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ABSTRACT

This document contains statements by educators, government officials, constitutional experts, and concerned citizens and groups concerning House Joint Resolution 620, other proposed amendments to the constitution, and legislative measures relating to the assignment and transportation of school pupils. The joint resolutions and proposals take various approaches including (1) forbidding schools to take race into consideration in assigning pupils to schools, (2) constitutionalizing neighborhood schools, (3) forbidding busing to achieve racial balance, and (4) "freedom-of-choice proposals. (JF)

SCHOOL BUSING

HEARINGS
BEFORE
SUBCOMMITTEE NO. 5
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
SECOND SESSION
ON
PROPOSED AMENDMENTS TO THE CONSTITUTION AND
LEGISLATION RELATING TO TRANSPORTATION AND
ASSIGNMENT OF PUBLIC SCHOOL PUPILS

Part 1
FEBRUARY 28, 29; MARCH 1, 2, 3, 6, 8, 9, 13, 15, 16; APRIL 12,
13, 26, 27; MAY 3, 4, 10, 18, AND 24, 1972

Serial No. 32

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Appendix A

SCHOOL BUSING

MONDAY, FEBRUARY 28, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler, chairman, presiding.

Present: Representatives Celler, Brooks, Hungate, Mikva, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman Celler. The committee will come to order.

The Chair wishes to caution those in the audience it will not allow any tape recorders or cameras in the room during the session—no cameras, no tape recorders.

Our first witness this morning will be a member of the committee, Mr. Walter Flowers of Alabama. However, before we hear from Mr. Flowers, both the ranking Republican member, our distinguished colleague, Mr. McCulloch, and I would like to make statements.

This morning, Subcommittee No. 5 begins public hearings on House Joint Resolution 620, other proposed amendments to the Constitution, and legislative measures relating to the assignment and transportation of public school pupils.

Today, 18 years after the Supreme Court decision outlawing racial segregation in the public schools, the Nation confronts a crisis.

The nature of the crisis is complex. A number of courts have held that transportation of students is one of the appropriate instruments for achieving racial desegregation in public schools. The most recent such opinion by the High Court asserted limitations on the propriety of pupil transportation. Meanwhile, however, the alleged dislocations and hazards of student transportation by bus have given rise to grave concern and to demands for constitutional relief.

To favor or oppose the busing of schoolchildren as an abstract matter serves no useful purpose. As the Court said in the *Swann* case, "bus transportation has been an integral part of the public education system for years * * * ." Today, approximately 40 percent of all public school pupils in all parts of the country are transported to their schools by bus.

Recent national surveys also indicate that there has been a dramatic reduction in the number and percentage of black students isolated in 100-percent minority schools. The committee has requested and now awaits receipt of pupil transportation data from the Department of Health, Education, and Welfare that indicates the number and percent of public school pupils that are transported to effectuate school desegregation. We have also requested data showing the amount of increase or decrease in pupil transportation which can be attributed to school desegregation.

The subcommittee will want to examine school desegregation and pupil transportation data in order to evaluate the consequences of busing. It will also receive and study testimony of concerned individuals and groups who express understandable distress at particular desegregation remedies that have been employed in their communities.

The foremost issue confronting the subcommittee is whether the busing dilemma calls for constitutional revision. I believe that the members of this subcommittee share the view that House action on amendments to the Constitution should not be taken in advance of study and consideration by the Judiciary Committee.

For this reason, the initial focus of these hearings will be on House Joint Resolution 620 and other proposed amendments to the Constitution relative to pupil assignment and transportation.

In response to my request, a number of nationally recognized constitutional scholars have commented on the provisions of House Joint Resolution 620. Copies of these comments are before each member. These constitutional authorities stress that the ostensibly simple language of House Joint Resolution 620 is in fact susceptible to differing and contradictory interpretations.

The hearings will explore the intent and effect of the proposed constitutional amendments. We shall also examine the scope of court-ordered remedies for school desegregation. I am confident that the subcommittee will receive testimony containing legitimate and concerned criticism regarding the process of school desegregation. The subcommittee will address itself to the problem of finding the most efficacious answer to this complex social and legal problem for the benefit of all Americans.

Mr. McCulloch.

STATEMENT OF HON. WILLIAM M. McCULLOCH, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. McCulloch. Mr. Chairman, my remarks today will be brief. Today, we begin our hearings on several measures relating to the headline-catching "busing" issue. As we begin, it is my hope that we in Congress can treat this issue in perspective and with honesty.

First, we should note that most of the measures before us would amend our fundamental charter of legal principles. Never before to my knowledge have we amended the Constitution to change a practice which is itself only temporary.

Second, we must remember that the complaints we hear about the busing of schoolchildren are complaints about a cost. Of course, no one likes to pay a cost as such. But our willingness to pay in a given instance may be measured by how we value what we obtain in return. As one public official put it, "Five miles is not a long ride when you're going where you want to go." There's a great deal of insight folded into that statement. We would do well, in my opinon, to keep in mind that, in discussing any bargain, we distort when we focus on cost alone.

Third, we should note that two distinct questions are being posed.

The first question is: Given the far-reaching phenomenon of court-ordered busing, is desegregation worth it? The second question is: Given the principle of equal educational opportunity for all, at what point does busing become counterproductive? Those asking the first question would have us eliminate busing as a tool for desegregation; those asking the second would have us limit busing to those cases where it is effective as a tool for desegregation. The first approach would require a constitutional amendment since it is at war with the equal-protection clause of the 14th amendment; the second approach, so long as it does not contradict the Constitution, would not.

Finally, we will never be able to resolve this issue in a way satisfactory to most Americans unless those of us in political life are honest with ourselves and our constituents. A social issue of such great controversy as this cannot be illuminated by statements of opposition to "unnecessary" busing or busing "to overcome racial imbalance." Such statements create the impression that Federal judges are arbitrarily ordering "massive, crosstown" busing without any justification other than that the racial composition of a particular public school does not reflect the racial composition of the entire school system. But the truth is that every court order operating today is predicated on a finding that the Constitution has been violated by agents of the State discriminating on the basis of race. In view of the facts, such statements are highly inflammatory and most irresponsible. I can well understand the temptations of campaign rhetoric, but the welfare of our Nation requires that we refrain from playing politics with constitutional rights.

I believe that if we view this controversy in the proper perspective, and if we clear the air of irresponsible rhetoric, we can arrive at a result which promotes the common good of our people.

Chairman CELLER. Does any other member of the committee wish to make a statement?

Hearing none, the Chair wishes to state we have 15 Members of Congress who have asked to testify this morning. It is not my desire to invoke cloture, but I do hope each Member will confine himself to 10 minutes so everyone will have an opportunity to be heard.

Our first witness will be the distinguished gentleman from Alabama, Mr. Walter Flowers.

STATEMENT OF HON. WALTER FLOWERS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. FLOWERS. Thank you, Mr. Chairman.

I welcome this opportunity to appear before you and other colleagues on the Judiciary Committee as you begin to undertake hearings on this issue of importance and concern in so many areas of our country, and to so many of our citizens. Let me say at the outset that I do not intend to dwell on intricate legal details or possibilites of judicial interpretation of pending legislative proposals before you. I know that you have an abundance of eminently qualified constitutional scholars scheduled to appear, and I will be awaiting their testimony just as you.

For whatever it may be worth, my message is clear and straightforward: First, I would sincerely hope that this committee will see and recognize the extent of the crisis facing American education today as a result of recent court decisions; and that this committee will proceed expeditiously so that the Congress might work its will toward bringing order out of chaos and ending this disruption. And, second, I would urge that you favorably consider a constitutional amendment along the lines of House Joint Resolution 620, which, in my judgment, is the only certain way of gaining the attention of the Federal judiciary.

Mr. Chairman, I trust that we are all aware that the American people are greatly disturbed at what has happened and is happening to the neighborhood school and to public education in general. No other institution is so ingrained in American life as the neighborhood public school. It is indeed a part of our heritage. We were the first nation in all history to base our hopes on the general intelligence of the population. As Thomas Jefferson said back in 1816, "If a nation expects to be ignorant and free * * * it expects what never was and never will be." And so, to accomplish the purpose of an educated citizenry, over the years a vast system of public education, locally controlled and supported, came into existence.

The symbol of this great system and support for it was the little red schoolhouse, and it evoked feelings of inspiration and pride. This has largely changed now, and many feel that this traditional symbol is being replaced in the minds of our people by another vision—that of a big, yellow schoolbus with entirely different connotations of resentment and fear. In my judgment, Mr. Chairman, this is a bad and unnecessary result that could and should have been avoided while still accomplishing the objective of integration in the public schools.

In the aftermath of recent court decisions culminating in the Richmond decision, the anxieties of many people have been compounded. I would like to read, in part, from a letter to the editor of the Washington Post several weeks ago. It is a good example of the absurdity of this decision as viewed by so many citizens:

> The next logical step indicated by the Richmond decision is either that all school districts within a state must be abolished, or that in a metropolitan area with state boundaries the school district must cross those boundaries.
>
> From there we swiftly move to a single federal school district for the entire nation, which, because the population will not conform itself to some kind of theoretical "balance," must include mandatory boarding schools for all grades. Once all schools in the nation are balanced racially, we can turn to balancing them on the basis of religion and national origin as well. Once that is achieved, real balance can be undertaken using the criteria of eye color, right or left-handedness, and so forth. Pity the blue-eyed, black haired, left-handed child of ethnically Norwegian-Filipino parents, as he will have to spend each school day in a different school to achieve proper balance throughout the system.
>
> Never mind that he won't get educated, for everyone knows that the notion that schools are for education is out of date.

The courts seem to be so preoccupied with saving the Nation from "de jure" segregation, and achieving racial balance, that the critical need of saving the public schools is apt to be lost in the shuffle of busing and cross-busing. We should never forget that the essential reason for the existence of schools is education, but all too often this is overlooked. I would ask to append at the conclusion of my statement two incisive editorials from local newspapers in my district, both written shortly after the *Swann* decisions were handed down last year.

Among the severe hardships that have been forced upon schools and school districts in my area have been the changing requirements and orders of the courts. Periodically, the courts have raised the ante, so to speak, and school boards diligently seeking to follow the law as they thought it to be at a given time have come to find that they were not in compliance. Perhaps they were following the law as it was a short time before, but not as it is now. Examples too numerous to catalog exist where honest citizens trying to do a voluntary public service for the community have found themselves hauled into court time and time again. This has caused untold confusion throughout the South, and I would hate to see the day come when sincere and public-spirited men and women will no longer agree to serve on local school boards, which are largely voluntary and without remuneration, because of the constant harassment.

The constitutional amendment route, such as proposed in House Joint Resolution 620, seems to me to be the logical way to accomplish a clear and even national policy in this field. I do not think that the passage of such an amendment would signal a setback for integration or a return to pre-1954, but it would be welcomed, by and large, by Americans of all races as a step toward sanity in national educational policy.

Short of enacting such an amendment, we are bound to continue to have a proliferation of proposals at every governmental level. The debate will continue to rage on every education authorization or appropriations measure, and I daresay it will even get more heated as the edicts of the courts now move north, east, and west.

For too long now, the South has been burdened with the double standards affixed to the Court's distinction between de jure and de facto segregation. It is generally accepted that Southern schools are among the most, if not the most, integrated systems in the Nation. The need for a single national policy in this area should be self-proving.

The language in Fifth Circuit Judge Walter Gewin's dissent in *United States et al.* v. *Jefferson County Board of Education, et al.* (380 F. 2d 385, 1967) clearly illustrates the need for a national standard:

> While professing to fashion a remedy under the benevolent canopy of the Federal Constitution, the opinion and the decree are couched in divisive terms and proceed to dichotomize the union of states into two separate and distinct parts. Based on such reasoning the Civil Rights Act of 1964 is stripped of its national character, the national policies therein stated are nullified, and, in effect, the remedial purposes of the Act are held to apply to approximately one-third of the states of the union and to a much smaller percentage or proportion of the total population of the country. I am unable to believe that the Congress had any such intent. If it did, a serious constitutional question would be presented as to the validity of the entire Act under our concepts of American constitutional government.
>
> The Negro children in Cleveland, Los Angeles, Boston, New York, or any other area of the nation which the opinion classifies under de facto segregation, would receive little comfort from the assertion that the racial make-up of their school system does not violate their constitutional rights because they were born into a de facto society, while the exact same racial make-up of the school system in the 17 Southern and border states violates the constitutional rights of their counterparts, or even their blood brothers, because they were born into a de jure society. All children everywhere in the nation are protected by the Constitution, and treatment which violates their constitutional rights in one area of the country also violates such constitutional rights in another area. The details of the remedy to be applied, however, may vary with local conditions. Basically,

all of them must be given the same constitutional protection. Due process and equal protection will not tolerate a lower standard, and surely not a double standard. The problem is a national one.

It will be argued that an amendment such as House Joint Resolution 620 is trivia and should not clutter up the basic charter of our Nation—that this would diminish the Constitution. Since I have been on this committee, this argument was used unsuccessfully against the so-called equal rights amendment. It appears to me that there is ample precedent, and the need is overwhelming.

The operative section of the proposed amendment merely states:

SECTION 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

My colleagues, there is a serious crisis in education, and it is of the utmost importance that the Congress offer a solution or solutions right now. The orders and decisions of the courts and administrative agencies on pupil assignment, school pairings and closings, forced busing, and so on, have been divisive and disruptive of our society. Education has suffered as a result of an inordinate emphasis on social engineering. Our jobs, our responsibility, as the duly elected representatives of the people, is to see that America's youth, of every race, creed, and color, get the best possible education and training to equip them to meet the increasing challenges that each year brings, and prepare them for leadership tomorrow.

Mr. Chairman, I would like to place in the record two editorials from local newspapers and also statements from the U.S. News & World Report entitled "School Busing Battle Spreads to North and West."

Chairman CELLER. They will be printed at this point.

(The material follows:)

[From the Tuscaloosa News, Apr. 25, 1971]

NEW COURT RULING IS JUDICIAL TYRANNY

The latest decision of the United States Supreme court on school desegregation is judicial tyranny. Congress must act to reestablish something close to the rational, and to help remove at least some of the chaos from public education.

Every member of Congress, from whatever state and section, should recognize in the decision elements of unfairness, injustice and impracticality. And they must respond to the challenge.

Generally, members of the House and Senate from southern states are outraged. The heavy hand falls with great force on the South, sparing other sections of the nation. A court decision in retribution for past errors, and in punishment for them, is a strange kind of decree to come from the highest court in the land.

The court rationalizes its injustice in providing for busing to achieve racial balance by indicating that it is to be done to end school segregation arising from development of separate black and white communities. This has occurred in every part of the nation, but the onerous burden of setting up artificial, impractical, expensive and harassing procedures to establish racial balance is to fall on the South.

The situation is enough to cause school officials to give up, but they must not. Nor must the rest of us. The public schools must be maintained despite extreme court decisions which have made administration a nightmare.

Significantly, the decision contradicts a prior announcement of policy by the President. The Supreme Court is, and must continue to be, independent of the chief executive and the legislative branch of government. But it must never be superior to the wishes of a majority of the people.

Desires of the electorate can be expressed through representatives and senators, and they must act now.

We in the South have made mistakes in the past. But we have come over to acceptance of the neighborhood school idea as a practical means of handling the segregation problem. True, this results in some schools heavily white and some heavily black. There is no racial balance in them. But they are schools serving the communities in which they exist.

We see no great injustice in such an arrangement. It is practical, defensible on the basis that a child attends the school nearest and most convenient to his home. Why should that not be a national policy, allowed everywhere?

The White House statement saying that it is up to the people to obey the decision is the only thing that could be said there, at the moment. But we would add an earnest plea for Congress to act. If parents do not have the constitutional right to send their children to the nearest community school, let's take steps required to establish that privilege.

[From the Tuscaloosa Graphic, Apr. 29, 1971]

SAVE THE PUBLIC SCHOOLS

The U.S. Supreme Court has made clear its intention to save the nation from de jure segregation. Yet it conveniently ignores the de facto segregation of the North.

There are no laws in the South requiring segregation. They were abolished years ago. But the South is still being singled out for punishment because it once had segregation laws. The kind of segregation in the North that results from neighborhood patterns is overlooked in desegregation decisions.

Thus the court bypassed Northern segregation in ruling last week that massive busing is legal in desegregating schools where the law once required separation. The neighborhood school must give away to race mixing and, if a long bus ride is the only way this can be accomplished, then go ahead.

In the same week of this court decision, the U.S. Senate defeated an amendment by Connecticut's Sen. Abraham Ribicoff that would have required an end to the de facto segregation of Northern schools over a 12-year period. Ribicoff has consistently fought for elimination of the double standard in desegregation, much to the discomfort of such northern liberals as Senators Mondale and Javits who know segregation in the South but profess not to know it when they see it in the North.

While the court strives to save the nation from de jure segregation, the critical need now is to save the public schools. The court is so obsessed with desegregation that the essential reason for the schools' existence, the education of children, is being overlooked.

The schools, at least those in the South, are being used to bring about social change. Even in schools where one race is dominant for the very reason that such schools exist in the North—neighborhood and economic reasons—the court is demanding social change through extensive busing.

The use of the schools to bring about social change is threatening the essential educational role of schools. Schools are supported by public tax money. Thus they require the confidence of the public. But such absurdities as the court's upholding of massive busing are undermining public support of schools.

The Congress must save the public schools from the court's obsession with mixing for mixing's sake.

[From U.S. News & World Report]

SCHOOL BUSING BATTLE SPREADS TO NORTH AND WEST

Now it's places such as San Francisco and Pontiac, Mich., where integration troubles are flaring. In the South, busing continues to grow.

The battle over busing for school integration is spreading from the South across the North and West.

Bombs blew up 10 school buses in Pontiac, Mich., on August 30, just eight days before that city was to begin a bitterly controversial program of transporting 8,700 children out of their neighborhoods to achieve racial balance in school enrollments.

The U.S. district judge who ordered the Pontiac busing threatened to put U.S. marshals on school buses and call in the Federal Bureau of Investigation if necessary to enforce his orders against strong local opposition.

San Francisco's school board lost an appeal to the Supreme Court to block the busing of 20,000 children to mix Negroes, Chinese and whites in classrooms.

Chinese parents, who object to their children being taken out of their neighborhood schools, vowed to continue the battle, with schools scheduled to open September 13.

LAWSUITS PENDING

Some two dozen cities in 14 States outside the South are targets of court suits demanding more racial mixing in schools. In nearly all, busing would be required to meet the demands.

Los Angeles is appealing the most massive and costly busing order yet imposed on any city—one that would transport 240,000 youngsters for distances ranging up to 25 miles at a cost estimated at 180 millions over the next eight years.

Other cities facing court orders to bus include Kalamazoo, Mich., Indianapolis, Seattle, Denver, Tulsa, Oklahoma City and Las Vegas, although legal battles are continuing in some of these cities.

Wichita, Kans., is starting to bus under pressure from the U.S. Department of Health, Education, and Welfare.

Boston has just yielded to State-government demands and agreed to step up its integration program. Refusal would have cost the city 21 million dollars in State funds.

Many Northern cities already have busing or other school-mixing programs in operation as a result of actions by State agencies, HEW or the U.S. Department of Justice.

HEW now has more agents at work outside the South than in the South, and several hundred non-Southern districts have been identified as posible targets for desegregation action.

The Justice Department has filed suit against seven cities, with other suits in prospect.

All this mounting pressure on the North comes at a time when the South is heading into what many officials regard as the decisive year in a long and slow process of desegregation.

The percentage of Southern Negroes in predominantly white schools more than doubled last year—up from 18 per cent to 39 per cent—in the biggest single year's increase in integration since the whole process began in 1954. That left only 14 per cent of the South's black youngsters in all-black schools.

HEW officials say there are only about 25 school districts in the entire South—out of 4,385—which have failed either to submit desegregation plans that meet legal requirements or to begin desegregation under court orders.

INTEGRATION RISING

In the new school year, another big increase in integration is predetermined.

What is happening in the South this autumn is an expansion of existing desegregation programs to break up many of the remaining all-black schools and to get more Negroes into school where the majority of pupils are white.

To do this, more busing has been ordered in many Southern districts—most of them in cities where housing patterns have tended to keep the races apart even after legally enforced segregation has been ended.

Estimates are that as many as 350,000 Southern children will be transferred to different schools in this mixing process, with most of them riding buses to their new schools.

By and large, throughout the South, this massive transfer is taking place quietly. HEW Secretary Elliot L. Richardson, after conferring with President Nixon on August 31, said the President shared his praise for "the remarkable degree of public understanding and leadership" being shown in the South.

Secretary Richardson also expressed his personal agreement with the President that busing should be held to the minimum necessary to accomplish the desegregation required by court orders.

The disputes now boiling in several Southern cities involve questions as to how much busing the Supreme Court decisions actually require.

The charge is raised that some district-court orders and HEW officials are requiring not just an end to segregation but the achievement of a "racial balance" in every school in a district.

One such case came to the attention of Chief Justice Warren E. Burger on August 31. It involved the Winston-Salem and Forsyth County district of North Carolina, where, under district-court pressure, the school board adopted a plan entailing the busing of 16,000 more pupils than last year, forcing the district to obtain 157 more buses and to stagger school openings.

The Chief Justice found it "disturbing" that the plan appeared to be based on a belief that the Supreme Court requires a fixed "racial balance" in every school to match the racial composition of the entire district.

Such a balance, Mr. Burger made plain, is not actually required. His explanation of the Court's holdings is set out in detail on this page.

The Chief Justice refused to interfere with the Winston-Salem order. But the district's school-board chairman, John Kiger, said he was encouraged by Mr. Burger's statement, adding:

"It remains to be seen what implications this has for use in the future, but it will have a bearing."

CASES ON APPEAL

Some court cases involving busing and "racial balance" are still on appeal.

A court hearing is set for September 22 on complaints from both white parents and civil-rights attorneys about the massive cross-busing program in effect in Charlotte-Mecklenburg County, N.C.

Jacksonville, Fla., won a one-year delay of a new busing program, but Nashville lost in its bid for a delay.

As schools began opening, there were many complications and some protests.

Blacks and whites fought in Wilmington, N.C., and 12 youths were arrested in disorders at Austin, Tex.

Negro parents in the Pompano Beach, Fla., area protested the busing of Negro pupils into white neighborhoods.

"If this is integration, we don't want it," said the Negroes' spokesman.

A similar stand was taken by a group of Indians in Maxton, N.C., who object to leaving their all-Indian schools.

On the other hand, more than 500 Negro students boycotted classes in Coco, Fla., demanding speedier integration of their county's schools.

When Dallas, Tex., was denied a delay in its court-ordered busing of more than 6,000 pupils, the school board found itself in a jam: The 105 new buses it will need were not readily available, with school opening drawing near.

Among cities which began busing—or increased it—without serious trouble were: Raleigh, N.C.; Columbia, S.C.; Miami, Fla.; Birmingham, Ala.; Richmond and Roanoke and Lynchburg, Va.

Trouble still could lie ahead. But the South appeared to be getting over another big test. And the battle now is moving northward.

Chairman CELLER. Thank you very much, Mr. Flowers. You have kept well within your 10 minutes.

Our next witness is the distinguished gentleman from Texas, Mr. Bob Casey.

STATEMENT OF HON. BOB CASEY, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. CASEY. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am indeed pleased to have the privilege of appearing before the committee today in support of my proposed amendment to the Constitution, which will endeavor to clear up the confusion now existing in this country concerning where a child should attend public school.

Mr. Chairman, there were many who had the view that your committee would never hold hearings on the proposed amendments. As a result, a discharge petition has been filed in behalf of a particular amendment, thus endeavoring to bypass this committee.

I have not signed the discharge petition on behalf of that amendment. Neither have I filed my proposed amendment for discharge, as I felt that you, Mr. Chairman, and this committee would soon recognize the need for hearings and the need for alleviation of the disruptive forces which are attacking our public school system.

My original proposed amendment, House Joint Resolution 607, reads as follows:

> SECTION 1. The right and duty of designating which public elementary and secondary school a child or ward will attend belongs jointly to the parents or guardian of each child, or ward, and to the local school board for the district in which the child resides, or other local educational authority, and shall not be impaired or denied, either directly or indirectly, by this Constitution or by any law, ordinance, regulation, or action of the United States, or of any State or political subdivision thereof.
>
> SEC. 2. The Congress shall have power to enforce this article with appropriate legislation.

However, after considerable thought, I introduced a second amendment last Wednesday, which has been assigned to this committee. Copies of this second amendment are supplied here today so that you might have it before you. The amendment which I introduced last Wednesday, House Joint Resolution 1076, reads as follows:

> SECTION 1. The right and duty of designating which public elementary and secondary school a child or ward will attend belongs jointly to the parents or guardian of each child, or ward, and to the local school board for the district in which the child resides, or other local educational authority, and shall not be impaired or denied, either directly or indirectly, by this Constitution or by any law, ordinance, regulation, or action of the United States, or of any State or political subdivision thereof.
>
> SEC. 2. No child shall be refused the right to attend the school of his choice because of race, color, or creed.
>
> SEC. 3. The Congress shall have power to enforce this article with appropriate legislation.

You will note, Mr. Chairman and members of the committee, that the only difference between the first amendment I introduced and my second one is the addition of a new section. The first section provides that the choice of assignment to a school belongs to the parents and the local governing body. Feeling that there might possibly be some local authorities who would arbitrarily assign children in a manner which would cause segregated schools, I added the new section 2, which would insure that no child's choice of school would be denied to him on the basis of race, color, or creed.

Make no mistake that this issue is one of paramount concern to the people of this Nation and that the situation is growing more acute. In the city of Houston, where I reside, a nonbinding referendum was held in the Houston Independent School District, and the issue was freedom of choice. The result of that referendum on November 16, 1969, Mr. Chairman, was 92,881 votes for freedom of choice and 30,801 against. This result was typical in all sections of the school district, both black and white.

Gentlemen, the Federal courts of this Nation, in my opinion, have far exceeded their powers and jurisdiction in school matters, and the result is a deterioration of the quality of education in this country. In my area of Texas, the results, in many instances, have been an inflammation of racial tension with a very detrimental effect on the children and the school system. Football teams have been broken up due to the reassignment of students. School bands have been dispersed in the same manner. Students who buy their senior high school rings during their junior year find themselves graduating from a school other than the school whose rings they wear.

Parent-teacher associations, which in my opinion are very necessary if you are going to have parental interest in schools, have been broken up, and parents have the feeling that they have no say in the operation of their schools.

Children who before walked a few blocks to school now are compelled to wait on buses and spend, in many instances, an hour or 2 hours a day traveling between home and school.

Mr. Chairman and members of the committee, the concern in my own area of Texas has been expressed to me very forcibly by my constituents. I could very easily present to this committee literally thousands of letters and telegrams urging action to correct this situation.

Just as of yesterday before I boarded a plane, this stack of petitions—and these are just signatures—were handed to me so that the committee would have visual evidence of the concern of the people of my area.

Needless to say, when I return to my district on weekends, the paramount question is, "What are you doing to stop the destruction of our public schools?"

Mr. Chairman, something must be done quickly. I would certainly urge this committee to take the initiative in drafting its own constitutional amendment if it feels that those pending before the committee do not furnish the correct answer.

If this is not done, I assure you that the vast majority of citizens of this country will lose faith in the basic concepts of our Government, a government of the people and by the people, for they feel that their wishes are being arbitrarily thwarted by capricious rulings by courts and thoughtless edicts by the Federal bureaucracy.

This committee brought forth legislation years ago to stop the assignment of children to schools on the basis of their race. Now I ask this committee to approve my proposed constitutional amendment for the same reason. If it was wrong in the past to assign, over their objection, all children of a particular race to a certain school, then it is wrong at the present to assign a portion of students of a particular race, over their objection, to a certain school.

You now have Federal agencies and the Federal courts ignoring the desires of the parents and the children themselves by assigning pupils on a racial basis contrary to any existing law and contrary to any concept of quality education.

I sincerely believe that my amendment will restore order and self-government to the local school boards and yet protect the rights of minorities in their desire to attend particular schools. I most earnestly urge your favorable consideration.

Mr. Chairman, with reference to the proposed amendment which has received attention and is being solicited for discharge, I might point out that it only provides that no child may be assigned to a school on the basis of race, color, or creed. That has not been the reason for some of the assignments by the Department of Health, Education, and Welfare, nor has it been the reason in some of the court decisions.

Mr. McCulloch stated the very same reason that is being used sometimes that they are being assigned to improve their education. I don't think you are improving education when you throw them into a vortex of complexity, when they don't want to go to that particular school. If you send a child to a particular school he does not want to go to, I don't think you are going to find him studying very hard; he is going to be a troublemaker.

My proposed amendment would assure any child who thinks the school he goes to is not of proper quality and chooses the school he cares to go to, and the only reason they could turn him down would be because of his race, color, or creed, that would be protected under this proposed amendment.

Gentlemen, I urge you seriously to consider this question because it is a very serious question for this country and I most earnestly urge your favorable consideration of my amendment.

Chairman CELLER. If from the testimony we hear there can be distilled an effective, wise statute, you would prefer our recommending such statute rather than a constitutional amendment, would you not?

Mr. CASEY. I would rather have a statute but, noting the proposed amendments over in the Senate, I don't believe they will accomplish what we are interested in at all because it still leaves it to the courts and the courts have in their recent actions so interpreted statutes and ignored some, and HEW has ignored prohibitions that the Congress has put on the appropriations bill.

Chairman CELLER. If we could make the statute foolproof——

Mr. CASEY. I have great confidence in you as a most able constitutional lawyer, not only in this House; if you can figure out some way to stop them, I am with you, and I think a statute would be quicker and more easily passed.

Chairman CELLER. On page 2 of your statement you have suggested a constitutional amendment which reads:

> SECTION 1. The right and duty of designating which public elementary and secondary school a child or ward will attend belongs jointly to the parents or guardian of each child, or ward, and to the local school board . . .

Then in section 2 you say, "No child shall be refused the right to attend the school of his choice because of race," and so forth.

Isn't there an inconsistency between section 1 and section 2?

Mr. CASEY. No, Mr. Chairman. The school board has to have some say in it. Otherwise, you could see a particular segment of the population saying, "We are all going to this one school. We will overload it." But if the school board says, "You can't all go here because the facilities are not adequate," that would be a reason they could refuse. But if they wanted to refuse one, two, or 100 children going to a particular school, they would have to show some legitimate reason other than race, color, or creed.

Chairman CELLER. In addition, you say, "No child shall be refused the right to attend the school of his choice."

Isn't that inconsistent?

Mr. CASEY. No child shall be refused the right to attend a school of his choice because of race, color, or creed. He can be refused because the facilities are not adequate or there are too many children going there. You have to have some local authority. Strict freedom of choice would not work, Mr. Chairman; you have to have some authority to say, "You can't all go to this school; you can't overload it."

Mr. BROOKS. I was certainly gratified to see that my distinguished colleague from Texas, Bob Casey, has favored this hearing by testifying on the vital question of school busing, whether by statute or amendment. We appreciate your coming back in from Texas to make this statement.

Mr. CASEY. Thank you very much. I can assure you it is most difficult to stay off that discharge petition.

Chairman CELLER. We are very grateful to you.

Mr. CASEY. Thank you, Mr. Chairman.

Chairman CELLER. Our next witness is the distinguished gentleman from Florida who is always welcome, Mr. Charles E. Bennett.

STATEMENT OF HON. CHARLES E. BENNETT, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. BENNETT. Thank you very much, Mr. Chairman.

I sincerely appreciate your giving me this opportunity to testify in support of the neighborhood school concept and my constitutional amendment to preserve this right.

House Joint Resolution 30, introduced by me on January 22, 1971, is the earliest introduced constitutional amendment before the Congress. Shortly after I submitted it I asked that hearings be held on this subject.

But at that early time in 1971 there was apparently in the committee a feeling that hearings would not be held at any time in the near future and I was so advised by letter. So as time went on, I introduced the first discharge petition in the 92d Congress on this subject; as months passed, a great interest has now mounted into what is apparent to me to be a strong majority opinion in the country and in the House of Representatives in favor of an amendment of this type.

The committee in its dedication to democracy has appropriately responded to this feeling and is now holding these hearings, and I am deeply grateful that this is so.

The original constitutional amendment which I introduced on January 22, 1971, was not as perfectly drafted as could have been wished, although it was the best that I could come up with at that time. I have now introduced House Joint Resolution 1073 as a substitute for House Joint Resolution 30. The purpose is identical but the wording is improved in House Joint Resolution 1073. Therefore, I am testifying in support of House Joint Resolution 1073. It is a very brief amendment and reads as follows:

> SECTION 1. No student shall be compelled to attend a public school other than the one nearest his residence.
>
> SEC. 2. The Congress shall have the power to enforce by appropriate legislation the provisions of this article; and to insure equal educational opportunities for all students wherever located.

The vast majority of the people of this country, of all races and economic positions, favor strongly the idea that no student should be compelled to attend a public school other than the one nearest his residence. There are many thousands of black people as well as of white people in the district which I represent; and many in both groups have strongly urged me to actively work for a constitutional provision such as above recited and none have voiced opposition to this point of view. I am, of course, most familiar with the problem of busing in my own district, Jacksonville, Fla. Currently about 43,000 students there are bused for racial ratios and by the end of this year the court orders make the figure 63,000 to be bused for racial ratios. The current costs in Jacksonville for court-ordered busing are $825,000 and 100 extra buses, and by the end of this year the figures are $1,175,000 and 150 extra buses for this purpose.

An inspection of the assets of my district will reveal this is a very heavy burden because the average income in my district is very low. My congressional district is 30 miles wide, and the school district is as wide and covers over 800 square miles. People are bused in this tremendous district through the downtown traffic all the way across town—black people and white people—and they are furious about it.

To bus students long distances across cities, large and small, and thus to deprive them of their time for study and their time for recreation, and their time for being with their parents in character-molding activities, is a penalty that neither this generation nor any other generation should have to pay. Children go to school to learn. Busing neither adds to their learning in the usual educational processes nor in any other.

People in low-income brackets experience the greatest difficulties because of the current busing situation. Every minute that they can have their children with them is important to them since they are not financially fixed so that they can buy some things and services that those in the wealthier groups can buy. Also, when busing becomes particularly intolerable to them, they do not have a chance to place their children in private schools. Neither do they have the chance to have these children perform household duties that are important in low-income bracket families to hold the family together.

Most important, however, is the denying to these people of the opportunity to be with their children in character-molding activities which are now difficult because of the long periods of time that these children must be away from their home influences.

I want to emphasize that the amendment that I propose would not deprive anybody of anything. It is not a return to the old dual school system. It would not prevent a student being assigned to a school more distant than his neighborhood school if he or his parents preferred the other school for some reason. It just prevents this being forced upon him.

Further, it attempts by the last sentence of the amendment to insure that equal educational opportunities for all students, wherever located, will be attained; and it puts the responsibility on Congress. Some suggested that the right to equal educational opportunity should be asserted as a constitutional right in the ordinary formula for the establishment of rights. I would have no objection to that result, but I did not put it in the wording which I introduced because I did not know how that sort of wording could be enforced by the courts since the local governments have the basic responsibility to run schools and I see no reason to change that. The way I have worded it in my constitutional amendment is workable because, while leaving school management in the grassroots, the responsibility is put on Congress to equalize educational opportunities throughout the United States in a way which would not give rise to individual lawsuits but instead give rise to legislation of a guideline and fund-producing type. This, I take it, is what is most needed.

I believe the constitutional amendment which I have introduced is a workable, clean provision behind which all Americans can rally for the improvement of the education of the youth of our country.

Mr. POFF. Mr. Chairman, I know I speak the sentiments of every member of the committee when I say the gentleman from Florida is always welcome here. He has a reputation for fairmindedness. I know what he speaks comes from the heart.

If I may, I would like to ask the gentleman for his definition of the phrase "neighborhood school."

Mr. BENNETT. That is not in the constitutional amendment which I have but it is in my statement. The constitutional amendment says the school nearest his residence.

Mr. POFF. Do you mean the "school nearest his residence" to be the equivalent of "neighborhood schools"?

Mr. BENNET. As far as my statement is concerned supporting the constitutional amendment, I did have that in mind but the constitutional amendment is certainly arrived at with much more care than my statement and I would prefer that the language of the constitutional amendment override; and it says "nearest to his residence," and that is very specific.

Mr. POFF. Suppose a student's home is adjacent to the geographic boundary of a local school district and the school physically closest to his residence lies across the geographic boundary in another local school district. Would a child be allowed under the language of your amendment to attend that school even if the school authorities in the school district of which he is a resident required him to go to a school in that district?

Mr. BENNETT. I am glad you brought that up because this emphasizes section 2 of the constitutional amendment which I have introduced. Now, in response to the question you have asked, if the Congress of the United States did not enact a law setting down guidelines which would make this appropriate in certain cases as you suggest, either allowing that to be handled by administrative action or a law they passed specifically, then in fact the child would have to go to the one closest, as the crow flies, to his home.

I have had an opinion on this by very able lawyers. I have not practiced law for 20 years myself but very able lawyers have looked at this and they say section 2 allows what you refer to be handled by statutory enactment; and it would allow regulation in a department such as Health, Education, and Welfare if a bill were enacted under this amendment to allow administrative action.

Mr. POFF. Thank you, Mr. Chairman.

Mr. HUTCHINSON. Mr. Chairman, I want to echo the statements of the gentleman from Virginia with reference to the esteem with which the witness from Florida is held by members of this committee.

I am disturbed, at first glance, by the scope of the last phrase in your constitutional amendment: "and to insure equal educational opportunities for all students wherever located." I anticipate that that language in the Constitution would be construed by the courts as vesting in the Congress complete authority over the educational system in the country in order to insure equal educational opportunities. Would you not suppose that Congress could dictate what the teacher-student ratios should be, what the content of the classroom instruction should be, what the qualifications of teachers should be? The statement which I know the gentleman sincerely makes, that his proposal would leave educational management at the local level, I am afraid would not prove to be correct.

Does the gentleman want to develop this point further?

Mr. BENNETT. I would like to develop it. I have not said anything in my statement about another problem which faces us further down the road, one that has nothing to do with the racial problem or busing, specifically, but having to do with equality of education. So far it has not gone beyond the State involved; but really the principle involved could really be nationwide. If the courts uphold this philosophy and say everyone is entitled to an equal education in the separate States, I would imagine it would not be much stretch of imagination to say this on a national basis.

Somebody has to have authority to correct this. Instead of putting it in as a right that an individual would be expected to litigate, I put the responsibility on Congress to do whatever is to be done in this field by guidelines or by dollars that they would appropriate.

I think my amendment therefore solves a number of problems. You notice it does not mention race or busing. It goes to fundamental rights of individuals. I think one of the fundamental rights of individuals which is coming up across the horizon real quick is to have an equal education everywhere in the United States, and there is nobody else who can provide that except the Congress of the United States.

The way I have drafted my amendment does not give rise to individual lawsuits to test this in the constitutional field before the courts, but it does put a responsibility on Congress.

I am drawing the distinction between section 1 which gives a basic constitutional right which can be litigated in a lawsuit by an individual. The second part gives power to the Congress, power to insure equal opportunities for all students wherever located.

I would like to see us solve both of these problems by amendment. I think everyone knows I have a relatively conservative point of view but I do try to look at the future, and my constitutional amendment will help solve this problem which is about to arise.

Chairman CELLER. We all know of your dedication, candor, and excellence as a Member of the House, and we always listen most attentively to what you say. It is interesting to observe that we have thus far heard three Members of Congress and there have been offered to us four different types of constitutional amendments. So you can see that our job is not going to be an easy one.

Mr. BENNETT. I agree, sir, and I know this committee, if any committee of Congress can, will come out with the best possible product. I am glad it is in such fine hands.

Chairman CELLER. Thank you very much, Mr. Bennett. We appreciate your comments.

Our next witness is the distinguished Member of Congress from Georgia, Mr. Jack Brinkley.

STATEMENT OF HON. JACK BRINKLEY, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BRINKLEY. Mr. Chairman and members of the committee, on January 20, 1970, during the second session of the 91st Congress, I proposed an amendment to the Constitution of the United States. This proposal, House Joint Resolution 1048, would provide that the involuntary busing of any student to a school or the required attendance of any student at a school outside the student's local school zone for the purpose of achieving racial balance or quotas is prohibited.

On January 22, 1971, near the beginning of the first session of the 92d Congress, I reintroduced this constitutional amendment designated House Joint Resolution 43 which, like its predecessor, was referred to the Committee on the Judiciary.

I appreciate this opportunity to testify before you today on this vitally important legislation.

As a lawyer myself and a successor to Hon. E. L. (Tic) Forrester, who served on this committee with many of you, may I propound a question and briefly build around it, giving what I believe to be a fair perspective and an accurate evaluation.

Question. Should neighborhood schools whose students happen to preponderate in one race or another because of housing patterns be required to bus students to achieve proportional racial balance?

In the landmark decision of *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), the U.S. Supreme Court established the criteria that racially restrictive covenants on land are unenforceable. Prior to that time many housing patterns were strictly controlled in most sections of the country through this device—restrictive covenants based on race—with complete Government sanction. Schools resulting from that situation are just as surely de jure as those schools formerly operating under a dual system. Yet this has been the hypocritical excuse to exempt most non-Southern systems from that classification. Thus, if the answer to my question is in the negative, then neither should busing be required of former dual systems under no less authority than *Shelley* v. *Kraemer*.

Just as busing to achieve segregation was wrong, busing to achieve integration is wrong. To draft other children from unwilling parents to serve as social leavening; to transport human beings from one end of a county to another to provide others with academic fellowship; to yoke together those of unequal learning readiness, ability, and cultural background in the faint hope of benefiting one at the almost certain expense of the other; to punish some to pamper others; to set the stage for disorder and educational chaos as an atonement for past real or fancied wrongs; to use educational institutions as factories for social experiment and reform; to deny the rights of many to grant a license to a few, I believe, Mr. Chairman, and members of this committee, is measureless folly.

Who is there among us who would seriously advocate resettlement of citizens around the country in order to achieve geographic proportional racial composition? But is not the principle of busing precisely the same?

We choose where we live, whether in Maine or Georgia, commensurate with our ability to afford it, based specifically on the considerations of school area, church affiliation, nearness to friends and the like.

In the words of Justice Louis D. Brandeis:

> They (the Founding Fathers) conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized men.

Brown v. *Board of Education*, 347 U.S. 483 (1954), held that a black child cannot be excluded from one school and required to attend another school solely because of his race. All too many governmental officials have misconstrued *Brown* to require that black and white children must be excluded from one school and required to attend another solely because of their race—that is, to meet racial quota or balance goals.

The situation might be likened to the invalidating of laws requiring black citizens to sit in the rear of a bus. A great many governmental officials are in the position of insisting that the decision requires black and white passengers to be seated according to a percentage or quota system so as to enforce a uniform racial distribution throughout the bus. We object to the Government's conversion of a personal right into a personal duty, just as we would object to its equating a citizen's right of religious freedom with a duty to go to church.

Last summer I sent out a questionnaire to the residents of one of the 19 counties I represent where my home is located, Muscogee County. Its government is consolidated with that of Columbus, Georgia's second largest city. It is also the home of Fort Benning and is a forward, progressive city. Two blacks are elected councilmen; one black has long represented us in the General Assembly of Georgia. Many blacks ably serve on different boards and agencies.

To this constituency we wrote, "A questionnaire is at best limited, but the intention of this one is to draw upon the personal knowledge of the answerer and his or her best judgment based thereupon."

Here are the questions and tabulations:

1. Do you have children in—
    - Public school, 925.
    - Private school, 75.
    - Parochial school, 17.
    - No school-age children, 415.
2. Judging from the development of your children *only*, would you say that the quality of education is—
    - Improving, 219.
    - About the same, 204.
    - Deteriorating, 792.
3. Is this due to—
    - School changes, 659.
    - Teacher changes, 586.
    - Social emphasis, 525.
    - Distance to school, 231.
    - None of the above (please explain), 78.
4. House Joint Resolution 43, Brinkley of Georgia, would establish as a national constitutional standard the right of children to attend his or her neighborhood school.

    Would you favor House Joint Resolution 43? 383.

    Would it be helpful to ask the President where he stands on this? 126.

    Would it be helpful to secure the position of *all* 1972 presidential candidates? 182.

    Would it be better to give the facts to the people from other parts of the country? 155.

Would it be better in the long run to work within the Congress for a proposed constitutional amendment limiting the terms of Supreme Court Justices (H.J. Res. 699, Brinkley of Georgia)? 205.

All of the above, 1040. None of the above, 6.

While the response to this questionnaire was not overwhelming, I sincerely believe that it is representative.

I don't know how things are in the schools of New York. If I am to believe hearsay evidence, things aren't so good. And in my district things aren't so good either, and it's because our systems are having to major in minors, chief of which is the judicial obsession to balance the races.

The identity of the individual, and in a larger sense the identity of his or her neighborhood, is also very important and worthy of protection. Our correspondence from black and white citizens alike points out the desirability of pride in identity and culture. An individual's identity in a democratic society—whether he is white or black—should not, under any reasonable circumstance, be bent to the will of the state. To absorb a minority into a majority as a judicial concept of the state is wrong to both minority and majority alike.

In conclusion, Mr. Chairman, when emphasis in school is placed on the R of race over the traditional three R's of reading, writing, and arithmetic, we know what will happen. We have seen it with our eyes. We have felt it in our hearts. Noble motivation has not achieved the envisioned or desired results: the uplifting of all children.

Quality education can best be achieved in a learning environment. Our resources are limited and can best be utilized to create such a place in neighborhood schools where a feeling of belonging is present: where a feeling of security exists; where a sense of participation by parent and child alike is present. To consume resources of time and money for busing for the purpose of achieving racial balance is so obviously wrong, meaningless, and unproductive; it is a void, demeaning. It is mercurochrome when the need is penicillin.

The present stage in history was thousands of years in the setting. As our republican form of government changes the scenery and improvises the dialog, may it have the wisdom and patience to allow the players free constitutional choice in finding their changing roles and adjusting to their new parts—without coercion. This Nation is not playing a one-night stand.

Thank you, Mr. Chairman.

Chairman CELLER. I just want to read a brief statement by Chief Justice Burger of the U.S. Supreme Court speaking for the Court in *Swann* v. *Board of Education* on this subject you have touched upon. Chief Justice Burger said:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient and even bizarre in some situations and may even impose burdens on some but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

I just wanted to put that interpretation in the record at this point. You may want to comment on that.

Mr. BRINKLEY. That is precisely the point I wish to make. The Court has set up an artificial distinction in this definition of de facto and de jure schools.

Prior to 1948, with the full coercive power of Government, lily-white subdivisions were sanctioned under full authority of law from which schools emanated and which were just as surely segregated schools as those in the South because of the dual system. Therefore, what we say is the fact that this distinction is unjustified, the distinction between de facto and de jure, because in those subdivisions of New York and California, the deliberate pattern of segregation was just as sure as in Atlanta, Ga., and this case, *Shelley* v. *Kraemer*, proves it. I commend it to your counsel.

Chairman CELLER. We are grateful to you for your very profound statement.

Our next witness is the distinguished Member from Alabama, Mr. Bill Nichols.

STATEMENT OF HON. BILL NICHOLS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. NICHOLS. Thank you, Mr. Chairman, and gentlemen of the committee.

It is indeed a pleasure and a privilege to appear before your committee in regard to House Joint Resolution 620, which, if adopted, would prohibit students from being assigned to a particular school on the basis of race, creed, or color.

Under the April 20, 1971, Supreme Court ruling which declared the forced busing of children to be a constitutional means of achieving racial balance, students are assigned solely on the basis of race.

Many proponents of forced busing would have us believe that we must have busing in order to guarantee members of minority groups quality education. Mr. Chairman, let me assure you that I sincerely desire quality education for all of our people regardless of race, creed, or color, and I think my voting record in the 92d Congress has reflected my support for better education for all people.

However, I strongly challenge the idea that forced busing is a desirable means of achieving quality education. In fact, I profoundly believe that the evidence tends to indicate that forced busing is one of the most disruptive and destructive forces in the history of American education. It has brought chaos and anxiety into the lives of many parents and students in all sections of our country. In addition to the turmoil created by busing, it is also costing the already overburdened taxpayer greatly. On top of the high cost of busing, many school systems have been forced to purchase new equipment in order to comply with court orders. It has been estimated that the court order in Los Angeles, Calif., to transport 240,000 students distances ranging up to 25 miles, would cost $180 million over the next 8 years.

Mr. Chairman, it seems to me that this increased spending would have a more positive impact on the quality of education if it were spent on something other than transporting students simply to attain the Supreme Court's ideal racial balance.

Finally, I think it should be remembered that we live in a representative democracy and that we in the Congress should make every effort to represent the will of the majority of the people in this country. Recent estimates across the Nation indicate that 75 to 80 percent of the American people are opposed to forced busing to achieve racial balance in our schools. Just this month a 3,300-car motorcade composed of Richmond area parents visited Washington protesting forced busing and the assignment of students to schools outside their neighborhood for the sole purpose of achieving racial balance. As you know, I am sure, there has been strong opposition to busing in California, Michigan, Virginia, Alabama, and many other States.

Mr. Chairman, I sincerely believe that House Joint Resolution 620 does indeed reflect the will of the majority of the people in our country, and as such I certainly hope it will be passed by the Congress.

I appreciate the opportunity of testifying before your good committee, Mr. Chairman, and the time you have given us.

Chairman CELLER. Are there any questions?

We are very grateful to you and thank you very much.

Our next witness is Mr. Fletcher Thompson, our distinguished colleague from Georgia.

STATEMENT OF HON. FLETCHER THOMPSON, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. THOMPSON. Thank you very much, Mr. Chairman.

I, too, appreciate this opportunity to appear with regard to legislation and proposed constitutional amendments relating to public school attendance based on the race, color, or creed of the student.

I suppose that I have spent more time, written more letters, and introduced more bills and amendments in an effort to find a solution to this than any other Member of Congress.

When I first came to Congress, I became incensed with what I saw happening to our school systems in the South, in the name of desegregation. I would like to pause, Mr. Chairman, at this moment and point out that I have a consistent record of supporting equal rights for all people and have no intention of deviating from this, either now or in the future.

However, what has been thrust upon Southern schools is not equal, it is not right, and it is destructive of our educational system. We are not affording equal protection of the laws to all people, but indeed are punishing many because of the desires of some people to implement their pet social theories.

Before I specifically discuss any proposed amendment to the Constitution, I would like to point out a fact that, though little known, is of great importance, so far as education is concerned. It illustrates the degree of upheaval forced upon Southern schools in the name of equal protection of the law for all. This makes a southerner understand how, throughout history, many lives have been lost and much suffering caused in what some few considered a holy cause. Southern schoolchildren have been the victims of a so-called holy cause of forced racial balance, directed and sustained by persons who were often well-intended but, unfortunately, knew little about the facts relating to equal protection of the law in Southern States.

Approximately 3 years ago, HEW advised one local school superintendent in my district that a 6-year-old high school, which had cost about $1 million, would have to be abandoned, since it helped perpetuate a segregated school system. The student body of this school was all black and, without exception, all of them lived closer to that school than any other. But the facility was to be closed down because HEW said that keeping it open would promote segregation.

This caused me to ask HEW how many schools throughout the South had been closed, not because the schools were outdated or inadequate or unsafe, but simply to force the students out of one school and into another for the purpose of achieving racial balance.

At first, HEW denied keeping statistics of this nature. I then personally contacted some 1,816 individual school districts and asked, first of all, how many schools in that district had been closed during the past year and, second, how many had been closed at the insistence of either HEW or Federal courts in order to promote what they called "desegregation" but, in fact, was mathematical racial balance.

At the same time, I requested the help of Congressman John Moss, chairman of the Freedom of Information Subcommittee, to require HEW to give me the figures I requested. From my efforts in contacting school districts, I learned that 356 schools had been closed, which, according to the school authorities, were closed solely for the purpose of trying to achieve racial balance and not because of any deficiency in the building. Then, at the prodding of Congressman Moss, HEW supplied me with their information which, to my amazement, showed that not 356, but rather 475 schools had been closed in the South for the purpose of promoting racial balance.

Try as I might, I could never get anyone very upset about this waste, because the tide and emotion were running in the other direction. I submitted for the Record the information given me by HEW, and it is contained in the Congressional Record, page H9996, February 18, 1970. This material points out not only that more than 400 schools were closed for a social purpose, but also that millions and millions of taxpayers' dollars were wasted.

As a sidelight, you may have read about the fact that Baker Academy in Baker County, Ga., has been sued by the Justice Department to void its purchase of an abandoned public schoolhouse, where it is now conducting classes.

I have been to Baker County and seen that this is a fine, solid building. It was sold at public auction on the steps of the courthouse and the buyers then sold it to Baker Academy. I say hurrah for Baker County, for at least its abandoned school facility is being used for education. It is not like Butler High School in Gainesville, Ga., which was closed when it was 8 years old because it was in a black community and keeping it open would not promote racial balance. This school has not been used since that time for classes.

Had it not been for waste like this, President Nixon would never have to ask for $1½ billion in emergency aid to combat problems created by actions such as I have cited above. The HEW figures reprinted in the Congressional Record are presented as exhibit A, attached to my testimony, and I hereby request unanimous consent that they be included in the official record of these proceedings at this point.

Chairman CELLER. They will be included.

(The figures follow:)

Results of a survey by Congressman Fletcher Thompson of Georgia, of 1,816 school districts

State	School districts written	Answered	Schools closed	Class-rooms closed	Cost	Students	Negro schools closed	High schools closed	Elementary schools closed	Schools closed: Value stated	Schools closed: Not stated
Arkansas	207	12	6	41	$492, 025	----	----	----	----	6	0
Alabama	118	23	75	496	8, 807, 301	2, 400	15	17	10	63	12
Georgia	195	130	31	480	9, 550, 677	190	6	5	9	15	15
North Carolina	156	40	28	239	3, 917, 000	260	0	3	4	21	7
South Carolina	92	15	11	62	2, 067, 880	1, 900	7	8	5	10	1
Virginia	129	55	17	140	4, 785, 000	973	15	0	2	15	2
Texas	254	53	24	183	2, 388, 012	500	2	0	8	17	7
Louisiana	67	22	37	399	6, 065, 777	0	4	7	17	35	2
Tennessee	150	29	43	218	3, 286, 000	0	1	5	0	31	12
Kentucky	156	77	8	55	550, 000	200	5	1	4	5	3
Florida	77	37	40	308	5, 560, 732	410	1	3	5	25	15
Oklahoma	67	25	12	63	648, 000	0	3	1	1	6	6
Mississippi	148	148	24	332	4, 324, 700	5, 977	0	0	0	24	0
Total	1, 816	666	356	3, 016	[1] 52, 443, 104	12, 810	59	50	65	274	[1] 82

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[1] This figure includes only 274 of 356 schools closed. 82 schools gave no value in their response. School districts written on integration when HEW would not give us requested material.

School closings compiled from HEW's own records, 1968–69, as submitted to Congressman Thompson of Georgia, 1968–69

State	Districts written and answering HEW form	All districts reporting in 1954–69, districts reporting		All districts for year of 1968–69					
		No schools closed	Schools closed	Schools closed per State 1968–69	Reasons for closing		Race of school		Average students per closed school in each State
					Desegregation	Other	Negro	White	
Georgia	112–152	24	88	59	27	32	31	22	189
Florida	59–62	10	49	66	45	21	50	16	119
Alabama	85–107	19	66	124	80	44	86	44	168
South Carolina	73–82	29	44	49	25	24	30	19	209
Mississippi	97–97	35	62	33	19	14	20	13	160
Tennessee	87–115	24	63	51	29	22	26	25	104
Louisiana	52–56	9	43	82	56	26	70	12	170
Arkansas	130–151	52	78	42	35	7	36	6	121
Oklahoma	54–65	13	41	33	14	19	17	16	126
Texas	398–414	133	265	119	80	39	83	36	193
Kentucky	72–85	21	51	26	6	21	5	21	84
North Carolina	134–146	37	97	86	55	31	63	23	273
Missouri	70–75	31	39	13	5	8	6	8	70
Delaware	18–21	11	7	1	0	1	0	1	585
Total	1, 441–1, 628	448	993	784	475	309	522	262	[1] 172

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[1] For 1968–69.

1968–69

State	Total average cost of schools closed by State	Schools closed by HEW [1]	State	Total average cost of schools closed by State	Schools closed by HEW [1]
Georgia	$400, 246	5	Oklahoma	102, 462	3
Florida	231, 665	19	Texas	335, 312	24
Alabama	219, 365	2	Kentucky	40, 961	1
South Carolina	481, 308	5	North Carolina	379, 044	2
Mississippi	205, 240	10	Missouri	217, 428	1
Tennessee	107, 438	3	Delaware	1, 118, 000	0
Louisiana	225, 279	14			
Arkansas	229, 448	9	Total	[2] 54, 758	98

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[1] Recommendation compiled by own records.

[2] Average cost per each school closed.

Material compiled for school closings, from HEW information given to Congressman Thompson of Georgia, for the years 1954–69

State	Districts written and answering HEW form	Districts reporting		Schools closed	Reasons for closing		Race of school		Average students per closed school
		No schools closed	Schools closed		Desegregation	Other	Negro	White	
Georgia	112–152	24	88	491	44	447	302	189	86
Florida	59–62	10	49	249	81	168	149	100	78
Alabama	85–107	19	66	834	166	668	537	297	141
Mississippi	97–97	35	62	623	21	602	469	154	105
South Carolina	73–82	29	44	443	28	415	268	175	50
Tennessee	87–115	24	63	969	135	834	333	636	57
Louisiana	52–56	9	43	225	60	166	170	55	232
Arkansas	130–151	52	78	164	89	75	120	44	117
Oklahoma	54–65	13	41	105	45	60	55	50	103
Texas	398–414	133	265	560	296	264	377	183	133
Kentucky	72–85	21	51	408	95	313	127	281	156
North Carolina	134–146	37	97	369	97	272	256	113	221
Missouri	70–75	31	39	173	55	118	77	96	133
Delaware	18–21	11	7	21	12	9	14	7	59
Total	1, 441–1, 628	448	993	5, 634	1, 224	4, 410	3, 254	2, 380	

Mr. THOMPSON. Now, Mr. Chairman, putting the past aside and with it all the injustices done to both blacks and whites, our task today is to attempt to map out a future course for this Nation in school matters. Whether by constitutional amendment or by regular bill, we must decide what will best serve the interests of the people, especially the schoolchildren of America.

I will not at this time attempt to relate the numerous court decisions in school cases, for I feel certain that you are as familiar with those as I am.

Suffice it to say that school systems are now faced with the condition that students must be assigned to attend schools solely on the basis of race, color, or creed of the child.

This is achieved not only through forced busing, but also through closing of schools, pairing of schools, alteration of grade structure and the gerrymandering of school districts.

With this knowledge, I drafted the language now known as the Lent amendment. As the original author and the first to introduce this proposed amendment, as House Joint Resolution 561, I would like to explain the purpose of the measure, what it does and what it does not do.

The proposed amendment popularly known as the Lent amendment as originally drafted by myself means simply that public school assignment would be based on factors other than race, creed or color. Any attempt to base school attendance on race, through forced busing, gerrymandering school districts, pairings, closing schools, altering grade structure or any other means would be prohibited, should this proposed amendment be enacted.

So in substance, Mr. Chairman, the amendment says that a schoolchild is a schoolchild, and shall not be considered a black schoolchild or a white schoolchild or an oriental schoolchild in assigning which school he shall attend.

The amendment does not, in my opinion, as the original author, overturn court decisions wherein there has been a finding of discrimination based on race, creed or color. The amendment does specifically state what criteria should not be used in assigning students to public schools, the prohibited criteria being race, creed or color. Other criteria not prohibited could be educational, vocational, geographic, and so forth, so long as a child is not forced to attend a particular school because of his race, creed, or color.

Mr. Chairman, I have made many speeches in my State and district in which I have said that if we accept the premise that a black schoolchild cannot receive a quality education when placed with other black children and that an influx of white children is necessary for him to receive a quality education, then we are by law saying that the black race is inferior. This we cannot allow, for our Constitution states that every individual must legally be considered equal. We cannot abide any legal presumptions of racial inferiority as are inherent when one states that equal education is impossible without racial balance.

The question that presents itself: is this the only constitutional amendment that would provide for neighborhood schools? The answer is: of course not. However, the wording of this proposed amendment is what I prefer because it does make clear that we would consider students as students, and not assign them according to race, color or creed. This is in keeping with the principles of American democracy. Those who feel that schoolchildren should be forced to attend a certain school because of their race, color or creed are opposed to this amendment.

Mr. Chairman, some of my colleagues have told me that they cannot support this amendment because it would let the South off the hook in some court cases. This is true, it would, and it should. Specifically in cases where busing is now being carried out under Federal court order, solely to achieve racial balance, this amendment would outlaw the practice. But I would like to submit that in the United States, we need one standard and one standard only. This standard must be applicable equally in all the 50 States.

Regarding other means, such as passing laws or attaching riders to bills, it is unfortunate that the Federal courts have seen fit to ignore efforts of the Congress. A case in point is the Civil Rights Act of 1964 which prohibited the forcing of racial balance through transporting students or closing schools, saying that this was not intended. I submitted during the last Congress a bill, H.R. 15162, to establish a standard of operation for public schools throughout the Nation, to be based on a policy of nondiscrimination. It met with violent opposition from HEW because it prohibited the requiring of attendance based on racial factors, something HEW wants to force on the people. But it, too, would probably have been ignored by the courts.

I personally believe that any bill which attempts to remove school matters from the jurisdiction of the courts is doomed to be ineffectual. The courts have staked their rulings to the equal protection clause of the 14th Amendment. Removing school matters from the jurisdiction of the courts does not remove the courts' concern with the 14th Amendment. No more need be said of this.

I have also had thoughts along the lines of legislation authorized pursuant to section 5 of the 14th Amendment. Such legislation would state that the Congress affirms that all citizens have equal protection under the law and that no citizen, by virtue of his race, color, or creed, would be forced to do something another citizen would not be forced to do. This would, by statute, implement "equal protection of the laws" and would stop forced busing based on race.

What I am saying is that the Congress has constitutional authority to interpret the Constitution, just as do the courts. Specifically, the Congress has the right to interpret and then implement pursuant to section 5 of the 14th Amendment the phrases of the Amendment, although we run the risk of the courts disagreeing with our interpretation, with a conflict between the two branches ensuing. Therefore, I return to the position that a constitutional amendment is the safest method.

It has been said that we learn from the past, live in the present, and plan for the future. Let's learn from the past, specifically that part of the past where we have required attendance based on race. In the past, it was to maintain a system of racial segregation. To this, the people rightly objected, protesting the application of race as a determinant of where they could and could not go, and what they could and could not do.

For the present, let's enact legislation based on our experience from the past, so that we will not repeat the old mistake of making race, color, or creed a criterion for an assignment to school.

Let's plan for the future, as our forefathers planned, a society in which all are by law treated equally, and where one's race merits him no special treatment nor makes him the object of discrimination. Let's treat Americans as Americans and not some as black and some as white, with race determining where they must go or what they must do.

Let us have a society, Mr. Chairman, in which all Americans are Americans, not some black and some white, with favoritism, discrimination, or bias toward none because of race, creed, or color.

I implore you to report to the House, House Joint Resolution 620 or any other proposed constitutional amendment which will eliminate race, creed, and color as a basis for assignment to public schools.

Chairman CELLER. Thank you very much, sir.

Our next witness is Jamie L. Whitten, our colleague from Mississippi.

Mr. Whitten, we also welcome you here.

STATEMENT OF HON. JAMIE L. WHITTEN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. WHITTEN. Thank you, Mr. Chairman.

Mr. Chairman, I appreciate this opportunity to appear before you in support of a constitutional amendment pending before your committee which would prohibit forced busing of students against the wishes of the parent or parents.

As you know, I have been in the forefront through the years in pointing out the damage which was being done by forced busing in areas where schools were already open to students of all races, creeds, and colors.

In this connection the Congressional Quarterly of December 11, 1971, page 2559, carried an article entitled "Busing Opponents: New Friends in the House." Under the title appear the following references:

REFERENCES

1971—Anti-busing amendments to higher education-desegregation aid bill, Weekly Report p. 2386, 2310, 2276; President Nixon on busing, p. 1830, 1829; Whitten amendments to education appropriations bill, p. 1468, 1304, 843, 842; Supreme Court decision on busing, p. 928; desegregation statistics, p. 199; vote 236(T), 239(T), p. 232, 2333; vote 31(T), p. 875, 874.

1970—Whitten amendments to education appropriations bills, 1970 Almanac p. 266, 264, 262, 260; 144, 143, 142, 141, 133; vote 106, p. 40–H, 41–H; vote 20, p. 8–H, 9–H; CQ book, Civil Rights; Progress Report 1970, p. 49–52.

1969—Whitten amendments to education appropriations bill, 1969 Alamanc p. 554, 553, 549, 548; vote 167, p. 78–H, 79–H.

1968—Whitten amendments to education appropriations bill, 1968 Almanac, p. 603, 600, 598; vote 214, p. 92–H, 93–H.

As is indicated, I offered these amendments on this subject four different times, and they have been enacted into law for 2 successive years. The amendments appear now as sections 309 and 310 of Public Law 92–48, making appropriations for the Office of Education for the current fiscal year, as follows:

> SEC. 309. No part of the funds contained in this Act may be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–353, to take any action to force the busing of students; to force on account of race, creed or color the abolishment of any school so desegregated; or to force the transfer or assignment of any

student attending any elementary or secondary school so desegregated to or from a particular school over the protest of his or her parents or parent.

Sec. 310. No part of the funds contained in this Act shall be used to force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed, or color the transfer of students to or from a particular school so desegregated as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

I regret to say that notwithstanding the fact that the Congress passed these provisions by an overwhelming vote and that they are a part of the law today, the Department of Education has wholly ignored them.

Mr. Chairman, I have done all I know to do to get these sections of this statute enforced. On October 5, 1971, I wrote the President calling attention to these sections and asking that he direct the Secretary of Education to see that his Department, which is paid from these funds, does not violate the clear language. I received almost immediately a response from an assistant to the President advising me that my letter would be brought to President Nixon's attention and would be presented to those reviewing specific actions in this field.

On December 6, 1971, not having had a further response from the President or his assistant, I wrote the President's assistant calling attention to my letter of October 5, 1971, and again asking for remedial action and a reply. To date, I have heard nothing from him.

Mr. Chairman, I detail this information as evidence that more than a statute will be required to stop the courts and the executive branch, which carries out or enforces the orders of the Federal judges from choice, from going beyond the clear meaning of the Civil Rights Act of 1964, and, in my judgment, beyond the authority granted to either the executive or the judicial branch in the Constitution.

The facts are that a statute should put a stop to forced busing. However, if the courts would react properly to a statute, the Civil Rights Act of 1964, Public Law 88–352, 78 Stat. 246, would have held the courts and the President in check and prevented the present chaos in many school districts, for that act provides:

"TITLE IV—DESEGREATION OF PUBLIC EDUCATION

"DEFINITIONS

"Sec. 401. As used in this title—

"(a) 'Commissioner' means the Commissioner of Education.

"(b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance. . . ."

Mr. Chairman, you will recall that subsequent to the passage of this act, notwithstanding this limitation, the Department of Education came out with guidelines which went far beyond the statute to which it had to look for authority for such guidelines.

Good lawyer that you are, you know that it is basic that the Department of Education did not have authority to write stronger guidelines than were embodied in the law authorizing guidelines, yet they did. They got by with this action because neither the President, the courts, nor the Congress would say, "No."

This issue has a long history following the Supreme Court decision later followed by opinions of various Federal judges, and the court of appeals, which went far beyond the Supreme Court opinion in the *Brown* and other cases, setting the Federal judiciary as the final judge of the well-being and educational welfare of children, even against belief or knowledge of the parents.

The Circuit Court of Appeals of the Fifth Circuit created that unbelievable theory that though it was the welfare of the child they sought to protect, they would act only if his situation originated de jure but not if caused de facto—surely so far as the child's situation is concerned, that is a distinction without a difference.

Mr. Chairman, you and I know if the court's reasoning that all of this is to protect the child is sound, the manner in which the child may have gotten into his situation should in no way restrict the court in granting relief nor justify treating different children differently, because their situation came about through different means before they were born.

I am not going to take up the committee's time in reviewing all these court decisions nor actions of various Federal judges who seem to claim for themselves the divine right of kings. These facts are too well known to you and your committee to require repetition here.

Again, what I am opposed to is forced busing, busing against the wishes of parents, where the schools already are open to students of all races, creeds, or color.

I support these constitutional amendments because the statutes of which I was the author have not been carried out, which leads me to believe that a constitutional amendment is required to stop the Federal courts and to restore the quality of education so essential to our survival.

I may say further, Mr. Chairman, that we need to pull the Supreme Court and other Federal courts back to the place they are supposed to fill within our Constitution.

We all know that the executive, judicial, and legislative branches were conceived and provided for as equal and coordinate branches. For such a system to work, there must be comity of understanding. Each branch must respect the powers and rights of the other; yet we have seen the courts usurp the powers of the executive and the legislative branches.

Along this line, Mr. Chairman, I don't believe I could improve on my discussion of this matter in the debate on the floor on December 22, 1969, pages H12895, H12896, and H12897 of the Congressional Record. This I repeat at this point.

(The attachment follows:)

[Congressional Record—House, Dec. 22, 1969]

Mr. WHITTEN. Mr. Speaker, I am not happy with this conference report. In accepting it we must trust the executive department to make great improvements in many programs and eliminate others. On this we have had some assurance. There are areas however, where funds must be made available, and for that reason we propose to vote for it.

Turning to the sections where I have been most active, not being a member of the subcommittee, it is never easy as we review history to understand the reason for the fall of empires, especially here it is apparent it came about through destruction from within—you might say from self-destruction. It seems to me that there is considerable evidence that we are on that road; I would like to point out here some of the danger signals as I see them.

But first, may I say thanks to all our friends who have stood steadfast and worked hard through these difficult days of trying to hold the so-called Whitten amendments. Those of us who live in the sorely affected areas, and know conditions firsthand, appreciate their stand which we know was under pressure.

To those of you who were unable to see just what is happening to us which of course will spread to you, or who for some other reason were unable to support our views, we hope you will study this problem for you will learn how serious this matter is, not merely to one section of the country but to the Nation.

For the Record I would like to repeat the language of these amendments:

"Sec. 408. No part of the funds contained in this Act may be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of any student attending any elementary or secondary school to a particular school against the choice of his or her parents or parent.

"Sec. 409. No part of the funds contained in this Act shall be used to force any school district to take any actions involving the busing of students, the abolishment of any school or the assignment of students to a particular school as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school."

I offered these amendments to the HEW bill and they were adopted by the House Appropriations Committee by a vote of 34 to 11. They were retained on the floor, and the bill containing these provisions was passed by a vote of 158 to 141.

Our friends in the Senate, particularly our Senator STENNIS, a member of the committe and our senior Senator EASTLAND, made a strong fight, presenting in detail evidence of the destruction of the public school system of our Nation, at the moment primarily in our section; that it was unfair to the people of all races and to the Nation. Nevertheless a majority of the Senate added to each of my amendments the words "except as required by the Constitution." The vote was 52 to 37, which leaves it open to Supreme Court determination—though that would be no problem if the Court would follow the Constitution as written.

Mr. Speaker, we lost because the Congress reversed itself. Secretary Finch, speaking for the administration, after our amendments passed the House, and was accepted in conference, went all out against the amendments, in person, by the press, by telephone, and telegraph. Of course he changed votes. The record shows it. As a consequence we lost.

Mr. Speaker, my amendments protected citizens of all races from being forced by the Department of Health, Education, and Welfare to bus, from being forced to close schools, from being forced to send their children to a particular school against the wishes of their parents, or to withold funds to make schools willingly to do so.

What is wrong with that—nothing, and you know it.

Mr. Speaker, the record of the debates on this amendment show that school after school has been closed; that there is tremendous overcrowding; that, by a partial count only, more than $100,000,000 of school facilities are made unavailable by order of courts, all in overcrowded districts.

The press is full of such facts. Only last Saturday Columnist Jenkin Lloyd Jones, under the heading "The Dangers of Good Intentions," quoted a dissenting judge in the noted Jefferson County Board of Education in these words:

"The freedom of the Negro child to attend any public school without regard to his race or color . . . is again lost—now he must go where the Court tells him. In one school there are over 1,000 vacant places and five other schools have 800 more students than they were built to accommodate."

And so it goes over the southeastern part of the United States. And judging by the way Court-condoned crime has spread, as has Court-promoted destruction of property, this destruction of the public schools will spread to you, too.

Look at a leading local paper, the Washington Post, which I shall not otherwise describe. Each day it takes almost a half page merely to list the rapes, murders, robberies, and major crimes which occurred in Washington alone for the preceding day, and in fine print, too. And the Supreme Court-favored criminals lead to a public school situation which is perhaps described best by the headlines of one of yesterday's leading newspapers, the Daily News: "Doors Still Chained in Some Schools During School Hours."

My friends, we continue to fly in the face of recorded history, violating not only the lessons we should have learned from study of other nations but which have had brought home to us in the United States in recent years.

If we will stop and think we will realize it was our Federal courts, following or actually getting out ahead of the Supreme Court, which in my section held it to be all right to prevent the use of property by the owner who worked and saved to pay for it, but to interfere with the owner running his own business affairs and thereby actually cause him to lose his property. What was not realized by the general public was that when the court takes such a view it becomes a precedent and that such decisions will be followed in your courts, as are being done today. Such right to a man's use of his property led these law violators to take property; and the next step for them, led on by court decisions was not only the destruction of billions of dollars of property, through the burning of large sections of Detroit, Cleveland, Washington, and hundreds of cities but a great loss of human life.

Mr. Speaker, surely we should have learned from that. Next, however, we see the same Supreme Court holding it is all right for the criminal to be protected from the police and for the Court to constantly enlarge the privileges of the criminal as against the authority deemed necessary for the law enforcement officer for hundreds of years. It has been estimated this restriction of officer rights occurred in 35 different phases of law enforcement all to the advantages of the criminal.

Here, too, each time the courts acted, it became a precedent and the result has been a complete breakdown in law and order, with murder, rape, robbery and even assassination commonplace in the cities of the Nation. The same Federal courts, promoted and led on by the Supreme Court, are now destroying our public school system. It is time we wake up. If we are to remedy this situation, not only do we need the amendments which have been defeated in the existing bill; but we must put the Supreme Court back in the position provided for it by the Constitution which was made clear in debate dealing with the Constitution, in the wording of the Constitution itself—but was perhaps best described by a maker of the Constitution, Alexander Hamilton in the Federalist papers which contributed so much to the adoption of the Constitution itself.

THE PLACE OF THE SUPREME COURT

Mr. Hamilton, one of the framers, described the place of the Court in the Federalist as follows:

> The Executive not only dispenses the honors but holds the sword of the community. The Legislative not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated. The Judiciary, to the contrary, has no influence over either the sword or the purse . . . and can take no active resolution whatever.

If we are to save a nation from judges who by reason of lifetime appointment seem to claim almost every right and power, we must stop the members of the Court from dictating to Congress, the President, and the people. I cannot help but say, knowing some of the members socially if they were our relatives we would realize they qualified for welfare homes.

Mr. Speaker, it is up to us to stand up. After all, we are the ones—for we are the people's branch, we must stand up if a nation is to be saved.

Mr. Speaker, under leave to extend my remarks, I repeat a speech I made on June 18, dealing with this subject in more detail.

I quote:

Mr. Justice Warren Versus the Constitution

Mr. Whitten. Mr. Speaker, recorded history clearly shows that power breeds the desire to have power and that no dictator ever voluntarily stopped short of taking it all.

Certainly the action of the Supreme Court on Monday of this week clearly demonstrates that if you give them an inch they will take a mile. This case, Powell against McCormack, et al., might better be styled "U.S. Supreme Court versus the Constitution, or the abortive effort of the Warren Court to take over the legislative branch of Government."

Mr. Speaker, there are literally hundreds of questions life in the air following this decision. It is to be noted that the Supreme Court limited itself to a declaratory judgment, merely judging "because the issue was justiciable—capable of being judged—but left it up to the lower court to find ways and means to have the Sergeant at Arms, the Clerk, and the Doorkeeper—all employees of the House of Representatives—to seek out and provide an appropriate remedy. How can any court claim that they can indirectly control the people's branch—the U.S. House of Representatives—by orders to our employees under threat of jail when the Court sidesteps any claim they could control the Speaker and various Members of Congress directly?

Where lies the authority of administering the oath of office of a Member to serve in a Congress already expired? Where lies the authority for the Sergeant at Arms to pay a Member from funds appropriated for the fiscal year and the fiscal year has expired?

Mr. Speaker, Chief Justice Warren doubtless took great pleasure in overruling his successor as Chief Justice, Justice Burger—particularly since Mr. Warren was thwarted in his efforts to force the Congress and the President to name Justice Abe Fortas as Chief Justice only a short time ago. Mr. Fortas has since resigned.

CONGRESSIONAL DISTRICTS

Mr. Speaker, any nation must of necessity defend itself at home as well as abroad. *When Mr. Warren and his Court first held that the size and population of congressional districts were subject to their regulation, I introduced a resolution and urged the House of Representatives to "thank the Court for its advisory opinion," on the ground that the Constitution provides that the House is the sole judge of the qualifications of its Members.* I was unable to get such resolution through the committee and through the Congress. *We could see then that to acknowledge such power in the Court was to invite a Court takeover in this field. This happened. First the courts said a population variance which did not exceed 10 percent would be all right. After forcing that goal now the judges say a variation of as much as 3 percent is too much.* Of course, this is thoroughly impractical and I think in the future Congresses are going to have to seat whom they wish and tell the Court to stay in its own bailiwick. Letting the Court get by with its earlier decision on the Congress itself led to the completely out-of-bounds opinion of Monday.

CRIME—BREAKDOWN IN LAW ENFORCEMENT

Let us look to the matter of crime. When the Supreme Court and subordinate courts set out to say it is all right to let somebody prevent you from using your property—to sit-in so that you would lose your business—it disturbed many people, but many others thought, "So what?" But if they let them prevent the use of your property, the next step is to let them take your property; and the next is to burn and loot and destroy. We have seen all these steps taken, beginning with the original encroachment by the Court of basic rights, until *today you are not safe to be out at night, man or woman, in half of the United States. We are approaching the conditions of the Middle Ages.*

By allowing the Supreme Court and the Federal courts to claim the sole right to interpret the Constitution, they have virtually set themselves up as a judicial dictatorship. In an estimated 35 new decisions, privileges of the individual criminal have been placed ahead of the welfare of the public. The result has been a complete breakdown of law and order. Murder, rape, robbery, burning of large sections of our major cities, and even assassinations, have been the result.

All this, if closely analyzed, comes because we have stood by, both the legislative branch and the executive branch, and let the Supreme Court assume the sole right of interpretation of the Constitution, a right the court does not have under the Constitution.

DESTRUCTION OF PUBLIC SCHOOLS

Let us look at our schools. An extensive process of education is absolutely essential to any continuing society. Our Nation has had one of the finest educational systems ever known.

In the Brown case, 1954, the Supreme Court said States could not provide for forced segregation by law. What has happened since?

By exercising their claim of the power to dictate, the Federal courts today are actually assuming and exercising the right to supervise the operation of local schools—open to all students—from day to day and month to month. We see court orders closing some school buildings, to force students into one building, regardless of overcrowding, and setting up quotas in others, directing the hiring and firing and assignment of teachers against the wishes of all parents and forced assignment by race against the wishes of all parents.

Educational funds are withheld under the misguided conception that in some way this punishes school boards—when in fact it is the children who are thus punished. This has happened because so far we have let the courts get by with the claim that they have the sole right to interpret the Constitution. Yet any study will show they have no such exclusive power, for under the Constitution the legislative and the executive branches are equal and coordinate and have the right to interpret for themselves, where their responsibilities are concerned.

All of this leads up to the fact, Mr. Speaker, that on *January 3, I introduced House Resolution 51, providing for a standing committee in the House of Representatives on the Constitution*. This would give us a forum in which we, too, could interpret the Constitution, and would enable us to hold our own in the battle for public support. When House Resolution 51 was not voted out by the committee, *I filed Discharge Petition No. 3. I now urge Members to sign this discharge petition*. We then would have an instrument with which to go before the bar of public opinion. I think it is essential that we take this step and take it now. I know the Congress, being an equal branch, can ignore the Court or limit its jurisdiction. I am convinced we will see this Court continue to strike at the very bedrock of our society unless we act now. *They have already destroyed law enforcement. They are in the process of destroying the public school system, and in this opinion, they attempt to tear down the people's branch—the Congress, destroying the separate but equal doctrine and assuming further dictatorial powers*, I think, among other things, we might review the announced statement by the Chief Justice that he expects to continue on in the Supreme Court Building, where doubtless he will be continuing his efforts to influence the Justices in their decisions.

We have had enough of Justice Warren and we are fortunate that he did not get to pick his successor. It is unfortunate that his first move is to claim the sole power in the judicial branch to interpret the Constitution, even to the extent of controlling in effect, the other two branches of Government which certainly were intended to be and have the power to be joint and coequal.

Again, may I say to my colleagues, I hope you will all sign Discharge Petition No. 3. Let us establish for us a Committee on the Constitution, for as we all know, we swear to uphold the Constitution as Members of Congress—but to uphold it as it is written and not as it might be interpreted by Mr. Warren, Mr. Douglas, or any other members of the Supreme Court.

We must renew our resolve to return the Court to its proper place so that a citizen may enjoy the fruits of his labor, and to make certain that the public interest again becomes paramount. We must again make education the prime purpose of our schools by precluding their operation by the Federal courts, either by the district courts or from Washington. We must set up our own committees to interpret the Constitution. This I have proposed in House Resolution 51.

Chairman CELLER. Thank you very much, Mr. Whitten.

Our next witness is the gentleman from Louisiana, Mr. John R. Rarick.

STATEMENT OF HON. JOHN R. RARICK, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. RARICK. Mr. Chairman, members of the subcommittee, I certainly welcome this opportunity to testify today as you begin consideration of legislation to correct the inequities of forced busing to achieve "proper racial proportions," a problem that threatens freedom in America by dividing our people and demoralizing our educational system.

Forced busing to achieve theoretical racial proportions is both morally and legally wrong: it is an abrogation of the basic American right of freedom of choice and a denial of the rights of the American citizen to choose the society in which he will live, work, and raise a family, a society where he can pass on his heritage and culture in peace and harmony with his chosen friends.

Forced busing is a practice which, if demanded of adult Americans, would be immediately condemned and stopped. It is no more moral for society to apply to children the force which, if is were applied to adults, men would know as immoral. What charity, what compassion, what morality is there in forcing a child as we would not force his father? Anyone can see that to apply such force to American adults would make our society a police state.

One of the best statements exposing the immorality of busing schoolchildren to achieve racial balance appeared in the Wall Street Journal of February 26, 1971. Two key passages of this editorial are worth noting at this point.

The editorial begins with a very definite statement:

> Surely it is time to face up to a fact that can no longer be hidden from view. The attempt to integrate this country's schools is a tragic failure.

The article concludes with a statement of its principal theme, a theme that is very relevant to the legislation now before this subcommittee:

> So long as he does not encroach upon others, no man should be compelled to walk where he would not walk, live where he would not live, share what company he would shun, think what he would not think, believe what he believes not.

Mr. Chairman, I ask that the text of this editorial, "Forced Integration: Suffer the Children," be inserted at this point in my testimony.

(The editorial follows:)

[From the Wall Street Journal, Feb. 26, 1971]

FORCED INTEGRATION: SUFFER THE CHILDREN

(By Vermont Royster)

"Surely it is time to face up to a fact that can no longer be hidden from view. The attempt to integrate this country's schools is a tragic failure."

The words of Stewart Alsop in Newsweek will serve as well as any. They are startling, honest and deeply true. Whatever anyone else says otherwise, however shocked we may be, we know he is right.

The proof lies in the fact that Congress, in a confused sort of way, has made it clear that it no longer thinks forced integration is the way to El Dorado. Since Congress is a political body, that in itself might be evidence enough. But Mr. Alsop has also put the statement up for challenge to a wide range of civil rights leaders, black and white, ranging from Education Commissioner James Allen to black militant Julius Hobson, and found none to deny it. Beyond that, we have only to look around ourselves, at both our white and our black neighbors, to know that the failure is there.

But that only plunges us into deeper questions. Why is it a failure? And why is it tragic? Why is it that something on which so many men of good will put their faith has at last come to this? Where did we go wrong?

And those questions plunge us yet deeper. For to answer them we must go back to the beginning. It is the moment for one of those agonizing reappraisals of all our hopes, emotions, thoughts, about what is surely the most wretched of all the problems before our society.

A SIMPLE PROPOSITION

We begin, I think, with a simple proposition. It is that it was, and is, *morally* wrong for a society to say to one group of people that because of their color they are pariahs—that the majesty of law can be used to segregate them in their homes, in their schools, in their livelihoods, in their social contacts with their fellows. The wrong is in no wise mitigated by any pleas that society may provide well for them within their segregated state. That has nothing to do with the moral question.

In 1954, for the first time, the Supreme Court stated that moral imperative. Beginning with the school decision the judges in a series of decisions struck down the legal underpinnings of segregation.

Since emotions and prejudices are not swept away by court decisions, there were some white people in all parts of the country who resisted the change. But they were, for all their noise, in the minority. The great body of our people, even in the South where prejudice had congealed into custom, began the talk of stripping away the battens of segregation. Slowly, perhaps, but relentlessly.

Then some people—men of good will, mostly—said this was not enough. They noticed that the mere ending of segregation did not mix whites and blacks in social intercourse. Neighborhoods remained either predominantly white or black. So did schools, because our schools are related to our neighborhoods. So did many other things. Not because of the law, but because of habit, economics, preference—or prejudices, if you prefer.

From this came the concept of "de facto" segregation. This Latin phrase, borrowed from the law, describes any separation of whites and blacks that exists in fact and equates it with the segregation proscribed by law. The cause matters not. These men of good will concluded that if segregation in law is bad then any separation that exists in fact is equally bad.

From this view we were led to attack any separation as de facto segregation. Since the first attack on segregation came in the schools, the schools became the first place for the attack on separation from whatever cause. And since the law had served us well in the first instance, we chose—our lawmakers chose—to use the law for the second purpose also. The law, that is, was applied to compel not merely an end to segregation but an end to separation by forced integration.

It was at this point that we fell into the abyss. The error was not merely that we created a legal monstrosity, or something unacceptable politically to both whites and blacks. The tragedy is that we embraced an idea *morally* wrong.

That must be recognized if we are to understand all else. For what is wrong about forced integration in the schools is not its impracticality, which we all now see, but its immorality, which is not yet fully grasped.

Let us consider.

Imagine, now, a neighborhood in which 95% of the people are white, 5% of them black. It is self-evident that we have here a de facto imbalance. We do not have legal segregation, but we do not have integration either, at least not anything more than "Tokenism."

Let us suppose also that for some reason—any reason, economics, white hostilities, or perhaps black prejudice against living next door to whites—the proportion does not change. The only way then to change it is for some of the whites to move away and, concurrently, for some blacks who live elsewhere to move into this neighborhood. One is not enough. Both things must happen.

CREATING AN IMBALANCE

Or let us suppose the proportion does change. Let us suppose that for some reason—any reason, including prejudice—large numbers of white families move out of the neighborhood, making room for black people to move in, so that after a few years we have entirely reversed the proportions. The neighborhood becomes 95% black, 5% white.

Again we have an imbalance. Again we do not truly have segregation, but call it that, if you wish: de facto segregation. In any event we do not have integration in the sense that there is a general mixing together of the blacks and whites.

Now suppose that we act from the assumption that this is wrong. That it is wrong to have the neighborhood either 95% white or 95% black. That the mix to be "right," must be some particular proportion.

What action is to be taken? In the first instance, do we by law forcefully remove some of the white families from the neighborhood so that we can force in the "proper" number of black families? Or, in the second instance, do we by law prohibit some of the white families from moving out of the neighborhood? If we do either, who decides who moves, who stays?

The example, of course, is fanciful. We do none of this. No one has had the political temerity to propose a law that would send soldiers to pick people up and move them, or to block the way and prevent them from moving. No one stands up and says this is the moral thing to do.

Stated thus badly, the immorality of doing such things is perfectly clear. No one thinks it moral to send policemen, or the National Guard, bayonets in hand, to corral people and force them into a swimming pool, or a public park or a cocktail party when they do not wish to go.

No one pretends this is moral—for all that anyone may deplore people's prejudice—because everyone can see that to do this is to make of our society a police state. The methods, whatever the differences in intent, would be no different from the tramping boots of the Communist, Nazi or Fascistic police states.

All this being fanciful, no one proposing such things, it may seem we have strayed far from the school integration program. But have we?

The essence of that program is that we have tried to apply to our schools the methods we would not dream of applying to other parts of society. We have forced the children to move.

There are many things wrong with the forcible transfer of children from school to school to obtain the "proper" racial mix. It is, for one thing, wasteful of time, energy and money that could better be applied to making all schools better.

To this practical objection there is also the fact that in concept it is arrogant. The unspoken idea it rests upon is that black children will somehow gain from putting their black skins near to white skins. This is the reverse coin of the worst segregationist's idea that somehow the white children will suffer from putting their white skins near to black skins.

Both are insolent assertions of white superiority. Both spring from the same bitter seed.

Still, the practical difficulties might be surmounted. The implied arrogance might be overlooked, on the grounds that the alleged superiority is not racial but cultural; or that, further, both whites and blacks will gain from mutual association. That still leaves the moral question.

Perhaps it should be re-stated. Is it moral for society to apply to children the force, which if it were applied to adults, men who would know immoral? What charity, what compassion, what morality is there in forcing a child as we would not force his father?

It is a terrible thing to see, as we have seen, soldiers standing guard so that a black child but cringe in shame that only this way is it done. But at least then the soldiers are standing for a moral principle—that no one, child or adult, shall be barred by the color of his skin from access to what belongs to us all, white or black.

But it would have been terrifying if those same soldiers had been going about the town rounding up the black children and marching them from their accustomed school to another, while they went fearfully and their parents wept. On that, I verily believe, morality will brook no challenge.

Thus, then, the abyss. It opened because in fleeing from one moral wrong of the past, for which we felt guilty, we fled all unaware to another immorality. The failure is tragic because in so doing we heaped the burdens upon our children, who are helpless.

MUST WE TURN BACK?

Does this mean, as many men of good will fear, that to recognize as much, to acknowledge the failure of forced integration in the schools, is to surrender, to turn backward to what we have fled from?

Surely not. There remains, and we as a people must insist upon it, the moral imperative that no one should be denied his place in society, his dignity as a human being, because of his color. Not in the schools only but in his livelihood and his life. No custom, no tradition, no trickery should be allowed to evade that imperative.

That we can insist upon without violating the other moral imperative. So long as he does not encroach upon others, no man should be compelled to walk where he would not walk, live where he would not live, share what company he would shun, think what he would not think, believe what he believes not.

If we grasp the distinction, we will follow a tragic failure with a giant step. And, God willing, not just in the schools.

Mr. Rarick. Forced busing to overcome racial imbalance is illegal; it is, on the face of it, in violation of the law of the land. But what is the "law of the land?"

We start with the Constitution of the United States, where the law of the land is defined in no uncertain terms in what is called the supremacy clause of article VI:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby * * *

The crucial provision of our Constitution is:

> This Constitution and the Laws of the United States which shall be made in pursuance thereof * * * shall be the supreme Law of the Land * * *

Nothing is provided about Supreme Court decisions being the law of the land. On the other hand, judges are bound by acts of Congress.

Now Congress has enacted laws pursuant to the Constitution which are the law of the land. One of these laws goes right to the heart of our school problems today and points out the usurpation by the Supreme Court's ruling on busing.

Title 42 of the United States Code, section 2000c-6(a)(2) reads:

> * * * provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or the school district to another in order to achieve racial balance or otherwise enlarge the existing power of the court to insure compliance with Constitutional Standards.

42 U.S.C. 2000(c), definition (b) reads:

> Desegregation means the assignment of students to public schools and within such schools without regard to their race * * * but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance.

And then, to make sure that the intent of Congress was not misunderstood, when the Congress appropriated money to operate the Department of Health, Education, and Welfare, the Members wrote into that law—in English so plain no one can misunderstand—a provision forbidding HEW to misuse taxpayers' moneys in busing to achieve racial balance.

The language of the HEW Appropriations Act reads:

> No part of the funds contained in this Act may be used to force busing of students, abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents or parent in order to overcome racial imbalance.

I would particularly point out here, Mr. Chairman, that part of title 42 U.S.C. that specifically provides that no Federal court shall "otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

Certainly this passage, which is existing law, calls into question the Supreme Court's very justification for its actions and equity in the Swann-Mecklenburg decision.

These laws forbidding the use of forced busing or the assignment of students to public schools in order to overcome racial imbalance have never been declared unconstitutional. Therefore, they are the law of the land, and courts which hold to the contrary are in direct disobedience of the very law which they have sworn to uphold.

The problem confronting this committee and the Congress is, then, involved with the relationship between the separate branches of the

Government. It is evident that the Federal judiciary will not on its own initiative return to the law of the land. It is, therefore, up to us—the representatives of the people assembled in Congress—to restore the basic right of freedom of choice to the American people and rescue them from judicial tyranny.

Mr. Chairman, it is worth pausing a moment here to take note of Jefferson's remarks on the dangers of judicial tyranny. He said:

> The Constitution is a mere thing of wax in the hands of the judiciary.
>
> The great object of my fear is the federal judiciary. That body, like gravity, ever acting, with noiseless foot, and unalarming advance, gaining ground step by step, and holding what it gains, is engulfing insidiously the special governments into the jaws of that which feeds them.
>
> I am sensible of the inroads daily made by the federal judiciary into the jurisdiction of its coordinate associates, the State governments. The legislative and executive branches may sometimes err, but elections and dependence will bring them to rights. The judiciary branch is the instrument which, working like gravity, without intermission, is to press us at last into one consolidated mass.
>
> Our government is now taking so steady a course as to show by what road it will pass to destruction, to-wit: by consolidation first, and then corruption, its necessary consequence. The engine of consolidation will be the federal judiciary; the two other branches, the corrupting and corrupted instruments.
>
> It has long been my opinion, and I have never shrunk from its expression, that the germ of dissolution of our federal government is in the constitution of the federal judiciary; an irresponsible body (for impeachment is scarcely a scarecrow), working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction, until all shall be usurped from the States, and the government of all be consolidated into one. To this I am opposed; because, when all government, domestic and foreign, in little as in greater things, shall be drawn to Washington as the centre of all power, it will render powerless the checks provided of one government on another, and will become as venal and oppressive as the government from which we separated.

There are, you are all well aware, steps that we, the elected representatives of the people assembled in Congress, can take to check the power of the judiciary and satisfy the cry of the people raised against the use of forced busing to overcome racial imbalance.

There is incontrovertible evidence to indicate that a vast majority of Americans are opposed to forced busing to achieve some ridiculous notion of "proper racial proportions." In the Gallup poll of September 1971, the results indicated that 73 percent of the American people oppose the use of forced busing to achieve some idea of proper racial mixture.

Only 19 percent indicated that they favored the continued use of busing, with 8 percent indicating no opinion on this issue. I would daresay that the number of Americans opposing forced busing has increased over the past school year with the further implementation of *Swann-Mecklenburg* and the recent *Richmond* decision.

One of the means available to the Congress to check the power of the judiciary is through constitutional amendment; 146 Members, as of February 25, 1972, had indicated their support for this approach to the problem of busing through the signing of discharge petition No. 9, calling House Joint Resolution 620 from the consideration of this committee. This bill proposes an amendment to the Constitution reading, in essence:

> No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

I speak today in support of this or similar legislation. I repeat, there is no need of further laws prohibiting the use of busing to achieve "proper racial proportions"—it is already against the law of the land, clearly stated in incontrovertible language. The problem is caused not by our laws, but by a Federal judiciary that has virtually ignored the laws it has sworn to uphold.

Our Constitution, the very foundation of the American system, is quite clear on the solution to a problem such as this—one sure means available to the Congress to check the power of the judiciary is through constitutional amendment, to restate to our friends on the bench that the people want the Constitution to mean what it says.

I would, in conclusion, again point out that passage of this legislation and eventual ratification as part of the Constitution will restore the basic right of freedom of choice to the American people and will protect them from judicial tyranny by restoring to them the basic right of private property, the right to reap the benefits of ownership and/or residence in a place of their own choosing.

Finally, Mr. Chairman, I would point out one further effect that ratification of such a constitutional amendment would have. It would be an effective curb on such decisions as that rendered in the *Richmond* case and suggested in the earlier *Atlanta* decision wherein the Federal judge/judges ordered the merger of an innercity school system with the school systems of surrounding counties, again to achieve proper racial balance. I am sure that you are all well aware of the fact that such a decision will, through implementation, force wholesale busing of schoolchildren.

Mr. Chairman, I urge you and the members of the subcommittee to give favorable consideration to House Joint Resolution 620, or similar legislation proposing an amendment to the Constitution prohibiting the assignment of any public school student to a particular school because of his race, creed, or color. Ratification of such an amendment—which would, I believe, come quickly—would restore the right of freedom of choice to the American people—which is, after all is said and done, what America is all about.

I thank you, Mr. Chairman.

Chairman CELLER. Thank you, Mr. Rarick.

Are there any questions?

We appreciate your coming, Mr. Rarick.

Our next witness is the gentleman from North Carolina, Mr. Wilmer D. Mizell.

STATEMENT OF HON. WILMER D. MIZELL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. MIZELL. Thank you, Mr. Chairman.

I am very grateful to you and the members of this committee for this opportunity to testify on the first day of the committee's hearings on legislation related to the busing of schoolchildren to achieve racial balance.

The issue of busing is one that has raised the passions of the American people to feverish levels in the past several months, and it stands today as perhaps the single most controversial and hotly debated issue in American political and social life.

I fervently hope that these hearings which begin today will be conducted in a spirit of rationality, objectivity, and genuine concern. For my part, since I am among the first witnesses to testify, I will try to help set a general tone of calmness, reason, and accuracy which hopefully will characterize the entirety of these hearings.

Let me say at the outset that the vast majority of us who speak in opposition to cross-busing do not speak as the echoes of past voices preaching "segregation forever" or "white supremacy" or other slogans of racial hatred and prejudice. Thank goodness, we as a nation and as a people have come farther than that.

Certainly, these strident voices can still be heard, but they are not to be heeded by reasonable men and women. We have heard them before, and no doubt we shall hear them again, but I don't believe those voices that would divide us have any influence on the great majority of Americans today.

Discrimination has no place in our society, and its presence in the educational process, and its impact on our pursuit of quality education for all our children, are of great concern to me, and to this committee, and to millions of Americans today.

Let us first try to agree on what would constitute the absence of discrimination in our public school systems.

The foundation for this concept would be a commitment to provide the best possible education for every American child, whether his skin is black, white, brown, yellow, or red.

That basic commitment would entail an additional commitment to open-door policies in our schools, allowing parents to send their children to the schools of their choice.

Experience and commonsense tell us that most parents, and their children, would prefer the neighborhood school, where the opportunity is greatest for a rewarding educational experience.

The closeness to home, the association with friends, the familiar surroundings of one's own neighborhood—any educator would certainly agree that these conditions are conducive to learning, especially where grade-school-age children are concerned.

But commitment to the neighborhood school concept is not enough, either. A further commitment is required, insuring that every school in every neighborhood, whether in the inner city, or in the suburb, or in the countryside, is adequately equipped, that the facilities are kept in good repair, that the teachers are adequately paid and fully qualified, that an equitable amount of public funds is spent on each child, regardless of his race, and that each child is given every possible opportunity to learn as much and as rapidly as he can.

I think we can agree that the fulfillment of these commitments would constitute the absence of discrimination, and just as important, would greatly contribute to quality education.

What, then, would work to the detriment of quality education?

First, a discriminatory policy which prevents children of one race or several races from enjoying the same educational opportunities as those enjoyed by children of another race. The courts have correctly struck down such policies.

But there is another policy, just as detrimental, that has gained great favor in the eyes of the courts, and that is the policy of establishing arbitrary racial balance for pupil assignment. This policy is based on the assumption that until these balances are reached, educational quality will be impaired or impossible, regardless of any other consideration.

But to say that a black child cannot learn unless he is in the company of a white child, or to say that a white teacher is automatically better qualified than a black teacher is the most profound kind of racism there is, and it is the kind the courts are perpetuating today.

This policy of racial assignment almost always involves a program of massive transportation designed specifically to enable a school system to achieve those arbitrary balances.

In Winston-Salem, N.C., this program involves putting a grade-school child on a bus for more than an hour, and taking him 15 to 20 miles away from his home to go to a school where he has no friends, in a neighborhood completely foreign to him.

And in Winston-Salem, the problems of disruption are compounded by a system, just imposed this year, providing for a change of school every 2 years after the fourth grade, eliminating any hope of stability and any concept of school pride so important to a young person.

Mr. Chairman, I cannot conceive of a plan any less conducive to quality education or more discriminating against all children than the one I have just described. But in the past several months, Federal courts throughout America have demanded that just such plans be implemented in the name of quality education and nondiscrimination.

Citing again the case of Winston-Salem, the largest city in the Fifth District of North Carolina, which I am proud to represent, 32,220 of the school system's 44,000 students are riding buses this year. About two-thirds of them are being bused because they live beyond walking distance of a school, but more than one-third—more than 11,000 children—are being bused solely to achieve court-required racial balance.

One hundred fifty-seven new buses were required to implement that order. Each of those buses cost $6,300 to buy, and it costs $1,600 a year to maintain them, without mentioning the additional costs in bus drivers' salaries. The superintendent of schools there has told me that this massive busing program now accounts for an annual operating budget of $1.4 million. That figure represents almost exactly a 100-percent increase in transportation costs over last year.

Chairman **Celler**. Does not that cost include busing all over the county, particularly in the rural areas where the schools are far distant and the children are carried in buses to reach those schools for reasons unrelated to desegregation or segregation?

Mr. **Mizell**. The figures I quoted were given to me as the additional cost and additional requirement for buses to implement the court order in Winston-Salem. The overall cost of the busing program is $1.4 million. That figure represents a 100-percent increase over what it was previous to the court order.

In Charlotte, N. C., the city directly involved in the Supreme Court's busing decision of last April, the busing program costs almost $800,000 to run. The superintendent of schools in that system reported recently that the first year of busing resulted in a school budget deficit of almost $650,000.

But North Carolina has not borne the brunt of unreasonable court decisions alone, nor has the South.

The school systems serving San Francisco, Calif.; Boston, Mass.; Pontiac, Mich.; and many other nonsouthern cities are also now under court order to bus their pupils for racial balance, and all of these cities are undergoing the same financial strains we have experienced in Winston-Salem.

The Los Angeles, Calif., school system is now under court order, subject to appeal, to transport 240,000 children up to 25 miles to attend school. U.S. News & World Report recently reported that the cost of this massive program has been estimated by school officials at $180 million over the next 8 years.

And there are numerous other examples and figures one could cite, demonstrating the destructive drain on public finances that these massive transportation programs cause.

But I believe my point has already been made. Financial burdens already threaten to quite literally destroy hundreds of school systems throughout the country. The Dayton, Ohio, school system has already fallen under the weight of budgetary pressures, and others are sure to follow unless something is done to relieve those pressures.

We read of teachers in many cities striking for higher pay, of school buildings crumbling in disrepair, and of acute shortages in so many kinds of educational equipment.

When funds for these pressing needs cannot be supplied even now, how shall the cause of quality education be served by imposing overwhelming additional costs for purchasing and maintaining fleets of new buses?

In our admirable desire to provide a quality education for all, will we make it impossible to provide a quality education for any? This need not—it must not—be the case.

The American people are known throughout the world for their commonsense, and I think it is highly significant that, according to a recent Gallup poll, almost 90 percent of the American people oppose busing to achieve racial balance.

A full 93 percent of my constituents responding to my latest questionnaire expressed opposition to busing, and every colleague in the Congress that I have spoken with has told me that a similar level of opposition exists in his district.

Mr. Chairman, I believe that the people's will should count for something in a democracy, and the people's will has been trampled down along with congressional statutes in the Federal courts' zeal to achieve racial balances in schools.

The Congress has declared on many occasions that the cost of busing solely for racial balance is an unwarranted and illegal expense.

Section 407 of the Civil Rights Act of 1964 provides that:

> Nothing herein shall empower any official or court of the United States to issue an order to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another to achieve balance or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

The U.S. Supreme Court ignored that provision of the law in its *Charlotte* decision, and the Federal court in Richmond, Va., made an absolute mockery of it in its decision requiring the merger of three different school systems to achieve a greater racial balance.

Thus, I believe we have no recourse other than to amend the Constitution to prohibit the assignment of students to schools on the basis of race, because it seems obvious to me that if the Supreme Court could overrule the antibusing provision of the 1964 Civil Rights Act, it can overrule any other antibusing provision the Congress might pass, short of a constitutional amendment.

That is the reason I announced last April 20 my intention to introduce a constitutional amendment which states that:

> No public school student shall, because of his race, creed or color, be assigned to or required to attend a particular school.

The language of that amendment is no doubt familiar to the members of this committee, since it is the language of the amendment which has received the greatest amount of publicity and earned the greatest degree of congressional interest, with more than 140 Members of Congress already calling for action on this amendment.

As I said on introducing the amendment 10 months ago:

> Offering an amendment to so honored and cherished and complete a document as our Constitution is not a step to be taken lightly, or in haste, or without very good cause.

I believe that very deeply, Mr. Chairman, but I also believe that if passing a constitutional amendment is the only way we can insure quality education for all of our children, then we should not hesitate to pass a constitutional amendment.

The amendment I have proposed is as simple and forthright as I could possibly make it. The people can understand it, and so can the distinguished men of the U.S. Supreme Court.

In conclusion, Mr. Chairman, I would like to quote from a column that appeared in the Washington Post of February 16. The column was entitled "Massive Busing: A Waste." The writer is William Raspberry, a liberal man and a black man.

He wrote:

> It is both evil and illegal to say to a child: "You cannot attend this school because it is a white school." But how much better is it to say: "You must attend this school because it is integrated and we need you for racial balance."
>
> This is no brief for a return to the lie of separate but equal.

Mr. Raspberry continued:

> It is an appeal for rational priorities, a plea that we make the test of a school whether it does what schools are supposed to do—educate our children.
>
> The ideal is a situation in which race is irrelevant to assignment. Preoccupation with mathematical precision * * * is not the way to achieve that ideal.

The amendment I have offered is intended to achieve the ideal of quality education that Mr. Raspberry shares with me and millions of other Americans.

The strong opposition to cross-busing transcends political, racial, ethnic, liberal or conservative lines—the only issue remaining is how best to eliminate cross-busing from public education in America.

This committee has the opportunity and the responsibility to help set aright the course of public education in America. It can seize that opportunity and meet that responsibility by acting favorably on the amendment I have proposed.

The American people are looking to this committee and this Congress to show that we are responsive to their will, that their strong voice of protest can be heard where it counts, and that popular sovereignty still rules this country.

So let us begin today to chart a clear course that will preserve public education in America and provide new and improved educational opportunities for all our children, without the madness of cross-busing.

This is the people's will and the Congress mandate. Let us act accordingly, and let us act now.

Mr. Hungate. I want to thank the gentleman for his forceful statement. I am acquainted with that article by Mr. Raspberry. I think I put that in the Congressional Record. I frequently find myself in agreement with him, which makes one wonder if he is liberal.

Did he not agree with Vice President Agnew on this busing amendment, and did he not oppose a constitutional amendment?

Mr. Mizell. Yes, and in my statement I made the statement that while there are disagreements as to the course we should take to correct the situation, the overwhelming voice of the people is to correct the situation and to correct it now.

I think there was one other point on the article that Mr. Raspberry wrote, and I was not aware that the gentleman had put it in the Congressional Record, but at the close of this article it said, "But only if we deal with the situation and stop looking for new ways to run."

So we are here looking for a solution to the problem.

Mr. Hungate. The committee certainly appreciates your help and that of our other colleagues.

Chairman Celler. I would like to ask one question.

In a report prepared by the Commission on Civil Rights on Forsyth County, N.C., with regard to transportation we find this interesting comment:

> In the 1970–1971 school year, approximately 22,300 students were transported to school, primarily because they lived further than 1½ miles from their schools. Implementation of the current plan necessitates the transportation of between 1,000 and 12,000 more students than were transported during the 1970–1971 school year.

Earlier the report states:

"The school board and superintendent have found that a benefit of the plan is that the school system can obtain maximum utilization of classroom facilities. The number of mobile units in this school system has been reduced," and the whole tenor of the report seems to indicate considerable improvement as a result of busing.

Mr. Mizell. Mr. Chairman, I understand the chairman of the school board of Winston-Salem has already been scheduled to appear before the committee to testify, and I can assure you that the opposition to the plan that they are implementing there is overwhelming as recorded by my questionnaire; 93 percent of the people are opposed. This is all across the district, not just in Winston-Salem.

Chairman Celler. Yes; the chairman of the Winston-Salem School Board has been invited to testify before this committee.

If here are no other questions, thank you very much.

Our next witness is the gentleman from Florida, C. W. Bill Young.

STATEMENT OF HON. C. W. BILL YOUNG, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Young. Mr. Chairman, thank you very much.

I appreciate the opportunity to appear before this House Judiciary Committee today in behalf of House Joint Resolution 600, a proposed constitutional amendment I introduced last April 29 in an effort to preserve our neighborhood schools and head off what could become one of the greatest social crises this Nation has ever faced.

The forced busing of America's schoolchildren, as mandated by the Federal courts, could tear this Nation apart. Across our land, angry parents are picketing, demonstrating, even in one unfortunate instance burning school buses in an effort to draw attention to their frustration. Communities are voting down school millage requests that were routinely approved in years past. Last fall the people of Pinellas County, Fla., my home district, who have always provided generous financial support for our schools, for the first time in memory voted down a school millage request simply because of the forced busing issue.

The concern of parents in seeing their children uprooted from their neighborhoods and forced to travel long distances merely to satisfy the caprices of some judge is certainly justified.

Thousands of letters have poured into my office in opposition to forced busing to create an aribtrary racial balance in the Nation's classrooms. Other Congressmen, I am sure, have had the same experience. And these letters graphically demonstrate that this is not a racial question—black parents don't like forced busing any more than whites. Nor is it a philosophical or political question—Republican or Democrat, conservative or liberal, the people of America want to keep their neighborhood schools.

In my home State of Florida, every suggestion that Florida A. & M. University in Tallahassee, a Negro school, be merged with Florida State University, also in Tallahassee, triggers howls of opposition from people of both races and especially blacks.

Uprooting children from their neighborhood school destroys a vital part of their education. Forced to spend hours riding a schoolbus, many children lose out on opportunities to become part of the Boy or Girl Scout troop, play in the band, be a cheerleader, participate in football and baseball, join service clubs and take part in all the extracurricular activities that prepare them to function meaningfully in our society.

The Congress repeatedly has opposed forced busing and affirmed its determination to preserve neighborhood schools. The antibusing amendment to the 1964 Civil Rights Act prohibited massive busing to create an artificial racial balance in the schools. The Congress repeatedly has prohibited using Federal funds for busing in approving appropriations to education.

President Nixon has affirmed his commitment to preserving neighborhood schools, and recently set up a Cabinet-level committee to explore ways to achieve this end in view of the continued efforts of our Federal courts to turn our classrooms into laboratories for social experiments.

If the Congress wants neighborhood schools, and if the executive branch wants neighborhood schools, where then is the problem? The problem is within our Federal courts. Elected by no one, some Federal judges act as laws unto themselves, and under our system they are not answerable to the people for their performance.

Now it is up to the Congress to act. As elected representatives of the people, we must take the operation of our schools out of the hands of the judges and return the classrooms to our teachers. Our classrooms must be preserved for education—not social experimentation.

We must cement the right of all American youngsters to attend their neighborhood school into the basic document of this country, the Constitution. I regret such a major step is required, but we must act because of the capricious attitude of the courts. In Jacksonville, Fla., for example, the people voted overwhelmingly last December for an amendment against forced busing, similar to the one passed in the House the previous month. Seconds after this popular vote, the Federal court voided the people's decision—letting us know that, in the view of some judges, the courts and not the people really run this Nation.

My proposed constitutional amendment simply states that:

> The right of students to attend the public school nearest their place of residency shall not be denied or abridged for reasons of race, color, national origin, religion or sex.

I don't believe anyone can quarrel with a freedom as basic as this.

Chairman CELLER. Thank you very much, sir.

Our next witness is Mr. LaMar Baker, of the State of Tennessee. Mr. Baker.

STATEMENT OF HON. LaMAR BAKER, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. BAKER. I thank you, Mr. Chairman, for the privilege of testifying before the House Committee on the Judiciary in support of House Joint Resolution 646.

I am a cosponsor of this legislation aimed at amending the Constitution to make it illegal to assign or require any young person to attend a particular public school because of race, creed, or color.

The determinations of our Federal courts which order mandatory busing of students to achieve a racial balance in our schools have become a matter of deep concern to a great portion of the population of this Nation.

In 1954, the decision of the Supreme Court ruled against discrimination in assignment of students to schools because of race, creed, or color. This abolished the system of dual school facilities for each race. The separate but equal doctrine was knocked down.

Today, in the district which I represent, I find a minimal opposition to quality education where members of different races participate in this common pursuit.

The Civil Rights Act of 1964 proclaimed the right of opportunity for an integrated education to everyone. The presumption here was that this constituted the highest quality education available.

But in 1971, the Supreme Court decreed that mandatory busing of students to achieve a numerical racial balance was a proper way to execute the law. This appears to be in conflict with the 1954 ruling, because many young people will be required to attend certain schools due to their color.

Because of the strong opposition to the mandatory aspects of the busing question, I have been active in the fight to rectify this problem for many, many months.

I have reached the conclusion that the Supreme Court and the Federal courts are ruling on the basis of decisions as to the constitutionality of certain actions. The rulings have been handed down stating that, according to the Constitution in its present form, mandatory busing is a proper activity.

Therefore, it is my considered judgment that the only relief for the public rests in a clarification of the Constitution in the form of an amendment. In my home city of Chattanooga, Tenn., the city school board is under a Federal court order to bus students to achieve racial balance in our schools.

The pairing system has been the design by which our school board is proceeding. Here, children are exchanged between two sections of the city. Pupils in grades one to three from one area are bused one way, and those from grades four to six from the paired area go the opposite way. The junior high school students in grades seven to nine are assigned on another basis so that numerical racial balance is achieved.

Thus, a mother with three children in grades two, five, and seven can very easily find them in three separate localities. This works a real hardship on students who want to participate in extracurricular activities, such as athletics, band, programs, and so forth.

Also, the mother finds herself accepting an unusual burden in attempting to participate in Parent-Teacher Association activities in three different localities. And, if sickness or some emergency arises on the part of one or all children, she will experience unusual inconvenience in accommodating the needs of her youngsters.

A group of citizens in Chattanooga, Tenn., filed a suit to prohibit our city government from spending any tax funds to implement the mandatory provisions of the Federal court order. The case was heard by Judge Joe Hunter, who found in favor of the plaintiffs and ordered the city of Chattanooga to cease and desist from spending city moneys raised by the taxes of the citizens for the purpose of mandatory busing.

Judge Hunter stated:

> The concept of forced busing to achieve racial balance violates the laws of reasoning and even sanity. It endangers and jeopardizes the health and lives of hundreds of small children. It creates unbelievable traffic conditions. It gets small children out before daylight to go to school.
>
> It is disturbing the minds of citizens and their tranquillity. It disrupts the neighborhood's whole concept of the American way of life, and it depreciates quality education. In addition to being illegal, it is feared and despised by the vast majority of people in this nation, and in the opinion of this court, it should not be allowed.

Judge Hunter had ruled that this expenditures of public moneys for the purpose of mandatory busing to achieve racial balance is in violation of statutes of the State of Tennessee and of Federal laws.

Recognizing the dissatisfaction of a great many of my constituents, I want to read to you a letter which I received from a good friend of mine in Chattanooga, Tenn. It expresses in a vivid and dramatic manner a problem which has come to him and to his family.

JANUARY 21, 1972.

HON. LAMAR BAKER,
U.S. Congressman, State of Tennessee,
Washington, D.C.

DEAR LAMAR: The afternoon of January 19, as my son Robert was leaving Brainerd High School, he was assaulted by a black student, who is "bused" in from another neighborhood.

My son is studying religion and music and plans to go into Youth Ministry. He would not start a fight, nor would he fight back, certainly not when surrounded by blacks as he was at that time this trouble erupted.

A small Negro teenager tried to start a fight with Robert when they bumped in a doorway, and my son, refusing to fight, tried to walk away even though he was struck twice.

Another black, a large fellow, accosted Robert and asked, "What are you doing to my friend?" and hit Robert in the face, splitting his upper lip with a ring or some object. The cut goes up inside his jaw far enough to require plastic surgery.

We are not certain yet whether or not he will lose one of his teeth, and his nose may be broken. The black that hit him has been in trouble several times.

My son is in a good deal of pain, cannot eat due to a swollen mouth and had to miss two days of school, one of which covers semester examinations. He is afraid for the safety of a friend who identified the assailant.

Brainerd High School was at one time a quiet institution where teachers and students went about their tasks of educating young people. Today, in spite of having the best principal in the city school system, this school is a jungle where students are afraid to go to the restrooms.

The girls are afraid to stand in line in the cafeteria, so they have to bring their lunches. What happened to my son happens to several students a year.

I am fed up with this outrage and plan to sell my home at the end of this school term and will move far enough into North Georgia where I will not have to worry about a Federal Judge consolidating several counties on the state border into one school system.

My family has always tried to be good citizens, and we are not racists, but we cannot stomach any more of the outrage that the Federal Courts are subjecting our young people to. I have no respect whatever left for our federal judiciary, and I have just about lost hope that we will ever again have a government based on Constitutional law.

I know that you are opposed to busing and I hope that you can use what has happened to my boy as an example of what busing is bringing on those children of us who are not financially able to send our children to private schools.

Cordially,

RAYMOND D. PAYNE, Jr.

I am confident that a vast majority of the people of this Nation are in opposition to mandatory busing of our students for the purpose of achieving a numerical racial balance. This position is sustained by the results of a Gallup poll which was taken about November 1, 1971.

The question was asked, "In general, do you favor or oppose the busing of Negro and white children from one school district to another?" The respondents, by region, replied as follows: In the East, 77 percent were opposed; in the Midwest, 77 percent were opposed; in the South, 82 percent were opposed; and in the Far West, 72 percent were opposed.

The average nationwide reveals about 76 percent of our population is in opposition to this decision which has been handed down by our Federal courts.

At this point, categorically taking no exception to the Federal court, it is my considered opinion and my judgment that if 76 percent of our people oppose or support a particular action, regardless of its own merits, our obligation as Representatives of our people is to do our best to enable their will to be worked.

To clarify the constitutional intent so there can be no misunderstanding on the part of our Supreme Court Justices, I vigorously support the amendment contained in House Joint Resolution 646 or language similar thereto which accommodates the purposes and the desires of the American people.

Mr. HUNGATE. I want to thank my colleague for his statement.

In line with the sentiment reflected in the poll, would the gentleman think that 76 percent of the people preferred to return to the separate-but-equal doctrine? If so, do you think we should adopt such an amendment?

Mr. BAKER. I don't think they would prefer to return to the separate-but-equal policy. They are opposed to the mandatory provisions developed through the court decisions where their freedom and discriminatory provisions come into play.

Mr. HUNGATE. I did not make my position clear. I said if they did, do you think we should?

Mr. BAKER. I don't think we should, and I don't think in our section of the country our people want to return to separate but equal. I realize a great deal of pull and push has taken place in the past, and a great deal has been necessary to accomplish equal opportunities for the races, but I don't think this element exists in my district.

Mr. HUNGATE. Thank you, Mr. Chairman.

Mr. MCCLORY. The gentleman from Tennessee as well as the other witnesses have explained the problems in particular States and districts created by court decisions. My attention has been called to an editorial in the reputedly conservative Wall Street Journal which suggests the lack of wisdom of a constitutional amendment and concludes, "The best source of a respectable antibusing rationale, one that both preserves the ideal of racial justice and avoids the impasse into which the issue seems to be headed, is the courts themselves."

Do you feel that the courts, either through the pending appeal in the *Richmond* case or other possible decisions, might remedy this and obviate the need for any constitutional amendment or further legislative action?

Mr. BAKER. In my judgment, and I am not an attorney, I don't consider that the *Richmond* case properly addresses itself to our problem. I consider that the *Richmond* case involves more the sanctity of jurisdictions, rather than the mandatory busing question.

Here, as I understand it, we have taken three separate jurisdictions and have said that we must merge our efforts, regardless of the desires of the governmental authorities within these jurisdictions, and move at the behest of the Supreme Court edict.

If we did that, we destroy a great many more things than just our school system. I feel that the mandatory problems which are present must be rectified. I have included in this testimony a letter from a friend in my State which I hope the committee will read, because it points up the real problem that exists in our communities so far as the difficulties from different backgrounds being forced together and creating a situation that is untenable.

Mr. MCCLORY. In other words, you feel that the busing requirement has caused so many diverse and multiple problems that the only way to correct it is through a constitutional change?

Mr. BAKER. That is my judgment.

Chairman CELLER. Thank you very much.

Our next witness is the gentleman from California, John G. Schmitz. We will be pleased to hear from you.

STATEMENT OF HON. JOHN G. SCHMITZ, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. SCHMITZ. I would like to take this opportunity to thank the committee for inviting me to testify on H.R. 10614, which I introduced last year. This is not a constitutional amendment but a statutory change.

Mr. Chairman and members of the committee, during most of our history it was our proud, and in large part justified, claim that we had a government of laws and not of men. Our Federal and State statutes were adopted after open, public debate in legislative bodies whose members were elected by the people and responsible to them. Once enacted, they were then applied to specific cases by the courts in accordance with rational, well-understood, and essentially unchanging principles of legal interpretation. The judge's task was not to make law, but to find it.

This did not mean that nothing in the law could change. Congress and the State legislatures could pass new statutes at any time, so long as they were in harmony with the Constitution; and the fixed principles of legal interpretation could be, and were, used to build whole new structures of case law in new situations created by advancing technology, such as those arising out of the widespread use of the automobile.

Such was the system we had: the rule of law. Very few lawyers, legal scholars, or even the most enthusiastic apologists for today's courts, would claim that we have that system any longer. It has been replaced by the practice of deciding each case on the basis of each individual judge's vague and often ideologically bent concepts of what is fair and socially desirable.

The appointment of Federal judges for life, the many marks of special honor and respect accorded to a judge, and the absence of any direct political check on judicial authority, all grow out of the old assumption that judges find law, not make it—that they are primarily legal scholars rather than world changers. It becomes increasingly difficult to justify maintaining these special privileges when judges become activists competing with our elected lawmakers by, in effect, enacting laws that Congress has refused to pass.

Our Founding Fathers never intended that the Federal courts should be a law unto themselves. They wrote into the Constitution itself a specific and very important limit to the power of the courts, which appears in article III, section 2, as follows:

> In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, *with such exceptions and under such regulations as the Congress shall make.*

This particular provision of the Constitution applies not only to the Supreme Court but also to all other Federal courts, since they are established under the same authority that prescribes the jurisdiction of the Supreme Court. That authority is a vote of Congress. Congress has, therefore, the power to specify the kinds of cases which may be heard in Federal courts, and the kinds which may not be heard there.

Speaking on the floor of the Senate just last week, February 23, Senator Ervin of North Carolina, justly renowned for his mastery of constitutional law, explained in detail the nature and scope of the authority over the courts given to Congress by article III, section 2, and confirmed by the Supreme Court itself in the landmark case, never subsequently challenged or overturned, of *Ex parte McCardle* (1868). He read into the record a list of no less than 77 statutes compiled by Charles Doyle, legislative attorney for the Library of Congress, in which Congress has used the power granted by article III, section 2, to limit or otherwise prescribe the jurisdiction of Federal courts. So it can hardly be claimed that the use of this power is new or unprecedented.

The subject of your hearing today concerns perhaps the most flagrant abuse of the present comprehensive authority of the Federal courts: the power they have assumed to order the compulsory busing of schoolchildren for purposes of racial integration. Such busing is racism in a new form, the product of an intolerant, totalitarian elitism which moves other people's children around vast metropolitan areas like pawns on a chessboard, to obtain the sociological mix most satisfying to the dominant academic and bureaucratic cliques of the moment. It is offensive to white and black citizens alike. Every survey shows that a decisive majority of the people and their elected Representatives do not want it. Yet Federal courts are imposing it.

In its decision last April in the case of *Swann et al.* v. *Charlotte-Mecklenberg Board of Education*, the Supreme Court not only read into the Constitution a power for a single Federal district court judge to set school attendance rules for an entire city—a power which could not by the remotest stretch of the imagination be conceived as having been in the minds of the Founding Fathers when they drafted the Constitution—but overturned the explicit language of that Court's own historic *Brown* v. *Board of Education* decision declaring that new school attendance areas should be "compact units." When the Supreme Court begins to override not only laws passed by Congress, not only long-established legal precedents, but even its own recent and best-known rulings to advance its sociological objectives it is heading straight for tyranny or chaos.

The logical, indeed inevitable, next step came January 10 when Federal District Judge Merhige in Richmond, Va., decreed the compulsory busing of schoolchildren in the Richmond area across county lines. All past busing decisions had involved only school attendance zones or requirements within a given school district or the limits of a particular city. The claim was always made that the school district had deliberately set up its attendance zones so as to promote racial segregation.

But in Eastern States like Virginia, the counties were set up before there were any public schools, so there can be no possible basis for claiming that county lines there were drawn for the purpose of racial discrimination. Judge Merhige appears to have felt that the State of Virginia should have changed or ignored its county lines in order to meet the demands of persons dissatisfied with the racial mix in school districts resulting from those lines. Because the county lines were left as they had always been, he simply ordered a new school district to be set up disregarding them, in which 78,000 of 104,000 schoolchildren will be bused into and out of downtown Richmond, from and to the suburban areas of neighboring counties.

Many of those people who are sincerely convinced that racial discrimination is a great evil appear willing to push for what they ought to realize are almost limitless evils in trying to wipe it out. American parents who have spent thousands upon thousands of their hard-earned dollars to give their children a better environment outside our vice and crime-ridden urban areas have an absolute natural right to keep their children from being dragged back by force into the cities so full of danger for them. They are looking to us to protect that right.

One means proposed to protect that right is a constitutional amendment to override the forced busing decisions. I have supported and still support such an amendment. However, we should realize that its words and meaning, no matter how explicit, could be twisted by the same courts and judges responsible for the situation in which we now find ourselves. It would be best of all to get the Federal courts out of this issue altogether, where they never belonged, by depriving them of all authority and jurisdiction to order the assignment of any child to any school on the basis of his race alone.

My bill, H.R. 10614, which is before this committee, would remove from the jurisdiction of the Federal courts any case or appeal "which relates to assigning or requiring any public school student to attend a particular school because of his race, creed, or color."

The approach to this critical problem taken by my bill—an approach not widely discussed until recently—has now become an idea whose time has come. It has been the subject of two very close votes on the Senate floor and is virtually sure to be considered in the future on the House floor as well. The Judiciary Committee has a solemn obligation to the House to give it full and thorough consideration, and I most strongly urge the committee's approval of this statutory limitation of the jurisdiction of the Federal courts.

As an addendum to my prepared testimony here, I would like to plug a loophole in the printed version of my bill which legislative counsel added, which at the time I introduced it did not seem as significant as it does at the present time.

I would request that in the last sentence a period be put after the word "Act" on line 21, page 2, and that the last three lines be deleted. This is, in effect, a grandfather clause which would allow the Supreme Court to decide any busing case now filed in a lower court, and would be a loophole you could drive a truck through in my bill.

If this committee feels, as I hope it will, that they would like to act on this bill, I would request that those last three lines be deleted.

Chairman CELLER. Are there any questions?

Thank you very much, sir.

I wish to thank the members of the committee for their attendance. We will now adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:25 p.m. the committee was recessed, to reconvene at 10 a.m. Tuesday, February 29, 1972.)

SCHOOL BUSING

TUESDAY, FEBRUARY 29, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler, chairman, presiding.

Present: Representatives Celler, Brooks, Hungate, Jacobs, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel, and Herbert E. Hoffman, counsel.

Chairman Celler. The meeting will come to order.

The Chair wishes to place in the record the comments of a number of nationally recognized constitutional law scholars on House Joint Resolution 620. The scholars have uniformly expressed reservations about the proposed amendment. They stress that the ostensibly simple language of the proposal is in fact susceptible to at least four distinct and contradictory interpretations.

For example, the amendment could strengthen the line of Supreme Court decisions from *Brown* v. *Board of Education* (1954 through *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.* (1971). In this reading it would prevent erosion of those decisions that might result from changes in personnel on the Supreme Court.

Or, the amendment may be interpreted as going beyond the present state of the Supreme Court decisional law to outlaw de facto school segregation; that is, segregation not expressly compelled by official State action. Unlike the 14th Amendment, the proposed language of House Joint Resolution 620 contains no reference or limitation to State action.

A third possible construction is that the amendment forbids racial assignment of pupils except as required by the equal protection clause of the 14th Amendment. This interpretation would harmonize the 14th Amendment and the proposed amendment. Such reconciliation of possibly inconsistent provisions is not uncommon in constitutional adjudication.

Finally, the proposed amendment may be intended as a partial repeal of the equal protection clause of the 14th Amendment insofar as racial discrimination in public education is concerned. In this view its aim would be to constitutionalize the so-called neighborhood school. However, assignment of students on the basis of geographic convenience may in many communities constitute assignments on the basis of race and, thus, the amendment would be self-defeating. As some commentators have suggested, the formulation of the proposed amendment is the least likely technique for insulating the neighborhood school assignment from judicial revision or review.

(The documents referred to follow:)

DUKE UNIVERSITY,
SCHOOL OF LAW,
Durham, N.C., January 17, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: In response to your request of January 6, 1972, I am submitting the following comments on H. J. Res. 620 which proposes to amend the Constitution by adding the following sections:

> *Section 1.* No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.
>
> *Section 2.* Congress shall have the power to enforce this article by appropriate legislation.

As no hearings have yet been held, the intention and proper construction of this proposed amendment are necessarily uncertain. As I mean to indicate in detail, moreover, the language of the proposed amendment is readily susceptible to widely differing interpretations, any one of which might be finally rendered by the Supreme Court, with consequences very different from those imagined by some members of Congress.

Nevertheless, as the proposed amendment has been introduced within a year of the Supreme Court's unanimous affirmance of *Swann* v. *Mecklenburg County*, and as it has been proposed in a time of considerable public unease regarding the judicial enforcement of equal protection derived from the Court's earlier unanimous Opinion in *Brown* v. *Board of Education*, its principal objective may be that of establishing a constitutional exception of the means which federal courts have held to constitute an appropriate remedy to redress systematic racial discrimination by government against the equal rights of Negro school children. Specifically, I suppose that it is meant to forbid federal courts to consider the race or color of any student in fashioning a judicial order affecting school attendance, whether or not that order is otherwise determined by the court to be required as an essential means of assuring school children equal educational opportunities previously denied them in violation of the fourteenth amendment.

Respectfully, I believe that the proposed amendment is uniquely ill-advised. First, its disingenuous coloration, *i.e.*, the manner in which it is worded, is systematically misleading. Second, and closely connected with the manner in which the proposal has been framed, its capacity for radically different kinds of judicial interpretation is so enormous as to leave utterly uncertain its ultimate practical consequences. For reasons more fully explained hereafter, moreover, the amendment as proposed is in fact exceedingly unlikely to have any effect upon the authority of a federal court to require pupil assignments to schools other than those within their neighborhoods. In short, one of the least likely consequences of the amendment is that of insulating the assignment of children to neighborhood schools from judicial review and revision. My reasons for these conclusions are set forth in the three following sections.

I. PLAUSIBLE CONSTRUCTIONS OF THE PROPOSED AMENDMENT WHOLLY IN ACCORD WITH SWANN

From one point of view, the proposed amendment might well be interpreted as nothing more or less than the explicit constitutionalizing of federal court decisions previously derived from the more general provisions of the fourteenth amendment. Wholly consistent with its language, it can be construed to provide that no department of government, including of course a local school board, may structure any public educational system to achieve racial apartheid or to relate the assignment of students to any standard which would result in his attendance of a school racially segregated as the consequence of prior governmental racial discrimination involving that standard. The use of any standard compelling a student to attend a particular school, where the standard itself is one involving prior governmental discrimination based on race, would thus be declared invalid as a violation of this explicit amendment.

Far from prohibiting busing, and far from insulating neighborhood school assignments from judicial review and modification, however, the amendment as thus construed would have no effect on either of these other than to confirm their correctness. The only question in each such case would be for the court to determine whether a student has been assigned to a school according to some standard which reflects either current or past governmental racial discrimination, so that his attendance in that racially segregated school must in fact be seen as segregation "because of his race."

That this explicit provision in the Constitution, as thus construed, would not at all "constitutionalize" the neighborhood school basis for requiring attendance at a particular school can readily be seen. Indeed, that it would forbid such basis for assigning attendance is also apparent in every instance where the student's "choice" of neighborhood was itself dictated by governmental action based on race. That there has been such action which has had a continuing effect in many communities, North as well as South, is not difficult to establish.

To select only the most obvious and demonstrable examples, it is well known that government at all levels, federal as well as state and local, has in the past utilized its power to compel racial segregation by neighborhood. Such action includes the explicit policies of the VA, FHA, and FNMA which continued into the 1950s to limit the availability of federal insurance on home loans to persons of the same race as that which predominated in the neighborhood in which they sought to purchase a home. It includes as well the actions of state governments in enforcing racially-restrictive covenants limiting the choice of housing available to Negroes and excluding them from entire neighborhoods solely because of their race. It includes also the myriad decisions of local school boards and other departments of state government in school site selections, the particular selection having been made to maintain a deliberate racial predominance of exclusivity if students assignable to that school because of the location thus selected.

Against the background of these and other deliberate governmental actions, the subsequent assignment of students thus restricted to a given neighborhood because of their race could not be made to the neighborhood school. Consistent with the language of the proposed amendment, the courts would be called upon to enjoin any such assignment as one requiring attendance of the particular school "because of the race" of the student so assigned.

In suggesting this surprising construction of the proposed amendment, I should note in passing that it has ample precedent and analogy, as well as that it is of course the concrete constitutionalizing of *Swann* and subsequent decisions which have applied it generously. On the same kind of analysis exactly, the Supreme Court has already found that the use of an apparently nonracial standard is forbidden to government when in fact it is specifically identifiable to past governmental racial discrimination immediately related to that standard. Thus, in the *Gaston County* case, the Supreme Court quite properly found that persons otherwise eligible to register to vote could not be disqualified by the use of a literacy test which was not racially discriminatory on its face or in the manner of its administration. Rather, use of that standard was forbidden in a county with a prior history of racial discrimination in public education which itself significantly contributed to the lower incidence of literacy of those victimized by that discrimination. In this sense, the use of a literacy test contained within itself "built in" discrimination against Negroes which resulted in their inability to vote "because of race" as discriminatorily utilized by prior governmental action. Their disqualification attributable to that action was thus itself disqualification "because of their race" as employed by government. Identically, the assignment of Negro children to a racially segregated school which they are compelled to attend because of the combination of "neighborhood" assignment plus prior governmental action restricting them to that neighborhood because of their race, is forbidden.

The unexceptional nature of this construction and analysis is older still. Even in 1866, as the fourteenth amendment was then under formulation, the House Majority Leader recognized that as it would be racially discriminatory to disqualify a Negro from voting explicitly because of his race, so it would be equally racially discriminatory to disqualify him for lack of sufficient property *if, at the same time, governmental action barred him from acquiring property:*

> Mr. FARNSWORTH. Suppose the State of South Carolina should provide by law that no Negro should hold real estate.
>
> Mr. STEVENS. Then the amendment operates.

(Cong. Globe, 39th Cong., 1st Sess. p. 376)

Exactly in the same manner, school assignments based on neighborhood, where government itself has previously assigned that neighborhood on the basis of race or where it has located schools to perpetuate neighborhoods on the basis of race, are clearly forbidden. To the extent that the proposed amendment would explicitly affirm this determination, I see little basis for taking exception to it. Given that construction of section 1, the compatible construction of section 2 of the proposed amendment would follow a similar course: to establish in Congress the authority to "enforce" this effect of section 1 by "appropriate" legislation, *i.e.*, to repose in Congress a useful authority to complement the judicial administration of section 1 by furnishing additional remedies (and, possibly, an even more generous affirmative scope of protection) to those remedies otherwise within the judicial power of the courts. Cf. *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966); *Bivens* v. *Six FBI Agents*, U.S. (1971).

II. THE PROBABLE IRRELEVANCE OF THE PROPOSED AMENDMENT TO EXISTING FEDERAL COURT ENFORCEMENT OF THE EQUAL PROTECTION CLAUSE

I have not meant to be artful in setting forth the possible interpretation of H.J. Res. 620 that I have suggested in the preceding discussion. Rather, I have meant to show only how innocent, correct, and well-intentioned it can plausibly be construed by a Court in aid, rather than in derogation, of its decisions in *Brown* and *Swann*.

Even so, I do not take the proposal to be offered in this spirit of authenticating the obligation of our federal courts to grant relief to children required to attend segregated schools because of the discriminatory actions of government. It may, indeed, intend to accomplish nearly the opposite result: to forbid effective relief to persons captured in racially segregated neighborhood schools as a consequence of government's own complicity in related actions of racial discrimination. That it could conceivably be given this construction and this consequence can readily be seen, I suppose, even though it is difficult for me to imagine why any member of Congress would think it appropriate to enact such an appalling proposition into the fundamental law of this nation.

This possible consequence of the proposed amendment, so to perpetuate governmentally-imposed school segregation, can be seen by interpreting it to bar a federal court from issuing the only kind of order which may, in a given case, be indispensable to relieve Negro children from that racial segregation which government has imposed upon them through its combination of neighborhood school assignment plus prior racial discrimination in restricting neighborhoods and in locating its schools. In frankness, however, I do not think that this interpretation of the proposed amendment is truly supportable consistent with its current phrasing. The reasons that make this an implausible construction of its terms can best be understood by a brief review of the rationale of several busing cases.

We have already noted the several respects in which the rigid and unyielding assignment of students strictly on the basis of residential proximity to the closest school at hand may indefinitely perpetuate state-imposed racial segregation as clearly as though the state has physically confined Negroes to certain areas by a single statute, rather than by the wider combination of state and federal actions which were identically discriminatory: the enforcement of racially restrictive covenants, the restriction of federal assistance to purchasers of property in racially homogeneous areas, the location of schools to assure racially homogeneous student bodies, etc. As the right to equal protection is personal, and as it is the duty of the federal courts to grant relief accordingly, *i.e.*, to each person thus discriminated against, it is not strange that the relief to be ordered in each such case necessarily must provide the plaintiff's child with effective access to a different school—a school not necessarily within the immediate neighborhood of where its family has been made to live.

That the child should merely be freed from attending the school erected in the immediate neighborhood is clearly inadequate in these circumstances to grant him *equal* protection: by itself, such an order makes no provisions for him to be admitted to any other school, or to overcome the governmentally-imposed greater expense that he must bear to reach that school. To the extent that his family, because of its race, has been restricted by the prior actions of government to a residence farther from that other school than other children must travel at their own expense, it is very clear that government must now restore that equal access by furnishing the means of getting there with no more hazard or expense than other families are made to endure. Thus the provision for *busing*, the usual means for transporting students to school.

This, writ very small, is the essence of the unanimous decision in *Swann* and its subsequent application in other cases, North as well as South: judicially compelled relief from that denial of equal protection arising from deliberate government actions placing Negroes in particular neighborhoods because of race, and placing schools in particular places because of race, necessarily requires that government must now provide effective access to other schools. Access which is effective on *equal* terms with that enjoyed by all other children required to attend that school is not assured, moreover, unless those entitled to such relief as a whole class are subjected to no greater inconvenience, delay, and hazards of transportation than all others within the district. Thus, buses may be made to move in *both* directions, assuring that Negro children need not travel farther than white children to attend a school free of that racial apartheid previously sponsored by government itself.

Even though it should now be clear that the resulting order of the court respecting school attendance is entered not "because of race," but rather because it is plainly required to assure the children of Negro plaintiffs that equal protection which the fourteenth amendment has been held to guarantee them, it may be that the purpose of the proposed amendment is to forbid our federal courts from granting that relief. If so, however, then that purpose and effect need to be more clearly stated in the proposed amendment because its current phrasing is simply inadequate to assure that end. Its inadequacy in this respect can be seen by comparing its wording with the actual manner in which the federal courts currently review school district plans.

What the amendment provides is that no public school student shall be required to attend a particular school "because of his race." The rationale of a school attendance plan approved by a federal court as part of that relief to which the plaintiffs were found to be entitled, however, is not that any particular assignment is made because of the race of any particular student; rather, it is that the attendance plan reflects the school board's best determination of cost, convenience, efficiency, and safety in assigning students to various schools, *consistent with the constitutional right of the plaintiffs to be free from racial discrimination*. To put the matter differently, each student is assigned to a particular school because of considerations of cost, convenience, and educational policy as determined without respect to each student's race. To be sure, the alternative plans open to the school board on these bases, broad and numerous as they are, are appropriately limited by judicial decree to make certain that they do not operate directly or indirectly to impose unequal burdens upon Negro children because of *their* race. The proposed amendment does not on its face forbid such a limitation, however, and thus, given its present wording, it may in fact have no effect whatever upon this authority of the federal courts.

III. THE REAL DECISION BEFORE THE CONGRESS

What I have attempted to explain here is essentially that the proposed amendment is the victim of its own disingenuousness. Its ulterior objective has been so thoroughly disguised in the innocence of its language as to have been utterly compromised by that disguise. Indeed, the most that can be said of it in its current form is the suggestion I ventured at the beginning: its capacity for radically different kinds of judicial interpretation is so enormous as to leave utterly uncertain its ultimate practical consequences.

Nevertheless, there is of course a means by which that uncertainty can be eliminated, namely, to rephrase the proposed amendment so to make perfectly clear the real decision of the Congress. Specifically, uncertainty would be dispelled and the ulterior purpose made clear beyond peradventure of judicial mis-construction if the proposal were candidly reformulated as follows:

> The assignment of public school students to the particular school closest to their respective homes shall not be deemed to deny them any constitutional right whether or not that school is racially segregated and whether or not that racial segregation is the result of governmental action which has itself been based on race.

This amendment would, indeed, be adequate to accomplish its "purpose," *i.e.*, the plain and terrible determination to perpetuate racial apartheid in public education. It would freeze our courts from providing meaningful relief to those who have been denied equal protection, and it would signal that the promise of *Brown v. Board of Education* is a lie, a commitment we no longer mean to keep. Respectfully, however, it might be far better that Congress should most carefully consider whether it truly desires to this.

Sincerely,

William Van Alstyne.

Yale Law School,
New Haven, Conn., January 18, 1972.

Hon. Emanuel Celler,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

Dear Mr. Chairman: This is in reply to your letter of January 6 asking for my comments on House Joint Resolution 620, proposing an amendment to the Constitution concerning neighborhood schools.

I wish to express in the strongest terms I can my opposition to this proposal. I think it altogether ill-advised.

As my writings and my testimony on two occasions before the Senate Select Committee on Educational Opportunity will amply show, I am, to use the shorthand now commonly employed, no advocate of large scale busing. But H.J. Res. 620 strikes at much more than busing. Unless I totally mistake its import, the effect of it would be to roll back the desegregation of schools in areas in which legally enforced segregation prevailed before 1954 all the way to the stage of pupil placement statutes. This would mean regression not to tokenism, but to the stage before tokenism. This seems to me utterly destructive and unacceptable.

Even an anti-busing constitutional amendment more carefully framed than this one would seem to me highly objectionable on at least two grounds. First, it trivializes the constitution to deal by constitutional amendment with a subject enmeshed in so many variables and so local in nature. A constitutional amendment dealing with busing would be preposterously out of place in comparison with the momentous structural and substantive provisions with which the rest of our constitution, after a fashion proper to a constitution, was written to deal. Nor do any of the amendments so far made to the Constitution, saving only prohibition and its repeal, fail to deal with subjects of the proper magnitude. We must not set foot on the road to converting our Constitution into a code of detailed regulation, dealing with myriad passing grievances, after the fashion of so many state constitutions, which are then every so often scrapped whenever it seems advisable to make a fresh start. We must never forget, said John Marshall, that it is *a constitution* we are expounding, and whenever it considers proposing amendments, Congress should never forget that it is a constitution it is rewriting, not a common code of laws subject to change from time to time.

Secondly, the enormous symbolic significance of such an amendment, or even of Congress proposing such an amendment, must be kept in mind. H.J. Res. 620 would justly be read as repudiating *Brown v. Board of Education*, since to all intents and purposes it does so. Even a more closely drafted amendment could not fail to be so read. Courts that order busing purport to be implementing the *Brown* case, and a constitutional amendment that attempted to forbid busing would be viewed as a renunciation of it. That is not anything to be lightly done. So to dash the hopes and expectations, previously raised by the Federal Government, of millions of people would be an inexcusable act.

Faithfully yours,

Alexander M. Bickel.

Yale Law School,
New Haven Conn., January 19, 1972.

Hon. Emanuel Celler,
House of Representatives,
Washington, D.C.

My Dear Congressman Celler: This letter constitutes a fulfillment of my promise to comment on H.J. Res. 620, in compliance with your request contained in your letter of January 6, 1972. I shall be glad of any use you make of this letter, either for inclusion in the Record, or for duplication and dissemination by other means amongst other Members of Congress.

When I reach the text of the Resolution, I find myself genuinely bewildered, because I think it impossible that it should mean the same thing to any two laymen or to any two lawyers.

It could, for example, sound like a Congressional ratification of the Brown case. Obviously, that is not what its sponsors intend, but I must say that the use of such misleading language, for purposes which are in general the reverse of those which would appear to the casual reader, comes (to say the least) very close to deserving the charge of disingenuousness. The proposal of a so-worded Resolution for the purpose of halting or curtailing school integration is not, with respect, the kind of thing one has a right to look for in public men.

The Brown case, of course, needs no ratification by Congress, and has in any event already been ratified by Congress, and by the Presidency, in several civil rights statutes. It has been the standing law of the land for seventeen years, and whatever may happen on the present Court, there is no prospect whatever of its being overruled in its central holding. This is conclusively demonstrated by unanimous decisions since the accession of two Justices appointed by Mr. Nixon. Anybody who votes for this Resolution under the theory that he is ratifying the Brown case is, therefore, being misled, whether deliberately or not.

When one reaches the question, or rather the illimitable set of questions, as to what this Amendment can in fact possibly mean, two general difficulties stand out before one approaches particulars.

First, the usual aid to the interpretation of delphic language such as this—"legislative history" in Congress—is hardly available to its full extent in the case of constitutional amendments. The final coming into force of an amendment is the result, not of the action of Congress, but of the actions of thirty-eight separate state legislatures, many of which do not even keep a record of their debates. A consonance of understanding amongst these thirty-eight legislatures, as to language such as this, is not to be looked for. The processes of proposal and ratification, therefore, could not help very much in the final interpretation of this language.

Second, both because of the multiple ambiguity of the language used and because of the futility of the expectation of help from the processes of proposal and ratification, it is certain that a very great deal of wasteful and dilatory relitigation of settled questions will have to take place, whatever the outcome in each case. It could be contended, for example, that in a small town of two school districts, the intentional drawing of the line in such a way as to produce integration, where it could also be drawn in such a way as to produce segregation, constitutes a sending of public school students to one school rather than another on the basis of their "race, creed, or color". I believe this contention would be without merit, and would almost certainly be rejected by the courts, but meanwhile we will have had to go through all over again a part of the litigation process which it has taken seventeen years to complete. This is tendered only as an example; almost every question about the merits of steps taken to effect integration would have to be relitigated, because somebody could always contend that any such step was taken, in some sense, because of the "race" of the pupils concerned, and that therefore some of them were being forced into some school because of their race.

It seems to me that, in adverting to these possibilities of litigation, I have, in effect, done about all that one can do on the general merits of the proposal, because, looked at from another angle, what I have implicitly said is that there is a danger that this language may produce some measure of retrogression in the thorough-going use of judicial power to implement the Brown decision in all its implications. I am sure that the Supreme Court would not interpret this Amendment in the extreme way which I have used as an illustration of an example of possible litigation. But it is all too likely that, feeling an obligation to give some meaning to the Amendment, the Court would find it to command some cutback in desegregation measures. Such a cutback, whatever its dimensions, or whatever the precise lines reached, is the only possible result of this Amendment. When one has said that, I think one has said that the Amendment is highly undesirable.

It might, for example, be held that the Amendment forbids the busing of children to schools specifically designed to be interracial, even though that busing was no more extensive than busing which had in past years taken place for the purpose of maintaining segregation, and even though the segregation pattern was one that had been created and fostered by the past actions of the state or local governments concerned. Nobody would dare come out in the open at this time and suggest that such retrogression would be a proper step. But I think there is a real danger that it might take place if this misleading language is thrown to the Supreme Court for interpretation. In such a case as the one I have just sketched (and, of course, it is far from an unimaginable case) it would be true, in a fairly normal sense of the word, that some pupils, both white and black, were being sent to particular schools "because of . . . race". Yet in such a case such assignment is entirely benign, results in no more busing than took place before, and quite clearly aims at the correction of a situation produced by public authority itself. It would be very foolish to run the risk of such an interpretation—unless that is what one really wants, though one dares not say so in plain words.

If we come to the practice which may be the principal one aimed at by the proponents of the Amendment, and which is, in any case, the one opposition to which would be the principal component in public opinion in support of such an amendment—the long-distance busing of ghetto children out and suburban children in for purposes of integration—then one is indeed faced with a question which I think anyone of common sense must regard as a troublesome one. I am not a fullthroated and thoroughly happy advocate of that type of busing, because I am sure that it is not an optimal solution to the problem, and because it does, of course, produce a substantial inconvenience to all concerned, and a good deal of understandable resentment. After much reading and thought and conversation on the subject, I have concluded that it is the lesser of two evils, since the alternative is simply to leave the ghetto schools segregated, with no motivation on the part of the white majority to improve them, and thus to freeze in being a two-race school system, with only rare exceptions. I think we must support this least desirable form of busing, not because we like it, but because we dislike it less than we dislike its alternative.

This question could be and has been argued at great length. It is not an easy question. The point about this Amendment is that it does not address itself with any specificity whatever to this question, but disguises any intent which it may have to deal with this question behind the facade of scattergun language that might be interpreted in ways of which nobody with a minimally sincere desire to solve the racial problem could possibly approve. If an amendment were to be drawn prohibiting this one type of busing, which so many people quite erroneously regard as the only type of busing in issue, a great deal of light could be shed on the question, and a decision could be made. I would oppose such an amendment, both for the reason I have given, and because I think this remedial issue is not of dimensions suitable for constitutional amendment, but can more fittingly be dealt with from time to time by the good sense of the courts and by such action as Congress might take under Section 5 of the Fourteenth Amendment.

But the essential point is that this proposal does not address itself to this question with any specificity. It might be construed to prohibit all busing motivated by a desire for integration even though no incidental inconvenience to anyone results. It might be construed to prohibit the redrawing of school district lines in such a manner as to produce greater integration. It might indeed be construed to prohibit every step that could possibly be taken to further integration, however harmless such a step might be, because any step taken in aid of integration inevitably does, in some sense, involve the assignment of pupils to schools on the basis of race.

To summarize, the Amendment is misleading because, on first perusal, it seems to do no more than ratify the Brown case, which is both unnecessary and the exact opposite of what its proponents want. It is unintelligible because it literally prohibits assignment on the basis of race in situations where it could not possibly be intended by two-thirds of both Houses of Congress and three-qpuarters of the state legislatures that steps taken in integration should be prohibited, and yet it gives us no aid in its text to determine which of these situations shall be covered, and which shall not. Since it is unintelligible, it will inevitably be productive of an enormous volume of litigation, traveling over the same ground which has been so painfully traversed in the last seventeen years. Since it is unintelligible, moreover, and since it is literally interpretable as forbidding every step taken in integration, it is extremely dangerous, because no one can say how far the Supreme Court might feel it is obliged to follow this possible literal meaning of the words of the Amendment.

This Amendment is bad law, therefore, on multiple grounds. I hope that you and your Committee will act unfavorably on it.

If I can be of any further assistance, please do not hesitate to call on me.

Very sincerely,

CHARLES L. BLACK, Jr.,
Luce Professor of Jurisprudence.

UNIVERSITY OF CALIFORNIA, LOS ANGELES,
SCHOOL OF LAW,
Los Angeles, Calif., January 26, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I am pleased to respond to your letter requesting my comments on H.J. Res. 620. I write in my individual capacity, and not as a representative of the University of California.

This proposed constitutional amendment is described as "relative to neighborhood schools." Presumably the proposal is designed to require adherence by school districts to the neighborhood school principle. But the proposal does so only with respect to prohibiting assignment of children outside a neighborhood zone on grounds of "race, creed, or color." Any other departure from a neighborhood school principle is not prohibited by the proposed amendment. The proposal is, then, designed to preserve neighborhood schools only where neighborhood schools are threatened by efforts to ameliorate racial segregation. I am opposed to the proposal for several reasons.

(1) There may be cases where current racially segregated school populations are the product of present or past compulsory racial segregation by a school district. The proposed amendment would apparently prohibit assigning children to schools on the basis of race where such assignments would be an essential mechanism by which to undo "de jure" segregation. The amendment might, in such cases, make unavailable a necessary means to remedy a denial of equal protection of the laws under section one of the Fourteenth Amendment.

(2) The proposed amendment would establish a Constitutional principle on an issue which the United States Supreme Court has yet to decide: the scope of the obligation of school districts to take steps to ameliorate what is misleadingly referred to as "de facto" segregation. I believe that the Equal Protection Clause should be held to require that school districts make use of all means reasonably available to lessen such segregation. I shall not here develop my reasons for this conclusion. This issue has been litigated in a number of courts, and the Supreme Court will soon decide the issue. I, therefore, of course oppose a constitutional amendment which would produce the contrary result.

(3) The proposed amendment would not just establish that a school district does not have an obligation to lessen "de facto segregation"—it would go further, and prohibit school districts from deciding to take such action even though they were not constitutionally obligated to do so. I do not think it wise to prohibit such action by states and school districts. Even if there is no constitutional obligation to lessen "de facto" segregation, I believe that, as a minimum, state and local governments should be permitted to choose what their responses will be to this issue. It is, to say the least, not unreasonable for a school district to decide that, in order to provide equality of educational opportunity and to encourage the development of constructive race relations in a community, efforts should be made to lessen racial separation in the public schools. It is far from clear that there should be one single national principle on this question, prohibiting local determination and diversity.

For these reasons I believe that it would be contrary to the national interest to adopt the amendment proposed in H.J. Res. 620.

Sincerely,

HAROLD W. HOROWITZ,
Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
CAMBRIDGE, MASS., *January 27, 1972.*

Congressman EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: In response to your inquiry of January 6 I am glad to record my opposition to H.J. Res. 620 proposing a Constitutional amendment prohibiting the assignment of a public school student to a particular school because of his race, creed, or color.

One fundamental objection to the proposal is the very great danger inherent in adopting specific constitutional amendments to a specific question of immediate public and political interest. One of the prime values of our Constitutional system is the fact that the Constitution speaks in fundamental principles having an enduring generality. This characteristic, coupled with the power of the Supreme Court to project the great fundamental issues upon particular occasions, gives our political ideals a permanence not subject to alteration by violent short-run surges of public feeling or the desire of office holders for political advantage.

H.J. Res. 620 is wholly inconsistent with this tradition. It seeks to deal in short-range terms with an immediate problem upon which public opinion might hold one view today and another tomorrow. A single departure from our wise constitutional tradition could scarcely spell disaster, but it would set dangerous precedent which others would come under pressure to follow.

In my view, the rule embodied in H.J. Res. 620 is thoroughly unsound. It would prevent local school boards as well as the federal courts from taking effective steps to remedy past violation of the Fourteenth Amendment guarantee against official racial discrimination. It would prevent any state or local school board from attempting to achieve racial balance in the schools. While racial balance seems to me to be a goal of paramount importance, I recognize that there is room for exercise of judgment in determining how far other desiderata should be sacrificed to achieve this purpose. Perhaps the greatest vice in the proposed amendment is that, if adopted, it would bar any and every practical effort to achieve this objective.

I should point out that the proposed amendment is totally inconsistent with any form of states rights or local responsibility for education. Its effect is to prohibit either a state or local school board from rendering any independent judgment in this regard.

Finally, no argument is necessary to make it plain that the proposed amendment would symbolize a measurable step backward in progress toward racial equality.

Sincerely,

ARCHIBALD COX.

STANFORD LAW SCHOOL,
Stanford, Calif., January 28, 1972.

Representative EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE CELLER: Thank you for your letter of January 6, inviting my observations on H.J. Res. 620. Please forgive the delay in my reply. I have been out of town.

H.J. Res. 620 proposes a constitutional amendment providing that no public school student shall be assigned to or required to attend a particular school because of his race. In my judgment, the proposal is extremely ill-conceived for two reasons.

First, the deceptively simple language of the proposed amendment is in fact susceptible of four quite different interpretations:

(1) The amendment specifically ratifies the desegregation decisions of the Supreme Court from *Brown* v. *Board of Education*, 347 U.S. 483 (1954), through *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), and immunizes those decisions against any overruling or erosion which might otherwise occur as a result of change of personnel on the Supreme Court. In terms, of course, the amendment says exactly what the Supreme Court has said in these cases: that the assignment of a child to a particular school "because of race" is unconstitutional.

(2) The amendment goes beyond the Supreme Court decisions and outlaws *de facto* segregation. Notice that, unlike the Fourteenth Amendment, the proposed amendment contains no "state action" requirement.

(3) The amendment forbids any racial assignment of pupils except insofar as required by the Equal Protection Clause of the Fourteenth Amendment. Such a reading would harmonize the Fourteenth Amendment and the proposed amendment. As you know, it is a commonplace of constitutional adjudication to construe statutes and constitutional provisions in such a way as to reconcile them if at all possible; and I tend to think that the courts, confronted with the unprecedented situation of two possibly inconsistent constitutional provisions, would take the same approach and construe the new amendment harmoniously with the Fourteenth.

(4) The proposed amendment *pro tanto* repeals the Equal Protection Clause, and forbids even such racially-conscious assignments as are necessary to effect the final abolition of the segregated school systems condemned by *Brown*. I use

the term "repeal" literally, for the Supreme Court has now clearly held that the Fourteenth Amendment not merely forbids racial discrimination in public education, but also requires school boards (and, in their default, courts) to take "steps adequate to abolish [the] . . . dual, segregated system" of public education that had grown up in the Southern States during many years prior to *Brown* and was perpetuated by various devices during the fifteen years after *Brown*. See *Green* v. *County School Board*, 391 U.S. 430, 437 (1968). For reasons which I shall come to shortly, the abolition of immemorially segregated school systems may require racially-conscious assignment of pupils, see *Swann* v. *Charlotte-Mecklenburg Board of Education, supra; cf. Brooks* v. *Beto*, 366 F. 2d 1, 21-26 (5th Cir. 1966), and therefore "an absolute prohibition against transportation of students assigned on the basis of race" is inconsistent with the Fourteenth Amendment. *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 46 (1971).

I hardly need to underline the political and legal irresponsibility of promulgating a proposed constitutional amendment that is subject to such diverse and mutually contradictory interpretations. Those who are called to vote upon its ratification may approve it upon entirely different understandings of its meaning. In this manner, for example, persons who have altogether legitimate concerns about the inordinate bussing of children, not required to effect desegregation of segregated school systems, can be made the dupes of others who have continued by every devious means to preserve segregation since the Supreme Court declared it unlawful. (H.J. Res. 620, of course, deals with pupil assignment, not transportation; and to the exact extent that it would forbid bussing, it would also forbid other methods of school desegregation not involving the transportation of children.) But in the end, it is unclear whether the dupes or the dupers will win out, since no one can comfortably predict how the courts will construe this ambiguous amendment.

Second, even if the amendment unambiguously did what I suspect it is devised to do—that is, to work a *pro tanto* repealer of the Fourteenth Amendment in favor of the "neighborhood school" concept—it would seem to me tragically unwise. *Brown* v. *Board of Education* marked an historic moment in the evolution of the conscience of this Nation. But the promise of a desegregated education which it held out to hundreds of thousands of black children went largely unfulfilled for fifteen years. Finally, after a generation of procrastination, the Supreme Court ordered that *Brown* be effectively enforced. *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969); *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 226 (1969), 396 U.S. 290 (1970); *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). One year later, we are offered a constitutional amendment by which—just as *Brown's* meaningful implementation begins—*Brown* is to be nullified.

That this would be the effect of the amendment (assuming, as I now am, that it is clarified to subordinate the Fourteenth Amendment to the "neighborhood school" system) is perfectly plain. Whatever may be the case outside the South, southern "neighborhood" schools are the products and the perpetuators of the racial segregation that *Brown* sought to end. To understand why this is so, one needs only recognize the obvious fact that "neighborhoods" are shaped by the social conditions in which they grow and change. The "neighborhoods" of "neighborhood schools" do not come into being independently of the schools; rather the "neighborhood schools" significantly mold their own "neighborhoods."

Governmental decisions as to school location and school size necessarily define the "neighborhood" of any school; and, once those decisions have been made, people decide where they will live (to the extent that social patterns allow) in considerations prior to *Brown* and one generation after, all of these decisions were made in a manner that accepted, reinforced, and frequently affirmatively promoted, racial segregation. The resultant "neighborhoods" could only become, as they now are, bastions of segregation.

School location, school construction, school size, grade structure, road patterns, highway design, and other physical planning in the South have always been—as they are everywhere—designed to foster the public convenience. In the southern states where segregation was accepted as the way of life, they were designed to foster the convenience of segregated schooling. Southern geographic convenience was thoroughly linked to segregation; and to say, now, "we will stop segregating and start assigning pupils to schools on the basis of geographic convenience," is to stop nothing but candor and to start nothing new except hypocrisy. The same kids go to the same schools; they go there because of the color of their skins; they are just as segregated as they ever were, and by the same devices.

So, to cast the "neighborhood school" concept in the form of an inflexible constitutional amendment which supersedes *Brown* is, in the South, to repudiate *Brown* itself. It is to make *Brown* a fifteen-year promise without substance; then, when substance comes near, to break the promise. It is to deal a terrible blow not only to our black citizens but also to the institutions of American government and the sincerity of our commitment through those institutions to preserve and protect the legitimate rights of all minority groups.

American government is based fundamentally upon the principle of majority rule with decent respect for minorities. That respect is partially assured by our constitutional guarantees of individual rights, including the right of racial equality, which no majority may abridge. Of course, the Constitution is amendable; those guarantees may be taken away in whole or in part; and so, if a minority is small enough, its rights are ultimately subject to the majority's will.

But it is to America's credit—it is a source of America's unity, its strength, its relative freedom from agonizing dissention—that none of our constitutional guarantees of individual rights has throughout history been taken away, in whole or in part, by the amending process. This tradition of restraint in the use of the amending process is another large part of the constitutional heritage that expresses our decent respect for minorities. It is an indispensable part: for, without such restraint, only the rights of very large minorities would be safe for long.

To break with the tradition of restraint on this occasion, at this time, upon this issue, would be a national calamity. To amend the Constitution precipitously—in response to very recent judicial decisions whose boundaries the courts are still thrashing out and whose consequences we have plainly had insufficient time to consider maturely—would set the worst kind of precedent for the use of the amending process. And to achieve what worthy purpose? To put what all the world will see as an Apartheid Amendment on the Constitution of the United States. I devoutly hope not.

Yours sincerely,

ANTHONY G. AMSTERDAM,
Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., February 18, 1972.

Hon. EMANUEL CELLER,
Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: I am glad to reply to your inquiry concerning my views on proposals for a constitutional amendment to prohibit the compulsory busing of school children to achieve greater racial balance.

In my judgment such an amendment would impose a single, simplistic answer to what are complicated questions that ought to be resolved on a case by case basis with appropriate guidelines from the courts.

It must be evident that such an amendment would apply even in extreme cases of evasion of desegregation orders, in communities with a long history of officially required or promoted segregation. To deprive the courts of the resource of busing in such instances would undermine the basic guarantee against de jure segregation in the schools.

The appropriateness of busing as a remedial measure, and the proper limitations on its use, remain to be worked out as additional cases are presented and decided. Even if the subject lent itself to a more absolute answer than it does, it would be premature to go through the process of a constitutional amendment in the present state of the law.

There is a consideration of a broader nature that must be apparent. The amending process is one that has been invoked, and ought to be invoked, only to remedy basic defects in our constitutional structure or doctrine. Almost all the Amendments since the Civil War have been directed to structural or procedural defects in our governmental system. Where a substantive doctrine has been overturned, as in the case of the Income Tax Amendment, the authority of the legislature has been liberated rather than constrained.

An amendment on the subject of school busing would disfigure the Constitution in the eyes of those, here and abroad, who look on it as a great charter of governmental powers and fundamental limitations protective of human rights.

Sincerely yours,

PAUL A. FREUND.

UNIVERSITY OF PENNSYLVANIA,
THE LAW SCHOOL,
Philadelphia, Pa., February 24, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: We are pleased to respond to your inquiry of January 6, 1972, asking for comments and observations on House Joint Resolution 620, proposing a constitutional amendment prohibiting the assignment of any public school student to a particular school "because of his race, creed, or color." Although you wrote to us individually, we are sending you this joint reply because our views are essentially similar.

It is not entirely clear from the text just what H.J.R. 620 would prohibit. Without any reference to its intended purpose or background, it appears merely to duplicate the Fourteenth Amendment in prohibiting *de jure* segregation—*i.e.*, the deliberate policy of assigning students of different races to different schools. The announced purpose of H.J.R. 620, however, seems to be to prohibit the "busing" of children beyond their neighborhood schools as a means of dealing with the problem of school racial segregation, and we therefore respond to the proposal as though this purpose were plain from the text.

H.J.R. 620 is, in our view, both unnecessary and unwise. Contrary to popular assumption, the Supreme Court has not broadly authorized the courts to require the use of busing to solve the problems of racial imbalance. Where racial imbalance is *de facto* rather than *de jure*—that is, where neither laws nor deliberate administrative policy have imposed racial segregation, but where school segregation is a result of residential patterns and a neighborhood school approach—the Court has not held that any judicial remedy is required since it has not held that such segregation is illegal. Compulsory busing has been authorized by the Court only in those cases where it has found a past or present policy of intentionally separating the races in school. Even in such cases of deliberate segregation, moreover, the Court has held that busing is not always an appropriate remedy. Under the Court's decision in *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), busing may be required as a means of correcting the consequences of unlawful segregation only where needed "to counteract the continuing effects of past discrimination", as where such past discrimination has caused "discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation." Beyond this, the Court stated that, even where busing may be necessary to correct the continuing effects of past discrimination, it should not be employed "when the time or distance of travel is so great as to risk either the health of the children or significantly impinge upon the educational process."

It is difficult to believe that anyone who believed in the principles of the Fourteenth Amendment would wish to prevent the federal courts from requiring busing in the narrow circumstances in which that measure has been authorized by the Supreme Court. If busing cannot be required where it is *necessary* to correct continuing segregation which results from deliberate past policies to segregate the races (and where it causes harm neither to the children nor the educational process) the Fourteenth Amendment will, in effect, be nullified in such cases and the *Brown* decision rendered meaningless. Deliberate past policies of racial discrimination would continue to victimize children into the indefinite future.

What has been said of the Supreme Court's decision in the *Swann* case makes it plain, then, that the Court has not sought to impose a Procrustean rule on school districts where racial segregation has been practiced in the past. Indeed, the Court has repeatedly recognizedd in the School cases that there is a range of practical problems, that their dimensions vary from case to case, and that the measures to be adopted in response must similarly vary from place to place and from time to time.

By the same token, no Procrustean rule should be imposed upon the courts, inhibiting them in their performance of their constitutional role. Nothing is more central to the judicial function than the exercise of equitable powers to fashion appropriate and flexible relief for the correction of legal wrongs. To impose upon the courts a fixed requirement as to the means which they should adopt, or refrain from adopting, in providing relief for the victims of segregation would establish for that class of cases a principle nowhere else adopted. If anything, those cases call peculiarly for the exercise of a wise and unhampered judicial discretion.

Finally, we would stress our conviction that the device of constitutional amendment should rarely be employed for purposes other than the effectuation of significant changes in the structure of government. Certainly, that process ought not be invoked as a means of influencing or altering the approach taken by the judiciary in devising appropriate decrees in School cases, a matter which goes solely to the manner in which the judiciary is administering the judicial task which is its constitutional responsibility.

Sincerely yours,

RALPH S. SPRITZER,
PAUL BENDER,
Professors of Law.

Chairman CELLER. Our first witness this morning is the distinguished Member of Congress from Texas, Mr. Earle Cabell.

Mr. Cabell.

STATEM[illegible] OF HON. EARLE CABELL, A U.S. REPRESENTATIVE IN [illegible]ONGRESS FROM THE STATE OF TEXAS

Mr. CABELL. Good morning, Mr. Chairman.

Thank you, Mr. Chairman, and members of the committee. I want to apologize for our communications having broken down yesterday, and therefore, I did not get over here, and I do appreciate the opportunity of testifying before you this morning.

I have a short statement which I would like to read into the record, copies of which I think have been distributed to the committee. Appended to the statement are two reproductions, reprints of some articles carried in the Dallas papers this Sunday last. With your permission, sir, I would like for them to be included in the record following my testimony.

Mr. Chairman and members of the committee, across the bottom third of Sunday's Dallas Morning News, a six-column banner headline reported: "Classroom Battle Turning Physical, Teachers Say." While it is inaccurate to blame the 18 reported altercations since school opened on busing alone, there is no doubt the tensions that exist in my district today at school and at home are a result of intrusion of our Federal courts into our educative processes.

This was even carried to the unheard of extreme of a decision by the Dallas court to divest the superintendent and the board of the Dallas Independent School District of all authority in the operation of the school system and placing such authority in the hands of a triethnic committee appointed by the court.

After all, there is no way to count the attacks and the verbal threats that go unreported.

While the hearings of this committee, Mr. Chairman, are to be confined to proposals for curbing the busing of schoolchildren to secure racial balance, an even more important matter is the question of improving minority schools, updating facilities where they have been allowed to deteriorate, and making certain that our strongest, our finest, and our best teachers are assigned to areas of greatest need.

Busing itself is an historic method of transporting children to school. The transporting of schoolchildren from thinly populated suburban or rural areas is essential to make available adequate facilities to these children. This is not the case in urban areas where the population density is sufficient to provide schools for the individual neighborhoods convenient to them.

Today's chaos is the result of adding the element of force and of making its purpose to achieve racial balance, regardless of the distances involved.

The result has unleashed a political force so powerful that it has already unsettled the experts in the White House and has brought powerful antibusing majorities to the fore in both Houses of Congress.

Do not underestimate the power of the neighborhood school concept, its effect upon public opinion, and its ability to change the minds of politicians as a threat to it develops in their home districts.

Another Dallas newspaper, the Dallas Times Herald, expressed it best in a lead editorial Sunday, pointing out that:

> While this Nation earnestly seeks equal educational opportunities for blacks and whites alike, it is not likely to stand for schemes that detract from the learning process and even heighten those racial tensions we would all like to be done with.

(The reprints referred to follow:)

[From the Dallas Morning News, Feb. 27, 1972]

CLASSROOM BATTLE TURNING PHYSICAL, TEACHERS SAY

(By Leo Donosky)

A lot of teachers always thought they were fighting a battle against ignorance, but lately, some say they just feel they are fighting a battle.

In some Dallas schools, discipline problems have been serious enough to initiate military strategy.

At one junior high school last year, a teacher reported, a voice occasionally would come over the public address system announcing "Operation Little Lamb, Operation Little Lamb."

"That," the teacher explained, "was a signal for us to clear the restrooms and halls and move the kids down to the first floor for a shakedown."

The School's principal would then have each student empty his or her pockets. All "weapons" would be confiscated and the principal would paddle the students who had brought them.

But several teachers, who asked not to be identified, said they are now ready to mount a campaign of their own.

"Conditions have gotten so much worse, teachers have become more militant. Things have got to change even if it takes a strike," one said.

Since the opening of school this year, 18 incidents have been reported of students physically attacking teachers.

While most such attacks take place in inner city schools, a teacher at a junior high school where four attacks have taken place this year said the increase is not just a result of faculty desegregation. Attacks have taken place against blacks as well as white teachers, he said.

"Of course, it doesn't help that the youngest, most inexperienced teachers were transferred into the most difficult situations," he said.

Dealing with problems and frustrations physically is more a socio-economic factor than a racial one, another said.

Teacher morale is a little better, though, in schools with students from middle and upper-middle class backgrounds.

"There's an atmosphere of intimidation," said a woman teaching at a predominantly white junior high school.

Because of recent court ruling extending student rights, "I'll tell a student to stop something and he'll say 'touch me and I'll sue you.' And he can," she said.

Teachers said they saw the breakdown in authority in schools moving across the nation like a thunderstorm.

School Supt. Nolan Estes said, "We saw it start several years ago on the West and East Coast, move into the Midwest and head South."

Anne Schuessler, a teacher at Skyline Center, said she is glad student rights have been upheld by the courts. "It's time we started treating them like people. Some teachers have equated respect with making students scared to death."

"For so long we had to enforce ridiculous rules like dress codes," said another teacher. But now there has been an "overreaction" among students with their new rights. "They are pushing to see how far they can go."

"You couldn't count all the verbal and physical threats that go unreported," he said.

Some teachers say they shy away from reporting too many problems for fear of looking bad at "teacher evaluation time."

Jewell Howard, president of the 6,500-member Classroom Teachers of Dallas (CTD), said, "This is going to be the big issue this year. We're not going to allow teachers to be afraid in the schools or feel like it's their fault."

Some teachers say they feel forgotten in the hue and cry of parents for tighter discipline in the schools.

"Most of the problems happen outside the classroom. When you're acting like a policeman, doing hall patrol and lunchroom duty, kids react to you like a policeman," said one teacher.

"I wasn't trained for that and don't want to do it. But we're the ones who have to enforce the rules," he said.

School district policy warns teachers against making "initial" contact with a student or an outsider causing a disruption, to keep physical injuries to teachers to a minimum and prevent lawsuits.

Herb Cooke, director of CTD, said the association is mounting a campaign to inform teachers of their rights. Most, he said, don't know it is up to them to press charges against a student who assaults a teacher.

CTD, he said, is going to help teachers press criminal charges that stick and "do everything we can to get students convicted."

Cooke said CTD's attorney has also advised pressing civic damage suits against parents in hopes they will take greater responsibility for their children's actions.

"Our teachers have been going the third mile, not just the second," Estes said. "But they need our help and support."

Dr. Estes said newly issued directives to principals instruct them to remove perpetual troublemakers from the schools."

Estes said the school district has alternate programs for students such as instruction in the home.

He said the cost would be "prohibitive" to free teachers altogether from nonteaching duties such as hall patrols.

Estes said he wants more administrative and management personnel in the schools to free principals and counselors from paper work.

One young teacher said, "It's going to take changing the entire school atmosphere. School has got to be a place where learning is exciting.

"That's going to take a lot of money and time," he said.

"I guess I'm just crazy enough to wait around for it to change," he said. "It has to."

[From the Dallas Times Herald, Feb. 27, 1972]

BUSING REVOLT

Who would have thought it?

Only a year ago, most Northern congressmen and senators appeared dead-set against affording the South any relief from the anguish of racial-balance busing.

Now the Senate has voted, 43–40, to take away from the federal courts the power they've used—and abused—to order busing.

Sens. Mansfield and Scott, the Democratic and Republican floor leaders, respectively, had hoped that by offering meaningless antibusing legislation they could take steam out of the drive for a constitutional amendment to outlaw pupil assignment on the basis of race. It wasn't a bad strategem. The Senate last Thursday went along with Mansfield and Scott, voting useless and futile strictures against busing that too seriously inconveniences children.

But the leadership may have underestimated the nationwide abhorrence that busing these days calls forth. For the very next day, the senators tacked onto a higher education bill Michigan Sen. Robert Griffin's amendment to halt busing orders altogether.

All we can say is, Hallelujah!

Here is the rationale for Griffin's amendment: The Constitution gives Congress the power to regulate the jurisdiction of the federal courts. What Griffin proposes, then, is all very open and above-board—to strip federal judges, at whatever level, of their power to mandate desegregation plans based on busing. This is the action for which both of Texas' senators, Lloyd Bensten and John Tower, had called in no unmistakable terms. After all, it is the federal judiciary which is most responsible for the present busing crisis.

The legislation goes ultimately to the House of Representatives, where in our opinion, it will receive even a warmer welcome than in the Senate. For in the lower chamber, with its close ties to grass-roots America, one discerns massive sentiment against these ukases prescribing massive busing. Thus we would predict that the Griffin amendment will ultimately find its way into the statute books.

A word of caution: As John Tower points out, an amendment to the U.S. Constitution is "the only approach that is 100 per cent certain" to do away with busing. For such an amendment would be absolutely immune from being overturned in court. Hearings on the question open Wednesday in the House of Representatives, and the Griffin legislation notwithstanding, we think the amendatory process ought fully to be pursued.

Even, so, the Griffin amendment's adoption is heartening for reasons other than the altogether salutary effects it should have. In selling 43 United States senators on his proposal, Sen. Griffin has demonstrated plainly as day that the American people are weary of social engineering schemes devised by nonelected judges; that while this nation earnestly seeks equal educational opportunities for blacks and white alike, it is not likely to stand for schemes that detract from the learning process and even heighten those racial tensions we would all like to be done with. This much the Senate has shown. And it is with the utmost relief that we note it.

Mr. Cabell. Gentlemen, that concludes my statement. I will be happy to submit to any questions that the Chair might wish to ask.

Chairman Celler. Mr. Brooks.

Mr. Brooks. Mr. Chairman, I would like to say that we are pleased to have you here, Mr. Cabell. Your statement is a helpful one and is a reasonable interpretation of the problems as you see them in Dallas, and, indeed, problems we have all over the country.

We appreciate your being here and contributing to the hearing.

Mr. Cabell. Thank you.

Chairman Celler. We are grateful to you. Thank you very much.

The next witness is the distinguished Member from Louisiana, Hon. Joe D. Waggonner, Jr.

STATEMENT OF HON. JOE D. WAGGONNER, JR., A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. Waggonner. Thank you, gentlemen. I do not have a lengthy statement this morning. I do not, as others have done during the course of these hearings, speak specifically to one particular area of our United States. I speak generally about the problem overall.

I do so because I think, Mr. Chairman, that through the years our problem in part has come about because we have looked at it as one which affected only certain sections of the country or maybe just one section of the country, and for that reason, among others, the magnitude of this problem has grown and grown to the point that it has now become a concern of not just a few but a concern of a good many people around the country.

And I say to you in all candor this morning it is going to, unless something is done in time, become an even greater problem involving the entire country; it will gain the interest of those who have been heretofore, sitting back with a rather indifferent attitude, and will, unless something is done, destroy public education as far as quality education is concerned in this country.

I welcome very much this opportunity to set forth some thoughts of mine on this subject which I personally feel strongly about and which, I feel, is the No. 1 issue facing our country today, with the exception, perhaps, of our economic problems.

It is an issue in which northerner and southerner, and easterner and westerner alike, are all vitally concerned; and rightly so. Concerned, I think, because forced busing is contrary to the American way of life and also because it is in violation of the Constitution and contravenes the laws of our land. It is, I am afraid, an example of Federal tyranny at its worst.

I am, therefore, here today to plead the cause of individual freedom and the preservation of the American way of life which, like so many Americans, I hold dear.

I am also here on behalf of our schools; to restore and preserve quality public education in our country, a field in which I have maintained an abiding interest throughout the years.

All of the successes and all of the failures of our great country can be traced to the successes or failures of these three institutions: the home, the school, and the church.

The neighborhood school like the neighborhood church is as integral a part of America as the home and the family. At the center is the family unit and the home, the neighborhood being an extension of them. It has been this concept and practical role of the family unit in our society that has given this Nation its moral strength to cope with its problems and to overcome adversity. It must be retained at all costs.

Likewise, there is a need to preserve our neighborhood school system. It is only through the personalized atmosphere, the parent and teacher cooperation and participation, and the local government supervision prevalent in the neighborhood public school, can an educational environment conducive to quality education be maintained.

Nevertheless, the American concept of community schools has all but been destroyed by 18 years of Federal court decisions.

Nor have the Federal courts provided an answer to the question of race as it relates to education. Rather, the judicial usurpation of the lawmaking authority of the Congress we have been witnessing has only exacerbated racial strife in this country. Furthermore, the quality of education has not been improved; it has, in fact, been impaired, and I challenge anyone to prove otherwise.

Much of the reasoning given for the judicial mandates on this question has been for the purpose of guaranteeing equality of education to all students. [illegible]. Chairman, I am not an attorney, but nowhere can I find where the Constitution says anything about providing for "equal education." I think if anything, these actions by the courts have shown us the evil inherent in court usurpation of legislative authority—the effect of appointed officials seizing power from elected representatives of the people.

I am not here to argue what is the best method to choose in clarifying this matter. But clarify we must. For my own part, I do not think the intention of Congress could be made any clearer.

You yourself, Mr. Chairman, during the debate of the Civil Rights Act of 1964, said that all the Congress was doing was outlawing discrimination. Yet nine unelected and appointed members of the Supreme Court and numerous other members of inferior Federal courts, continue to foist their social philosophies on the lives of millions of Americans.

There are a number of approaches we could take. It has been suggested—and there are legislative proposals to this effect—that we limit the jurisdiction of the Federal courts in areas of school desegregation, and I think that this is a good idea.

It has also been suggested that we continue to enact legislation prohibiting the expenditure of Federal funds for the purposes of busing to achieve a racial balance, and I agree. Yet, as we know, this latter approach has not been heeded by, nor has it restrained, the courts.

The major and most recent effort has been for a constitutional amendment. I don't know if this is the best approach or not. In my personal opinion, this would serve to clarify the issue once and for all. I am one who believes in the written word of the Constitution; I do not think that great document should be changed on a whim.

But that same Constitution provides for amendment when the need does in fact arise. And I think the need has arisen today, and millions of voices are raised in support of this effort.

Besides, what other recourse is left to us? The Congress of the United States, elected by the people, has legislated to prohibit forced busing. Title 42 of the United States Code, which has been the law of the land since 1964, says that:

> Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

In addition, it reads: "'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalances * * *." I don't see how you can get any clearer than that, but the blind men of the Court don't seem able to understand it.

One need only read the debate during the consideration of the Civil Rights Act of 1964 to ascertain the legislative intent of the Congress.

But the Court continues to maintain through its decrees that only racial balance will satisfy the law when applied to a de jure institution. We are told then that this entails busing of students to achieve a specific racial quota. Quality education, the Court says, will thus best be served in the long run.

It is time that we act; our conscience dictates that we do so. Our laws have been spurned with contempt by dictatorial Federal courts, leaving practically destroyed in their wake our public school system. Let us at least think about our children, of all races and creeds, who are being sacrificed on an altar of sociological experimentation and political expediency.

Let us rededicate ourselves to preserving our community schools, giving our first consideration to our children and their education and not to some bankrupt fancy theories about race. Like good educators, our first consideration should be for quality education. We should be attempting to improve it, not destroy it.

Let me tell you how simple and how easy it is to provide for quality education in this country for all our people.

I will begin by talking about the value of the institutions which comprise our society and form the backbone of it. Education is one of those three institutions. There are only two ingredients in education, Mr. Chairman, and those two ingredients are quite understandable.

The first ingredient is a child who wants to learn and can learn, a youngster who has a desire to learn; and the second ingredient involves a qualified teacher to teach or to motivate that youngster.

Having said this, let me say to you that there are three simple things which can be done, and if these things are done and done with reason by reasonable men, we will continue to have the best education system man ever devised for the masses, and this is the only nation that educates the masses of the people.

First of all, we are going to have to provide for neighborhood schools, and the courts are going to have to understand what we mean when we talk about neighborhood schools. And by "neighborhood schools," I mean bona fide neighborhood school districts that are not gerrymandered, districts that the line doesn't go within 50 feet of on one side and 10 miles on the other side.

They are going to have to be true neighborhood schools that serve neighborhoods, well located.

Mr. Chairman, admittedly—and there is nothing wrong with it, I challenge anybody to prove otherwise—if we have true neighborhood schools, some of them might conceivably be all white, but I doubt it. Some might be almost all white. Some might be almost all black or even all black, and some might be evenly balanced, maybe 50-50, with regard to race.

But what is wrong with that, if they provide for the needs of the people that they are established to serve, and that is, they provide quality education?

Second, Mr. Chairman, and this again the courts are going to have to understand, we are going to have to allow educators to hire teachers on the basis of qualifications, and qualifications alone. "Race" can never be a factor if you are interested in providing for education in these United States.

Third, we are going to have to allow people in education to do something that they found helps in some cases, and that is, provide for some sort of training for those who have abilities beyond others. We are going to have to allow them to do bona fide ability grouping.

When I talk about doing bona fide ability grouping, I am not talking about a new concept, because we have been doing ability grouping ever since we have had education. I am talking about refining this concept. The ability grouping we have been doing, we have been doing through the years when we assign youngsters to grades 1, 2, 3, 4, and 5—that is nothing but an example of ability grouping. Somebody has made the determination that one youngster ought to be in grade 5 and another ought to be in grade 4, and nobody has ever challenged that until now. Now that race becomes a factor, ability grouping seems to be something we should give no consideration to.

I am not talking about locking a youngster into a track and leaving him there forever, as a former District of Columbia plan did. I am talking about providing for ability grouping of students: for those who can learn a little faster, allow them to proceed and learn a little faster; and for those who don't learn quite as fast for reasons that maybe we understand and in some instances certainly we don't understand, give those youngsters compensatory education to try to help them come up to the average or to advance to faster groups.

And wherever those who are assigned to faster tracks do not produce, forget about them and move them back into the slower learning classes; and for those youngsters who dedicate themselves and apply themselves and do improve their positions, allow them to move to those more advanced groups.

Those three things, and those three things alone, if accepted by this country as a whole, will solve this problem. But it is asinine, in my personal opinion, for us as Members of the Congress to sit here and allow this educational system to be destroyed because we haven't got the political fortitude to face up to the problems when we might make somebody mad. But I am interested in education, and I have no other concern. I challenge anybody to demonstrate that they have more of an interest in public education than I do, and I am here this morning in an effort to preserve public education.

Do those three things: Make sure that the courts understand we want neighborhood schools, bona fide neighborhood schools, in this country; make sure that the courts understand we want the best teachers available, regardless of race, to teach our youngsters; and allow educators some leeway to do the ability grouping I described—and you will be proud of this educational system in time to come.

Thank you, Mr. Chairman, for this opportunity this morning.

Chairman Celler. We are very grateful to you, Mr. Waggonner. You have always been very helpful in your statements, and you are always welcome before this committee.

The Chair wishes to announce we have some 12 Members of Congress, and so I hope each of you will be as brief as possible so that we can hear from all of the Members this morning before we go to the House floor. Thank you very much.

Chairman Celler. Our next witness is the distinguished gentleman from Virginia, Mr. David E. Satterfield.

Your father was a distinguished member of this committee for many years, Mr. Satterfield.

STATEMENT OF HON. DAVID E. SATTERFIELD III, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Satterfield. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, before beginning, I have a question to ask, and it relates to your remarks just before my introduction. I received a telephone call at 9 o'clock this morning from a member of your staff, informing me that it was your wish that we confine our remarks to 10 minutes. I would like to know before beginning whether or not this is the rule under which I am permitted to appear.

Chairman Celler. I said yesterday I hoped that the Members, taking into consideration the great many Members who wish to testify, might confine themselves to 10 minutes, but I would not invoke cloture.

Mr. Satterfield. I have a statement, Mr. Chairman, that unfortunately I prepared before I was made aware of this fact, and I would point out that the scheduling of the number of witnesses we have today, of course, was something which the committee did, and I would hope that I would not be confined to the brevity which would prohibit me from presenting my statement. If it should be the will of this committee that I come at another time, when I can be afforded full time——

Chairman Celler. Suppose you go ahead and see what happens.

Mr. Satterfield. All right, sir.

Mr. Chairman and members of the committee, I know of no issue of deeper concern to our citizens than court-ordered busing of school pupils to alter the racial mixture in public schools. I wish to take this opportunity to congratulate this subcommittee for its decision to conduct public hearings upon a host of proposals before it which would attempt to deal with this issue.

I wish to express also my personal appreciation for this opportunity to appear before you to express my views as well as those of my constituents in the city of Richmond, Va., and the two adjacent counties of Henrico and Chesterfield, who are so vitally affected.

The depth of concern among my constituents was forcefully demonstrated on February 17. Despite a heavy snowstorm, a motorcade of 3,261 vehicles journeyed from Richmond to the District of Columbia to demonstrate objection to forced busing and to consolidation of school districts to facilitate forced busing.

An additional 2,000 vehicles were turned back at the point of origin in order to reduce the impact of this demonstration on the usual heavy afternoon traffic on highways leading south from Washington.

The peaceful, lawful nature of their protest and the demeanor of 120 citizens, who called upon more than 300 offices of Members of the House that day, demonstrates more eloquently than words that these were serious individuals typical of middle-class America.

I want to make it clear that I do not appear here today to argue the question of integration in the public schools of Richmond or any other place. I appear as a spokesman for the people in my district and as a legislator who has become deeply concerned about forced busing of pupils to correct racial imbalance in public schools.

I am concerned by what I have seen it do to my city of Richmond, Va., and by what I fear it may do to my entire district, my State, and my Nation.

I am concerned about the present and future quality of public education and the adverse effect of forced busing upon excellence in education. I have grown concerned also about the possible effect of busing decisions upon the future of this Nation and its system of government.

Our federal system of government is a good one, capable of perfection in its operation. It is my view that the failure to realize its full potential has been due to the frailties of man and not imperfections in the system itself. However, we will never achieve that potential if we abandon the basic premise inherent in the freedoms secured to us all in our Constitution, that to the fullest extent possible, man should control his own destiny and that of his minor children.

In a sense, it is regrettable that the offending judicial edicts have become obscured by the use of the term "busing and that as a result the real points at issue have been obfuscated. The busing of which I speak and about which I complain is the busing of pupils by force, pursuant to judicial order, for the purpose of effecting an artificial racial balance of students in public schools.

I have heard it said, primarily in an effort to mitigate the gravity of the forced busing issue, that busing is historic in America and that through the years thousands of students have ridden buses to and from school. But there is a serious difference between that kind of busing and the forced busing of which I speak. That difference can be described in one word—compulsion.

The kind of busing to which these individuals refer emerged with the development of the motor vehicle and was employed to replace the long walk or horseback ride to the nearest school. It developed as a matter of convenience to assist pupils in their efforts to attend the nearest school. It was voluntary.

Court ordered busing plans, on the other hand, transfer students by bus, not as a matter of convenience, but merely to achieve some arbitrarily established level of racial mix among pupils. The court thus replaces the parent in determining what school his child shall attend and how. It thus seizes all control over a child's education and denies to the parent the right and opportunity to influence an important aspect of his child's education.

I realize that there have been instances in the past where a black child was bused past his nearest school to attend a black school, or a white child bused past his neighborhood school to attend a white school. That was wrong.

It is just as wrong today to bus a black or a white child past his neighborhood school in order that he will become a part of an artificial racial balance in a school miles away.

I am not unmindful of the fact that some sociologists and psychiatrists have suggested that proper public education demands a certain degree of racial mix and that parents lack the ability, experience and knowledge to determine what is best for their own children, and that these suggestions have been used to defend forced busing.

I would observe, however, that neither suggestion has escaped serious challenge and that arguments supporting the principle of free choice must of necessity transcend both in importance.

I am acutely aware of the fact that some individuals who express the view that forced busing is necessary, do so with the mistaken idea that areas now under busing orders have made no effort to integrate their schools or that they have deliberately resorted to subterfuge to prevent integration.

That is not the case in my district. Even if it were, it seems to me there are other solutions, not nearly so harsh, which can at the same time contribute to quality education. We may have been slow to react to the *Brown* decision, but we did take steps to conform to what it said.

In 1966, the school system in the independent city of Richmond inaugurated a freedom of choice system for enrolling pupils in our public schools.

This plan was devoid of any possibility of gerrymandering a school area, since it employed no geographic zones at all. It permitted parents to send their children to any school of their choice within the corporate boundaries of the city of Richmond. It conformed to the

1969 court definition of a unitary school system as being one within which no person is effectively excluded from any school because of race.

That it was achieving integration in the public schools of Richmond is evident. Consider, if you will, the fact that in 1961, prior to implementation of this freedom of choice plan, only 1.8 percent of 34,956 pupils attended integrated schools. In the 1967–68 school year, the second under this freedom of choice plan, that figure had risen to 44.6 percent, and in the 1969–70 school year to 50.2 percent. In 1969–70, every white student in the city of Richmond attended an integrated school.

The subsequent decision of the Federal court at Richmond ordering forced busing of pupils to achieve an arbitrary racial mixture of students in the Richmond Public Schools and its further order requiring the reassignment of teachers to achieve a racial mixture in each school's faculty as well, produced a profound and undesirable effect upon the Richmond school system and the quality of education provided by that system.

I realize that this is neither the time nor the place to discuss in detail the numerous incidents which support this conclusion or to discuss those resulting problems peculiar to Richmond. I feel I would be remiss, however, if I did not invite the attention of this subcommittee to some of those problems which I believe are inherent in every case where forced busing is ordered and which I believe diminishes the quality of education.

Perhaps the greatest long-range damage results from transferring teachers from the school at which they taught prior to a busing order, for the sole purpose of achieving an arbitrary racial mixture of teachers at each school. Some of these teachers were uprooted after years of tenure in one school.

An immediate result in Richmond was a termination by many teachers of their voluntary after-hours work with students in various extracurricular activities. Furthermore, many teachers, upon the expiration of existing contracts, feel compelled to leave the school system involved.

Some teachers seek employment elsewhere. Others who have reached the age for retirement but who continued to teach out of pure love for their profession, have elected to retire. This exodus, which includes in its ranks many of our most experienced and effective teachers, seriously damages the school systems in which they had worked.

I doubt any educator will challenge the value of participation in extracurricular activities to the quality of a pupil's education. Yet forced busing has seriously interfered with the opportunity to engage in these activities after school. For many, the time formerly employed in these pursuits is now unproductively consumed riding a bus.

For those fortunate enough to continue their extracurricular activities, the experience is less rewarding because of the reduced number of participants and the diminished availability of teachers who possess the greatest interest in these activities.

The debilitating effect of forced busing on extracurricular activities is particularly true of after-school athletic programs. It is regrettable that participation in sports, so essential to the physical and mental health of our young citizens, is thus curtailed.

But that is only part of the story. In the Richmond system, for example, which has been remarkably free of violence in the past, there occurred, following the inauguration of forced busing, an alarming increase in the incidence of violence, disruption, and criminal acts in its public schools and against the persons of pupils and teachers.

This regrettable fact forced the city to engage, for the first time ever, a school security force armed with the power of arrest to help maintain order and to protect law-abiding students and teachers. It also forced the termination of nighttime school sports events.

One tragic result of forced busing has been the destruction of the role of the neighborhood public school in its community. As a direct result of forced busing:

—Parental contact with and influence in schools attended by their children have been lost.

—Parental conferences with teachers, so essential to proper childhood guidance, have been inconvenienced, if not lost altogether.

—Children, especially those in kindergarten and lower elementary grades, have lost an important sense of security and identity provided by neighborhood schools.

—Parents are severely handicapped in their ability to bring a sick child home; and

—Children are subjected to additional risks; for example, in Richmond alone, schoolbuses were involved in a total of 153 accidents between September 1, 1971, and February 24, 1972.

Last, but by no means least, is the question of educational opportunity. All of us have heard at one time or another the statement that in order for a black child to receive a quality education he must attend a school in which white children are enrolled. That is a racist statement which makes no more sense than another racist statement which we have also heard, that a white child cannot receive a quality education in a school also attended by black students.

Both statements are erroneous, but they do serve to focus upon a critical question relative to the effects of forced busing.

No doubt there are instances where one might conclude that a bused pupil will achieve a better education in the school to which he is bused than he received previously. But what about that child who will receive an inferior education as a result of being bused? A classic example, which can be documented, but which is by no means exclusive, has occurred in Richmond.

The Richmond School Board was a pioneer in the concept of providing accelerated courses in math, chemistry, and physics through which exceptionally talented students would be afforded an opportunity to expand their knowledge at a more rapid rate than was possible in the standard curriculum. Pilot courses were commenced in one high school and gradually extended to others when and where a need became evident.

As a result of the forced busing order, some students who were already pursuing the course of study provided in these advanced classes were plucked out of their neighborhood school and bused to schools which do not provide any accelerated courses of study.

These unfortunate students were forced to waste the balance of their high school careers repeating classwork they had already completed in their accelerated studies.

Can one really justify forced busing when this is a direct result? Of course, we must exert every effort to provide equal quality education to all pupils, regardless of their race or economic station in life. But I fail to see how anyone can condone a plan which may improve the quality of education of one student at the expense of another or which threatens a decrease in overall quality education.

Do the rights of a student who may improve his educational lot through forced busing outweigh the rights of a student who thereby suffers a diminution in the quality of his education? If this, then, be a result of forced busing, and it is, on what conceivable constitutional theory can it be supported? I submit there is none.

None of the problems to which I have referred, by any stretch of imagination, can be said to contribute to excellence in education. Indeed, the exact opposite is true. These problems are in fact sacrificial offerings upon the altar of forced busing.

The time has come to stop this practice.

In January, a new decision was rendered by the U.S. district court at Richmond, not out of a new cause of action but upon a motion of joinder in the original action which had produced the forced busing order for the city of Richmond. Although this new decision is being appealed, I feel compelled to discuss it, because it provides a chilling insight into how far Federal courts are prepared to go.

To fully comprehend the impact of this decision, it must be remembered that Virginia is unique in that its cities and counties are completely separate political entities, neither being dependent upon the other in the operation of its government.

The city of Richmond is governed by an elected council and the counties of Henrico and Chesterfield by separate elected boards of supervisors who appoint the members of their respective school boards. Each political entity has operated its own separate school system, the boundaries of which are coterminous with the political boundaries.

Funds to operate these systems are appropriated by their respective legislative bodies which also authorize capital investments. Bond issues for school construction are the sole obligation of the political entity offering the issue.

Richmond City has approximately 43,000 pupils; the counties of Henrico and Chesterfield have approximately 34,000 and 24,000 pupils, respectively. Richmond city students are predominantly black, and those in the counties predominantly white. The three independent political subdivisions encompass an area of 744 square miles, some of which land, in both Henrico and Chesterfield, is rural.

The decision to which I refer would impose a forced busing plan upon these three jurisdictions, by abolishing the three separate school districts and their respective school boards and by creating in their place and stead a single master school district encompassing the entire area.

That new district would be administered by a master school board to which Richmond city would appoint four members, the county of Henrico three members, and the county of Chesterfield two members.

I wish to call particular attention to the fact that when this decision was rendered, each of the three jurisdictions involved was then operating an approved unitary school system; Richmond's unitary system having been established pursuant to order of the court in question and the counties of Henrico and Chesterfield have been established pursuant to unitary school plans approved by the Department of Health, Education, and Welfare.

This decision goes far beyond the ordinary desegregation case involving the reassignment of students and faculty to obtain a unitary school system. It involves the complete restructuring of three independent unitary school systems in three independent political subdivisions in order to bring about something defined as a more "viable racial mix" throughout the area, defined as a "metropolitan area" school community.

In mandating this consolidation, the court, for the first time, has affixed a constitutional right of Negro children attending a judically approved unitary school system of one political subdivision to be transported to and enrolled in a unitary school system of an adjoining political subdivision.

The court has further affixed to white children attending a unitary school system the obligation of being transported to a predominantly black unitary school system in another political subdivision; the rights and obligations are said to have been invoked to provide for a more desirable racial mix.

It would establish within the new master school district six subdivisions extending like slices of pie from the center of the city and would arbitrarily fix the racial mix in each school at not less than 20-percent nor more than 40-percent black. It would provide that selection of pupils to be bused would be by lottery, similar to the random selection method employed in the selection of draftees under the Uniform Selective Service Act.

The implications of this decision are broader by far than any previous school case. Here for the first time a Federal court has struck down jurisdictional lines which were established in the first half of the 18th century and which have been changed only by periodic enlargement of the city through annexation proceedings which no one has ever seriously suggested were designed to perpetuate school segregation.

Should this decision to ignore jurisdictional lines within a State be affirmed by the U.S. Supreme Court, which certainly is not a complete improbability, then the precedent will have been set to ignore State lines as well. We could then anticipate a host of court-ordered interstate mergers, such as a merger between the schools of Washington, D.C.—now 57-percent black—with those of the adjacent areas of Maryland and Virginia, or perhaps a merger involving New York City and New Jersey.

Make no mistake, this decision constitutes a very real threat to the right of a locality to control its own schools. Once begun, interstate mergers could easily lead to a Federal school system, controlled absolutely in Washington by appointed officials, who are in no way answerable to the electorate.

They would dictate the design of each and every new public school; determine where and when it shall be erected; assign pupils to specific schools; determine the training requirements of teachers and their assignments to specific schools; select the textbooks to be used; formulaet and dictate classroom curricula; and control every facet of school administration.

Should this come to pass, it goes without saying that every single community in this country will be affected, even though it does not now have, and may never have, an education problem involving race.

The greatest guarantee we have for the continuation of freedom in education so essential to a free people, is to continue that diversification of control over public education inherent in the principle of local control. Destroy that and you destroy freedom of education itself.

As disturbing as this aspect of the consolidation decision may be, the collateral questions which it raises are even more disturbing.

For example, if Federal courts are permitted to strike down local jurisdictional boundaries for an educational purpose, might they not also traverse them for some other public purpose such as welfare and medical care?

Consider, if you will, those questions collateral to implementation of the *Richmond Consolidation* case. The manner in which they may be resolved will have a serious impact upon local government far beyond the questions of education, integration, and forced busing.

The court has made no effort in its decision to deal with the number of school administrators which will be required by the new master school district. It makes no reference to the philosophy of the new district or the educational program it will employ, nor does it indicate how or by whom either will be determined.

It fails to acknowledge the operational costs of this new school system or to suggest how funds to finance those costs will be raised. It fails to address the question of how capital outlays for new schools or additions to existing schools are to be financed or, for that matter, how bonds will be issued.

It fails to address the problem of how school property will be conveyed to the new school board or how that board will receive and hold such property; it ignores the vital problem of how the separate outstanding bond obligations of the counties and city involved will be assumed or repaid.

Above all, it leaves unanswered the vexing question as to how three separate legislative bodies can be made to finance their respective portions of the operating expenses of this new common school district, especially when the true tax rate in each political entity is different, or how either of these bodies can be made to act when the public interest of county or city is hostile to the public interest of one of the others.

Previously in this case the presiding judge ordered the Richmond City School Board to purchase buses and Richmond City Council, an elective legislative body, to appropriate the funds required to pay for them. These orders were armed with the threat of contempt citation and punishment if resisted.

Both bodies, the school board and city council, complied with these orders. Regardless of any question as to whether they should or should not have resisted, I think it is self-evident that little or no imagination is required to raise the fear that all these collateral questions will be determined either by court edict or by judicial coercion upon the elected representatives involved.

Such a possibility should be repugnant to every individual who believes in our Constitution.

The potential for mischief inherent in this decision is, I think, self-evident. It constitutes a serious threat to the autonomy of local and State governments as integral parts of our Federal system and it constitutes a serious danger to the continued right of the people of this Nation to freely govern themselves at the State and local levels of government.

If the Federal courts are prohibited from demanding forced busing as a tool to achieve a unitary school system—whatever that may be—then the reasons which have produced the *Richmond Consolidation* case and all like it will have been removed. Court-ordered busing is a fact. Extension of the doctrine upon which forced busing is predicated is now more than a fear or a theory.

The time has come for Congress to act to prohibit forced busing either by legislative act, as some suggest, or by amendment to the Constitution, which I believe to be the only practical course now open to us.

There was a time when I believed that Congress could enact legislation which the Supreme Court would sustain to prohibit forced busing to achieve an artificial racial balance or to eliminate a racial imbalance in public schools. I confess, however, that my optimism in this regard was destroyed by the Supreme Court's opinion in *Swann, et al.* v. *Charlotte-Mecklenburg Board of Education, et al.*

That opinion left no doubt that the Supreme Court has concluded that there shall be a reordering of the ratio between the races among pupils in the public schools in areas where de jure segregation is said to exist. Moreover, it makes quite clear that busing is an acceptable tool, and therefore a constitutional tool, which may be utilized to effect the necessary involuntary transfers.

When I consider that determination, when I consider the facility with which the Supreme Court swept aside pertinent language in the 1964 Civil Rights Act, as well as congressional expressions in subsequent enactments, and when I consider the distances pupils must be moved from one school to another to implement that decision, I find it impossible to conceive that the Supreme Court of its own volition will embrace and approve any legislative act having the effect of prohibiting such forced busing or eliminating forced busing already in progress as a result of its decision.

I know that some Members of Congress sincerely believe we can prohibit forced busing simply by enacting legislation. I respect their right to this view, of course, but I disagree with their conclusion. We are dealing with a basic decision which is predicated upon the Supreme Court's interpretation of the Constitution. I fail to see how we can alter such a decision by mere legislation.

The groundwork is already laid upon which the Supreme Court can render a decision which would declare such legislation unconstitutional, and I believe that is precisely what it would do.

It is important at this point for each of us to contemplate a perplexing aspect of the *Charlotte-Mecklenburg* decision. I refer to the Court's failure to make that decision applicable to public schools located in areas where de facto segregation is said to exist.

What may be of greater significance, however, is the Court's refusal to hold that these areas are exempt from its application at some future date.

I find it difficult to justify the apparent conclusion of the Supreme Court, on the one hand, that the civil rights of a black child in North Carolina are so violated by a condition of segregation as to demand redress, whereas, on the other hand, the civil rights of a black child in another area who experiences the same condition of segregation are not violated, simply because the former condition is determined to be de jure segregation and the latter de facto segregation.

I deem it self-evident that the rights of both children are the same, and that if the rights of one are violated, then the rights of both are violated, regardless of the circumstances which contributed to establishing the offending condition. There can be no serious doubt, absent effective action by Congress, that the time must come when the Supreme Court will conclude that the *Charlotte-Mecklenburg* decision applies to de facto and de jure segregation with equal force.

It is high time for all of us to recognize, for what it is, the distinction which has been created between de facto and de jure segregation—that it is a deliberate effort to divide into two camps the potential objectors to forced busing and to keep the two camps divided by holding out to one the hope that it will not suffer the same indignity of forced busing visited upon the other.

I suggest that the long-range result, if we fail to act, is that both camps will suffer the same fate, separately.

Those who feel secure today because they reside in areas identified as having de facto segregation will be well advised to heed the arguments of those of us who are currently under the gun. Where we stand today, they will surely stand tomorrow.

Some of those who now advocate action by legislation, and who argue that it would be upheld in court, do not seek to prohibit forced busing, but rather to implement existing busing orders by attempting to impose some limitation upon the extent to which such orders would apply.

Some advocates of this approach with whom I have talked seem to be saying that a certain amount of forced busing is acceptable, so long as it occurs somewhere else.

I hold that if forced busing is wrong in one place then it is wrong every place. I cannot, therefore, understand or accept such an approach as a method for dealing with this issue.

Forced busing under court order solely to achieve an artificial racial mix of pupils in public schools is a fact. In Richmond, for example, it has existed for a full year and a half. To date, every determination to impose forced busing upon separate school systems has been made by the judicial branch of the Federal Government, in which, unfortunately, democracy as we know it simply does not exist.

We should not make the mistake of failing to recognize that citizens across this land, especially those in jurisdictions already subject to court-ordered busing, are growing restive, not simply because of their objection to forced busing but because this practice, so vital to them and their children, has become a reality without any opportunity to express themselves on the issue either by direct vote or through their duly elected representatives.

This fact alone offers a compelling argument against reliance now upon so questionable a remedy as a legislative act, for the validity of such an act will remain undetermined for a long period of time, perhaps several years. Meanwhile, existing court-ordered busing would continue unabated, and consolidation orders, such as the one in Richmond, even if stayed throughout appeal, will have been decided long before such legislation can be tested in the Supreme Court.

I am here today, therefore, to support and to urge your sympathetic consideration of an amendment to the Federal Constitution which will establish the constitutional foundation for valid legislative action to properly and effectively deal with this issue and hopefully with the related arbitrary assignment of teachers to achieve artificial racial balances of the teachers in each public school.

The essential language to which I refer provides that no public school students because of race, creed, or color shall be assigned to or required to attend a particular school. This language is appealing because it is brief and explicit and because it properly extends to its ultimate conclusion the existing principle that the Constitution is colorblind.

Proponents of forced busing have charged that such an amendment would rollback progress in school integration which began with the *Brown* decision in 1954. This is an invalid argument.

First of all, the charge appears to be predicated upon a conviction, which no amount of fact seems to dispel, that every opponent of forced busing is an unrelenting segregationist whose sole objection to it is his unswerving aversion to mixing black and white children in public schools. That simply is not a fact.

Opposition to forced busing is not related to race, for the principle that public schools shall be racially integrated is well established and accepted.

In the past year and a half, for example, I have received approximately 15,000 communications from constituents, some of whom are black, expressing their opposition to forced busing. Except for a handful of letters, these citizens made affirmative statements demonstrating that they do not object to integration in public schools.

That this reflects a genuine conviction is attested by the fact that immediately prior to the forced busing order in Richmond, public school integration was progressing, peacefully and without incident.

Second, I find it difficult to understand how these opponents of the constitutional amendment which I support can embrace on one hand the proposition that our Constitution says that a public school pupil may not be prevented from attending a particular public school on account of his race, creed or color, yet reject on the other hand this proposed amendment which complements that proposition by stating that henceforth the Constitution will also forbid the assignment of that pupil to a particular school because of his race, creed or color.

Their proposition supports the patently unequal proposition that for some purposes the Constitution is colorblind, but for others it is not.

The language I support, as set out in my resolution, House Joint Resolution 597, House Joint Resolution 620, and other pending proposals, would make it clear beyond doubt that the Constitution is indeed colorblind, in every respect.

Should there be a feeling on the part of this subcommittee that the suggested amendment should reflect both propositions, then, I submit, it might consider inserting immediately after that portion of the proposed amendment which reads, "No public school pupil shall, because of race, creed, or color," the words: "be prevented from attending or" so that section 1 will read:

"SECTION 1. No public school student shall, because of his race, creed, or color, be prevented from attending or be assigned to or required to attend a particular school."

An important facet of the approach I recommend, which should allay the fears of its detractors, is that even though this constitutional amendment is passed and ratified, subsequent legislation will be required to implement it. The question as to what school plans will result and whether the neighborhood school concept, freedom of choice, or some other plan will be permissible will, no doubt, be determined by subsequent congressional legislation.

I am aware of the argument that this amendment might produce a result contrary to the one I seek. Perhaps that is possible; however, its adoption and ratification will provide Congress with an opportunity to make the decisions involved rather than to continue to leave them to the Federal courts.

I, for one, feel far better about relying upon the will of Congress than I do about having to rely upon the discretion of Federal judges who are not accountable to the people for their actions. I have an abiding faith in the citizens of this Nation, when important issues are involved, to be fair and objective and to reach a correct decision.

Those of us who have joined together in our antibusing effort are perfectly willing to place our case before the body politic who will speak through their elected Representatives. I think it is fair, then, to ask those who oppose us why they are unwilling to do the same.

In conclusion, let me reiterate, our effort here is not one to perpetuate segregation; it is simply an effort to prohibit the utilization of compulsory busing of pupils to achieve an arbitrary racial mixture in public schools.

It is an effort to redirect national focus upon the proposition that public schools exist for the purpose of providing quality education, not for experimentation in sociological projects.

It is an effort to provide the framework upon which permissible legislation can be formulated.

It is an effort to afford to the people an opportunity to act.

I intend to support legislation, if it is developed, which has as its objective a prohibition upon forced busing. However, to support such an effort to the exclusion of all else would, in my view, be a serious mistake, and I will, therefore, continue to work for this constitutional amendment.

Because of the questionable validity of a legislative act, I believe we should all join hands now in support of this constitutional amendment, regardless of whether our action is in conjunction with separate legislation or not.

Should we do that and should we also enact antibusing legislation which is sustained by the Court before this amendment can be ratified, then no damage will have been done. On the other hand, should such legislative enactment be declared unconstitutional at some future date, then the immediate availability of an amendment for ratification will be a significant and welcome circumstance in what must be the common goal of us all, to effect resolution of this vexing problem at the earliest possible time.

Thank you, Mr. Chairman. Again, I wish to apologize for having taken so much time of this committee and of my colleagues. Unfortunately, I had prepared the statement in advance and when I tried this morning to summarize it, I found that it was not practicable.

Chairman CELLER. Thank you, Mr. Satterfield.

Reading from the opinion of the court in the *Richmond* case, I find the following: "Of the seven high schools, three were 100 percent

Black." "Of the middle schools, three were over 99.91 percent Black." "Seventeen elementary schools were 100 percent Black." "Two schools were 100 percent White."

In addition the district court goes on to say:

> The State Board has never forbidden by regulation the exchange of pupils across political subdivision lines. It has promoted the crossing of lines for purposes of operating regional segregated schools. . . . It has disbursed funds for transportation required under such systems and even paid for the shipment of pupils to other states in segregated groups.

What do you have to say about that statement?

Mr. Satterfield. I read that portion of the decision, Mr. Chairman, and having read it, I did as best I could to find out what the true facts were and I talked to counsel in the case. It is my understanding that this statement by the judge in his decision, standing alone, is not without question.

I am told that indeed there has been transportation between these countries and the city by bus but that this involved those students in the counties who were educationally disadvantaged, which permitted them to be bused into the city where specific schools which could treat the kind of ailment they suffered existed, whereas no similar school was in existence in the counties. This was the purpose for the transportation across those lines.

I am further advised that it was done on a cost reimbursable basis. So I, too, question that conclusion of the judge.

Chairman Celler. Well, there also was payment for transportation for segregated purposes.

Mr. Satterfield. I have been unable to find any fact which in my mind supports that conclusion of the judge. I am frank to say that I did not attend the hearings. The best information I have is that this conclusion of the judge will not pass unnoted and without attack on appeal.

Chairman Celler. Any questions?

Mr. Poff. Mr. Chairman, I want to extend a welcome to my distinguished colleague from Virginia, and for the benefit of this committee, to say something about his professional background. The witness was a highly successful lawyer in private practice. He was an assistant U.S. attorney for the Eastern District of Virginia. He is the son of a distinguished former member of the Judiciary Committee of the House of Representatives who served with the chairman of this committee for many years.

From his testimony, it is apparent that he is a legal and constitutional scholar who knows whereof he speaks. I might add that he is an articulate, eloquent, persuasive spokesman of the constituency he represents and in my judgment, Mr. Chairman, the time spent here this morning has been well spent.

Mr. Satterfield. I thank my colleague whom I consider a very close personal friend.

Chairman Celler. Mr. Counsel.

Mr. Polk. Mr. Satterfield, yesterday the committee received testimony from a Member who was a sponsor of a constitutional proposal written in the very same, identical language as the one you propose this morning. In discussing that proposal, he indicated to the committee the intent of the proposal. He said any attempt to base school attendance on race through forced busing, gerrymandering school districts, pairing, closing schools, altering grade structure, or any other means would be prohibited should this proposed amendment be enacted.

I was wondering if this was your intent in sponsoring the language that you have suggested?

Mr. SATTERFIELD. I am very frank to state, as I attempted to say in my presentation, that I don't believe the amendment that I have talked about or even some altered wording in that amendment will do that. Incidentally, I am delighted that these hearings are in progress because if such amendment is to be reported and considered, I think it needs the examination and study of people as expert in the Constitution as you are. Perhaps you can improve on our language.

My concept of this issue is that an amendment such as this would not deal with any of those things specifically. I like the idea that this amendment would extend a basic principle in the Constitution only and that we then would expect the people of this country to determine how it would work through appropriate legislation and Congress.

I think that is the way it ought to work. So I do not intend that this in and of itself do any of those things you mention. If you are asking me what I conceive might be the result, it would seem to me that under it, we could have a plan wherein these matters could be concluded as indeed they were in the city of Richmond recently, under its freedom of choice plan, where every single student will have an opportunity to attend the school of his choice within his school district and that there would not be any geographic boundary lines which could be gerrymandered. It would seem this would get around part of the question I think you were posing to me.

Mr. POLK. The Member was saying that House Joint Resolution 620 would prohibit all means currently employed for integration, yet I believe the major import of your statement this morning concerned the problem of busing. I was wondering if you intend to limit your remedy to the busing problem or if you intend to prohibit all means of integration?

Mr. SATTERFIELD. I do not mean to suggest that we prohibit all means of integration. I have tried to state that I think it is equally wrong to assign a person to a given school and force him to attend it on the basis of race, creed, or color as it is to prohibit him from attending a school of his choice on the basis of race, creed, or color.

Mr. POLK. Thank you.

Mr. HUTCHINSON. Mr. Chairman, may I inquire?

Chairman CELLER. Yes.

Mr. HUTCHINSON. First I would like to state that I am very appreciative of the witness' testimony. It has been very helpful. He represents a constituency which we all know lives in the vortex of this problem. And so the time we have spent with him, I agree, has been well invested.

I am aware of the gentleman's position, one that is taken by so many, that the only effective way to meet this problem is by a constitutional amendment. I would like to make this statement and ask the gentleman's reaction to it.

Every time we put a subject into the Constitution we take it out of the control of the legislative branch and simply transfer it to the judicial branch.

If we are concerned—and I think we are concerned—about how Federal judges are acting these days on many questions and how they are basing what they do on their own interpretation of the Constitution, I fear giving them additional tools, additional words to interpret.

My own preference would be to attempt a solution statutorily. If the courts knock it down, at least we can try again. But if we say we can't do anything and turn it over to them, we have, in my opinion, lost all control of the matter.

I would be glad to have the gentleman's reaction to that statement.

Mr. SATTERFIELD. I certainly agree with your fears. It disturbs me any time that we provide additional latitude to the court, but it seems to me that we have no choice because the court has assumed to itself the power and authority already to do these things.

In our system of government, it seems to me that the only check and balance we have under the Constitution against pronouncements of the Supreme Court that go to the heart of the Constitution, is the right of the people to change that Constitution by amendment.

I know that Thomas Jefferson expressed the grave concern that there was no effective check and balance against the Court should it ever begin to legislate.

Unfortunately that is precisely what it is doing. I don't like the idea that we are forced to react and I don't think we as legislators ought to be the final word in reaction but I do support the proposition of a constitutional amendment because this will give the people of this country an opportunity to determine whether they want this put in the Constitution or not.

And they will be the ultimate deciders acting through their own elected representatives. I don't think we have any other choice, sir.

Chairman CELLER. Thank you very much, Mr. Satterfield; we appreciate your coming.

Our next witness is the distinguished gentleman from Texas, Mr. James M. Collins.

Mr. Collins, we hope you will take into consideration the patience of the other members who are waiting.

STATEMENT OF HON. JAMES M. COLLINS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. COLLINS. Mr. Chairman, could I include my complete remarks in the record and just make some observations?

Chairman CELLER. Yes.

(The statement referred to follows:)

STATEMENT OF HON. JAMES M. COLLINS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman: I want to thank your Committee for the opportunity to discuss Busing and its effect on Education.

On the subject of Busing, some of the witnesses are concerned with broad sociological issues but my concern is directly with quality education for all of America's children.

The final answer must rest with a confirmed Constitutional Amendment so that the Courts can no longer confuse the issue. My Amendment says "No Public school student shall, because of his race, creed, or color be assigned to or required to attend a particular school." We are one Country and one people.

I hope this Country has not reached a point where housing areas, business establishments and schools are on a quota basis.

I remember well an experience that I had in the War when I served with the Third Army in Europe: At that time I had the 2nd Platoon in a Company of Engineers. In our four platoons the Captain had made it a point to assign all of the boys of Italian ancestry to the 2nd Platoon. He apparently had some type of negative feeling about Italian people.

I worked with these boys, I lived with them, I was in the mud and the snow with them. We marched together—we went hungry together and we were close, as War brings out the complete person. I liked these boys. I remember the day I turned to my Sergeant named D'Ermilio and said, "we are lucky in the 2nd Platoon. I am sure glad we have all the Italian boys in our Platoon." And he said, "What do you mean, Italian, Lieutenant, I am an American."

Are we in this Country going to move the clock back after all the progress that we have made and start assigning people from the time they are five years of age on a regimented basis because of their color or religion?

I am not a lawyer, but I have been in Congress long enough to learn that Lawyers know how to put in trick phrases in any Bill which can kill it. The trick phrase that they use on Busing Bills is to insert the phrase "unless Constitutionally Required". These three words give a Lawyer a blank check for a Liberal Federal Judge to write any school procedures he dictates. We have a system today where Judicial Decisions rather than Congressional Laws are the Law of the Land.

It is the responsibility of Congress to make Laws and Judges should interpret the Law as written.

Congress follows the Constitution in writing the laws. And I ask all of you what is more Constitutionally solid than for every American to be treated equally. For every American to be able to go to the school closest to his home is fundamental. For every American to be treated as an equal American and not handled as a quota is in the Bill of Rights.

Take an example of Busing in the small, little town of Wilmer, near Dallas. When Busing first started in 1970, it was 45% Black and 55% White in the student enrollment. Now the Black percentage is over 85%. Black students are bused in from South Dallas with the first buses scheduled to arrive at 7:25 A.M. and the second trip at 8:10 A.M., so the long early haul begins by 6:00 A.M.

It is reported that Grade levels in Wilmer have dropped two years in academics. This means fifth graders are now doing third grade studies.

Many are beginning to believe that Busing is the first step in an Educational downhill plan. Next will be bureaucratic Metropolitan schools. Then finally, they could become entirely Federalized schools. Whereas what America wants and needs are local school boards with full local control.

We need to review the fundamentals of education. The age of the School House has nothing to do with the quality of education. You can be in any old building but if you have the necessary ingredients you will get the best education. To start with and most important is to have good teachers. The second factor is to have interested parents that encourage the student and the third is to have a pupil who has an interest and desire in wanting to learn. None of this has to do with the location of any school or the type of school building.

I favor a system that would let any child in the County go to any school in the County and have complete freedom of choice as was suggested by Mr. Thurgood Marshall. He is now a Justice on the Supreme Court and in presenting the case in 1952 to the Supreme Court, said he wanted children to "have the choice to attend any school he desires." I, too favor complete freedom of choice, which is full equality.

We need to clearly define the Issue so that even the Courts can understand it. The American people understand it. When Congress said in the Civil Rights Act of 1964, "Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of students from one school to another in order to achieve such racial balance." Congress thought this definitely and explicitly covered the subject.

But with judges who stay up late at night working out such technicalities as how many angels could dance on the point of a needle, we find that they have discovered all types of interpretations to offset this very definite and specific language.

There is one solution that we must act on immediately. It has been brought forward with greatest clarity by Senator Griffin in the current debates in the United States Senate. His Amendment as offered in the Senate is worded as follows:

"In the text of the Mondale amendment, after the words "uniform basis" insert a period, strike the remainder of the sentence, and add the following:

"SEC. 902. No court of the United States shall have jurisdiction to make any decision, enter any judgment or issue any order the effect of which would be to require that pupils be transported to or from school on the basis of their race, color, religion, or national origin.

"SEC. 903. No department, agency, officer, or employee of the United States, empowered to extend Federal financial assistance to any program or activity at any school by way of grant, loan, or otherwise, shall withhold or threaten to withhold any such Federal financial assistance in order to coerce or induce the implementation or continuation of any plan or program the effect of which would be to require that pupils be transported to or from school on the basis of their race, color, religion, or national origin.

"SEC. 904. Notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority or which requires the consolidation of two or more local educational agencies for the purposes of achieving a balance among students with respect to race, color, religion, or national origin, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired.

"SEC. 905. If any provision of this title, or the application thereof to any person or circumstance, is held invalid, the remaining provisions of this title, or the application of such provision to other persons or circumstances, shall not be affected thereby."

The issue is Quality Education. We should act on Busing now in Congress through Senator Griffin's Legislation, while we are waiting for final and permanent Liberty for the American Children through a Constitutional Amendment.

Let us keep the trick clauses out of it and vote on the fundamental issue just as it stands. If you vote for this Constitutional Amendment you are voting to end busing. If you vote against the Amendment this means that you favor busing.

Mr. COLLINS. I would like to make some general observations from the testimony and discussion of other Congressmen.

I want to say a word first about school excellence, as that is the subject that concerns us the most, and basically is what we are interested in, excellence in our schools. I agree with my colleague from Louisiana when he talked about excellence in schools. He pointed out that the school building where you go to school is not the factor that determines excellence. The most important thing is the schoolteacher and every one that studies education knows how important it is that we have top schoolteachers.

The second thing is to have pupils that want to learn. And a third and very important motivation is to have interested parents. I think many times we overlook this. The parents should encourage the youngsters. So you have students, teachers, and parents all concerned with the subject of busing.

We talk all of the time about racial balance. So let's go back to the Civil Rights Act as my distinguished colleague from Michigan was talking about deferring this matter to the Supreme Court and Federal courts. Those of us who have been concerned with busing under the educational system are disturbed about the Court's ability to understand exactly what Congress says. We think that we are going to need a constitutional amendment or at least a law spelled out in one-syllable words for the Supreme Court to understand it.

The Civil Rights Act of 1964 says:

> Nothing herein shall empower any official or Court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of students from one school to another in order to achieve such racial balance.

Yet in spite of this specific language in the basic Civil Rights Act, racial balance has been the whole impetus of what is involved. I don't see anything wrong with a minority being together. The Chinese out in San Francisco have raised their children emphasizing two different concepts.

One virtue is to discourage any kind of juvenile delinquency. As we know, the Chinese children have the best record as far as juvenile delinquency of any group we have in America.

The second thing they teach their children is respect for their parents, and both of these are very desirable traits. The Chinese have objected to busing. They are a minority and live together but now they have forced busing. It doesn't matter what minority it is, groups should have a right to live together.

I had an experience during the war that impressed me very much. Our outfit shipped out of Boston and was loaded into 54 ships in our convoy. About the fourth day out the fellow on watch came back and he said, "The Nazi submarines have found us."

About the fifth day out the whole submarine pack had found us. My men became pretty nervous and they asked, "How long is it going to take us to get to Europe?"

I went down and checked with the mate and the mate said, "We will get there just as fast as the slowest ship."

In busing, we are getting back to the convoy system. We are gearing this whole thing down to the slowest ship and school training is related to the pace of the slower students.

I will give you an example from the nearby community of Wilmer near Dallas. In 1970 Wilmer started busing. At that time the ratio was 45 percent black, 55 percent white. That was 1970. Today they have already passed 85 percent black so we didn't achieve any type of integration if that was the objective. But one thing we have done out there in Wilmer, the school achievement level has dropped two grades and class work is adjusted to lower grades.

That didn't do any good for anybody. What they have done is simply confused the school system.

I would like to discuss racial balance. I think about the greatest thing we have in the city of Dallas is our Dallas Cowboy football team. We don't think of our Cowboy football team as to what race our players may be. We think of a team and yet as I sat down and reviewed the team, I recalled we don't have a single Mexican-American on the team and most of our stars are blacks.

We have more Mexican-Americans in Texas than we do blacks, so what we would do if we went on quota system is let half of our stars go and get Mexican-Americans to learn the game.

Mexican-Americans are the best soccer players in the world. But they are not the same stars as black footballers. Go through and look at who is outstanding. For the Cowboys take men of character like Calvin Hill, or Thomas, the rookie of the year; Hays, the fastest man; Renfro, and nobody challenges Renfro back in defense as he is always all-pro. Take dynamic big Jethro Pugh. Many have seen Cornell Green in action. These men led the Cowboy team to the world championship. There was no quota. The best players made the team. To have the best team in school we should never go to quota racial balance.

Let me tell you a story. Mr. Chairman, of a man from your area. It regards a sergeant from New York City when we served together in the Army.

As all of you know, you get to know fellows pretty well in the Army because you live in the mud and snow and you sleep together and you suffer together.

I was in an outfit of Engineers. The 2d Platoon was my platoon.

My captain happened to have a hangup about Italians so he put all of the Italian boys in the 2d Platoon.

When I got assigned to it, I realized all of the Italians were in that platoon. As I went through Europe, I began to realize these were the finest boys in the world.

I could depend on them. They were good boys. When Sunday came, those boys went to Mass. If you ever asked them to help you, no matter what time of the night, they were always there. They were good boys. One day I turned to this sergeant and I said. "You know I am sure lucky in the 2d Platoon. We are really lucky. We have all of the Italians in our platoon." He said, "Lieutenant, I am not an Italian. I am American." What we are talking about here today is, are we going to let everyone in this country be Americans? Are we going to be Italians, Poles, Jews, Japanese, or will be all be Americans. Shall our schools be on a quota system for each race or will education be equal for all, and will all students be Americans.

Chairman CELLAR. Thank you. Mr. Collins.

Mr. JACOBS. Mr. Chairman, I have a question I would like to ask. I welcome you to the committee, Congressman Collins. There has been a lot of testimony about freedom of choice—a person being able to go to the school he wants to or his parents want him to. How do you reconcile the concept of freedom of choice with the concept of the neighborhood schools?

Mr. COLLINS. Normally, most people like to go to the school in their area for many reasons. It is closer to home. They can walk. All of the normal reasons that most people have. They will play with these same children when school is out. But I also favor the freedom-of-choice concept. I think it is highly desirable.

Suppose we only offered German in two schools in our city and the student wanted to take German. Suppose a student wanted to take advanced calculus and we only offer that in three or four schools. I think any child in any community should have a right to go to those schools that offer these limited courses.

Mr. JACOBS. Suppose an organized effort was successful in a black ghetto someplace, and all of the black people in that ghetto wanted their children to go to a suburban school that perhaps had pastel colors, a swimming pool, tight windows—a generally better building.

I believe you said the building wasn't all that important. But it would seem to me in the wintertime if windows weren't tight, it could have a chilling effect on the educational process.

Suppose that should occur. That would be freedom of choice. People would organize and take a look, and maybe some would note that the suburban school had better audio aids.

And suppose they did that as a matter of freedom of choice. Would you find some conflict then between the advocacy of the neighborhood system of schools and the freedom of choice concept?

Mr. COLLINS. I am not aware of schools throughout the country but it is interesting in the South. Today you will find in the South as a whole, that most of the modern schools have been built in black areas.

One of the finest high school buildings in Dallas is Pinkston. Pinkston runs two-thirds full. They specialize in vocational education whereas students have been encouraged by preachers and parents that they should take humanities.

So basically, if one looks for the best school facilities in our particular community, you would find black neighborhoods to be well represented. On freedom of choice it would be only fair that people that live within an area should be entitled to go to their neighborhood school before transfers, but there would be plenty of openings in most every school.

In other words, in any area, anybody that desired a special subject should have an opportunity.

Mr. JACOBS. If you ran into the hypothetical that I propounded, then how would you reconcile the concept of neighborhood schools?

Mr. COLLINS. In the worst school building I ever sat in I got the best education. When I was in SMU, I went to the sorriest building. It was an old prefab building. The windows were wide open and drafty. The roof leaked. There were only boards on the walls and wind whistled through. We called it the shack. This was a college building. Yet within these walls I had a fine education. The reason I learned was because I had great teachers.

Mr. JACOBS. But that does not answer the question. You would put no obstacle in the way of the blacks in the ghetto who, exercising freedom of choice, organize and demand to go to schools in suburban areas on their own hook?

Mr. COLLINS. If they wanted to, I would let them go wherever they wanted to go.

Mr. JACOBS. You endorsed the statement of the gentleman from Louisiana, Mr. Waggonner, who said that schoolbusing was a sociological experiment and politically expedient.

Do you think that advocating busing is politically expedient?

Mr. COLLINS. No. I endorsed his concept. I did not go as far as getting into sociology experiment. I was endorsing the concept that the type of school building is not the criteria by which you measure academic success, although I would say this: to the degree busing has been discussed as an experiment, I object because I hate to see 5-year-old children used as pawns.

I think if we are going to do experiments, let's do it with mature people, and concentrate in schools on quality of education.

Mr. JACOBS. One last question.

You said the Dallas Cowboys were the greatest thing in Dallas. Would you stand on that statement?

Mr. COLLINS. I would say as far as my constituents are concerned, they are still the greatest. They are the greatest team in the world.

Mr. JACOBS. Your constituents are there, too?

Mr. COLLINS. It is a great thing about the Cowboys. It is a team, and the Dallas Cowboys play as a team effort. The team effort makes America great.

Mr. JACOBS. You do have good libraries there.

Mr. COLLINS. We do have other good attributes.

Thank you, Mr. Chairman.

Chairman CELLER. The next witness is Hon. Samuel L. Devine.

STATEMENT OF HON. SAMUEL L. DEVINE, A U.S REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. **Devine**. Thank you, Mr. Chairman, and gentlemen.

My statement is before you this morning, and I will be brief and to the point.

I might say that I was born in the State of Indiana, and I spent about a half century in the State of Ohio, except for employment in the State of New York and in the State of Colorado, so I don't think I could be considered as a Dixiecrat here this morning; probably as a Yankee.

I am glad this matter has finally been scheduled for hearing. Too much time has been wasted, and many of us feel the legislative processes have been unduly thwarted.

Busing, as such, is not new in the educational system. It has served a useful purpose in accommodating students whose homes were a mile or more from school.

But the key, and only issue before you today is whether the Congress ever intended busing for the purpose of promoting racial integration, or, to put it more succinctly, compulsory busing to terminate de facto segregation. Should buses be the instrument to encourage more mixture of the blacks and whites?

Stripping away all of the highly emotional aspects, it seems to me the only way to promote and maintain quality education is to preserve our neighborhood school concept. Our children are entitled to quality education, no matter where they live. Busing all over creation does great violence to this system, and indeed encourages mediocrity as well as makes a pawn of our educational processes.

I recognize in taking this position that there will be the usual cries of bias, bigotry, and racism, and the predictable smears from the professional civil libertarians and social reformers. The NAACP and ACLU undoubtedly will appear in opposition to any so-called antibusing legislation.

Nevertheless, it is my firm conviction that the overwhelming majority of Americans, black and white, are opposed to forced busing, and they don't care whether it is by constitutional amendment, legislation, or court decisions—they want it stopped.

The Congress, in my opinion, has dallied much too long, and should face up to this important disruptive issue now. The courts have legislated by judicial fiat, and attempted social reform by usurping legislative jurisdiction, clearly misreading the intentions of the Congress that specifically forbid the practice of busing solely to end de facto segregation and promote integration.

I trust the members of this subcommittee will listen well to the testimony today and throughout the hearings, as well as to their folks back home, then act expeditiously to move this legislation onto the floor of the House in order that the issues may be thoroughly debated, and all Members may then have an opportunity to "bite the bullet" and go on record. The American people are entitled to nothing less.

Thank you, Mr. Chairman.

Chairman **Celler**. Thank you for your brevity and for your succinctness.

We understand your position very well indeed, sir. We are grateful to you.

Our next witness is the gentleman from Virginia, Watkins M. Abbitt.

STATEMENT OF HON. WATKINS M. ABBITT, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Abbitt. Mr. Chairman, I have a prepared statement which I would like to ask consent to submit for the record and then, for the sake of saving time, I would like to summarize what it says.

Chairman Celler. You have that consent.

(Statement follows:)

Statement of Hon. Watkins M. Abbitt, a U.S. Representative in Congress From the State of Virginia

Mr. Chairman and Members of the Subcommittee, I want to express my appreciation for the opportunity of testifying in support of H.J. Res. 855 and other similar proposed amendments to the Constitution relating to the transportation and assignment of public school students.

I introduced by resolution on September 9, 1971 when it became apparent that some action must be taken if we are to preserve any semblance of order in the operation of our public schools. Much has happened since the introduction of these resolutions last fall which makes it even more imperative that action be taken without further delay to avoid catastrophic problems when school opens in September. The proposed consolidation of the Richmond public schools with those of Henrico and Chesterfield Counties in Virginia is now before the Fourth Circuit Court of Appeals and should the Order issued in January by the Federal District Court be upheld, this would open the floodgates for similar court orders in other school districts throughout the United States.

If there were ever any question about the nationwide appeal of this issue, such apprehension should have been effectively erased by the decision of the Federal District Court at Richmond. Make no mistake about it—we are facing a tremendous crisis throughout America, and the quicker Congress acts, the better opportunity we will have to diminish the disastrous results which may well come from consolidations of the type proposed at Richmond. It should be abundantly obvious that if the Federal courts can force the consolidation of school districts in three separate localities in order to achieve that which could not be accomplished within a single district, who is to say that such consolidations in the future might fall across state lines, encompass an entire state, or establish a national school system.

Frankly, I feel that Congress has already waited much too long in the hopes that eventually things would work out satisfactorily. It is obvious that such delays have only complicated the situation and what was once a parochial problem in the southern part of the United States is now becoming a major national issue. People from all over the country are becoming incensed over the preoccupation of the Federal courts and HEW with the idea of forced busing in order to achieve racial balance in the public schools. Federal judges, with seeming ambitions to become school superintendents, are through diverse means seeking to force their will upon school districts with little or no regard for the ultimate consequences. Surely there must be some limit to which Federal judges and HEW bureaucrats may go in seeking to achieve racial balances in the public schools. If the courts are not going to exercise sanity and the Executive Branch continues to dilly-dally on the issue, then it must logically fall upon the Congress to exercise some restraining force to protect the public schools of America. I submit that it is the responsibility of Congress to take the lead in such matters and not wait until disaster hits upon us before charting a logical and judicial course of action. Unless this is done we may ultimately find that we have little left worth preserving.

There has been much talk about the various methods to be utilized in solving the school assignment issue. Some contend that legislative action to assure "freedom of choice" in the assigning of students to the public schools is the most logical answer. It is obvious by this time that congressional reluctance and executive uncertainty is being overrun by judicial usurpation of power so that "freedom of choice" would be of questionable value even if Congress would pass one of the several bills now pending under which free choice would be available.

We have certainly learned by experience that relying upon restraint in HEW or certain Federal courts is futile. We have sat by and watched authority over our schools continually shift from local school boards to HEW and the Federal courts. This process must be reversed—and I am convinced that the only effective way this can be brought about is through a constitutional amendment.

Our public schools are one of our most cherished possessions. They have stood us well through many years and we can not afford to sacrifice the quality of our education simply to pacify and placate certain elements which insist upon precise percentages of racial balance in the schools. Sooner or later we must decide which is more important—to meet each and every objection raised by splinter groups who insist upon having their own way or to preserve and expand quality education for our young people. Far too much time and far too much effort has been expended in recent years in trying to establish guidelines and meeting ridiculous requirements laid down by minority pressure groups, HEW bureaucrats and power-grasping Federal judges. Such actions have not resulted in an improvement of public education but have in fact diminished the effectiveness of education in America. Time was when the public schools were the place for developing leadership, for improving the minds of our children and providing a setting for the learning process. Under the harassment of HEW and the intrusion of the courts, many of our schools have become anything but institutions where learning may be easily encouraged. Parents are fearful of their children's safety in getting to school and while they are within the school buildings. Conduct within the schools has become a mockery and far more attention is given today to how a child gets to school rather than what he learns after he arrives in the classroom.

It is ridiculous for Federal, State and local governments to continue calling for additional funds for public education within the framework in which we now support our public schools. Unless something is done to overcome the preoccupation with racial balances, regardless of the consequences to quality education, our public schools are destined to become a mockery. It makes no sense whatever to disrupt quality eductaion programs within schools which already are substantially integrated in order to achieve some unrealistic guideline for percentage balance within a total school system.

Reports are coming in almost weekly of court decisions and HEW directives which are totally ignoring the principal purposes of education in favor of placating certain groups who seek to achieve racial percentages in the public schools. No better example of this can be found anywhere in America than in the January decision by the Federal District Court at Richmond. Nowhere in the Constitution or in Federal statutes is there any authority for a Federal judge to force the reconstitution of school districts in order to achieve goals which he himself has promulgated. Yet, this was done in the Richmond case and if this is not overturned by the higher courts, there is no telling how far some of the Federal judges are likely to go in the future.

The controversy over America's public schools has far transcended the question of integration versus segregation. Many of the school districts which are now feeling the heavy hands of Federal judges and HEW bureaucrats are those which are already largely integrated. This is particularly true in the South where most of the concentration has been. In my opinion, far too much emphasis has already been placed upon percentage balances in trying to achieve certain goals in Southern schools. Our people have been patient under trying circumstances and in the face of what I consider to be judicial tyranny our people have attempted to work out orderly compliance. Much progress was being made before certain judges began insisting upon mass busing and I am fearful that unless this Congress takes concrete action to forbid busing, we will soon have totally unreasonable demands being made by Federal courts and HEW.

I am convinced that the only way to achieve this is through a constitutional amendment. It is impossible to reason with many of the Federal judges who do not know the meaning of judicial restraint. They are more interested in forcing upon communities their own philosophical and sociological views rather than trying to realistically look at the situation. Federal judges were never meant to be school superintendents and if we ever reach the place in America where our schools are run from the Federal bench and from behind the walls of HEW, then we have reached a sad day in the history of education in America.

The time has come for plain talk in dealing with this problem. We can not substitute ideology and sociological fantasies for the quality education which our young people need in meeting the challenges in our world. The schools have become havens of disorder and rsercevoirs of discontent. The crisscross of forced busing on the highways of America present a latent possibility of great danger and much time and money is being expended in the useless endeavor of forced busing. Nowhere have I seen that our young people are obtaining any useful knowledge on buses. Those judges and those HEW theorists who want to remold and remake our public schools are doing a good job of bringing ruination on one of America's greatest institutions.

This Congress has the authority and the responsibility of protecting our schools and I believe that the American people have a right hold us accountable. I urge this subcommittee to give thoughtful and mature consideration to the whole problem which faces us and I trust that your influence will be brought behind the securing of a constitutional amendment to clear up this whole messy situation. In my opinion, we have already waited far too long and allowed things to get too much out of hand. There is still time to save our public schools if we have the will to do it.

I for one wish to state that I am totally opposed to the concept of forced busing in order to achieve racial balance in the public schools. I do not feel that it is fair to the children themselves to be carried all over the countryside in order to get to a school far from their homes. This is hurting both the white and black children of America and in many instances it is the latter who are suffering the most. Many young people are forced to work before or after school and time spent on buses is a personal loss to them. It is ironical that contesting groups and organizations are spending vast amounts of time and effort to debate the school assignment issue when the young people themselves are the principal ones involved. I am convinced that the vast majority of our people, young and old alike, are opposed to forced busing in order to achieve racial percentages and the quicker we adhere to the will of the majority the better off all of us will be.

Mr. ABBITT. I will state briefly my views.

Mr. Chairman, I am very much in favor of the constitutional amendment which would prohibit busing purely and simply to achieve racial balance in the various schools outside of the locality or the community where the child resides. I introduced a resolution along this line 2 years ago.

In my opinion, the courts do not have authority to break down political subdivisions and cause busing purely and simply on account of race, as it was done in the Richmond case. I think the courts have far exceeded their authority.

I realize they have the power to do this, but in my opinion it is illegal. I don't know of any other way that it can be stopped, other than by constitutional amendment.

I realize that the Constitution is not to be trifled with. It is a serious matter when we amend our Constitution. I realize that language must be drawn very adroitly, and that we need many expert people to decide the exact language, but the people in my area, both black and white, are opposed to being bused out of their neighborhood to another neighborhood beyond the boundary lines where they are customarily living, and where they have been going to school. I think that is universally true.

In my home county of Appomattox, Va., we have a unitary school. We have one high school in the county. We have one grammar school in the county, and we have two lower schools, so there is no question about our schools being entirely integrated in my county. But we have a small county, only 9,000 people.

In the other areas, where there is busing, there is widespread discontent. Our people feel that the Government is more interested in mixing the races and achieving social revolution than they are in educating our children.

They very strongly feel that our children should be given the best education possible, but that they have a right to attend their local schools, the neighborhood schools.

I realize that some years ago schools were not equal in our section. There is no question about that. But that is a thing of the past, now.

I just hope that it is the will of this committee that they will pass on a proper resolution which would bring to a halt the busing of our children beyond their neighborhood schools.

Mr. Chairman, that is my statement.

Chairman CELLER. May I make one observation and have your reaction?

Mr. ABBITT. Yes, sir.

Chairman CELLER. Is it not true that in our Constitution and in the amendments to the Constitution, we always have accorded or granted positive rights; we never negated any rights, except in the case of prohibition which was, of course, repealed. Is that not true?

Mr. ABBITT. That is true.

Chairman CELLER. We have granted rights; we have never taken them away.

In the case of the amendment you are advocating, we would take away rights, would we not?

Mr. ABBITT. I don't think so, except you would take away some of the power that the judiciary has assumed unto themselves, which power they had, but in my opinion not the authority, under the Constitution, to do.

Chairman CELLER. Any questions?

Mr. HUNGATE. Yes, Mr. Chairman.

I appreciate the gentleman's comment. I take it he would agree that involved here is not only busing as such, but the problem, as you stated, of the breakdown of the political subdivisions as required by the court action requiring that. Would the gentleman comment on the Minnesota and Texas cases, and California State case, regarding the tax system for raising revenues for schools under equal protection of laws concept? Would you have a view on that?

Mr. ABBITT. Yes. I think the court far exceeded its authority. In our case, the court in Richmond wiped out political subdivision lines. The judge set up a phantom school board. He has directed how much of the money one political subdivision had to pay, and out of a blue sky said how many members of the school board there were to be.

I think he had no authority whatever to do it, but he did it, and, of course, now his decision has been stayed by the Fourth Circuit Court of Appeals, and I hope it will be brought up relatively soon, but I think this amendment will take care of it.

Mr. HUNGATE. Thank you, Mr. Chairman.

Mr. POFF. Mr. Chairman, I simply say welcome to you from the committee, and express the appreciation of the committee for the procedure you pursued in making your contribution to the committee. It makes it possible for other witnesses to testify. This courtesy is typical of the gentleman, and we are grateful to you.

Mr. ABBITT. Thank you.

Thank you, Mr. Chairman.

Chairman CELLER. Our next witness is the Honorable O. C. Fisher from the State of Texas.

STATEMENT OF HON. O. C. FISHER, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Fisher. Thank you, Mr. Chairman. I have a very brief statement.

Mr. Chairman, I welcome this opportunity to testify in behalf of proposals which would amend the Constitution by providing that no public school student shall be assigned to or required to attend, or forbidden to attend, a particular school because of his race, creed, color, or economic class.

I would hope the resolution, if and when reported by this committee, will make crystal clear this prohibition shall be binding on all Federal agencies, bureaus, departments, and courts.

Because of the projection of the forced busing concept, we face in this country an anomalous situation which has become too intolerable for the people to bear. Every national and local poll I have seen, including the Gallup poll, confirms the fact that some 80 percent of all Americans are opposed to this form of tyranny—and they demand, and are entitled to have, something done about it.

Mr. Chairman, as you well know, there has been a lot of sidestepping and doubletalk on this issue. There are those who say, "Yes, of course, I'm against busing, but this is not the way to do it." Another one says, "I'm against busing, unless it's done to provide 'quality' education."

Now, these excuses are invalid. They are used by those who are apparently afraid to take a firm stand on the issue, and are unwilling to do something about it. They blow hot and cold at the same time. So often we hear the voice of Esau, but we see the hand of Jacob.

We have reached the point where you are either for or against the forced busing concept, period. In my opinion, the American people are in no mood to accept phony excuses.

If a particular school is below the educational standard of another school located 10 miles away, the answer is not in buying a bus, hiring a driver, and hauling a bunch of the children to the more favored school, and vice versa. The answer, and the only proper answer, lies in actions to improve the standards of the school which may be deficient in some respect.

The fact is that forced busing is for one purpose, only—not to improve educational opportunities, but for racial mixture purposes. Indeed, there is much evidence that the forced busing lends itself to the lowering of educational standards, along with other undersirable effects.

Busing has nothing to do with neighborhood integration. We already have that. Today no child is denied admittance to any public school because of that child's race, creed, or color.

When you talk about taking children out of their neighborhood schools and forcing them to travel 10, or even 20, miles, you are tinkering with the health and safety of those youngsters. You are striking a blow at a basic American freedom. You are attacking the neighborhood school concept, so dear to the hearts of all Americans, regardless of race. You are undermining the integrity of the public school system in this country.

Mr. Chairman, forced busing has become not only a national issue but a national scandal. Busing costs money—vast amounts of money—

money that should be used for educational purposes, and to improve any schools that need it for that purpose.

The courts have made it clear that the only real and permanent answer to this problem is a constitutional amendment—unless, of course, this committee should prefer legislation to limit the jurisdiction of the courts as applied to pupil assignments.

I am confident this committee will recognize the urgency of this matter and will proceed to report a resolution which will allow every Member of the House to vote on it—one way or another. Surely it is recognized that the American people are entitled to this consideration. Thank you.

Chairman CELLER. Thank you very much, Mr. Fisher.

Our next witness is my neighbor, the distinguished gentleman from Virginia, Tom Downing.

We are glad to have you, Mr. Downing.

STATEMENT OF HON. THOMAS N. DOWNING, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. DOWNING. Thank you very much, Mr. Chairman.

It is with deep appreciation that I appear before you and the other members of the distinguished subcommittee to explain my position on the need for a constitutional amendment which would prohibit compulsory busing of students in order to achieve specific racial balance in our public schools.

I shall be brief.

There is an old Indian adage, Mr. Chairman, which says, "To understand another's problems, you must walk in his moccasions." Those of us from the Southern and border States who have suffered the results of discrimination between de jure and de facto segregation welcome the support of those from Michigan, California, and other non-Southern States who have recently walked in our moccasions. Indeed, if all the disciples of de facto segregation were forced into the same footwear, the parade of congressional witnesses before this distinguished subcommittee would be considerably longer and more diverse.

The feeling against forced busing to achieve racial balance is universal enough, however. Recently surveys have shown that up to 80 percent of all Americans oppose it, while more than 60 percent of black parents are against it.

In the State of Wisconsin, where a high ratio of whites to blacks exists, the senior Senator reported in his newsletter that slightly more than 87 percent of those responding to his questionnaire answered, "No," to his question, "Do you think busing should be used to eliminate segregation wherever it exists and whatever its causes?"

Clearly, the American people prefer the concept of the so-called neighborhood school.

The main question, then, becomes how to put an end to this child-handling technique of busing, and achieve our neighborhood schools. As I see it, there are four possible answers:

1. The Supreme Court could reinterpret its recent decisions and reverse the drive toward compulsory busing.
2. The administration could refuse to implement any further busing plans.

3. The Congress can initiate legislation to end compulsory busing.
4. A constitutional amendment could put a positive end to this busing.

Options 1 and 2 appears to offer very slim hope. It would be classified as a miracle for the Supreme Court to reverse itself so soon. Perhaps in another 50 or 75 years, future jurists will perceive the mischief accomplished and be in a position to alter by reversal the recent cases ordering compulsory busing.

President Nixon may wish to follow the desires of a vast majority of Americans, but the Federal bureaucracy is such that it is doubtful whether effective action can be accomplished in this manner.

An equally important contribution to administrative inadequacy is the Executive's subservience to the judicial branch of Government.

Federal courts have ordered busing. A perfect example of this concept is in my own State—the now infamous *Richmond* case involving three separate school jurisdictions. It hardly seems necessary to cite further examples.

Thus, we are left, Mr. Chairman, with congressional action: simple legislation, or the inauguration of a constitutional amendment.

We have seen time after time that the statutory approach is not the answer. The Civil Rights Act of 1964 and the Whitten amendments to appropriations bills of the Departments of Labor and Health, Education, and Welfare for the fiscal years 1969–72 have all been undone by the Supreme Court.

The High Court has also ruled unconstitutional the statutes of the States of North Carolina and New York.

It appears, Mr. Chairman, that the only thing which the U.S. Supreme Court has not ruled unconstitutional is an amendment to the U.S. Constitution itself. This is the keystone of our hope.

The earliest opinion that I have seen which sets forth the principle of judicial review was in the Virginia case of *Caton* v. *Commonwealth* (4 Call 5), which was argued in the High Court of Chancery 190 years ago. The opinion was delivered by the eminent George Wythe, preceptor of Jefferson and Marshall. Chancellor Wythe's opinion concluded:

> * * * if the whole legislature, an event to be deprecated, should attempt to overleap the bounds, prescribed to them by the people, I, in administering the public justice of the country, will meet the united powers, at my seat in this tribunal; and, pointing to the Constitution, will say to them, here is the limit of your authority; and, hither, shall you go, but no further.

It is noteworthy to me that Marshall, at that time a fledgling attorney scarcely 1 year out of Wythe's law lectures at the College of William and Mary, was in the courtroom in Richmond that day hearing the same doctrine which he would espouse 21 years later.

You will note that the opinion cited the Constitution as the limit of authority, the Constitution as prescribed by the people.

It is incumbent upon us, I feel, as Members of the greatest body of our federal system, the body closest to the people themselves, to take the first step to spell out in this mighty Constitution the wishes of the people.

Ours is a representative democracy. The people will not have it otherwise.

Mr. Chairman, I would like to say this. I believe that this Congress can go in two routes. If you and your distinguished committee think that legislation is the answer, go ahead. But also let us go ahead with the proposed constitutional amendment, too.

In my humble opinion, I do not think legislation is the answer. I think it will take a constitutional amendment, and this takes time. For that reason, I would like to see both proceed simultaneously.

Thank you, sir.

Chairman CELLER. Mr. Downing, "Scientific American," issued in December 1971, reported findings of the National Opinion Research Center which asked the question: Do you think white students and Negroes should go to the same schools or separate schools?

Eight out of 10 white citizens in the North supported integrated education. Nationally, throughout the land, 75 percent of white Americans supported integrated education.

Now, I would like to ask you this question: Do you support integration?

Mr. DOWNING. I do, Mr. Chairman.

Chairman CELLER. How could it be brought about?

Mr. DOWNING. I think it is a question of evolution, Mr. Chairman.

As I have heard so much up here, the laws don't occur by revolution, they occur by evolution. I think it is going to take time. I think we should persist in our efforts to integrate all segments of our society, not just education.

I think by this mass effort to integrate schools, we have really sacrificed the educational qualities of our school system.

Chairman CELLER. The Chair will place in the record the article from "Scientific American."

(Article to be furnished follows:)

[From the Scientific American, December 1971]

ATTITUDES TOWARD RACIAL INTEGRATION**

THE THIRD IN A SERIES OF REPORTS SPANNING NEARLY THREE DECADES SHOWS A CONTINUING ADVANCE IN THE SUPPORT OF DESEGREGATION BY U.S. WHITES. THE TREND HAS NOT BEEN AFFECTED BY THE RACIAL STRIFE OF RECENT YEARS.

(By Andrew M. Greeley and Paul B. Sheatsley)

We present herewith the third report in these pages on the findings of the National Opinion Research Center concerning the attitudes of white Americans toward the position black Americans should occupy in American society. Together the reports cover a period of almost 30 years, which is the length of time the Center has been sampling these attitudes. In that time the trend has been distinctly and strongly toward increasing approval of integration. For the most part the trend has not been slowed by the racial turmoil of the past eight years. We believe these findings have significant political implications.

Our sample usually consists of about 1,500 people, chosen to represent a spectrum of the population of adults in the U.S. About 1,250 of the people in the sample are white, and it is with the attitudes of whites that this article is concerned. With a sample of this size we are able to test for opinion by age, region, income, occupation, education, religion and ethnic origin.

Since the last report [see "Attitudes toward Desegregation," by Herbert H. Hyman and Paul B. Sheatsley; SCIENTIFIC AMERICAN, July, 1964] the U.S. has experienced what is probably the most acute crisis in race relations since the end of the Civil War. City after city suffered racial violence, with Watts, Detroit and Newark only the most conspicuous among them. Martin Luther King, the apostle of nonviolence, was assassinated and another spasm of riots shook

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**Graphs referred to in the body of the article are omitted.

the nation. King was replaced on the television screen by a far more militant brand of black leader. Stokely Carmichael, H. Rap Brown, Eldridge Cleaver, Bobby Seale and LeRoi Jones became nationally known. Newspapers carried accounts of blacks arming for guerrilla warfare. The Black Panthers appeared on the scene, and in several cities there were gunfights between the police and the Panthers. Columnists, editorial writers and political analysts worried publicly about the "backlash." George Wallace did well in several primaries, and in the presidential election of 1968 he made the most successful third-party showing in many decades.

Concurrently with these dramatic events the attitudes of white Americans toward desegregation continued to change almost as though nothing was happening. The data do offer a certain amount of evidence of a negative reaction to black militancy; we shall return to this point. Even so, the negative reaction has not impeded the steady increase in the proportion of white Americans willing to endorse integration.

Two questions have been asked throughout the period covered by the National Opinion Research Center's surveys, which were conducted in 1942, 1956, 1963 and 1970. One question is: "Generally speaking, do you think there should be separate sections for Negroes in streetcars and buses?" The other question is: "Do you think white students and Negroes should go to the same schools or separate schools?"

In 1942 some 44 percent of the white population was willing to endorse integrated transportation [*see top illustration on next page*]. By 1970 the proportion had doubled, reaching 60 percent in 1956 and 88 percent in 1970. In the South the change has been even more pronounced. Only 4 percent of white Southerners accepted integrated transportation in 1942; by 1970 the proportion was 67 percent.

Integrating transportation, then, is no longer a significant issue. In retrospect it may well be said that the right of blacks to sit where they wish in public vehicles is not a very important right, since obtaining it does not notably improve the welfare of black people. From the perspective of 1971 such an assertion is certainly correct, but when one recalls what the attitudes were in 1942 or even in 1956, the change is striking. In less than 15 years—since Martin Luther King's historic boycott in Montgomery, Ala.—integrated transportation has virtually disappeared as an issue.

The integration of schools, however, is still an issue, even though in the North the idea is now endorsed by eight of every 10 respondents. In 1942, 2 percent of whites in the South favored school integration. By 1956 the proportion had increased to only 14 percent. Since 1956—two years after the U.S. Supreme Court's decision in *Brown* v. *Board of Education*—the proportion of Southern whites accepting school integration has increased sharply. Now almost half of them favor it. Nationally the support of whites for integrated schools is 75 percent.

An interesting pattern emerging in the successive surveys is that the proportion of the Northern white population supporting integration at one point in time is quite close to the population of the total white population accepting it at the next point in time. If the trend continues, one can expect a majority of the white population in every region to accept integrated schooling by 1977. Perhaps 60 percent of Southern whites will be willing to accept it. One could then say that desegregating schools had ceased to be a significant issue.

In 1963 the National Opinion Research Center employed in its survey a "Guttman scale" prepared by Donald Treiman of the Center's staff. The properties of the Guttman scale (named for Louis Guttman, now of the Israeli Institute of Public Opinion, who devised it) are such that if a respondent rejects one item on the scale, the chances are at least 90 percent that he will also reflect all the items below it [*see bottom illustration at left*]. We use a similar scale in 1970. It has seven questions, relating successively to integrated transportation; integrated parks, restaurants and hotels; integrated schools; having a member of the family bring a black friend home for dinner; integrated neighborhoods; mixed marriages, and blacks intruding where they are not wanted.

The first six items on the scale show a consistent increase in support of integration between 1963 and 1970. Indeed, on transportation, public facilities, schools and having a black guest to dinner a large majority of whites respond favorably. Only neighborhood integration and mixed marriages still divide white Americans about equally. If present trends persist, it seems likely that both neighborhood integration and racial intermarriage will be accepted by 60 percent of the white population at the time of the next report by the National Opinion Research Center in about seven years.

Only on the last item of the Guttman scale does one find any evidence of a backlash response to events of the period from 1963 to 1970. In 1963 about 25 percent of the white population rejected the idea that "Negroes shouldn't push themselves where they're not wanted." By 1970 the proportion taking an integrationist stand on this issue had dropped to 16 percent. One can surmise that this change is a response to black militancy, but even if that is so, the change has not interfered with increasing support for specific aspects of racial integration.

The seven items of the Guttman scale comprise a "pro-integration scale" on which each respondent can be assigned a score ranging from 0 to 7 depending on the number of pro-integration responses he gave; 0 if he gave none and 7 if he favored integration in all his responses. From there it is a small step to compute mean scores for various population groups to see where the strongest integrationist and anti-integrationist positions are. The mean score for all white Americans in 1970 was 4.2 indicating that the typical American accepts at least four of the seven integrationist attitudes. The mean score in 1963 was 3.57 [*see illustration on next page*]. Another way of putting it is that the average white American in 1963 could live with integrated transportation, integrated education and integrated parks, restaurants and hotels; he could accept, although just barely, a black dinner guest. In 1970 he was no longer concerned about having a black dinner guest and was no longer ready to totally rejected the possibility of integrated neighborhoods.

As one might expect, the greatest differences are regional. The typical Southerner accepts completely only the first two items on the scale, although he leans toward the third. The typical Northerner accepts the first four items and is strongly disposed toward the idea of accepting neighborhood integration. The net change of mean score, however, has been somewhat larger in the South than in the north: .77 compared with .6.

Also as one might expect, the highest pro-integration scores are among people aged 25 and under, both in 1963 and in 1970. As one might not have expected, the most dramatic increase in any age group is among the young; the mean score for people under 25 has increased by 1.08. It is even more striking that young Southerners manifest the largest net rise in integrationst scores; from 2.35 to 3.87. In other words, Southerners under 25 were as likely to be integrationist in 1970 as Northerners aged 45 to 64, whereas in 1963 young southerners were less likely to be integrationist than Northerners over 65. Moreover, Southerners at each of the three older age levels had higher pro-integration scores than the people at the next-younger age level had had in 1963. Thus one can say that the changing attitudes in the South entailed not only the influx of a new generation but also an actual change of position by many older white Southerners.

The mean scores of the various groups can be summarized by saying that there is an increase in integrationist sympathies in all segments of the white population, with the most notable changes at present taking place among people whose scores in the past were the lowest. The net result is that groups at the extremes seem to be moving toward a more central position. For example, the Jewish score, but the Protestant score is catching up. People who have been to graduate school still score higher than people who went no further than grammar school, but the difference between the two groups is narrowing. Similarly, whites in large cities continue to be more likely than whites in ruraly areas to endorse integration, but again the difference is declining. Finally, unskilled workers and service workers now have scores closer to the scores of professionals.

To a certain extent this catching up is a statistical artifact. People with high scores in 1963 did not have much room for improving the scores by 1970. Nonetheless, the diminishing differences indicate that the turbulence of the past few years has not interfered with increasing sympathy for integration, even among people who were least likely to have been sympathetic in the early 1960's. Their scores on the integration scale can increase more rapidly than the scores of people who sympathized with integration in 1963 because there is more room for improvement in their scores. It is not a statistical artifact that the scores continue to increase. That phenomenon reflects changing attitudes in the midst of turmoil and conflict.

Popular mythology would lead one to believe that if there is a backlash, it would be more likely to appear among the "white ethnic" groups, because they are less securely established in American society and also are the people most likely to be in direct conflict with newly militant blacks over such issues as jobs, education and housing. No ethnic-background question was asked in 1963, so that we are unable to compare the attitudes of white ethnics in 1963 and 1970. The 1970 scores alone, however, provide little evidence for the existence of a white backlash [*see top illustration at right*]. When the ethnics are compared with white Protestants in the North (the only comparison that is valid since most ethnics live in the North), it turns out that Irish Catholics and German Catholics have a higher average score on the integration scale than the typical white Protestant Northerner does. Catholics of southern European origin (mostly Italian) and Catholics of Slavic origin (mostly Polish) scored only slightly below Anglo-Saxon Protestants. Whatever direct confrontation there may be between blacks and Catholics of southern European and eastern European origin, they have had only a marginal effect on the integrationist sympathies of these two groups. It is also interesting to note that Irish Catholics are second only to Jews in their support of integration.

Considering the integrationist sentiments of ethnic groups by educational backgrounds, one finds that insofar as there is a white ethnic backlash it seems to be limited to people who have not finished high school [*see bottom illustration at right*]. (The sample here is small, so that the finding is at best suggestive.) Among people who have graduated from high school, only Slavic Catholics have scores lower than the white Protestant mean (and not much lower). Irish Catholics, German Catholics and southern European Catholics have scores that are higher than the Anglo-Saxon Protestant mean.

One of the most sensitive issues in Northern urban politics is open-occupancy legislation, which forbids racial discrimination in housing. An item measuring attitudes on this subject was included in the 1970 survey [*see upper illustration below*]. Three of the four ethnic groups—the Irish, the Germans and the largely Italian southern Europeans—are slightly more likely than Northern Anglo-Saxon Protestants to support such legislation. Only among the Slavic Catholics is there less inclination to be in favor of open-housing laws.

The question of the relation between blacks and white ethnics is a complicated one, lying largerly beyond the scope of this article. On the basis of the data available to us, however, there seems to be no evidence of racism among white ethnics except in the Slavic Catholic group. To the extent that a backlash exists even in that group, it seems to be concentrated among the less educated people. The other three Catholic ethnic groups are, if anything, even more integrationist than the typical Northern Protestant white—although less so than the typical Northern Jew.

Why, then, is the popular image of the "hard hat" ethnic racist so powerful? Our colleague Norman Nie has suggested that the reason may well be that the ethnics, particularly those from southern and eastern Europe, are "next up the ladder" from blacks and are most likely to be in competition with them for jobs and housing. We were able to put this hypothesis to a crude test by dividing the respondents to our survey into two groups, one comprising people who live in places where fewer than .5 percent of the residents are black and one comprising people who live in places with a higher proportion of blacks. Our supposition was that ethnics would be more likely to be in the latter group and that scores on the integration scale would be lower in that group.

Although the number of respondents is small, the findings indicate confirmation of Nie's suggestion [*see lower illustration at left*]. Every ethnic group in an integrated area had a lower integration score than members of the same ethnic group in nonintegrated areas except the Irish Catholics, the German Catholics and the Jews. The differences between Anglo-Saxon Protestants and southern Europeans were slight when the comparison was made among people living in nonintegrated areas. Thus there does seem to be a correlation between lower scores and feeling "threatened." It is interesting to note that living close to blacks raises the level of Jewish support for integration. German support rises slightly with propinquity, but the Irish score is unaffected.

In the light of our various findings one inevitably asks: Where is the backlash? It could be said to appear in the responses to the item on blacks intruding where they are not wanted. The decline between 1963 and 1970 in the proportion of whites willing to reject the item is, however, fairly evenly distributed in the white population, although it is somewhat less likely to be observed among the young and among the better educated [*see illustration on opposite page*]. It is also somewhat less likely to be observed among Catholics than among Jews and Protestants. (Here is further evidence against the validity of the notion that there is a "white ethnic racist backlash.") In short, if the extent to which whites are now somewhat more likely to say that blacks should not intrude where they are not wanted is a measure of negative response to black militance, the response is fairly evenly distributed among the Northern white population.

Two important observations are in order. First, attitudes are not necessarily predictive of behavior. A man may be a staunch integrationist and still flee when his neighborhood is "threatened." A man with segregationist views may vote for an integrationist candidate if the key issues of the election are nonracial.

Second, responses to the interviewers from the National Opinion Research Center may reflect what the white American thinks he ought to say rather than what he believes. Nonetheless, even a change in what one thinks one ought to say is significant. In any case, no one can measure another person's inner feelings with full confidence. If someone asserts that notwithstanding our evidence white ethnics are racists, it seems to us that a claim is being made to some kind of special revelation about what the white ethnic really thinks.

Although a change of attitude does not necessarily predict a change in behavior, it does create a context in which behavioral change becomes possible. Increasing support for school integration, for example, makes it somewhat easier for official policies of school integration to be pursued. The increase in support for integrated neighborhoods may facilitate at least tentative solutions to the vexing problem of changing neighborhoods in Northern cities. In sum, changing attitudes—even the dramatic ones monitored by our group over the past 30 years—do not by themselves represent effective social reform, but one can see them as a sign of progress and as creating an environment for effective social reform.

It is not our intention to argue that the data point to a need for more militant or less militant action by blacks. The appropriate strategy for blacks is also beyond the scope of this article. To note that American attitudes have changed is not to suggest that all is well in American society; it is merely to note that there has been change. Presumably no one will argue that the fact of change should go unrecorded because it will diminish the motive to work for further change.

It has been argued recently that American politics are politics of the center, albeit a floating center. We do not want to deny the utility of such a model, but we would point out that at least on the matter of racial integration the center has floated consistently to the left since 1942. We would also note that the shift has not been impeded (or accelerated either) by the racial turmoil of recent years.

The political significance of these conclusions is twofold. On the one hand, the political leader who adjusts his style to an anti-integration backlash is, on the basis of our data, adjusting to something that does not exist. On the other hand, the leader who thinks social conditions are suitable for leading the center even further to the left on the subject of racial integration would find strong support for his strategy in the findings made by the National Opinion Research Center.

We cannot say with measurable precision that sustained pressure by the national leadership is the reason for the increasing support for integration since 1942. It does seem reasonable to argue, however, that if every president since Franklin D. Roosevelt had not endorsed an integrationist position, the change of attitude monitored by our surveys might not be anywhere near as impressive as it is. By the same token it is reasonable to argue that if the present Administration and future ones put forward the case for integration more forcefully, they will find basic attitudinal support among the nation's white people.

Chairman Celler. Mr. Hungate.

Mr. Hungate. I want to thank the gentleman for his contribution. He is and should be recognized as one of the great legal scholars in Congress.

In talking about polls, and we have had polls cited on both sides of the issue, and as one who has read the Reader's Digest and remembers the prediction of Dewey over Truman, I ask the gentleman if he thinks that because we had 76 percent or 86 percent of the people in a poll say they favor a certain course of action, that would be a reason for the Congress to propose an amendment of the Constitution?

Mr. DOWNING. I think we should try to abide by the wishes of the people. If they want this right, and it is not given to them by the legislature, it should be by constitutional amendment.

I agree with the gentleman on the accuracy of the polls.

But let me tell you something else. One of our colleagues a year ago said, "Watch out. This is going to be one of the political issues in the campaign of 1972." And at that time everybody said, "No, this would not be such an issue." But look at what it has done now. All of the half dozen candidates who are running are discussing this issue.

Mr. HUNGATE. If I may have one last question. I think Gallup or various polls, Harris and others, will show some 80 percent of the people favor stringent gun laws. Would the gentleman think that was a reason to favor an amendment to the Constitution to require registration of guns?

Mr. DOWNING. No, not to the Constitution, I would not.

Mr. HUNGATE. Thank you.

Mr. POFF. Mr. Chairman.

Chairman CELLER. Yes.

Mr. POFF. I welcome the witness to the committee. It seems that I have had that pleasure often today.

The gentleman has given a meaningful contribution to the committee. Like so many other witnesses that testified, he went to the University of Virginia Law School. I know that he has a profound knowledge of and concern for the problems involved.

Mr. DOWNING. I was happy to be a classmate of Congressman Poff, Mr. Chairman.

Chairman CELLER. I hold a high regard for the gentleman who has just testified, but in light of the feeling that 80 percent of the people in the North, and 75 percent of the entire Nation, are in favor of integration, I don't see how a constitutional amendment could successfully be submitted to the Nation.

Mr. DOWNING. A constitutional amendment is a serious thing, Mr. Chairman, and it should be the result of deliberations of great depth. I don't like to trivialize the Constitution, but I think that is the only way that we are going to accomplish what most Americans seek.

I wish I could believe that legislation was the answer, but I do not.

Chairman CELLER. Thank you very much.

Counsel wishes to ask a question.

Mr. POLK. Mr. Downing, I would like to ask you one question.

You and several other Members have referred to the Civil Rights Act of 1964 to illustrate the hopelessness of a statutory approach to the problem. I believe the language in the 1964 law that you have in mind is as follows: "* * * nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school * * *."

However, in the *Swann* case, Chief Justice Burger, writing for the unanimous Court, said the following:

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved, and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

I am puzzled by the assertion that the Supreme Court has not abided by the views of the Congress expressed in the 1964 Civil Rights Act.

Mr. Downing. What is the plain meaning of the wording in the 1964 act? As you read those words, does it not imply that you shall not bus solely for racial balance? If not, what is the meaning?

Mr. Polk. That is exactly what it says, that the act does not authorize busing to achieve racial balance.

Mr. Downing. Where did the courts go wrong, and where did they get off the track?

Mr. Polk. Have they? I have not found a single opinion to date where the courts have ordered busing for the purpose of achieving a racial balance as that term is used in the 1964 Civil Rights Act. And if they did, the Supreme Court said in *Swann* it would reverse.

Mr. Downing. As you are aware, the language is not in the orders, but to the affected jurisdiction the intent and effect is clear.

Mr. Polk. What the courts say they are doing is issuing orders to desegregate; and that is distinguished from issuing court orders to overcome racial imbalance by section 401(b) of the 1964 act.

Mr. Downing. Mr. Counsel, there has been a pyramid of judicial decisions after the *Brown* case, but it has been, in my opinion, an inverted pyramid of bad law, and I don't see how the Court could possibly construe the words which you read in any other manner except what they really mean.

Mr. Polk. I appreciate your comment. Thank you.

Chairman Celler. Thank you very much.

Our next witness is another gentleman from Virginia, Mr. William Whitehurst.

Mr. Whitehurst.

STATEMENT OF HON. G. WILLIAM WHITEHURST, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Whitehurst. Thank you, Mr. Chairman.

Mr. Chairman, my statement also will be brief. It is only four and a half pages, although I do have an insertion that I would like to put in the record.

Mr. Chairman, I am most grateful for this opportunity to appear before this distinguished subcommittee and present my view on the problems raised by the massive busing of students for the purpose of achieving racial balance in the schools.

I represent the Second Congressional District of Virginia, which includes the cities of Norfolk and Portsmouth.

The path of integration in the city of Norfolk has not always been easy. In 1959, the white high schools of the city were closed for a semester, during the period which is remembered as the time of massive resistance to integration.

In retrospect, that event, painful though it was, was the beginning of efforts on the part of our community leaders and the vast majority of our citizens to preserve public education, while at the same time complying with the injunction of the courts to proceed with integration.

Since that time, integration has proceeded apace, largely on a neighborhood basis, with students attending the schools that were closest to them. Faculties were integrated with a minimum of difficulty, and there emerged a checkered pattern of integration. I say checkered as opposed to token, because there is a distinction.

Some high schools had a greater degree of integration than others. My own high school, from which I graduated 30 years ago, Maury High School, was the most heavily integrated white high school. Racial tension there has been at a minimum.

On the elementary and junior high levels, the same pattern prevailed, but because of the neighborhood locations of elementary schools, there were many more with pupils of only one race attending.

This pattern was shaken to its foundations 2 years ago as a result of court cases which challenged the integration program of the Norfolk city schools. In successive years, a drastically altered integration program, designed to insure an artificial racial balance of a sort, was instituted, first on the high school and junior high school level, and then last fall on the elementary school level.

The same pattern has been followed in Portsmouth, Va.

To appreciate the full impact of what has happened in Norfolk, I commend to you the statement of a fine public servant, the chairman of our school board in Norfolk, Mr. Vincent J. Thomas.

Members of the Judiciary Committee should know that this is a nonelective position. Members of the board are appointed by the Norfolk City Council, and serve without remuneration. It is truly public service in the noblest sense.

Turned another way, it can be a monstrous headache. Mr. Thomas and his board have spent countless hours, in court and out, trying to satisfy the objections that Government attorneys and attorneys for the NAACP have raised.

Although the board's own plan offered the best hope for quality education for all children, they have been forced to accept a plan which requires the busing of nearly 20,000 children, for the purpose of achieving racial balance, and they have tried to implement it and urge acceptance of it against their better judgment.

It is interesting to me that I have never heard the quality of education mentioned as a criterion by the courts.

Mr. Thomas has done his job in the face of vociferous criticism and verbal abuse from outraged parents in the community. Lesser men have long ago resigned in the face of such a storm. It is to Mr. Thomas' credit that he has stuck it out. Last year, he was chosen Norfolk's first citizen, an honor he richly deserves.

With this introduction, I hope you will read the text of his proposal, which was presented last fall, approximately 1 month after the massive busing had been initiated. It is an appeal to reason, and any unbiased person could only conclude from Mr. Thomas' summation that busing in Norfolk to achieve racial balance has not realized educational objectives commensurate with the dislocation, financial sacrifice, and alienation of thousands of citizens from the public school system.

More than 7,000 white children have left the public school system of Norfolk alone. As Mr. Thomas states, this represents a loss of over 20 percent of the white students. Where have they gone? To private schools, or else their parents have moved to nearby communities.

All of us know that our school systems rely heavily on Federal funds. With a large military and defense-oriented population in Norfolk, Federal impact funds are vital to the operation of our schools. Consider what an adverse effect the loss of these students have on the formula for receiving Federal funds.

Think, too, if you will, of the impact on the city at large of the flight of thousands of families from its environs, the resultant loss in tax revenues, which affects the economic life of the city itself.

The picture of massive busing presents the disappearance of the neighborhood school as a vital force in community life. The vitality of the elementary school PTA is bound to suffer when the children are being transported 12 miles away, as is the case with many of our children.

It has always been a traditional right of our citizens to choose the neighborhood in which they want to live, for its churches, shops—and its schools.

I asked Mr. Thomas this. I said, "You have been forced to accept a particular plan by the court. You are going to lose 20 or 25 percent of your white children. Are you going to have to play musical schools with these children?"

He said, "I don't know."

What becomes of the small boy or girl who becomes ill during the day at school, when it is not convenient, or in some cases even possible, for the parent to come get that child?

How do we properly administer the very necessary school breakfast programs when inner-city children are being bused elsewhere, some to one school and some to another? Until this time, the children have been able to walk to school and get there early enough to receive a warm, nourishing meal.

What of the varied extracurricular or afterschool activities, which are inhibited by staggered schedules and the time lost in transportation?

These questions stem from personal pleas made to me by concerned parents in my congressional district.

What, too, of the environment to which the culturally deprived child returns each day after school? Does a trip across the city on a bus take the place of the cultural and motivational enrichment of Headstart and Follow Through?

Like many of you, I am reluctant to tamper with the Constitution. It has served us well without undue encumbrances. But when judges place an interpretation upon the 14th Amendment to go far beyond the implications of the language of the 1964 Civil Rights Act, then I am left with no other choice than to urge the adoption of an amendment which will clearly define school attendance.

For this reason, I have signed the discharge petition which is currently before the House, which urges consideration of the amendment offered by the gentleman from New York, Mr. Lent.

If there is uncertainty in this committee or in the Congress as to the intent of this amendment, then let us debate it and clarify it, changing it if necessary. But let us take action to restore the neighborhood school to our people before further damage is done to the public school system, in my district, and elsewhere in our land.

Let us return the schools to the purpose for which they are intended: to provide the best possible education for every child, so that each one may realize his potential.

Mr. Chairman, I thank you for this opportunity to appear.

Chairman Celler. Do you wish to place this statement in the record?

Mr. Whitehurst. I respectfully request to place in the record following my testimony, the statement by Mr. Vincent J. Thomas.

Chairman Celler. You have that permission.

(Reprint from the Congressional Record follows:)

[From the Congressional Record—House, Oct. 12, 1971]

Failure of Forced Busing of Students in Norfolk

(By Hon. G. William Whitehurst, House of Reps.)

Mr. Whitehurst. Mr. Speaker, anyone who believes that the forced busing of students to achieve racial balance is desirable should read the statement made by Mr. Vincent J. Thomas, the chairman of the Norfolk City School Board.

The city of Norfolk has been forced into the massive busing of children in grades 1 through 12. The pattern of failures which has occurred elsewhere is now repeating itself in the city of Norfolk. There has been an aggregate loss of 7,000 students over the past 15 months.

I hope that my colleagues in the Congress will take the time to read Mr. Thomas' statement. Those who are now suffering the impact of massive forced busing will find the conditions all too familiar. Those who have not yet been faced by it would be better advised to read these words. For like the plagues of old, no one is immune from the consequences.

There is only one final solution to the heartrending tragedy which has been worked upon us by the Federal courts, and that is to sign the discharge petition offered by Mr. Steed on behalf of Mr. Kemp's resolution providing for a constitutional amendment which will restore the neighborhood school to the children of America. I include Mr. Thomas' statement in the Record:

TEXT OF THOMAS' PROPOSAL ON NORFOLK SCHOOL SITUATION

The Supreme Court of the United States has declared in a number of school cases that school boards of formerly de jure segregated school systems have the affirmative duty to come forward with plans of integration which "promise realistically to work, and to work now." The Supreme Court did not specifically define what it meant by the "realistic workability" of a plan of integration, but reasonable men must assume that and workable plan should meet the following minimum conditions:

1. It must be constitutionally acceptable.
2. It must be educationally sound.
3. It must be within the power and capacity of the School Board realistically to implement the plan, to achieve and maintain the degree of integration set forth in the plan, and to stabilize the school system.

If these three conditions cannot be met, it then becomes impossible to achieve the recognized benefits of integrated education and will inevitably lead, as it has in other urban areas, to the frustration of the basic constitutional purpose of the 1954 decision; that of security for every child an equal educational opportunity. Integration temporarily achieved by the mere mixing of bodies, and then lost through resegregation, is not the solution to our problem. This ruinous process is already under way in Norfolk.

The Norfolk School Board, in 1969, presented to the Court a plan which, with some modifications, would generally meet the above tests and secure the maximum amount of integration which the School Board could reasonably be expected to achieve, and more important, to maintain. The plaintiffs, however, through the NAACP Legal Defense Fund and the Justice Department, presented other plans and other philosophies, exemplified by the C Series of the plan proposed by an NAACP expert, Dr. Michael Stolee, and this latter plan was accepted by the Appellate Court, while that of the School Board was rejected. Following the long awaited Supreme Court decision in the Charlotte-Mecklenburg case, known as Swann, the Fourth Circuit Court of Appeals remanded the Norfolk case to the District Court with the following advice:

"The Norfolk plan may be based on a revision of the Stolee C plan with necessary modifications and refinements, or the board may adopt some other plan of its choice that will meet the requirements of Swann and Davis."

Translated into plain language, this said that Norfolk must implement "Stolee C" or some other plan which would result in the same amount of racial mixture.

With great reluctance and with sincere reservations about its workability, the School Board offered a plan of pupil assignment based on Dr. Stolee's Series C, in effect balancing the races throughout all of the City's schools with attendant massive busing, as required by the Court.

Although the Norfolk schools have been open only a short time, it is already painfully apparent that this plan, which never really held a promise "realistically to work," is in actuality, not working. And in my considered judgment, it is not within the power of the School Board nor the Administration to make this plan work satisfactorily and be acceptable to the majority of our citizens over the long run.

This contention of non-workability is supported by the following facts:

1. Since the end of the school term June, 1970, the Norfolk system has suffered the tragic loss of some 7,000 white children, who, because of the unacceptability of these educational arrangements to the children and their parents, have either withdrawn from, or not entered, the Norfolk school system. This represents the incredible loss of over 20 per cent of our white students in only 15 months. This result is absolutely unacceptable to the Norfolk School Board.

While a small number of these parents may be die-hard segregationists, I submit that the majority of them are conscientious and sincere, and are genuinely concerned for the welfare of their children and for their children's rights as they may perceive them. These are good citizens who, by and large, have faithfully supported public education in Norfolk and who have provided the resources to nourish it. They have also accepted integration as right and just.

Many of these people cannot afford private education, nor do they really want private education. Many of these people cannot afford the transportation expenses imposed upon them. Many of these families cannot accommodate the family disruption caused by the extreme staggering of school openings and closings. Many of these people will not endure a situation which they feel sincerely tramples their own individual rights and prerogatives.

If our school system and our City are to survive over the long run, we must re-create a set of educational conditions which can be reasonably justified to our citizens as deserving of their support. This means no less than a stable, integrated school system delivering an equal educational opportunity of highest quality to every child.

2. There is at present under way in Norfolk, and in other similarly affected communities through the country, a massive and frantic search for alternatives to public education. "Instant" schools are springing up everywhere, most of which will never be able to provide the quality of education that is provided in our public schools. Established private schools are being deluged with applications. Parochial schools are noticing a sudden upsurge in the number of parents desiring a religious education background for their children. Parents are making arrangements to move from the city or locate their children with relatives in other communities not subjected to the traumas of massive busing. Middle class families moving to this area are avoiding Norfolk in favor of neighboring jurisdictions because of the unstable school situation.

As a practical matter, this search for alternatives to public education will continue to be pursued as long as extreme conditions, such as those now present in Norfolk, continue to be imposed upon our citizens against their will and their better judgment. This gradual abandonment of urban public education by the middle class can only lead to a gradual deterioration of our public educational system, as it has in communities such as Washington, D.C.

3. As argued by the School Board in Court, the transportation system is simply inadequate to carry the burden imposed upon it. Even with the loss this year of some 4,500 students, our busing arrangements are still a shambles. Every day there are children who do not get to school because of transportation inadequacies. Every day there were children who do not get to school because their families cannot pay the bus fare. Every day there are complaints about bus overcrowding. Every day there are concerns expressed by parents for the safety of their children. We have daily requests from parents, black and white, to transfer their children back to their neighborhood schools because they cannot afford transportation costs or for other, to them, equally valid reasons.

4. In order to make optimum use of the inadequate transportation facilities available to us, it has been necessary to stagger school openings from 7:45 a.m. to 9:40 a.m. and closings from 2:00 p.m. to 3:55 p.m. This has caused a great deal of

disruption both within the families of our children and within the educational program itself. It is difficult to find any family which has not suffered some measure of disruption and inconvenience from this "bizarre" plan. It is also difficult to find a teacher or principal whose educational program has not been appreciably disrupted.

5. The exposure of our children to possible physical danger has been greatly increased. It is axiomatic that the more children requiring transportation to school, the more chance of travel-related injuries and problems. Furthermore, in order to comply with the orders of the Court, it has been necessary for us to put young children on the second floor of some of our older buildings, thus increasing to some degree their exposure to fire danger. Parents, whose children must be transported far from home to school, are concerned about their availability to their children in case of illness or accident. Many also fear for the safety of their small children in strange neighborhoods and this applies to both black and white parents. Many worry about the adaptability of their small children to strange and unfamiliar surroundings.

6. While we parents are naturally concerned about all of our children, most of our concern in this situation is concentrated on our younger children. To me, it is extremely doubtful that we can ever create a set of conditions in our public school system in which mothers would readily and voluntarily accept the transportation of their small children out of their immediate neighborhoods and long distances to strange neighborhoods. This feeling on the part of parents is no respecter of race.

Given proper resources, the School Board would have it in its power to minimize the actual inconveniences resulting from an inadequate transportation system and remedy most transportation problems, lessen school staggerings, and improve safety measures. However, as a practical, political fact of life, it does not appear that these resources will be forthcoming until the School Board can convince the fiscal authorities that the allocations of such resources will result in a stable school system capable of attracting and holding the middle class. Our City, State and National Governments to date have all turned aside our requests for transportation assistance.

While the School Board was completely unsuccessful in convincing the Courts that the above unacceptable results would be obtained from the implementation of a plan such as that recommended by Dr. Stolee; the NAACP and the Justice Department, the Courts must now recognize the stark fact that these counterproductive results have indeed come to pass. They must also see that the constitutional and desired by the Courts are as a practical matter, being thwarted through the withdrawal of white children from the system. Since these same results are being obtained in many other school systems, adjustments will have to be made by the Courts. It makes no sense for us to commit educational suicide.

Already there is some indication that the lower courts are recognizing the detrimental results of merely mixing bodies through disruptive busing plans. Listen to the comments of Federal District Judge S. Hugh Dillin in his recent decision in the Indianapolis school case:

"Something more than routine, computerized approach to the problem of desegregation is required to this court, lest the tipping point be reached and passed beyond reprieve. . . . Put another way, the easy way out for this court and for the (Indianapolis) board would be to order a massive 'fruit basket' scrambling of students within the school city during the coming year, to achieve exact racial balancing, and then to go on to other things. The power to do so is undoubted. There is just one thing wrong with this simplistic solution. In the long haul, it won't work."

It is the duty of the School Board to look to the future of our educational system. Under the present conditions, this future is very uncertain, and no one of us can predict just when and how our school system will be stabilized. If the withdrawal of 7,000 children is permanent, we will certainly have to adjust our pupil assignments drastically. This could lead in the future to the closing of a number of our older elementary school plants, a reduction in teaching staff, and a curtailment of the educational program. Available statistics show that approximately 1,000 fewer children entered our school system this year than could have been reasonably expected to enroll at the first grade level. With this trend accelerated in the future, how many families with children, moving into this area, will choose Norfolk for their homes? If our school system cannot present a more attractive picture to newcomers, how much will we suffer by attrition? How quickly will we lose the biracial integrity of our commuity?

Under the current conditions, I doubt that many of those white, middle class individuals—college professors, columnists, commentators, civil rights advocates, civil rights attorneys, employees of HEW, judges—who have done the most to bring about the situation in which Norfolk now finds itself would voluntarily subject their own children to what our children are being subjected. Certainly racial identity of the Washington, D.C., school system indicates that many of our government liberals do not practice what they preach.

PROPOSED PLAN OF SCHOOL INTEGRATION FOR NORFOLK

For the consideration of the citizens of Norfolk and others. I wish to submit a plan for the integration of the Norfolk School System which I believe will meet the requirements for a unitary school system, whose components can be justified both to the Courts and to our parents, and which can ultimately command the broad support of the majority of our citizens, both black and white. It is hoped that this plan will be studied by the leadership of all interests in our City and that black and white leaders will react to it publicly. I am unalterably convinced that the final solution to the problems of successfully integrating our school system must be forged by us and not by the courts. The Courts are simply not equipped to fashion a single solution which will fit every community. The solution I offer is designed for Norfolk alone.

The following are the elements of a unitary school system for Norfolk:

1. Immediate and absolute compliance with the "Negative Mandate" of the United States Supreme Court in its historical 1954 decision. This Mandate requires an absolute and immediate end to all invidious discrimination based on race. If there are lingering vestiges, either intentional or unintentional, of invidious racial discrimination in our school system, we want it removed forthwith, and in my opinion, have already largely done so.

2. Aggressive, good faith compliance with the "Positive Mandate" of the Supreme Court which puts an affirmative duty on the School Board to eliminate, to the extent that it can reasonably and practically do so, all effects of past, state-imposed segregation. This is where the current legal argument lies. Are there any practical limitations on what a School Board must and can do to comply with this affirmative "Mandate"? For instance, it is widely recognized that in cities like New York it is an absolute physical impossibility to obtain racial mixture in every school. Are there not similar or other valid limitations on Norfolk's ability to achieve and maintain a racially balanced school system? The results of our current desegregation plan plainly indicate that there are.

Some affirmative actions completely under the control of the School Board are faculty to maximize integration, location of additions and new schools to facilitate integration, use of multiracial educational materials, etc. The aforementioned devices have been, and are being, used in our system to maximize integration. The School Board and the Administration should, through continuing leadership, create within the school system a spirit in which every decision is examined in the light of its racial implications, and where possible, made in such a manner as to foster true and lasting integration of the system.

3. As soon as possible we should alter the grade organization throughout the system from a 4-3-2-2 organization to a K-4-4-4 organization as follows:

Elementary schools—grades Kindergarten through 4.
Middle schools—grades 5 through 8.
High schools—grades 9 through 12.

Under this new organization is suggested that there be approximate racial balance in all high and middle schools to be accomplished through busing, where necessary. While there are many valid reasons for not busing younger children, these same reasons do not apply to the same degree to older children. Even before integration, all of our junior and senior high schools required at least some bus transportation. In view of the command of the Courts to obtain maximum amount of integration, using busing if required, I feel that no argument against full integration at the middle and high school levels would find any acceptance in the Courts.

However, this plan for Norfolk envisions that elementary schools serve single attendance zones, gerrymandered where possible to achieve the maximum amount of desirable integration. Since only grades K through 4 would be served by these schools, they would have to draw from larger attendance areas than previously, thus facilitating a greater degree of integration. A further advantage would be to make room in these schools for kindergarten without the necessity of extensive building additions. The additional children, resulting from the addition of kindergartens, would be accommodated at the middle and high school levels through building additions and/or drawn so as to minimize the number of one race elementary schools, although of necessity there would be some remaining under this plan.

This plan would deliver 13 years of stable, integrated education to approximately 75 per cent of our children and 8 years of integrated education to the remaining 25 per cent. Viewed another way, 100 per cent of our children would have at least 8 years of integration and only 25 per cent would have less than a full 18 years. To my knowledge, there is no core city in the country that even comes close to matching these percentages.

4. In order to give any children left in uniracial schools the real choice of an integrated education, there would be an aggressively administered, majority-to-minority transfer plan. This would satisfy the requirements of the Courts that no child be denied the right to attend any school because of race. For those requesting transfer, transportation would be provided at public expense. Parents would be fully informed of this right to transfer and provided counseling if desired.

5. In order to remove many of the irritations surrounding the use of buses for purposes of integration, the school system should have control of school transportation arrangements, and transportation should be free to all. This could be accomplished either through the school system owning and operating its own buses or through some joint, satisfactory arrangement with the Virginia Transit Company. Complete School Board control of school transportation would make possible the following:

a. Elimination of irritations and disruptions brought about by inadequate number of buses, time staggerings, cost of transportation, and lack of late transportation to serve those engaging in extracurricular activities.

b. Reduce opposition to long-distance busing at the middle school level.

c. Make possible the implementation of innovative, interracial programs for elementary students remaining in racially isolated schools.

d. Provide transportation where necessary for flexible educational programming, maximum use of facilities, field trips, better use of community resources, etc.

e. Provide free transportation for those exercising majority-to-minority transfer rights.

f. Better control of discipline on buses.

6. In order to secure the future stability of our system and of our city, this plan should be accompanied by a progressive and honest open housing policy supported by our political, civic, and business leadership. Every citizen should feel that he is free to locate in any neighborhood which is desirable to him and his family and which he can afford.

7. There should be a high-level Biracial Commission, preferably appointed by, and responsible to, the Court, which Commission would oversee the implementation of the plan and give regular reports both to the Court and to the public. This Commission would include an equal number of whites and blacks. I would further support the appointment of at least one additional black to the School Board.

In my opinion, it is absolutely essential that the responsibility for the integration of our school system be returned to local hands. The broad principles of the law have already been established. It is now only left for us to implement them in a reasonable and faithful manner to the extent of our ability to do so.

Now that this plan has been set forth, let me anticipate some of the major objections which will be raised to it:

1. The greatest objection, certainly the greatest legal objection, will be to the fact that some few elementary schools will remain all black and racially isolated. Testimony by experts has shown in our case that the effects of racial isolation are cumulative and that integration is most desirable in the early years of school. I answer this objection by saying that there will be a number of conditions present in these schools which are not present in the classical, racially isolated school. Our school plants in the inner city range from adequate to excellent. Our faculties are completely integrated, and our better teachers and administrators are spread throughout the city. Funds from the Federal Government for education of disadvantaged children will be concentrated primarily in the isolated schools where the greatest need is. Our own transportation system would allow those children to participate in integrated, inter-racial educational programs by

moving them about the city. They would also have the right to transfer out if desired, with transportation furnished.

Finally, in my opinion, this compromise between the detrimental effects of racial isolation and the detrimental effects and results of breaking up completely our neighborhood schools, especially where young children are concerned, is a compromise which must be made if our school system is not to be eventually destroyed. In practice, we will simply have to do everything possible to neutralize the effects of this isolation for those who do not elect voluntarily to transfer out.

2. The second big objection will come from the parents of middle school youngsters who must be bused relatively long distances across town. Since having our own transportation system will allow us to eliminate extreme staggering, to provide late buses for extracurricular activities, and to eliminate cost to parents, I believe that this arrangement, after some initial objection, will be reasonably well accepted by parents of these children. At the high school level the children are more mobile and mature, and opposition to the transportation of high school students is simply not a governing issue.

3. The third big objection would be the objection to the cost to the taxpayer of setting up and operating our own transportation system or of public financing of the transportation of students by VTC. Many say that we cannot afford it. My answer is that if it is necessary to save our school system and our City, we can afford it.

There are, of course, bound to be other objections. I would hope that those who are sincerely interested in resolving permanently the difficult problems before us will take the time to react in writing. At this point, I see nothing to be gained by arguing whether or not this plan is legal. Since we purport to be a democracy, I firmly believe that if any reasonable plan is acceptable to the great majority of our people after full examination, then it will ultimately be acceptable to the Courts. But let us be the ones to determine finally the plan under which our school system will operate and not those from without, who have no vested interest in, or responsibility for, the education of our children.

Ours is a government of law, but for our government to work, the law must be understood and supported by the broad majority of the people. Laws that cannot command broad understanding and support must inevitably fail. The Courts, over all others, should understand this basic precept of American democracy.

An extreme plan of school integration which results in the actual loss of over 20 per cent of our white children, and the potential loss of many more, is neither an intelligent nor an American solution. Over the long run, only those who have no other alternative—primarily the poor and the black—will accept it. Is this really what we want out of urban school integration? I say we can do better. For the sake of all our children, we must do better.

NOTE

For the purposes of this paper, I have assumed the eventual establishment of Kindergarten in the Norfolk School System. It is increasingly apparent that urban children desperately need this early educational base. The proposed plan would merely operate on a 4-4-4 grade organization until kindergarten can be started.

I have purposely kept away from opening at this time the Pandora's Box of forced school consolidation with surrounding jurisdictions. The Courts are now struggling with this knotty problem, and it will be some time before the legal points are resolved. In the meantime, my own views about consolidation will largely be governed by how successful we are in solving our problems here in Norfolk.

VINCENT J. THOMAS,
Chairman, Norfolk School Board.

Mr. POFF. I think for the benefit of the record it should be said that the witness has an opportunity to offer special insight regarding Norfolk. He is an educated and distinguished legislator, one who has observed firsthand the practical aspects of the problem to which he has addressed himself.

For that reason, I believe that each member of this committee would do well to study not only the formal text but the plan that Mr. Thomas has submitted, and which is now a part of the record.

I thank the gentleman for his testimony.

Mr. WHITEHURST. I thank my distinguished colleague.

Chairman CELLER. We all thank you.

The next witness is the gentleman from Texas, Hon. Robert Price.

STATEMENT OF HON. ROBERT PRICE, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. PRICE. Thank you, Mr. Chairman.

My statement is not too long, and I will speak quite fast.

Mr. Chairman, I appreciate the opportunity to appear before this subcommittee today in order to express the feelings of my constituents on the much-discussed issue of busing.

From the outset, I would like to clarify exactly what I am referring to as well as what I am not referring to when I talk about "busing."

I am not referring to the busing of schoolchildren that has been taking place for many years in rural areas like so much of my west Texas district, nor am I referring to the normal kind of busing that takes place in the cities.

I am not referring to busing in these forms, nor do I oppose busing in these forms, because this type of busing is in nearly every case merely a means of getting schoolchildren transported from their homes to the public school nearest them in the safest, quickest way possible, and because—above all else—this type of busing is a voluntary act on the part of the schoolchildren and their taxpaying parents.

Chairman CELLER. Is that more than 40 percent of all schoolchildren who are bused in the classifications you just mentioned, at a cost of about $980 million, involving 200,000 buses?

Mr. PRICE. Yes.

But my point is that this has been going on for years. I rode a school bus many miles to get to school, myself.

What I am referring to when I talk about busing is forced, compulsory, involuntary busing solely for the purpose of achieving some sort of racial balance in school populations.

Despite loud outcries to the contrary, I want it understood unequivocally that this issue of busing is not an issue of race.

Opposition to busing in order to achieve racial balance in public schools does not constitute an attempt to perpetuate segregation in those areas where it may still exist. Busing is not a method at once embraced by blacks and rejected by whites. On the contrary, it is, in my congressional district at least, uniformly shunned by blacks and whites alike.

I have received much mail on this matter of busing, as have all my colleagues, and the will of the people is clearly ascertainable on the issue.

Let me articulate, if I may be permitted to attempt to do so, why so many are so upset and concerned about this one issue, which would affect actually only a small percentage of the total number of students throughout the country.

I believe that two major reasons form the bedrock on which the outcry of opposition to busing is based. First, the people simply do not accept the underlying principle that a mathematically precise distribution of students is necessary for quality education, which is what Federal courts are trying to tell us.

And second, the people absolutely reject the mandatory aspect of this court-directed homogenization of human beings.

What the courts are trying to do—and what the people do not want to have done—is to take some more of the freedom of the people away from them.

The people want neighborhood schools. The people want local control of their schools through their own locally elected school boards.

And when I say "the people," I mean all of them, black and white. As a matter of fact, I have received from my own district more signatures on petitions and letters from blacks than I have from whites opposing forced busing.

Forced busing is, in my opinion, damaging to students, who are in some cases taxpayers, also, and an inconvenience to taxpaying parents. It involves much more than safety and economy, although those factors are important.

It involves removing schoolchildren from familiar neighborhood groupings and busing them long distances, solely to juggle percentages of races in schools. It is my contention that this results in a loss of neighborhood and community identity, a loss of control over the child, and a loss of control over the schools by the parents, and a likelihood that parents will not participate in their children's school activities to as great a degree, due to the increased difficulty of doing so.

I have always said if people participated in activities of their school, you will see a vibrant school, and if they don't participate, you will see a dying school, as far as spirit is concerned.

Mr. Chairman, I introduced House Joint Resolution 860 during the last session of this Congress, aimed at amending the Constitution in order to provide a solution to the problem of forced busing.

I prefer this method over the legislative approach, because it allows the people a chance to speak to the issue in a more direct way, through their State legislatures, during the ratification process.

I am not, however, opposed to a strictly legislative solution to the problem, if that procedure can, in fact, achieve our goal. Consequently, I am studying several ideas with the thought in mind of introducing legislation designed to provide an acceptable solution to this situation.

Chairman CELLER. We will be very happy to have your ideas.

Mr. PRICE. Mr. Chairman, I think that, first of all, when this generation of young people is educated, they will be able to earn a better salary, and they will be better able to move into any neighborhood that they might choose, and, therefore, they will send their children to that school that is nearest to the home that they are able to buy.

And I think it is a process, even though we might think it is slow, which will come, and it has proven it is gradually coming.

Mr. Chairman, in summation, let me say that the vast majority of people do not like forced busing. They do not want it. They are determined not to have it. And, if the people are to be served, we, as their representatives, must work to conform the policy of this Government and the law of this land to the will of the people.

Thank you, Mr. Chairman.

Chairman CELLER. Unless there are some questions, the Chair wishes to thank you very much for your contribution.

Mr. PRICE. Thank you, sir.

Chairman CELLER. The next witness is Hon. Walter B. Jones, of North Carolina.

STATEMENT OF HON. WALTER B. JONES, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. JONES. Thank you, Mr. Chairman, and members of the committee.

I appreciate the opportunity to appear in support of House Joint Resolution 620, which is identical to a bill I introduced, House Joint Resolution 870.

I am keenly aware that unfortunately many Members of Congress feel that most Southern Members have introduced this type of legislation as a result of being racists or complete segregationists. I hope that I can convince you that this is not true.

I have the honor of representing the First District of North Carolina, which, incidentally, is basically a rural district, yet I am confident that we have as many schools totally and completely integrated as any section throughout the United States. And I am proud to say that this has been accomplished with a minimum of disruption and difficulty, especially as compared to other parts of the country.

So I again ask that you believe me when I state that the question of integration is not one to which I am addressing myself, but I am speaking on behalf of the majority of the citizens that I represent, of both black and white races. For I am convinced that both are concerned with the direction which our schools have taken in recent years.

First, and in the main, the schools have lost the support of the public. This is evidenced by the number of bond issues for improvements and much needed new facilities which have repeatedly been defeated. Further, a decline in wholesome, extracurricular activities, and parent-teacher associations.

I am sure it will come as a surprise to many of you when I tell you that a few months ago a conference was held in my office between officials of HEW and five black citizens, two of whom were school administrators, virtually begging for an additional year of freedom of choice. They had with them signatures from the entire student body, as well as over 1,000 of the black citizens of the county involved.

Unfortunately, either correctly or incorrectly, the majority of the people that I represent have interpreted the 1954 Supreme Court decision as saying only that no child could be excluded from a school because of his race, creed, or color.

Therefore, it is difficult for them to understand why, either through Federal directives or court decisions, that a student be assigned to a particular school because of his race, creed, or color, especially in view of his desire not to do so.

Let us for a moment consider the serious question of busing to accomplish racial balance. I am all too familiar with the argument that for years in the South the black children were bused great distances to accomplish segregation. I will not contend that this was right or proper, but I do contend that if this was wrong then, then massive busing is equally wrong today.

Without attempting to interpret or pass judgment on the many interpretations of the Supreme Court rulings, I respectfully contend that a matter as important as the education of the children of this Nation should be submitted to the people for their final judgment.

So, through a constitutional amendment, I hope that you will give the American public this opportunity. In this very hour, in the U.S.

Senate, this sensitive question is being discussed and debated, with multiple offers of remedial relief, none of which can be guaranteed to be upheld by the Supreme Court.

But by providing this mechanism of the American expression, and in so doing, we will restore the dignity and the public support of the schools of this Nation, which is so vitally needed. Favorable action by your committee will be nothing more or less than a perpetuation of the democratic processes.

Thank you for the opportunity to appear before your committee, and I respectfully ask that you give serious consideration to the resolutions before you at this time.

Thank you, Mr. Chairman.

Chairman CELLER. Thank you, sir.

Our next witness is Hon. Robert G. Stephens, Jr., of Georgia.
Jr., of Georgia.

Mr. Stephens, I am sorry we have kept you waiting. We have one more witness after you.

STATEMENT OF HON. ROBERT G. STEPHENS, JR., A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. STEPHENS. Thank you very much, Mr. Chairman.

I have enjoyed waiting, because I have certainly followed with interest the testimony that has been made, and I have followed with interest the questions that have been asked by the subcommittee here.

I have not, as you realize, introduced a constitutional amendment, nor have I introduced a piece of legislation in respect to this.

If I felt qualified right now to word a constitutional amendment that I thought would be helpful in the situation I am addressing, I would have done so.

I have, of course, signed the discharge petition that would take the Lent proposal from the committee and bring it to the floor of the House. I signed that, not necessarily because I think that the Lent amendment would achieve what I would like to see done, but because I would like to see the House debate and discuss the possibilities of the constitutional amendment.

I had also hoped that this committee, which is a Judiciary Committee, would come forward with a proposal that would be satisfactory and could be submitted to the House and to the American people. I think that the time has come now for the only chance to solve this question of busing will be by constitutional amendment. I think that in the initial steps of the circumstances, when HEW made guidelines and then these guidelines became issues and then issues went to the court that somewhere along the line we might have arrived at some solution before they became issues.

But the people, at least in Augusta, Ga., have been told by the Federal court there that they must bus; that they must bus to achieve racial balance in the schools. If the court doesn't say that, the board of education believes it, and the people believe it, and they are doing so.

The Augusta decision of the district court is the latest decision following the other decisions made by the court, and I have had, as you realize, quite a good deal of information from my constituents in Augusta, Ga. Many have been in an integrated situation. They have integrated PTA meetings. Now 13,000 are being bused in the middle of a school term away from their neighborhood schools where the PTA groups have worked together—integrated PTA groups have worked together. They have raised money to make playground equipment available for neighborhood schools and there is a family which lives next door to the school which must have its children bused across town in order to achieve racial integration away from their home, community, and friends.

I am very much concerned about the quality of education as a result of the changes that have occurred and the artificial requirements that have been made. That, I think, is the great tragedy in the artificial regulations that have been made. The question of passing legislation might help but the only hope of passing legislation like that which has been proposed in the Senate is basically for the Supreme Court to reverse itself. That has been done by that Court before.

If the chairman will remember, in 1964 the civil rights bill was proposed, led by the chairman and by Mr. McCulloch. The language used in that statute was unconstitutional as the law then stood because in 1875 the U.S. Supreme Court had ruled upon the very language and said it was unconstitutional. So the language of the Civil Rights Act of 1964, which you gentlemen espoused, was unconstitutional. If we do pass legislation now that is contrary to what the Court now says, that in itself would have to be unconstitutional under the viewpoint that I took on the Civil Rights Act of 1964. The court has ruled upon the very issue and the only hope I find was that from 1875 down to 1965, the Court would reverse itself and rule differently on the cases.

Now, the people tell me in Augusta, Ga., that they are finding that title I funds under the education bill are being spent in schools that were predominantly black, that the equipment is better. I am passing on to you the results of a hearing that I called for Augusta, Ga., on Saturday, to find out what the people were complaining about because I was receiving letters about the situation. I think that whatever is done, something must come out of this committee for the people of the United States, and, as I say, the only thing I think that will be effective will be a constitutional amendment.

I was interested in the comments which the chairman made about rights in the Constitution itself and how we have had amendments to the Constitution.

I recall that the first 10 amendments were passed as negative because in the Constitution itself we said that every right that was not granted by this compact to the Government of the United States was reserved to the States.

Now, when the proposal of the Constitution was originally made to the States, they were objecting to it because it was not spelled out in the Constitution that these certain rights that we have, the civil rights we have, were not preserved and held. They said that the first 10 amendments must be adopted before some of the States would come into the Union. Those first 10 amendments are negative. They say that the United States shall not abridge the freedom of speech and shall not do this or that. It was not until the 14th Amendment came along that you had these rights made national rights.

I would like to ask permission, Mr. Chairman, without taking any more of your time, to make an additional formal written statement to present for the record and to file documents and statements pertinent to my testimony. The statements are those of William H. Grice, Charles J. Moye, Orion D. Sebastian, M. F. Detweiler, John E. Lord, Jr., and Jack P. Nix.

Chairman CELLER. That will be done.

(The documents and statements referred to follow:)

STATEMENT OF HON. ROBERT G. STEPHENS, JR., A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman and Committee Members: Thank you for giving me an opportunity to appear and express my opinion and that of the majority of my constituents against the forced busing of students to achieve racial balance in schools.

I am opposed to this practice and have always been opposed to it.

In 1968, on June 26th, I voted in the House against an amendment to the Appropriations bill which would allow Federal money to be spent on housing.

In October 1968, in considering the conference report on that bill, I voted against putting Federal money out for busing.

On July 31, 1969, a vote was taken on busing funds on the HEW Appropriations bill. I voted against spending much funds.

On December 22, 1969, on the same bill, I voted to keep language in the bill to prohibit busing, even though modified by the Senate.

President Nixon vetoed this bill which had anti-busing language.

On February 19, 1970, the HEW Appropriations bill vetoed by the President was again voted on. It had a strong amendment to prevent spending funds for busing. I voted for the amendment.

On April 14, 1970, I voted against the Cohelan Amendment which tried to knock out anti-busing language in the Appropriations bill for the year ending June 30, 1971.

On June 30, 1970, amendments were offered on the floor by Cohelan and Conte to cut out language that stopped money for busing. I voted against these amendments.

On July 16, 1970, I voted for the Appropriations bill that had anti-busing language.

On April 7, 1971, on that year's Appropriations bill, I voted twice that day to leave anti-busing language in the bill.

Also on April 7, 1971, I voted for final passage of this bill which had strong anti-busing language.

In October 1971, I signed discharge petition No. 9 asking that the Lent Resolution to amend the Constitution to prevent busing be brought to the House floor.

Today, February 29, 1972, I come before you to ask that the Judiciary Committee act now and quickly to bring to the House floor for public debate by everybody the Lent Resolution or some legislation that is designed to stop artificial busing of students to bring about racial balance in the schools.

Before coming here to testify, I called for an official public hearing in Augusta, Georgia, in the 10th Congressional District, where the latest order of a Federal court has been issued requiring the unrealistic practice of busing for racial balance.

In calling this public hearing, I mailed out 1,200 personally addressed invitations, sent notices to the two Augusta papers, three TV stations and eight radio stations. Everybody was adequately notified of the meeting to be held at the City-County Municipal Building in the Council Chamber. Arrangements were made to move to large accommodations of the city if the number of attendants justified it. For three hours, I listened to all sides. Parents were present. School teachers came. A school principal was there as well as a substitute teacher, four ministers, representatives of the NAACP, representatives of the Southern Christian Leadership, a lawyer for the Board of Education, two members of the Board of Education, one member of the Georgia House of Representatives, one member of the Georgia Senate and the Mayor of Augusta. About 25% of those who came were black. In the three hours, 30 people were heard. Ten of these were heard twice, some having requested time to rebut statements made by others.

I can testify to you that the great majority of the people who attended the hearing—over 100 persons—were violently opposed to busing students to achieve racial balance. I can also report that from the volume of mail I have received, the great majority of the people in Richmond County, Georgia, are opposed in the same way. Five statements were written out. The balance of the testimony was oral. I ask that these statements—typical of the majority views at the hearing—be made part of the proceedings of this Committee.

The statements are those of William H. Grice, Charles J. Moye, Orion D. Sebastian, M. F. Detweiler, and John E. Lord, Jr. I also advised the persons attending that if any of them—of the majority or minority viewpoint—wanted to write out their views, I would be glad to submit these written statements to the Committee. In addition, I present three documents and I ask permission to make them part of the record. The first is a resolution of the Senate of Georgia of September 30, 1971, sponsored by Senator James Lester of Richmond County and Senator Sam McGill of Wilkes County, supporting a Constitutional amendment opposing busing. The second is a resolution passed at a Precinct Mass Meeting of the 119th Militia District of Richmond County opposing busing. Third, I have been entrusted with an excellent statement opposing artificial busing by our fine State of Georgia Superintendent of Schools, Jack P. Nix, who has asked me to present it to this Committee. I commend this restrained and reasonable statement highly and urge its logic on the Committee.

In conclusion, let me thank you for letting me testify. Also, let me repeat what I started out saying: It is time for the Judiciary Committee to act on legislation on this national concern to stop busing to achieve racial balance in our schools.

February 29, 1972.

AUGUSTA, GA., *February 24, 1972.*

HON. ROBERT G. STEPHENS,
House of Representatives,
Washington, D.C.

DEAR SIR: I received your letter stating that you would be in Augusta, Ga., on Saturday morning at 10 a.m. and I will be there if possible. I am sure that the people of Richmond County will attend in large numbers and hope that in some manner we can put a stop to the way the Federal judges are trying to run the whole country, as I am sick of the way that Judge Lawrence has messed up the Richmond County schools and had some dumb people come down from a far northern State to tell us in Georgia how to run our schools and what a mess it is. I don't have any children in school but I do pay State and Federal taxes so that I should have a voice in how the High Court and the Federal judges try to run the U.S.A.

You have my full support in any way that may make a change from the way the school system is messed up at this time. I know that beyond a doubt if this is permitted the taxpayers will be to pay for the busing as the Federal Government isn't going to pay for the extra buses and drivers, the most disgusting thing is that the children will suffer the most by getting home late and leaving early to get to school.

Yours Truly:

WILLIAM H. GRICE.

AUGUSTA, GA., *February 25, 1972.*

REPRESENTATIVE ROBERT G. STEPHENS: Listed below are some of my observations of the events concerning education that have come to pass these few most recent months:

1. An agency set up the Department of Health, Education, and Welfare, for the purpose of working with our 16 member elected Board of Education, approved a school plan that was rejected by Judge Alexander A. Lawrence. He, in turn, brought in two men from Rhode Island who were totally unfamiliar with Richmond County, and its problems, and gave them the responsibility of indoctrinating a new plan, at our expense.

2. Our Superintendent of Schools, Mr. Roy Rollins, who has worked for many years to improve education for all the people in Richmond County, was publicly rebuked and down-graded by Judge Lawrence.

3. The shifting of school children in the middle of a term is senseless, affecting not only the children themselves by having to adjust to new surroundings, which

in itself may produce psychological difficulties; but the citizens that must pay taxes as well. Surely this mass upheaval of the school system will bring about the burden of added taxes in order to cope with the extra expense. This will only be another millstone around the neck of the working man. For an example of the expense, there was one school that needed to hire five patrol women at a cost of $5,000. This is just a fraction of the actual cost it would take to achieve mass busing.

4. One point that Ruffin, the black attorney for the plaintiff, made with Judge Lawrence was the fact that when he was a boy, he was bussed past the white schools, and now, he wanted this practice to be imposed upon the whites. Two wrongs do not make a right, and it certainly isn't right to discriminate against children attending neighborhood schools just because of this man's bias. Today, people of all races, creeds, and colors are living in the same neighborhood, and none are rejected from the schools. We need our neighborhood schools, not only for convenience, but for economy and better education.

5. We people are disgusted and abhor the tyranny that Judge Lawrence seeks to impose upon the majority to please a handful of the minority. Something must be done now to save our children from this trend toward Socialism that seems to be approaching. Parents will only stand to see their children maltreated for so long, and then, they themselves will attempt to correct the undoing.

CHARLES J. MOY.

FEBRUARY 25, 1972.

Congressman ROBERT G. STEPHENS, Jr.,
Georgia's 10th Congressional District.

YOUR HONOR: It is very possible that what needs to be said, and the desires of the people will not be expressed at the meeting with you tomorrow for lack of time. Therefore I feel it my duty to write this letter. I have talked with many people on the subject for which you are seeking information and so the views I express are not only my own. Time will not permit or I could have several pages of signatures to substantiate this. However this has also been done and the people feel that if their representatives and congressmen were as interested in issues that concern the people as they should be, many of these matters could have already been taken care of. People are fed up with being taxed to death and yet have no representation in the way their Government is run and especially unconstitutional judicial decisions that are forced upon them. It is unconstitutional to collect taxes to support an unconstitutional act. How many representatives and congressmen have sit idle and watch this process proceed? You might say this is not so, but I beg to differ with you. When they are out for reelection, they make it over their state giving flowery speeches and promises. How many have been out in the same manner arousing the people to the injustices taking place in our government? How many have proposed bills to bring issues to the people in the form of a vote so a true expression of all the people can be registered. It is unconstitutional to make an amendment to the Constitution for a handful of a minority group marching on or protesting to Washington. This seems to be the rule by which our laws are made in this age. Telegrams and letters are fine for conveying ideas or wishes but issues are far too serious for all the country, to let this be the determining factor for enacting our laws.

How many representatives or congressmen have met with state legislators and governors to advise them of actions that can be taken on the state level to correct some of the situations that face the people? There is too much party affiliation emphasis placed above the needs and desires of the people. Ones first allegiance should be to the people and his party second. How do you stand Sir? We pay Federal taxes, State taxes, School taxes and buy extra school supplies for our children to get an education. On top of this we are forced to contribute to societies to ban together and pay lower fees to defend us against tyranny by those our taxes pay to look after our welfare. There are no words to express the disgrace of those that fall into that category. How long does our representatives and congressmen think we can bare this oppression???

In addition to the questions I have already raised, there are several others that I would like clarification to:

1. Why does something that is unconstitutional to begin with, have to have an amendment to correct it?
2. What bill authorizes federal judges to write the laws of this country?
3. Why has Congress not started impeachment proceedings against these judges that are making their own laws?

4. What does Article X of the Constitution of the United States mean?

5. I think that it is quite noteable that Article X does not carry a section that states; "The Congress shall have power to enforce this Article by appropriate legislation."

6. What is meant in Article II, Section 3 of the Constitution that states that the President shall take care that the laws be faithfully executed?

The proposed amendment is no more than a pacifier. It will take too long to be passed in the first place. We do not intend to let our children's education be interrupted for that long. If an amendment is made to the Constitution regarding attending school outside our neighborhood or busing to accomplish racial balance, this same amendment must include mandatory attendance of Public Schools for children of public officials paid from taxes of the people. It shall be spelled out that there is no exception from the Presidents family to the lowest elected or appointed official. It shall also state that all children of these officials shall be withdrawn from private, parochial schools and private tutoring and placed in the Public School System at all levels of education by September 1, 1972.

Any amendment to the Constitution on this issue only adds confusion, since education is a matter for each of the states under Article X of the Constitution. The best way to handle the situation is to repeal all judicial orders on this issue and put it before the people in the November election!!; then act accordingly. By so doing, Government by the people and for the people, will have been returned to its proper prospective!!!

Your Honor, we ask that you and all other representatives and congressmen from the state of Georgia, immediately upon the Presidents return from China, present him with a request from the people to issue an Executive Order to the Supreme Court and all inferior courts to repeal any and all orders they have issued on this matter. Time is most important as our children's education is at stake.

Thank you for taking your time to read and answer this.

Sincerely,

ORION D. SEBASTIAN.

FEBRUARY 26, 1972.

DEAR SIR, I was present at the Public Hearing on busing you called for in Augusta on Feb. 26th.

I allotted my time to Mr. David Smith of the Board of Education as I'm sure he had the necessary facts and figures for rebuttal.

I would like to express a few of our views and comments past, present and future on the touchy subject of races.

Personally, I thought Mr. Barnes was a little harsh on you. I don't believe most people in public office that passed the busing bill ever dreamt that it would lead to what it has and destroy the concept of neighborhood schools.

I believe the meeting pretty well expressed the views of the majority and also the views of the minority. The NAACP is definitely not out for equal or quality education—this came out at the hearing—but strictly for racial balance and integration at any cost to the majority of the citizens. They are out to get the white race period.

Let's face the facts of the past. The Negro has very little history in this country. It was the white man who fought and won this country's freedom to start with. It was the white race that wrote the Bill of Rights and our Constitution. It was the white man who fought and won them their freedom to start with. The Civil War was a waste of manpower anyway as in time, because of population, they would have been given their freedom anyway. It was their own ancestors that sold them as slaves to start with so lets put the blame for this where it belongs. Most of them were better off as slaves in those days as slaves to white men than in the old country they were brought from. This is history and should be bygones.

Now let's look at the present facts. It is the black minority who are trying to get the white majority to bend to their wills and whims. It seems to government or our representatives have shown favoritism toward the minority because of interpretations in the Constitution. Let me say this, our way of life and our government has remained a democracy because the majority ruled and not the minority. The majority has always protected the minority in time of trouble. If a minority ever rules we will no longer be a democracy but a police state.

As far as equal, prejudiced or the word discriminate, its a bunch of unrealistic meaning of words. Nothing is equal. Wouldn't it be an awful world if this was the case? Everyone is prejudiced against something and discrimination is around us everyday in many ways. These words are a poor substitute for democracy in my opinion.

The two Reverends who brought religion into the hearing and quoted phrases which could be interpreted in many ways by many people had nothing to do with the matter at hand.

What has happened is the liberals have become too liberal and the silent majority are starting to wake up to what is and has taken place.

We should go back to freedom of choice period, in schools, colleges, jobs, churches, fraternities and communities. This policy will maintain individual freedom and only this way will we have true, honest law.

It should be a man's own resources and personal ability to get ahead, not something handed a certain group on a silver platter. That's one reason we should have a workfare program and not a welfare program.

When the Senators, our Congressmen or the Supreme Court talk about infringement of Constitutional Rights, they had better consider that what is justice for one group may be an injustice to another group. Whose rights are being infringed on. I, as an American Citizen and taxpayer, should have just as much right to say I'm not going to bus my children for any purpose, equal or quality education, racial balance or whatever it may be, compared to the person who wants to. That should be his individual right to do so, just like it is mine not to do so. Where will all this lead to next if it's not straightened out on the school issue, probably churches, communities, jobs, etc. Right at present I can go to what church I want to, what community I can live in, where I want to work and at what job. These things are just around the corner next if our representatives and the Court see everything as an infringement of Constitutional Rights. Where will it all stop? Probably long after we are dead but God help this country when it happens as history does repeat itself. As a matter of fact, some of these things are already starting to happen but so far on no large scale like the neighborhood school issue. But it's right around the corner, creeping in little by little. Just give it time.

When we say justice, liberty and freedom for all, that's what it means, each individual to his own right. This is why I say *individual freedom of choice*, in schools, colleges, communities, jobs, churches, should be the law of the land like it was intended to be and only this way will the Bill of Rights and the Constitution be upheld.

The way I see things going is that the black man is going backward instead of forward. They are always talking about what the white man did to them in the past. The past should be gone and forgotten and now they want revenge.

Yes, we should be able to pick our friends and who we associate with just like we should be able to pick our neighborhood school for our children, our churches and communities for our families and our place of employment.

Integration cannot be forced, it must come natural. I think the time element is going to be the only possible cure and even then the races will not mix because people are people and there is a difference.

The sooner the black man realizes this, the sooner he will become self sustained. If they would spend more time motivating the people in their own communities to straighten themselves out instead of always preaching how the whites have oppressed them and still do, the better off we would all be.

I personally cannot understand why anybody, regardless of race, cannot better himself or find employment if they want to. It's everywhere if they really truly try. All these free handouts here and abroad are nonsense. I have worked to earn my own living since I was eleven and still do now for my family. Every man is a little different one way or another. What one man can do another can't and so on and so on. If people are too helpless to help themselves, that is when they turn into something else than humans and I'm not talking about the old or mentally retarded or physically disabled person.

I think if integration was a valuable asset in all ways of life to all races—black, white, yellow, red—it would have happened long ago but it just isn't so and will never be, so let's face reality and use some common everyday sense.

The thing our representatives should remember is that no bill has ever passed yet that could make nationalities or religions get along, much less races. If only two people were left in the world, they would hunt each other out to fight over something.

Busing does not create equal or better education. All it does is create more problems and inconveniences for everyone. I think these things came out at today's hearing.

In other words, if we didn't learn anything else at today's hearing, we should have learned that what is considered good for one race is not always good for another. People of all races shouldn't be forced to do something against their wills at any government level.

No one in a freedom loving country wants to be forced into anything on anything. That's way freedom of choice takes preference over everything else when it comes to adhering to the Constitution.

We thank you again and realize you are doing what's best for all races.

The DETWEILER FAMILY.

AUGUSTA, GA.

HON. ROBERT G. STEPHENS,
Congress of the United States, House of Representatives
Washington, D.C.

DEAR CONGRESSMAN STEPHENS: I attended the meeting that you had in Augusta this past Saturday. I was impressed by what you had to say. It was appalling to see our Mayor Mr. Beckum with you as he has not opened his mouth one way or the other in our bid to stop the bussing of our children out of their neighborhood. We need relief now from this order that the judge has issued.

The news media are against us in this fight. We are not against intergration, but we are against busing our children across town to satisfy the liberal element in our country. I want the right to say where my child shall go to school and not the Federal Courts.

It seems that to me you are more interested in getting a new hospital here than you about our rights and freedom. We need a new hospital, but why spend all the money to purchase land when the government already owns the land where a hospital can be built.

What I am more concerned with now is what can be done to save our schools. You heard one teacher testify that she had lost her job because of the school boycott. There will be more teachers out of a job because in the schools affected so far, private schools have been started. The Evans Milledge School has about four hundred children in so far and we are expecting our enrollment to go far beyond this. I will put my children back into public school when the courts say I will not have to bus them.

What is happening now in Augusta and Richmond is that the blacks will suffer most as the white people will not vote to improve the public schools of this country as they will not benefit from them. I will fight all I can to keep from increasing taxes to finance schools busses improvement to the schools as long as I have no choice but to keep them in private school. The fact that 19,000 did not attend school Feb. 14, 1972 shows how people feel about busing their children out of the neighborhood.

I have two children that will have to walk three blocks from home and almost to the school that they were attending to catch a bus. They will be bussed by three schools that are closer to home to get to school. John Milledge is only .3 miles from my house. Lawton B. Evans is 1.9 miles from my house. Telfar is 2 miles from my house. Houghton to which they will attend if I let them be bussed is 3 miles from my house. The bad part of this bussing is they will have to go through the heart of the business district in the morning when people are going to work. They will be getting out of school in the afternoon when the evening workers are getting off and are going home.

Black parents tell me they are against this type of bussing but are afraid to object as they have threatened. They tell someone will burn their home. If this is true something should be done about it.

I am in the Boy Scouts. I am a Cubmaster and this bussing has completely wrecked a good scouting program we had in our school. It will keep the children in school so long that other activity will not be able to carry on.

I will work to have quality education, but I will do all that I can do to stop bussing as it tears down our neighbor schools. John Milledge had about 35% black in the school, so integration was not the problem. Why is it not against the Fourteenth Amendment to take the rights away from them and to affect the black race. Why is it against the law for me to choose where I will send my children to school? We have seen on T.V. the visit that Nixon made to China and from the reports the government to parents where to send their children. By eliminating freedom of choice you are limiting freedom of speech.

Why are the candidates that are running for president letting their children attend private schools? They are trying to push on the people of the United States something they don't believe in themselves. I thought that the majority ruled this country.

Thanking you for taking time to listen to us. Hope that you can be of help to us.

Yours truly,

JOHN E. LORD, Jr.

GEORGIA STATE SENATE

A RESOLUTION

Urging the Congress of the United States to propose an amendment to the Constitution of the United States; and for other purposes.

Whereas, the massive transportation of school children from one neighborhood to another merely as a means of achieving an arbitrary racial quota has created confusion and disruption of public school systems;

Whereas, this situation is creating bitter tension between the races in Georgia and throughout the Nation; and

Whereas, the parents of both white and black children resent this intrusion at the local school level by the federal government; and

Whereas, unless Congress intervenes and proposes an amendment to the Constitution of the United States which will permit local school administrators to regain the responsibility for managing their schools and educating our children, public education as we know it today will become nonexistent in certain areas of the United States.

Now, therefore, be it resolved by the Senate that this body does hereby respectfully urge the Congress of the United States which will give students the right to attend the public school nearest their place of residency which shall not be denied or abridged for reasons of race, color, national origin, religion or sex.

Be it further resolved that the Secretary of the Senate is hereby authorized and directed to transmit an appropriate copy of this Resolution to each member of the Georgia Congressional Delegation.

Senate Resolution 7 EX.

By: Senators Lester of the 23rd, McGill of the 24th, Riley of the 1st and others.

Adopted in Senate September 30, 1971.

LESTER MADDOX,
President of the Senate.
HAMILTON MCWHORTER,
Secretary of the Senate.

At the Precinct Mass Meeting of the 119th Milita District of Richmond County, Georgia, held February 12, 1972, the following resolution was adopted by unanimous vote:

Whereas, forced transportation of school children from one neighborhood to another merely as a means of achieving an arbitrary racial quota is creating confusion and disrupting the public school system in Richmond County, Georgia; and.

Whereas, the situation is creating bitter tension between the races in Richmond County, Georgia; and

Whereas, the parents of both white and black children resent this intrusion at the local school level by the judicial branch of the Federal Government; and.

Whereas, unless Congress intervenes and passes an amendment to the Constitution of the United States, prohibiting the busing of school children solely for the purpose of achieving some arbitrary racial quota, public education as we know it today will become non-existent in Richmond County, Georgia and in other areas of the United States.

Now therefore, be it resolved by the 119th Militia District that this body does hereby respectfully urge the Congress of the United States to support an amendment to the Constitution which will give students the right to attend public schools nearest their place of residency, which rights shall not be denied or abridged for reasons of race, color, national origins, religion or sex.

Be it further resolved, that the Secretary of the 119th Militia District precinct is hereby authorized and directed to transmit an appropriate copy of this resolution to the Resolutions Committee of the Richmond County Convention, the National Chairman of the Republican Party, the National Committeeman and Committeewoman from the State of Georgia, the President of the United States and the Senators and Representatives of the State of Georgia.

Mrs. JEAN L. HOWARD, *Secretary.*

STATEMENT ON BUSING BEFORE HOUSE JUDICIARY COMMITTEE

Mr. Chairman and members of the House Judiciary Committee, I am Jack P. Nix, State Superintendent of Schools for the State of Georgia. I am most appreciative of this opportunity to express to you my personal viewpoint on the matter of busing school children for the purpose of achieving racial balance in public schools.

I have consistently and often stated my position on this matter in very concise terms. If I may be allowed to indulge in a little historic retrospective, I would like to note here that more than two years ago in a speech to Georgia school board members I addressed myself to the very circumstances that have prompted you to hold these hearings. At that time responsible leaders in the Southern states were questioning the constitutionality of a federal act which seemed to be directed at one geographical section of the nation. It has been our constant battle since passage of the Civil Rights Act of 1954 to have the provisions of the bill apply equally in all parts of the country. We knew then, as now, that equal application of the law would mean the eventual acceptance of the Southern point of view—a more rational and reasonable approach to administration of the act coupled with simultaneous efforts to preserve and improve public education.

Apparently our prediction has come true. For years the rest of the United States has held itself above the South while its citizens wrestled mightily with the problems of eliminating the dual school system. Northerners, Westerners and Midwesterners seemed to feel it was not their problem. But suddenly, with the equal application of court-set formulas to bring integration by busing, it has become their problem. And thus it has become your problem.

There is another point to be made here while I am speaking of a particular region, the South. During the years before the question became a *national* issue, Southern opposition to busing to achieve racial balance was looked upon purely as a matter of racial prejudice. Now, I hope, it is clear to anyone who thinks rationally that there are a great many valid objections to busing which have their basis not in racial prejudice, but in the desire to provide the best quality education on the most equitable basis for every child, no matter who he is or where he happens to live.

The South, like the rest of the country, has made giant strides toward overcoming its prejudices in the past ten years. A recent story in the Wall Street Journal reported on a survey by the National Opinion Research Center which found that 80 percent of the nation, including half of the Southern white population, accepts integration in schools and other aspects of public life.

We in the South have always been equal to the challenge of change—we can survive and even thrive on change. This has been true in the past, during the tumultous period of rebuilding and growth that followed the Civil War, and I am confident that it will always be true.

It is also true that the transportation of students has always been an integral part of the educational program in Georgia, where we have many rural, sparsely populated areas that cannot support community schools. School buses are operated in these areas for one purpose—to improve the quality of education for Georgia children no matter where they live.

The Constitution of the State of Georgia mandates that it is the responsibility of the state to provide educational opportunities for every child, no matter where he lives. To achieve this end we have adopted a Minimum Foundation Program of Education which is aimed at equalizing, as best we can, the educational opportunities available to every child. And the school bus transportation program is a vital part of that foundation for education.

We operate the school buses in Georgia for the purpose of education, not to solve problems that have their basis in economic factors and are created by housing patterns. It is time to stop asking the public schools in this state and this nation to solve all the ills of society. It is a quirk of history that the Supreme Court decision of 1954 was directed at the public elementary school. The case could just as well have focused attention on public colleges, or on housing. Segregation has been struck down in colleges as it should have been, but no racial quotas have been set to be achieved by busing. De facto segregation by neighborhoods has been attacked, but courts have not drawn formulas for racially mixed neighborhoods to be achieved by the shifting of families of one race or another. Any such attempt would be quickly and loudly condemned as an effort to take away our precious freedom. Does not the same logic apply to public schools? Why should education be asked to solve problems that can be solved only and finally by the enforcement of laws insuring open housing and equal employment opportunity for all segments of society?

It seems to me that if the schools are ever to eliminate prejudice from the minds and hearts of Americans, then they must be allowed to get on with the job of education that has been assigned to them. We will never have a free, truly democratic society until we have educated, reasonable, humane people at every level of that society.

The solution to the problems of the ghettoes in our cities like Los Angeles and Atlanta is not to bus children into an artificial environment where they feel self-conscious and out of place. I am aware of such experiments with busing that seem to be working. Both black and white children are apparently learning. But it is an artificial, unrealistic way to educate children and it can never be accomplished on a broad scale. The answer to the problems of ghetto schools is to make them the very best schools that can be planned by providing the best teachers, the best facilities, the highest quality resources and a low pupil-teacher ratio that will insure individual attention. Only then can we be sure that every child is getting the kind of opportunity he needs to fulfill his own potential as a human being, no matter what that potential may be.

I am very much in favor of either legislation or a constitutional amendment that will clear up the question of busing. Right now we are so hampered by conflicting court rulings that it takes herculean effort to carry on any kind of educational program at all. In Augusta we have court-set quotas for specific schools; in Atlanta we have a more lenient ruling that requires busing only if it will further integration; in Richmond, Va., we have a court order that invalidates school system lines and orders busing among school systems.

Where will we stop at requiring busing, if the Richmond decision stands? Are we going to be required to bus across state lines? Of course that is an absurd idea, but only slightly more so that the solution recently proposed by lawyers contesting the Atlanta court decision. Their proposal is that children be bused across town, north to south and east to west, in many cases from one school that is 70 percent black enrollment to another school that is also 70 percent black.

The court in Atlanta, in its latest ruling on a case that entered litigation in 1958, recognized in its decision that busing is not the solution to problems created by shifting housing patterns. When the case was first brought in 1958, school population in Atlanta was 70 percent white and 30 percent black. During the interim between the filing and the most recent ruling, the situation has reversed, with the school population now standing at 30 percent white and 70 percent black. The court pointed out that shifting patterns essentially resulted from segregated housing, and that such factors were beyond the control of school authorities. The court also said that to order the kind of busing upheld by the U.S. Supreme Court in the Charlotte-Mecklenberg case would "hasten deterioration of the school and the city."

Mr. Chairman, I personally feel that what we need is legislation or a constitutional amendment that will result in students being assigned to the school nearest their residence. For the proper administration of schools and school systems, it is necessary that school boards be authorized to establish school attendance areas in a non-discriminatory manner and that students living within this attendance area attend the school designated by the board.

As a veteran of 29 years of service in the education profession, I sincerely request that you and other members of this distinguished body help us to get on with the educational process by eliminating busing for the purpose of bringing about racial balance.

Thank you for this opportunity to express my views.

JACK P. NIX.

Mr. STEPHENS. Thank you for your indulgence. I appreciate your letting me come before you.

Chairman CELLER. Mr. Hungate?

Mr. HUNGATE. Thank you, Mr. Chairman.

In line with the discussion of the need for congressional consideration and action in this field, as I understood you, you had not introduced a resolution?

Mr. STEPHENS. I had not.

Mr. HUNGATE. Have you signed the petition?

Mr. STEPHENS. I have signed the petition.

Mr. HUNGATE. That resolution provides that no public school student shall be assigned or required to attend a particular school on the basis of race or color.

Now, I would ask the gentleman if he might agree that in addition to the problem of school busing, there might be a problem involving court's power to redraw boundaries of political subdivisions?

Mr. STEPHENS. I think definitely that was wrong in the *Richmond* case, that is, the *Richmond, Va.*, case. The other resolution is from Richmond County, Ga., which is Augusta, Ga.

Mr. HUNGATE. I was not that far South yet.

I see. Thank you.

Mr. STEPHENS. Their name is derived from the same gentleman, the Duke of Richmond who was a great advocate of the position of the colonies in the American Revolutionary era.

Mr. HUNGATE. If I may follow on, would the gentleman agree that another problem in this field, and not related to schoolbusing, would relate to the courts' power to issue a decree restructuring the tax system as related to public education such as the *California State* case and the Federal cases in Minnesota and Texas?

Mr. STEPHENS. I would agree that should also be considered. And if you are going to do this, so far as busing, I would just as soon include more and clarify it once and for all.

Mr. HUNGATE. The point is that the matters about which the gentleman is concerned and about which many are concerned indeed do extend beyond the problem posed by the Lent amendment, to which the discharge petition is addressed.

Mr. STEPHENS. That is correct.

Mr. HUNGATE. I thank you.

Chairman CELLER. We are very grateful to you, sir. We thank you for your patience.

Mr. STEPHENS. Thank you.

Chairman CELLER. Our final witness this morning is G. Elliott Hagan from Georgia.

Mr. Hagan, we are grateful to you for your patience, likewise.

STATEMENT OF HON. G. ELLIOTT HAGAN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. HAGAN. Thank you very much for this opportunity, Mr. Chairman. It is a pleasure to be here and to have this opportunity to say a few words about our views on this subject before this committee.

I want you to know that I personally appreciate very much you and this committee calling this hearing on this very important issue. For years this has been a matter of serious concern to me as Representative of the First District of Georgia. Today, I join my colleagues from all over this country in our common concern for the forced busing of our schoolchildren and the resulting chaotic situation it has caused for them and their families, and, needless to say, our public schools.

The policy of forced busing of children away from their neighborhood schools is a devastating blow to the orderly process of education in our public schools—to the concept of local control of our schools—and to our citizens' freedom of choice regarding their children.

We are now at a point where the busing routine has grown far beyond being just a racial matter. The safety of our children is involved. The quality of education is involved. Parents wishing their children to attend neighborhood schools are involved. The tremendous added expense of busing is involved.

When court decisions are made upholding forced busing, two things do not seem to be taken into consideration, the quality of education and the children as individuals and not numbers to be used for racial balance.

Quality education cannot be achieved for any of our children while overwhelming additional expenses and added administrative duties are required to implement court-ordered busing.

Taking children out of their neighborhoods and busing them, sometimes for hours, to distant, unfamiliar, and unrelated schools, cannot be in the best interests of the child or the community spirit.

It is obvious that neither education nor the children were important in the thinking of those who issued the massive busing orders which are destroying our public school systems.

I know I can speak truthfully about that in my section of the United States.

Our people are caught in an intolerable squeeze: they want to obey the law but the consequences of forced busing are too disastrous for their children and they have reached the point where they are demanding that something be done to bring some reason and logic to this awful situation. Judging from the thousands of letters, phone calls, and telegrams I receive, there is no doubt in my mind that the majority of parents of all races do not want their children subjected to forced busing.

I am impressed with the fact that they are not talking about integration but that their concern is over the fact that their children are having to face the added risks of unnecessary bus travel, time-consuming and tiring trips, and the many other emotional and physical adjustments being required of them. These concerned parents are frustrated and looking to Washington for some solutions.

We, here in Congress, have a responsibility to these parents. I have been telling the people in my district that their voices must be heard in Washington through letters, phone calls, and telegrams to Congress, the President, and other officials. They have been doing just this and are now being joined by more voices from the north, east, and west. They are looking for some answers.

We, not the judicial or executive departments, have the responsibility for making the laws of the land. We, as direct representatives of the people, can and must give the needed leadership in response to the strong protest we are hearing from across the Nation.

A large number of proposals will be considered by this committee during these hearings. House Joint Resolution 629, which I have introduced, is among them.

Mr. HAGAN. I have long stood for freedom of choice for our people and am glad to see that this exercise of freedom is not only desired in the South, but that in all parts of our country people have the same wish. They, as citizens, want the freedom to choose the schools their children will attend. My bill, House Joint Resolution 629, proposes an amendment to the Constitution to allow freedom of choice in our schools and other related areas. In my judgment, this would help preserve the precious rights of every American in these matters.

I know, Mr. Chairman and gentlemen, I know that you will carefully consider all of these proposals.

I strongly urge this committee to carefully consider the proposals before them and report out a bill that will not only help solve the serious problem of forced busing, but may very well be the saving of our public school system here in America.

The people have a valid plea and are making their will known. We have a commitment to heed their plea and act accordingly.

I want you to know, Mr. Chairman and gentlemen, I appreciate your giving me this opportunity to express the views of my people, and I would wish that time would permit me to go into further details.

Thank you, sir.

Chairman CELLER. I want to make one observaion.

Your measure, House Joint Resolution 629, speaks of freedom of choice in our schools and other related areas, and the other related areas apparently concern domicile, martial status, employment, and the ownership, use, and disposal of property. I am curious to know why you added those other areas.

Mr. HAGAN. I am speaking, also, on behalf of the amendment which you have before you, which I have signed, the petition, and so on, because I am vitally concerned, naturally, about the busing, and I included the fact that I had this other bill in there, also.

Chairman CELLER. Any questions?

Thank you very much, Mr. Hagan.

Mr. HAGAN. Thank you very much.

Chairman CELLER. The Chair wishes to place in the record statements of the following Members: Hon. Edward J. Derwinski, a U.S. Representative in Congress from the State of Illinois; Hon. Don Fuqua, a U.S. Representative in Congress from the State of Florida; Hon. J. Irving Whalley, a U.S. Representative in Congress from the State of Pennsylvania; Hon. Ray Blanton, a U.S. Representative in Congress from the State of Tennessee; Hon. L. H. Fountain, a U.S. Representative in Congress from the State of North Carolina; Hon. Jack H. McDonald, a U.S. Representative in Congress from the State of Michigan.

(The statements referred to follow:)

STATEMENT OF HON. EDWARD J. DERWINSKI, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman: I am pleased to appear before your Committee in support of the Constitutional Amendment which would prohibit forced bussing of school children to achieve racial quotas. From a practical standpoint, we could more expeditiously develop legislative language to solve the growing educational crisis caused by forced bussing, which would not require the considerable delay that could be involved in the Constitutional Amendment procedure.

Last September 21st I made a statement on the Floor of the House which I believe still to be pertinent, and which I would like to reiterate at this time:

Mr. Speaker: In order to point out that the complications caused by forced bussing is a national, not a regional problem, I relate the situation which now confronts School District 151, which serves parts of South Holland, Harvey, and Phoenix, Illinois.

According to Superintendent of School District 151, Dr. Thomas E. Van Dam, "the school board is working on a budget shaved to the bone. There is not enough money to paint a school room. Our financial condition is serious, and getting worse. We are indebted to the education fund, and we are $23,000 outstanding in the transportation fund. It looks like we will have to borrow next year's tax money to pay this year's bills."

This is the gloomy picture of the school district which was the Department of Justice's first desegregation suit in the North under Title IV of the Civil Rights Act of 1964. This is the picture of a school district's financial plight since Court-ordered forced busing, when on July 22, 1968, the Court ordered the school board to restructure its grade organization and to bus approximately 55% of its student enrollment involuntarily to achieve racial balance. Upon execution of this Court order the school district lost approximately 800 students who transferred to private schools or whose parents moved to other school districts. The implementation of this bussing order quadrupled the bussing expense of this school district. Superintendent Van Dam stated that the Judge, regardless of the affluence or cultural deprivation of certain sections, assigned students to a specific school by just taking so many blocks along a given road and assigning that area to a school. This method of assignment, consequently, has placed children with the greatest number of problems in one specific school and the more advantaged children in another school. This is an obvious disruption of our entire system of neighborhood schools.

Yet Title IV of the Civil Rights Act of 1964, in authorizing suits such as this by the Attorney General, states very explicitly: "That nothing herein shall empower any official or Court of the United States to issue any order seeking to achieve racial balance in any school by requiring the transportation of pupils or students from one school to another."

Mr. Chairman, this basically is still my position and I regret that this Committee has not seen fit to address this matter more expeditiously and to work out the legislation necessary to solve the complex problems caused by court decisions.

I personally do not believe that students should be bussed for the primary purpose of creating adjustments for reason of race, creed, or color. I do not believe that the Congress ever intended that bussing be used for purposes other than logical, normal travel to and from schools.

It is not my purpose here, Mr. Chairman, to take much of the Committee's time since the issue has had the attention of many members and is reflected in local government deliberations and State Legislatures in almost every one of our States. I, therefore, reemphasize my belief that the Committee should expedite the processing of legislation or a Constitutional Amendment so that Congress can properly assert its jurisdiction and provide that forced bussing of school children merely for the sake of racial quotas be terminated.

STATEMENT OF HON. DON FUQUA, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I am pleased to have the opportunity to include in the hearings record on H.J. Res. 620 a statement of my views on the transportation and assignment of public school students. This is perhaps the most controversial domestic issue facing this country today and, as such, it is highly appropriate that Congress is now considering this Resolution.

In my view, the busing and artificial school assignment of children to achieve racial integration is a shortsighted and ill-conceived approach to a tremendously complex problem. I fear that in the rush to realize quick results the underlying fabric of our society is being torn apart.

Americans are a proud and independent people who resent being forced to do anything by their government unless a national consensus has been reached. We saw the fruits of this resentment in the demise of Prohibition. The implications of such a reaction in the area of civil rights would be tragic.

Our educational system was founded on the neighborhood school concept and allowed for parental and community involvement in educational programs. Mass busing creates a striated system which discourages local participation because of transportation problems among others.

There is a great need for improving the educational facilities and instruction at many of our inner-city schools. This does not mean, however, that it is necessary to displace children from their neighborhoods to effect this imprevement. Forced busing breeds frustration and bitterness, and is counter-productive to the goal of quality education for all children.

This means of achieving a quality educational environment is predicated, in large part, on an interested and active local effort. Such effort is discouraged when a child is taken up and carried miles across town to an alien environment away from his family and friends.

Whenever policy decisions such as busing are proposed, it is important to weight the benefits against the social costs. The rigors of traveling for hours across town on a bus takes important recreational time from those students who must attend schools out of their own neighborhoods. It seems obivous to me that the social costs in the ill-conceived busing plans far outweigh the speculative benefits.

Thank you for allowing me this opportunity to present my views to the committee, and I strongly urge the favorable consideration of H.J. Res. 620.

STATEMENT OF HON. J. IRVING WHALLEY, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. Chairman: On Nov. 18, 1971, I introduced a proposed amendment to the Constitution (H.J. Res. 977), which reads:

> SEC. 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.
>
> SEC. 2. Congress shall have the power to enforce this article by appropriate legislation.

Court ordered busing of school children to accomplish a racial mix has had ill effects on the education of the children. Millions of dollars, which could otherwise have been spent on educational needs, are now being drained for buses and drivers. A great amount of inconvenience and time is entailed in any kind of massive busing order. Busing our children past schools close to our homes to more distant schools is making our children a class of commuters. The ideal of the neighborhood school system stands as a false hope in light of these decisions.

The amendment is designed to reassert the principle of the original *Brown* decision, which was the condemnation of state laws compelling separate schools based on race. *Brown* v. *Bd. of Education*, 347 U.S. 483 (1954). Neither this decision nor the subsequent *Brown* decision, 349 U.S. 294 (1955) suggest that school districts or the lower federal courts are to do anything more than develop racially neutral school policies. My proposed amendment is consistent with the elder Justice Harlan's statement in his famous dissent in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896) that "our Constitution is color-blind."

In view of the recent Supreme Court decision in *Swann v. Charlotte Mecklenburg Board of Education*, 402 U.S. 1 (1971), upholding the use of extensive busing to create a racial mix, it is unlikely that the Supreme Court would overrule itself on that issue in the near future. Furthermore, it is doubtful that Congress or the state legislatures could effect a change consistent with the Constitution. The only effective way left to halt the use of busing to create a racial mix is to adopt and ratify my amendment.

STATEMENT OF HON. RAY BLANTON, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. Chairman, and distinguished Members of the Subcommittee.

I represent the Seventh Congressional District of Tennessee. One third of my constituents are from Memphis, the largest city in the South. The remainder are from some of the most rural counties in this country.

The subject of busing is an emotional issue in both rural and urban sectors of my district, even though, for the most part, busing is affecting only my urban constituents.

Approximately thirty five per cent of my constituents are black, the remainder white.

As an elected official who has had to face the electorate every two years since 1966, I make it a practice to keep attuned to the people's opinions.

I say without reservation that the great majority of white and black constituents in my district are opposed to busing.

They resent deeply this governmental intrusion into their lives. They are, to put it mildly mad as hell about the whole affair.

I have always thought it best to handle most issues through the legislative route. I don't think it particularly wise to add an amendment to the Constitution every time a major issue pops up around the country. However, when the overwhelming desire of the people necessitates an Amendment, I do not think we should deny this alternative

We have tried for years to find a legislative remedy to this matter of busing. The House for the past three Congresses has passed some sort of anti-busing legislation. Always, it has been defeated in the Senate, or watered down to the point of nullity in the Conference Committees. I remember the last go-around we had with the Senate was the addition of a new Senate maneuver to defeat House passed anti-busing measures. They would add such clauses as "except as provided in the Constitution." The addition of such a clause was intended to mean that the Court could undo the Congressional statute with apparent ease, if they (the Judiciary) felt busing was Constitutional.

The Administration refuses to stop busing, even though for political reasons it proclaims it is against busing. We have seen in only three years and two months more busing orders issued throughout this Country than in all of American history. And actively involved in these busing decisions have been the covert aid of the Justice Department and the Department of Health, Education and Welfare. The letter has actually been promoting, not only assisting, in busing measures. They are giving tacit approval to the Courts, which are legislating in a field in which they are not qualified to act.

It is no wonder, then, that we come to the legislation this Committee is considering today. We are now faced with a national movement to amend the Constitution specifically to stop busing, because the Senate, the Courts, and the Executive have left us no other alternative.

There are critics who say, "why should we clutter the Constitution with such trivial matters as busing?"

To these critics, my constituents would say, "Why has the government refused to accede to the demand of the American public that this practice of busing little children be stopped?"

I think we forget our purpose here in Washington when we argue against the infinite wisdom of grass roots America.

After all, we are elected as the spokesmen of the people—not rulers or potentates who rule arbitrarily.

Ideally, if all 435 Congressmen, and all 100 Senators expressed the will of their particular constituencies, then busing would have been halted long ago.

But no, we are daily treated to the spectacle of men who have set themselves up as an elected oligarchy, with noblesse oblige theories of government which say, in effect: "I know best what is right and good for the great mass of people, and I will vote my own views because I am better informed and better able to know what is right for them."

Every day we have evidence that the people are losing confidence in their government.

The people no longer trust their elected officials. It is getting close to the day when people no longer will believe in our system of democracy, because it refuses to respond to their desires.

If the people want to stop busing, and we have no other alternative than to pass a Constitutional Amendment to do it, can any of us deny them that recourse? What privilege, what right, what position do we have to say that the people are wrong. If we feel this way, we should resign our offices, and make way for spokesmen who will reflect the will of the people.

The arrogance of arbitrary rule by the few is more evident in the Senate, than in the House. We must face the voters every two years—therefore we respond more to their desires. But in the Senate, they have long terms, and people have short memories.

I am personally opposed to busing, as are my constituents.

We feel it is an inept mode of achieving quality education. In fact, it could destroy the quality of education for many.

The cost of busing is enormous. In Nashville, Tenn., the cost of massive busing will probably run as high as a half million dollars a year. This would help build new schools and would pay for high caliber teachers. But this money, this taxpayers' money, is going to such a superficial thing as transporting kids from one end of town to another.

Busing represents a safety factor which I think we should consider for the sake of the parents and the children involved.

Busing tears down the neighborhood life which is tradition in our country. It destroys its meaning.

In this highly technical and advanced pace of life we are witnessing in America today, there remain few "personal" things in our culture. The close knit neighborhood is one.

The parents of school children usually select a neighborhood based on the schools, the churches, the available shopping facilities, and the closeness to work for the parents. Busing undermines the neighborhood tradition.

Busing is a cosmetic, rather than medical approach to equalizing educational opportunities.

What makes a quality education? This is the most vital question involved in this issue, because a "quality education" is the alleged goal of busing.

The problem in education today is not one of race. The real problems is that some schools within a given community are simply not giving an acceptable standard of educational opportunities which other children at other schools in the same community are receiving.

Some schools, either by neglect or design, are underfunded and are given low fiscal priorities within their school system in the hiring of capable teachers, and in implementing the most modern and innovative teaching techniques.

It makes no difference in education what color the skin of the pupil is, or whether he is sitting in a class room with a certain color ratio. When we bus students to achieve these ratios, we merely take some kids out of a neighborhood with an inferior school, and send them to a neighborhood with a superior school. But we also send children from good schools to bad ones in the same process.

We are then only maintaining the status quo—the inferior schools and the better ones stay the same. The end result is that some children are being penalized by this forced busing merely because their parents live in a neighborhood with a good school. We are by government fiat penalizing children because of housing patterns. It has nothing to do with education per se. It is merely a subterfuge to punish parents who have located in certain neighborhoods.

If the federal government steps in to exert any direction or influence in community educational endeavors, it should be constructive. It should be designed to upgrade the educational opportunities for all students. Busing does not equalize these opportunities. It is in fact discrimination in reverse.

Every school receiving federal tax dollars should be rated within the community to determine whether it meets the acceptable standards for a good education. If it falls below those standards, then the community should be obligated to upgrade that school by targeting its resources to that inferior school. No child should be denied the best education available to any other child in the public school system within his community.

If we accept this alternative, then busing would be ridiculous, for busing a student from a good school to another good school would be foolish.

Mr. Chairman, I have presented my views on alternative solutions to this problem, because when one criticises an existing plan, he should offer another in its place. Of course implementing this plan which I have briefly outlined would cost enormous amounts of money. However, we are requiring enormous amounts of money to be spent in wasteful transportation expenses, and I believe the people of this country will support programs which allow the finest education to all our citizens, regardless of race or financial means.

In the meantime, to undo the absolute mess the busing judges and the apathetic Senate and executive have caused, I suggest we approve the Constitutional Amendment which I and many of my House Colleagues have introduced. Then we should obligate ourselves to aiding the communities to equalize their funding priorities for all schools within their districts, so that we can achieve real equality in education. By doing so, we can maintain the integrity of the neighborhood school.

STATEMENT OF HON. L. H. FOUNTAIN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I welcome this opportunity to appear before members of this distinguished Committee on one of the most serious domestic issues of our time—the forced busing of school children often over long distances to achieve racial balance.

The Committee is to be commended for scheduling these hearings, and I sincerely hope that out of them will come the kind of legislation which will serve to keep substantially intact our traditional neighborhood school system and preserve quality education.

As you are well aware, America's public school system is now under attack from many quarters. This is true in north and south, east and west.

Consequently, our task is clear, the Congress must act responsibly to restore a sense of sanity to the school situation and enable us to get back to the job of providing a quality education to each and every child in America.

It is in the name of common sense that I appear today in support of proposals intended to place a reasonable restraint on the practice of forced busing over long distances. I am not wedded to the exact language contained in House Joint Resolution 620, so long as the identical purpose can be achieved. Whatever the final wording may be, the time for action has come.

If recent polls are to be believed, perhaps four-fifths of the American people—Americans of every race, creed, color and national origin—share my strong distaste for the forced busing of students over our crowded traffic plagued highways in order to achieve the highly elusive, judicially-imposed racial balance.

Bear in mind that, though the Courts may learnedly discourse upon the distinctions between *de jure* and *de facto* in our country, the line has been drawn so fine that most Americans conclude that the distinction really lies in the eye of the beholder.

No section of our nation can take a detached view of the problems of busing. It is no longer a sectional matter. The Mason-Dixon Line is no longer an iron curtain. This is a national issue.

In any event, the dual school system in the South has long since been done away with. That is not the question of 1972. The question today is whether or not American public education is to be built up or torn down. The question is whether or not we are willing to put the welfare of the children first—all children, or whether we want to leave them at the mercy of Federal Judges whose main interest seems to be in arithmetic.

A brief review of the deviant course of judicial construction upon the Constitution, amply serves to demonstrate the imperative need for expeditious Congressional enactment of H.R. Res. 620 or a measure accomplishing the same end.

The United States Supreme Court in both *Brown* vs. *Board of Education* cases (Brown I and Brown II) declared that state imposed racial segregation in public education was contrary to the Equal Protection clause of the Fourteenth Amendment.

The mandate laid down in the *Brown* decisions was that the Constitution requires that states must not, on the basis of a child's race, or color, designate where he is to attend school.

It was not until twelve years after the decision in *Brown I* that the circuit court in *U.S.* vs. *Jefferson County Board of Education*, in a surprising stretch of judicial imagination, first divined that *Brown I* did more than prohibit segregation; yea, that it commanded integration.

The approach conceived of in *Jefferson* said school boards have an "affirmative duty" to eliminate the "last vestiges of the dual system" and establish a "unitary system". This decision left the courts in confusion and gave rise to a proliferation of judicial decisions irreconcilable in their results.

This confusion is understandable when one realizes that the decisions are such, for example, that a school district in Cincinnati, Ohio was told that the existence of all-black schools was of no Constitutional consequence, while, in one short sentence, all of the schools of the Fifth Circuit were "put on notice" that the all-black schools of the South must be integrated or abandoned in three weeks.

Now, seventeen years after enunciation of the principle of racial neutrality by the *Brown* Court, the pronouncement of the High Court in the *Swann* decision brings us full circle to the pre-*Brown* days. Our Constitution, according to the Swann Court, not only permits the assignment of students to public schools on the basis of their race, but, in fact, demands it.

Accordingly, the Court in *Swann* affirmed the lower court order imposing a racial balance requirement of 71 per cent white and 29 per cent black on all of the schools of the Charlotte, North Carolina system, this being the racial composition of the entire school system.

It would be absurd to contend that this result, which now is the Law of the Land, was contemplated by the Court in 1954 and 1955 when the Brown decisions were announced.

But, more importantly, what does all of this mean in human terms. As good hard look at the history and current situation in busing is all that it takes to realize that programs of forced pupil assignment have been a tragic mistake. Busing is based on an education fallacy, as well as false Constitutional logic, and not only wastes taxpayers' money, but is disruptive to the child, the school, family and neighborhood.

The nationwide lack of success with busing programs could easily have been predicted, since busing a child many miles to school is by no stretch of the imagination the same as providing him with a favorable educational environment. Many educators feel that busing in reality creates new tensions and anxieties at a time when a child is already beset with the many problems which go along with adolescense and growing up.

Busing removes a child from one of his most powerful of security—his neighborhood or community. It may place him in an atmosphere to which he can only react with anxiety. Whether a community or a neighborhood is rich or poor, well-kept or run-down, there's no place like home.

Just the fact that a child, black or white, is being bused into a difference neighborhood has a negative effect, for it forces upon the black child society's judgment that there must be something inferior with his own neighborhood. This prompts fear and resentment, and rightly so.

Beside children and families, neighborhoods and communities also suffer when busing programs are instituted on a wholesale basis. The entire community is disrupted and thrown into upheaval. We have all read about what is happening as the result of the Richmond, Virginia decision.

It's regrettable but true that busing has been been closely related to bitter community conflict. It has caused violence. In Denver, where a busing program to speed up integration had been started in the fall of 1969, someone bombed and burned 23 school buses. Ironically, some of the buses were only used to take handicapped children to special education classes.

I'm told that when busing was introduced into the public schools of Brooklyn Heights, New York six years ago the school became the center of a terrible controversy, which has intensified through the years rather than abated.

Community groups in that area—some for and some against—have, I understand, fought with such intensity during the entire six years that parents with school age children have moved out of the area, neighbors once friendly have stopped speaking to each other, and the school itself has become a place where proper education is almost impossible.

Even the pattern of disruption to individual lives and community organization might conceivably be justifiable upon some basis of demonstrable improvement in the educational product of the public schools. But this has not been the case. There is no demonstrable improvement. Busing is a 100 per cent, unadulterated failure.

Mr. Chairman, the present crisis demands that this Committee do everything in its power to examine the issues to which H.J. Res. 620 is addressed.

The states, which are on the firing line, should be given the opportunity to resolve this issue by Constitutional Amendment.

Again, I want to thank you, Mr. Chairman, and your Committee for holding these hearings, and I sincerely trust that H.J. Res. 620 will be favorably reported. Should the Committee change the language of this proposal in any way, I hope it will be in a form which will accomplish the results which I believe the vast majority of Americans of all races support. Thank you for listening.

Statement of Hon. Jack H. McDonald, a U.S. Representative in Congress From the State of Michigan

Understandable concern is being generated throughout our country over the wiseness (or unwiseness) of amending our sacred and noble document, the Constitution, in order to once and for all prohibit the forced busing of students to achieve racial balance. I am of the opinion that the Constitution should not and must not be altered with every passing fancy of the American populace; rather we should solve our problems through executive procedures and, more frequently, legislative action.

However, the issue of forced busing is unique. For many years, we in the Congress have been trying to settle the busing issue with legislation, but these attempts have been in vain, all having been disregarded by the courts. Current laws contain various provisions which prohibit any federal requirement of busing to achieve racial balance. The first such law was the Civil Rights Act of 1964, as amended; Title VI provided "that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve racial balance." Also the Departments of Labor-HEW Appropriations bills for F.Y. 1969 and 1970 have included some form of the so-called Whitten amendments which originally stated:

> "No part of the funds contained in this Act may be used to force busing of students, the abolishment of any school, or to force any student attending any elementary or secondary school to attend a particular school against the choice of his or her parents.
>
> "No part of the funds contained in this Act shall be used to force busing of students, the abolishment of any school or the attendance of students at a particular school as a condition precedent to obtaining Federal funds otherwise available to any state, school district or school."

Attempts were made to delete the Whitten amendments from the 1969 and 1970 HEW Appropriations Bills. These attempts were defeated; however the Senate succeeded in changing the final working of the anti-busing provisions by adding the phrase "except as required by the Constitution."

The 1971 Office of Education Appropriations Bill contains the following provisions:

> SEC. 209. No part of the funds contained in this Act may be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to force the transfer or assignment of any student attending any elementary or secondary school so desegregated to or from a particular school over the protest of his or her parents or parent.
>
> SEC. 210. No part of the funds contained in this Act shall be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed, or color the transfer of students to or from a particular school so desegregated as a condition precedent to obtaining Federal funds otherwise available to any State, school district or school.

And again in 1972, the Education Appropriations Bill contained the Whitten amendments.

Now the Senate is acting on the Higher Education Act, S. 659. This measure as passed by the House contained several strong anti-busing amendments. On February 25, the Senate accepted the Griffin amendment which states "no court of the U.S. shall have jurisdiction to make any decision, enter any judgment, or issue any order the effects of which would be to require pupils to be transported to or from schools on the basis of race, color, religion, or national origin."

This amendment appears to be very strong but I have no doubt that the courts will treat it in the same way, if enacted, that they have treated the Whitten amendments—total disregard. Legislative victories over busing have been and will continue to be merely symbolic; they will not have any effect on court-ordered busing.

Let there be no mistake: I and the vast number of citizens are in support of equal and quality education for all students, however, what is opposed is the use of forced busing to achieve this laudable goal. Busing is a negative approach, one that is meeting resistance throughout our land. I shall not at this time go into other approaches, but they exist, are workable, and will receive the support of the people.

I feel that the courts have misinterpreted the equal protection clause of the 14th Amendment, Title VI of the 1964 Civil Rights Act, and the various educational appropriations bills. The historical perception gleaned from enacted anti-busing provisions has convinced me that I must endorse and actively campaign for the passage of H.J. Res. 620. My convictions in this matter are supported by the 8,000+ letters, telegrams, and petitions of plea from my constituents that I join forces in the Congress to stop forced busing, preserve neighborhood schools and protect the freedom of choice.

So I lay to rest the case of the 19th District of Michigan, and the entire country, against busing. I strongly urge my colleagues on the Judiciary Committee to report out H.J. Res. 620 and let the people decide this issue.

Chairman CELLER. The Chair wishes to place in the record various resolutions and letters received from individuals and organizations.

(The resolutions and letters referred to follow:)

JANUARY 19, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The following is the statement which I would like to include on the hearing record and also have the opportunity to appear and state to the subcommittee.

It seems very obvious that the Federal Courts have gone beyond their authority by overriding the 1964 Civil Rights Act, Title VI. This act was passed as law by Congress with "Desegregation meaning the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance". The courts have in turn reversed your law or declared it null and void as far as the meaning of desegregation is concerned.

The courts also have, according to Senator Sam J. Ervin, violated the equal protection clause of the 14th amendment. This clause forbids a state acting through a public school board or any other state agency to treat differently persons similarly situated. In other words, this clause said to treat in like manner all persons in like circumstances. Therefore, if some children in a neighborhood are allowed to attend their neighborhood schools and others are bused across town the equal protection clause is violated.

That is what the law says about student assignments, but I would like to point out that as a concerned parent, a taxpayer, and the chairman of a concerned citizens group, student assignments which bring about massive forced busing is neither sensible nor educational. It does not help race relations; but in fact hinders them by placing students in a strange school and environment. Forced busing is in fact wasting millions of dollars of our tax money that could be spent more wisely on the education of our children. It's not very educational for a small child to have to catch the bus as early as 7:00 to 7:30 in the morning and not get home from school until 4:00 to 5:00 in the afternoon. This child is so worn out from riding the bus that he cannot learn at school and certainly will be too tired to study at night.

No other method could be more fair than the old freedom of choice method with children being allowed to attend school in the neighborhood. After all this is the big reason the family moves into a certain neighborhood to begin with. Since when did students have to go to school in certain color ratios to get a proper education. That would be like saying the Congress could not properly make laws unless they have a ratio of 70 to 30 white-black. How absurd.

As concerned citizens we feel our educational system should be free from oppression of the federal courts. We feel that our schools should be run on a local level. We know our problems locally. HEW and the federal courts do not know our problems and have only created more problems with their intervention in our school. In a free nation such as America parents certainly should have the opportunity to send their children to the school of their choice which is usually the neighborhood school. We urge the House of Representatives to take positive action on these amendments to ensure that the education of our children will again be the primary objective in our educational system. It's very obvious now that education is secondary with the ratio mixing being the main objective.

Save our public school system. Another 2 to 3 years of federal control of our schools could bring about a totally welfare school system. Give us back our schools.

Sincerely yours,

J. R. (Joe) BROWN, Sr., *Chairman,*
ACT (Americans Concerned About Today).

CLIFTON, VA., FEBRUARY 3, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I am enclosing an article entitled, "The High Court And Racial Busing," from the June 9, 1971 issue of *The Review of the News,* and would greatly appreciate it if the article could be included in the hearings on school busing scheduled to begin on March 1, 1971.

Thank you for your consideration.

Sincerely,

Mrs. ROBERT F. ACHOR.

Enclosure.

THE HIGH COURT AND RACIAL BUSING

(By Reed Benson and Robert Lee)

The pro-busing decision rendered by the Supreme Court on April 20, 1971, has stirred a hornets' nest of public concern. Many citizens are beginning to wonder if the busing of school children from one district to another because of their race may not be the start of a totalitarian toboggan ride that will eventuate in entire families being forcibly uprooted and moved in order to achieve the racial whims of the Supreme Court. Such speculation is not as far-fetched as it might seem at first glance, for as Congressman John Rarick (D.-Louisiana) observed to the House on April twentieth:

"If we are now to consider that racial balance is a constitutional goal, duty, and right, then distance must not be considered a legal factor. The attaining of true social justice, by pure racial balance, must be just as legal and desirable a goal from State to State or section to section as it is from school to school or across town. Any other conclusion would not be logical or in keeping with the equal protection provision of the U.S. Constitution."

An interesting and significant aspect of this latest busing case, known as *Swann v. Charlotte-Mecklenburg Board of Education*, is that much of the opposition to the Court's decision has been predicated on various laws and prior Court decisions which are themselves of the most dubious Constitutionality. For example, it has been correctly stressed that the Civil Rights Act of 1964 precludes the use of busing to achieve racial balance. Yet that Act as a whole, as pointed out by Constitutional authorities[1] at the time it was being considered, is nothing more than a means of achieving massive federal interference in areas the Constitution precludes the federal government from entering.

The anti-busing provisions were added to quiet some of the opposition to the Civil Rights Act. During Senate debate on June 4, 1964, for instance, Senator Robert C. Byrd (D.-West Virginia) asked Senator Hubert Humphrey (D.-Minnesota) the following question: "Can the Senator from Minnesota assure the Senator from West Virginia that under Title VI [*of the Act*] school children may not be bused from one end of the community to another end of the community at the taxpayers' expense to relieve socalled racial imbalance in the schools?" Senator Humphrey, the bill's Senate floor manager, replied with simple candor: "I do."

And thus in the Act's definition "desegregation" it is formally specified that " 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Other legislation which has expressed Congressional hostility to such busing includes the Elementary and Secondary Education Act of 1965, as amended in 1966 (which forbids "any department, agency, officer, or employee of the United States . . . to require the assignment or transportation of students or teachers in order to overcome racial imbalance") and the Office of Education Appropriation Act of 1971 (which provides that "no part of the funds contained in this Act shall be used to force any school or school district which is desegregated as that term is defined in Title IV of the Civil Rights Act of 1964 . . . to take any action to force the busing of students"). Yet, on other grounds, both of these laws are also blatantly un-Constitutional, since there is no authorization whatsoever in the Constitution for the federal government to meddle in the field of education.[2]

Even the Warren Court's 1954 decision (*Brown v. Board of Educaiton*), which arbitrarily reversed over fifty years of Constitutional precedent, is so tame compared to the recent busing decision that it, too, has been cited as a case in point by those opposed to busing. The *Brown* decision, for instance, specifically precluded race as a factor in assigning students to, or barring them from, public schools. But the Burger Court's *Swann* decision actually makes race the chief criterion for assigning children to the schools affected. It is, literally, a racist decision.

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[1] Including two past presidents of the American Bar Association.

[2] For further analysis of this particular problem, see *The Review Of The News* for January 6, 1971, Pp. 27–30.

It is significant that the Burger Court has moved so far to the Left that even the un-Constitutional laws and decisions of the recent past have now become arrows in the quiver of those attempting to defend what remains of our Constitutional system. The best argument against the Court's busing pronouncement remains the Constitution itself, which nowhere authorizes any branch of the federal government to compel racial balance.

So if you want to obey the law of the land, what do you do? Congress has passed laws which ban busing, but the Burger Court has issued an edit compelling busing. Following the *Swann* decision, White House press secretary Ronald Ziegler issued a brief statement implying that the decision would be considered "the law of the land" by the Administration. But the myth that Supreme Court decisions are the "law of the land," and the wide acceptance of that myth by the public, is but one more example of how far the American people have been led from the paths of sound Constitutional thinking.

If decisions of the Supreme Court are indeed the law of the land, where is the legal authorization for the Court's legislative activity? The first section of the first Article of the Constitution states: "All legislaitve powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." Further along, the Supremacy Clause (Article VI, Section 2) asserts: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land. . . ."

Treaties. Laws of Congress. The Constitution itself. All are mentioned as being factors which combine as the supreme law of the land. But nothing is said about Supreme Court edicts.

Actually, a Supreme Court decision—like decisions of other courts—relates solely to the litigants involved in the specific case before the Court. In his excellent book, *Your American Yardstick*, the noted Constitutional authority Hamilton A. Long explains:

> *Supreme Court decisions do not constitute the "supreme Law of the Land." Its decision in a case is limited by the facts involved and constitutes only "the law of the case," binding merely the parties to the case. This is true as to all cases and all courts, including the Supreme Court. Even in a case involving consideration of the Constitution, therefore, the Supreme Court's decision—involving a mixture of legal rules and principles as applied to the facts involved—cannot and does not constitute a part of the "supreme Law of the Land"; which the Constitution (Article VI) defines as including only this fundamental law itself, as well as Federal Laws, meaning Acts of Congress, and treaties (which conform to the Constitution).*

As President Abraham Lincoln noted in his First Inaugural Address:

> *. . . if the policy of the government, upon vital questions, affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court, the instant they are made, in ordinary litigation between parties, in personal actions, the people will have ceased to be their own rulers, having, to that extent, practically resigned their government into the hands of the eminent tribunal.*

Few things concerned framers of the Constitution more than the possibility that the federal judiciary would usurp powers delegated to the other branches. In Essay Seventy-eight of *The Federalist Papers*, for instance, Alexander Hamilton wrote that courts of justice could not endanger the general liberty of the people "so long as the judiciary remains truly distinct from both the legislature and the Executive," but agreed with Montesquieu that "there is no liberty if the power of judging be not separated from the legislative and executive powers."

Consider then what has happened. It is not possible to list all of the essential details of *Swann v. Charlotte-Mecklenburg Board of Education*, but here is a brief chronological review which includes some of the highlights:

Prior to the Supreme Court's 1954 *Brown* decision, the School Board of Charlotte and Mecklenburg Counties in North Carolina operated a dual (*i.e.*, racially segregated) public school system, as authorized by then-existing interpretations of the Fourteenth Amendment's equal protection clause. After the *Brown* decision, however, the School Board established a unitary public school system providing for admissions on a non-racial basis. James Swann first brought suit against the School Board in 1965, claiming the Board had still not gone far enough in achieving integration. But the U.S. District Court for the Western District of North Carolina ruled that the School Board had complied with the requirements of the equal protection clause (as set forth in the *Brown* decision), and rejected Swann's motion.

In 1968, however, a federal court decision in another case opened a door enabling Swann to take further action against the School Board. Another motion was filed, and the time the District Court reversed its previous stand, claiming that "the rules of the game" had been changed. On February 5, 1970, the Court approved a desegregation plan which contained busing provisions proposed by a special consultant chosen by the Court three months earlier.[3] The School Board was unwilling to accept this plan, and following another period of legal maneuvering and wrangling, the case eventually reached the U.S. District Court of Appeals, where Judge James B. McMillan, one of Lyndon Johnson's last-minute judicial appointees in 1968, upheld a lower court decision favoring Swann. From there, the case ascended to the Supreme Court, whose nine members, led by Chief Justice Warren Earl Burger, unanimously upheld all parts of Judge McMillan's ruling in favor of the radical busing order.[4]

The impact of this particular decision will be felt most heavily in the South, since it is limited to those areas of the country which in times past practiced *de jure* segregation. The reasoning used to justify partiality of this sort is basically this that *de jure* segregation[5] which existed prior to the *Brown* decision had such a significant posthumous influence on later patterns of *de facto* segregation as to merit court action against such "tainted" *de facto* segregation. Thus, for the present, it is only Southern children of all races who, in the words of Senator Sam J. Ervin (D.-North Carolina), have been reduced "to the status of helpless pawns" by the Supreme Court. But the North will undoubtedly get its share of busing at some later, and more politically expedient, date.

A question in the minds of many during the development of the busing controversy has been: "Where does President Nixon really stand on this issue?" There is good reason to be confused. While a candidate for the Presidency in 1968, Mr. Nixon made it unequivocally clear that he opposed busing. "I am against busing," he asserted on the C.B.S. *Face The Nation* program of October 27, 1968. "I am against busing," he reiterated on N.B.C.'s *Meet The Press* a week later.

Which was fine, except that *President* Nixon, on February 3, 1969, appointed James E. Allen Jr., one of the nation's best-known and strongest advocates of busing, as both Commissioner of Education and Assistant Secretary for Education. Later, Mr. Nixon appointed to the Supreme Court—as "strict constructionists"—the Chief Justice who would write the Court's busing decision of April twentieth, and an Associate Justice who would concur with that decision.[6]

Yet during his April 29, 1971, news conference, the President once again claimed, "I do not believe that busing to achieve racial balance is in the interests of better education." As has happened on so many other occasions during the past two-and-one-half years, Conservatives get the rhetoric while "Liberals" get the action.

There are three final points which should be noted and kept in mind regarding the Supreme Court's busing decision. First, it represents another major example of the un-Constitutional usurpation of power by the Supreme Court. Second, it increases the power of the federal government to regulate and control the activity of children contrary to the desires of parents. And third, it seems certain to escalate racial tensions and animosities in those areas of the country in which it is applied. In other words, the decision represents another revolutionary milestone for those forces seeking less individual responsibility and more government control, by degrees, until the free America that we love is destroyed.

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[3] It is perhaps worthwhile to note that the consultant selected by the Court had earlier been involved in the case as a partisan witness for the plaintiffs.

[4] In related decisions handed down the same day, the Court (1) struck down North Carolina's busing law; (2) ordered a new plan involving busing for the integration of schools in Mobile, Alabama; and (3) upheld an integration plan for a city and county in Georgia which assigns students to schools away from their neighborhoods on the basis of race.

[5] *De jure* ("according to law") refers to segregation sanctioned by law, of the type banned by the 1954 *Brown* decision. *De facto* ("in fact") refers to segregation which exists naturally as a simple matter of fact, such as the natural makeup of residential patterns, etc.

[6] Chief Justice Burger and Justice Harry Blackmun were, and are, "Liberals." For hard proofs and documentation, see (respectively) *The Review Of The News* for March 17, 1971 (Pp. 27-42) and April 22, 1970 (Pp. 19-24).

JEFFERSON STANDARD BROADCASTING CO.,
Charlotte, N.C., February 8, 1972.

HON. EMANUEL CELLER,
Rayburn House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: The enclosed editorial was broadcast four times each by WBT, WBT-FM, and three times by WBTV on the evening of February 7 and the morning of the 8th. In the interest of fairness and in an effort to present as balanced a picture as possible to our audience, it is our policy to invite response from a spokesman representing an opposing viewpoint. We are extending this offer to you in connection with the enclosed editorial.

You may respond by videotaping your statement in our studios, by sending us a recorded response, or by a written statement to be read by one of our staff announcers. We ask that your response be limited to 300 words and that a copy of your proposed remarks be forwarded (for review by our Editorial Board) in advance or recording. If your response is to be read by our announcer, it would be helpful to have a glossy head-and-shoulder portrait of yourself, preferably in color.

If at all possible, we would like to hear from you within the next week, but we *do* want to hear from you. Your comments will enable our viewers and listeners to form their own opinions and draw their own conclusions from having heard both sides of the issue.

Thank you for your consideration, Representative Celler, and we look forward to sharing your thoughts with our radio and television audiences.

Cordially,

LARRY M. HARDING.

Enclosure: "The Constitution And Busing."

[Editorial]

THE CONSTITUTION AND BUSING

"No public school student shall, because of his race, creed or color, be assigned to or required to attend a particular school."

This is the context of a proposed Constitutional Amendment by U.S. Congressman Norman Lent of New York. Significantly, it has been signed by 139 other Congressmen, representing 33 different states and every region of the country. It has been bottled up since last summer in the House Judiciary Committee, and this station believes it should be pried loose for action—and now.

The central part of the issue, of course, is busing, which 76% of Americans oppose, according to a Gallup Poll. Equally as significant, only 45% of *blacks* according to the same survey, favor busing to achieve a racial balance.

Yet, one court after another imposes orders that can be met only by extensive and widespread busing. In their orders, the courts override not only Congressional legislation clearly intended to keep children from being assigned to schools solely on the basis of the color of their skin, but also the wishes of a majority of Americans—both white *and* black.

Some will question the advisability of a Constitutional Amendment to settle the "forced busing" issue, and such reservations are understandable and perhaps debatable. What is *not* debatable, though, is the right of the people and the Congress to use lawful means to correct what the great majority feels are judicial excesses.

The Constitution provides the means by which you, through your elected representatives, can redress what you feel are wrongs. Regardless of how you feel, however, we hope you'll let your Senators and Congressman know what you think.

Invitation to respond has been sent to Representative Emanuel Celler.

RESOLUTION BY THE BOARD OF GOVERNORS OF THE PONTIAC URBAN COALITION ON BEHALF OF THE TRANSPORTATION OF STUDENTS FOR THE ACHIEVEMENT OF QUALITY EDUCATION—FEBRUARY 10, 1972

Whereas, the Pontiac Urban Coalition was created as a broad based coalition of leading Pontiac area citizens to address the problems of urban life, particularly as they affect the residents of the City of Pontiac, and

Whereas, equity of quality education for all area residents is the keystone for the development of a healthy and progressive community, and

Whereas, integrated quality education in the Pontiac school district, particularly at an early age, is a proved means of dissolving social barriers and misunderstandings as well as creating a common sense of understanding and dignity beneficial to successful participation in a pluralistic society, and

Whereas, integrated quality education has been demonstrated to be educationally advantageous to minority children and to be of no educational detriment to the majority population, and

Whereas, the goal of integrated quality education should not be thwarted by the unpredictable time necessary for open housing and equal employment opportunities to support the neighborhood school concept, and

Whereas, the transportation of children to attain the above objectives of better educational results both academically as well as socially has raised new hopes and provided a better school climate for long-term growth and development, in spite of strong initial opposition, and

Whereas, local school administrators, teachers, parents, and students have recently voiced publically their belief that significant progress has been achieved since the opening of school, and that the normalcy of school activity, lessening of fears, and the increased support by parents are signs which indicate that the Pontiac community is stabilizing and preparing for renewed growth: Therefore be it

Resolved, That the Board of Governors of the Pontiac Urban Coalition, recognizing that the transportation of students is an added financial burden and a personal inconvenience, nevertheless supports the approach in appropriate circumstances as a successful and necessary means of attaining the paramount goal of integrated quality education; and be it further

Resolved, That the Pontiac Urban Coalition is adamantly opposed to any Federal statute, any amendment to the United States Constitution, or any effort by the Legislature of the State of Michigan which would in any way deny a school district the right to transport students to attain racial balance in its learning institutions for the purpose of quality education; and be it further

Resolved, That the members of this Board wish to formally state their support for the positive strides taken by the citizens of Pontiac to correct serious educational inequities in our community and we are opposed to any legislation that will endanger the progress which has been made.

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A.,
Washington, D.C., February 14, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The National Council of Churches would appreciate an opportunity to testify in opposition to proposed antibusing Constitutional amendments some time during the course of your hearings on that subject.

I am enclosing a copy of a resolution on the subject adopted February 13 by the General Board of the Council.

With best wishes, I am
Cordially yours,

JAMES A. HAMILTON.

Enclosure.

RESOLUTION ON EQUAL EDUCATIONAL OPPORTUNITY ADOPTED BY THE GENERAL BOARD OF THE NATIONAL COUNCIL OF CHURCHES—FEBRUARY 13, 1972

Whereas the U.S. Supreme Court in its historic 1954 decision found "separate but equal" school systems "inherently unequal" because they work psychological harm to both white and non-white children and impose unequal educational disadvantages upon non-white children thus denying to the latter equal protection of the laws as guaranteed by the 14th Amendment and

Whereas progress toward achieving equal educational opportunity for all children has been accomplished only through court orders, lengthy legislative battles, executive agency enforcement proceedings, and school board actions, and

Whereas even this progress has not been sufficient to stem the tide of increasing racial imbalance and isolation in the public schools, so that now, eighteen years later, there is more racial imbalance and isolation in the schools across the nation as a whole than there was at the time of the high court's decision, and

Whereas the NCC has long ago called for schools to be "open to all without distinctions as to race, creed, national origin or economic status" and

Whereas the goal of equal educational opportunity through full integration is a goal the attainment of which is an inseparable component of any legitimate definition of "quality education" and

Whereas the goal of equal educational opportunity in our nation is gravely threatened by proposed anti-civil rights legislation now pending before the U.S. Congress: Now, therefore, be it

Resolved, That the General Board of the National Council of Churches

1. Reaffirm its commitment to equal educational opportunity for all children.
2. Reaffirm its commitment to racial integration of our public schools.
3. Recognizes that the busing of school children has in the past been widely used as a technique to achieve racial segregation in the schools.
4. Recognizes that in the absence of integrated housing, among the many effective methods which have been, can, and should be used to achieve higher degrees of equal educational opportunity and racial integration is the deliberate and selective busing of school children of all racial groups.
5. Recognizes that the absence of integrated education not only deprives all children of a rich and rewarding educational experience but works psychological damage upon white children as well as upon non-white children, and therefore precludes quality education in any event.
6. Calls upon the President of the United States, the Congress, state legislatures, and all school districts to assume leadership and provide adequate funds in a determined effort to achieve equal educational opportunity and integrated education for every child.
7. Urges the Congress of the U.S. to oppose all anti-civil rights proposals, including proposed constitutional amendments and other anti-busing measures, which can serve only to hamper desegregation, debase the quality of education at the human level, and delay the attainment of equal educational opportunities for all children in this country.

POLICY BASIS—THE CHURCHES AND SEGREGATION, A POLICY STATEMENT ADOPTED BY THE GENERAL BOARD, JUNE 11, 1952

". . . segregation as practiced in the United States probably has more effect on the attitudes of the young than the formal teachings of the schools about democracy or of the churches about Christian brotherhood."

"Segregation subjects sections of our population to constant humiliation and forces upon them moral and psychological handicaps in every relation of life. Still more devastating is the moral and spiritual effect upon the majority."

"The theory of 'separate but equal' services does not work out in practice; segregation is always discriminatory."

THE CHURCHES AND SEGREGATION, A POLICY STATEMENT ADOPTED BY THE GENERAL ASSEMBLY, DECEMBER 5, 1957

"The General Assembly of the National Council of Churches reaffirms at this time its renunciation of the pattern of racial segregation, both in the churches and in society, as a violation of the gospel of love and human brotherhood."

THE CHURCHES AND THE PUBLIC SCHOOLS, A POLICY STATEMENT ADOPTED BY THE GENERAL BOARD, JUNE 7, 1963

"As Christians we believe that every individual has a right to an education aimed at the full development of his capacities as a human being created by God, his character as well as his intellect. We are impelled by the love of neighbor to seek maximum educational opportunities for each individual in order that he may prepare himself for responsible participation in the common life."

RICHARDSON INDEPENDENT SCHOOL DISTRICT,
Richardson, Tex., February 14, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I appreciate your invitation to present my statement for the record in the forthcoming public hearings on the proposed amendments to the Constitution respecting the transportation and assignment of public school students.

The following statement is presented on behalf of the 120,000 residents and 31,000 students of the 38 sq. miles Richardson Indepenent School District, Richardson, Texas 75080.

This school system is unique in that it receives no Federal funds, but through the State and local funding provides one of the finest educations in the State of Texas for $615/pupil. It is an innovative, progressive system which provides the maximum support to each student in all aspects of fundamentals and enrichment programs. Our students are widely sought after by Universities and Colleges for both athletic achievement and academic excellence. We are currently accepted as a Constitutional school having integrated our 3% black students at all secondary levels. We still retain one black elementary neighborhood school which is centrally located within an all-black community within our school district. Approximately one-half of our district is within the north Dallas city limits.

Our Hamilton Park community was a model Negro community excelling in all aspects of student participation and achievement with a separate and equal school system under the original statutes of the State of Texas. Our black students graduated and attended Colleges and Universities in the 86–92% participation category, a similar ratio to our white schools. All necessary and excessive support was given to this area to assure that our students were second to none in their preparation for adult achievements. We now have a fully integrated system, but our Negro community has suffered a serious loss to their civic pride and the individual students probably have been denied a full sense of true accomplishment. The community was initiated as a social experiment to show that such a community steeped in civic and religious unity with a supporting excellent school system could take advantage of all of the opportunities of our American way of life. It was highly successful.

The above prologue is an attempt to place each of you in the setting of a modern day educational system committed to the ideal that the purpose of education is to educate, and that committed local boards representing the people of a community can work together with a highly trained and skilled school administration and teaching staff to do the job right. Individual needs and programs are tailored to meet the specific objectives of the whole system spending more or less, as required, to meet the specific objectives of education. No panacea from above, whether it be money or bureaucratic edict as to methods, approaches, or material, can accomplish the same end.

The United States of America has had the most efficient and effective free public school system in the entire world. I firmly believe that this has transpired because education has been the responsibility of the individual states and that opportunity and freedom coupled with local control and free enterprise were in effect. At present, in the name of social equity, our school systems are being reduced to shambles without accomplishing the stated goals for which this chaos has been created.

Gentlemen, the name of the game is education. Equal opportunity for each student arises through thoughtful and careful consideration of all learning problems and they are not limited to minority races, the poor, or the handicapped. Learning problems are student problems, and they know no social, racial, genetic, or affluence heritage. The further the governing body from the student's daily problems and achievements, the less likely is that body to either understand or solve those problems let alone set a blueprint that is likely to be successful. The gest government is that closest to the people; and that, which, by design, is controlled by the desires and goals of a local community board can best administer the education of our youth within the broad guidelines provided by each State Board of Education.

The areas of default in producing quality education are more related to apathy than social injustice. Granted, such inequities have, and do exist, and they need to be corrected. National symptomatic solutions will not cure the causes of such inequities. Artifacts of busing, consolidation, destruction of the neighborhood concept of education and the like have not, and probably will not, be successful if the goal is to improve the quality of education. If the object is to get complete social and racial integration ratios, the numbers game can be attained, but at a sacrifice neither economically nor educationally feasible or sound.

Congressional educational legislation has been rightfully aimed at special support to disadvantaged children. In direct contrast, however, judicial decisions in the name of Constitutional rights and legislative interpretations have ordered solutions which negate the use of funds so appropriated. Thus Federal funds and Federal justice march along in direct antithesis, solving nothing of consequence, but providing a climate of unrest, dissatisfaction, low educational motivation, and anxiety both within the schools and the population that supports them. This will neither lead to excellence in education nor equal opportunity, but it will certainly enhance the chaos delivered to local Boards of Trustees for their administration.

We are systematically destroying one of our greatest institutions, the public school system, in an attempt to rectify a problem which we ascribe solely to social inequities rather than to the specific causes of inadequate educational procedures and opportunities, which outweigh such artificial items as economic and racial balance for no other purpose than to get the so-called proper ratios or balances. Education is not a bookkeeping exercise, but one in proper husbandry. Too often today, more time is spent in acquiring lucrative Federal funding than in seeking solutions to specific educational problems. Public education in the United States can provide solutions at reasonable costs for all the problems which are educational. It can help with the social, the racial, the economically deprived, and any other class of problems if education is left to grow and mature under local control where the specific problems are understood and solvable. However, so long as funds are granted for specific purposes, as additive packages to supplement problem areas, and so long as Federal Courts prohibit the grouping of problem children because of the fear of resegregation, these solutions become financially impossible. We are working at cross purposes where available funds can only be used in a tutorial sense, and even the United States cannot afford this!

We have arrived at a situation of "over-kill" where all reasonable and effective measures are precluded by law and court decisions. We must return to a position of mutual trust where local school boards are charged with education, Congressmen are charged with legislation, and the Judiciary must limit its scope so that they in effect do not continue to be the local school board in absentia. School board members usually serve without pay and devote long hours to the solution of educational and school finance and construction problems so that the proper learning environment can be achieved. You and the Judiciary have made the decision-making process one of monumental size and complexity because the educational aspects have become the least of the decision. First you must decide is it legal, do I have the right ratios of teachers and students of the right race and social understanding, is there any way that I can do this which will not bankrupt the system, and still meet all of these objectives? The only real consideration should be what is best for all of the students, what are their individual needs, and how can we best accomplish these objectives at a reasonable cost. This is the way we used to do it, and we did it for a lot less money.

In all good conscience I have studied the situation in great detail trying to equate the ingredients of excellent education and cost and encompassing the specific needs of each child. We are continually under the gun, not knowing which axe will fall next as we try to plan meaningful programs and execute them. Now the threat of more busing, consolidation, new taxation procedures, changing of boundaries in relationship to schools planned in response to orderly growth in population (we add 2500 new students annually) are in the making. None of these has a stated goal of improving education, *per se*. We seek relief from our Congress in any manner that they can to alleviate the intolerate situation in which we are placed.

The only relief which I can perceive is a Constitutional amendment that will return the control of education to the States and to the local control of the individual community school boards. A means must be found whereby the neighborhood school system can be preserved, forced busing for social and racial balance eliminated and the threat of consolidation of school districts removed. The mechanism for providing this relief resides within the jurisdiction of our Congress, and I urge you to take whatever steps are necessary. On behalf of the students, parents, and school boards of America I implore you to check the destruction of our public schools.

I would like to testify before your subcommitee in the hopes that I can convey the seriousness of the problems that have been created.

Sincerely yours,

STANLEY B. MCCALEB,
President, Board of Trustees, Richardson Independent School District.

STATEMENT BY THE AFL-CIO EXECUTIVE COUNCIL ON SCHOOL BUSING, BAL HARBOUR, FLA.—FEBRUARY 15, 1972

The AFL-CIO has consistently supported both quality education and integrated education. We have just as staunchly supported mass investment of federal funds to improve substandard schools. We have fought for legislation to achieve open housing as the most effective way to achieve integrated education.

The AFL-CIO Executive Council categorically reiterates these positions and adds:

1. We wholeheartedly support busing of children when it will improve the educational opportunities of the children.
2. We deplore the actions of those individuals or groups who are creating a divisive political issue out of America's vital need for quality, integrated education.
3. We will oppose the Constitutional amendment approach because it will do a disservice to the quality, integrated education which we support.

FEBRUARY 18, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: P.A.S.S. (Preserve Autonomous School Systems) recently received your answer to our request to testify before the Committee on the Judiciary re: "proposed amendments to the Constitution respecting assignment and transportation of public school students." The Judiciary Committee asked for our "statement on this subject for inclusion in the hearing record." We comply with the request herewith.

P.A.S.S. is an organization representing over three hundred (300) contributing families. P.A.S.S. has five essential goals:

(1) We will strive to maintain the neighborhood school concept.
(2) We will work to maintain independent school districts.
(3) We will challenge forced busing in metropolitan areas.
(4) We will act to prevent forced consolidation without a consenting referendum.
(5) We will use legal, constitutional means to achieve our goals.

The right to pursue these goals is justified within the democratic process to maintain freedom from federal dominion. Historically and practically, public education has been the province of the local community. The favorable results of this educational process are statistically demonstrable by assessment of the economic and cultural growth in the American society.

Political subdivisions (e.g. school districts), structured by elected bodies (e.g. state legislatures), should not be subjected to arbitrary court decrees. The *novel* federal court idea to consolidate multi-county school systems or independent school districts within a county does not deal with the issue of eliminating vestiges of segregation. Rather this federal court action toward consolidation inflicts itself into the socio-economic policies of a broad spectrum of the citizenry.

There is no constitutional requirement that a community remain demographically stable. There is no constitutional requirement removing the citizen's right to mobility. Neither consolidation nor busing will solve the dilemma of quality education.

Public schools should be financed by and educationally structured to represent the community served. Public schools should reflect the interests and intellectual needs of the community served. Parents, students and teachers, in a given area, can determine the educational needs of the community better than state or federal governments.

Anonymity, a tragic feature of today's young people, can be overcome to a great degree if students are allowed to remain in and identify with their families and communities. Individuality can better express itself in the atmosphere of the smaller neighborhood than when students are transported throughout the metropolitan area without regard to these individual needs of identity. This diversity in education, reflected under local control, is a major strength of America.

We believe that a constitutional amendment is the only certain way to insure the rights of the majority in the vital area of our children's education.

Yours truly,

(Mrs.) ANN STORMER.

DALLAS COUNTY COMMISSIONERS, ABC COMMITTEE (ADVISORY BUSING COMPLAINT),
Dallas, Tex., February 19, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

Subject: Constitutional Amendment.

DEAR CONGRESSIONAL CELLER: The ABC Committee recently requested the opportunity to testify before the House Committee on the Judiciary re: the proposed Constitutional amendments respecting the transportation and assignment of public school students.

Per your request, our statement on this subject follows:

Our committee believes that forced busing, required because of court-ordered pupil assignment, has caused serious disruption in quality education in the Dallas Independent School District. Further, forced busing has caused community eruptions which will not soon heal. Instead of blending the races harmoniously, it has polarized the races. The deep-seated problems appear to have the culture clash as their basis rather than racial bias. Racial differences are too often misnamed the culprits in this crisis through lack of understanding of the real issues.

When forced busing is used to achieve socio-economic integration, students assigned to more affluent areas complain that their educational position disintegrates rather than improves. The divergence in socio-economic position advances their feelings of inferiority or causes hostility. By contrast, students assigned to schools in lower socio-economic areas complain that behavior patterns such as; sexual abuse, theft, obscenities and militant tactics, make learning impossible because of the climate of fear. Where cultural background is similar, black and white apparently assimilate into the public school system with little turmoil involved.

We are including three reports of the ABC Committee. Number 1 explains our purpose—why we were appointed and how we function. Numbers 2 and 3 are resumes of our caseload over the past four months. These additional reports may aid the Judiciary Committee to gain insight into the specific problems involved when children are removed from their neighborhood schools.

Our committee hopes that compensatory education will replace forced busing so that every child can expect quality education without regard to race. We hope that Congress will allow the people to express their will in the area of student transportation and assignment through a constitutional amendment.

DORIS M. HOLDEN, *Chairman.*

DALLAS COUNTY COMMISSIONERS, ABC COMMITTEE,
(ADVISORY BUSING COMPLAINT),
Dallas, Tex., February 1, 1972.

To whom it may concern: The ABC (Advisory Busing Complaint) Committee was formed by the Dallas County Commissioners in October 1971, to fill an unmet community need. Recent federal court orders, requiring massive changes in the educational complex, acted as the catalyst for our committee. The County Commissioners were deluged with parental and student complaints about school problems. They had neither the time nor the staff to deal with this barrage of charges.

The charges originated in areas newly involved in the implementation of federal court orders requiring forced busing, unequal desegregation or culture clashes. We work with parents on an individual basis re: their children's public school experiences. Some of these problems have existed always in public education, but to a lesser degree. When there were fewer problems or when local governing agencies had more latitude to make decisions or when parents had more confidence in their opportunities to seek redress, they were dealt with by existing local structures. Today, many parents believe they have been bypassed by the courts and their elected or appointed officials. Therefore, the parents with whom we counsel are more comfortable in the presence of the ABC Committee than with other established groups to whom they might have turned before.

For example, the Dallas Independent School District School Board holds meetings in a public atmosphere with news media present. Privacy and confidential reporting are restricted. Also, school boards appear to the public to concern themselves primarily with school funding, construction and administration rather than with personal, individual problems.

School administrations are viewed by most of our complainants as authoritative bodies before whom they cannot appeal nor appear as equals.

The Tri-Ethnic Committee is seen as a group more responsive to minority rather than majority views because of the unbalanced composition of ten (10) minority to five (5) majority members. Since the Tri-Ethnic Committee was ordered into existence by the Federal District Court, which these parents see as the creator of their dilemma, it is difficult to fault them for *not* seeking redress before this committee.

Therefore, the ABC Committee was appointed to serve in this vacuum. The Commissioners appointed us to investigate complaints in school districts in Dallas County. We try to evaluate the importance and validity of the charges. We then help parents seek appropriate, alternate solutions within the existing system.

Our concern is the concern of parents who supply the two major requirements to public education—the children and the tax dollars. We hope it is helpful to you to know why and how the ABC Committee functions.

DORIS HOLDEN, *Chairman.*

NOVEMBER 24, 1971.

DALLAS COUNTY COMMISSIONERS' ABC (ADVISORY BUSING COMPLAINT) COMMITTEE

The ABC Committee submits the following report on our activities during the months of October and November 1971.

We have heard a total of thirteen (13) complaints which were resolved as follows:

A. Eleven (11) complaints from Boude-Storey Junior High.

1. Seven (7) complaints were dealt with in a field trip to Boude-Storey by three committee members. The results of this trip were submitted in our report dated November 1, 1971. Copies of this report were given to all County Commissioners, School Board DISD President John Plath Green, The Boude-Storey Principal and two assistant Principals, ABC Committee members and to the Complainants.

2. In Complaint #3 of the November 1 Boude-Storey report, a medical transfer has been effected with the assistance of the ABC Committee.

3. Complaint #8, received after the Boude-Storey field trip, was similar in nature to the seven complaints already investigated. No further action was taken except to make a copy of the November 1st report available to the complainant.

4. Complaint #9 was dealt with by the parents of the students involved. A medical transfer was granted by the DISD due to physical illness requiring the attendance at a neighborhood school.

5. Complaints #10 and 11 have been heard by the ABC Committee. With the approval of the parents and suggestions from the ABC Committee, the parents will seek redress from the DISD. If this fails, the ABC Committee will be available for further action as required. Case #10 involves a transfer for medical reasons. Case #11 involves a change in instructors due to an irreconcilable personality conflict.

B. Complaint #12—Zumwalt Junior High School.

1. This case was received by mail and did not involve the first-hand observation of the complainant. The ABC Committee will take no action until eyewitness observers choose to come forward with the complaint.

C. Complaint #13—Comstock Junior High School.

1. This case involved an assault action which was handled by the Comstock School Administration and the Juvenile Division of the Dallas Police Department. No further action is required, at this time, by the ABC Committee.

The ABC Committee has written all Independent School Districts in Dallas County and six school Districts in towns surrounding Dallas County. A copy of this letter is attached. We are requesting the school census for 1969–1970–1971. We also request the school administration's comments concerning increases or decreases in school enrollment. Our purpose is to confirm or deny the "white flight" theory being used by the media and the courts. We wish to recognize and to thank the Commissioners for their strong stand in opposition to county-wide school consolidation.

We are seeking a replacement on the ABC Committee for Mayor Roy Orr who resigned. We will submit these names with resumes to the County Commissioners, as soon as possible, for a final selection of the 11th Committee member.

We find blatant inconsistency in the enrollment at Boude-Storey as required by the court orders. According to Judge William M. Taylor Jr. Orders dated August 2, 1971, Boude-Storey was to have the following enrollment:

Anglos	664
Mexican-American	190
Black	621
Total	1,475

According to the DISD Desegregation Plan "Confluence of Cultures" booklet dated July 23, 1971 and effected August 24, 1971, Boude-Storey was to have the following enrollment:

Anglos	250
Mexican-American	194
Black	1,245
Total	1,689

According to the actual school enrollment figures supplied by the Principal, Mr. Kirkpatrick, on October 29, 1971:

Anglos	88
Mexican-American	111
Black	1,650
Total	1,849

The ABC Committee is convinced that further study of this problem is necessary if Boude-Storey is to be an institution of education and not simply of social experimentation. We will ask further questions of the DISD re: this untenable situation. We welcome any suggestions the Commissioners might wish to give to the ABC Committee re: this matter.

If the ABC is to be more than an interim committee to serve only an explosive and temporary need, additional direction beyond busing and integration problems needs to be given. I have taken the liberty of preparing a report (attached) to express some of the fields in education in which the ABC Committee might delve in the future.

Respectfully submitted,

Doris Holden,
Chairman, ABC Committee.

Dallas County Commissioners, ABC Committee
(Advisory Busing Complaint),
Dallas, Texas, February 1, 1972.

To: Dallas County Commissioners:

This ABC Committee report is intended to give an accounting of our activities during December and January. Our last report to you was dated November 24, 1971.

We have received twenty (20) complaints for investigation. Each complainant is required to submit either a written report to the ABC Committee or to appear in person before the committee during our regular weekly Monday meetings. We have an additional ten (10) incomplete reports from parents who did not meet either of these requirements.

Twelve (12) of the twenty (20) complaints have been completed by investigation and subsequent action. The additional eight (8) complaints are under investigation. We hope to find solutions to the problems.

Our major concern in this report is with Boude-Storey Junior High School. Fifteen (15) of our twenty (20) complaints have originated in this school. Parents are concerned for the safety of their children.

These parents believe that general disorder and chaos reign in this school. They substantiate the charges by reporting that metal combs (i.e. angel food cake cutters for Afro hair styles) are used as weapons; lunch money and books are stolen on a continuing basis; physical fights break out regularly in classrooms and halls; and sexual molestation in varying degrees is in constant practice. Additionally, there is the major complaint that school exits are kept locked during school hours though state fire prevention laws prohibit this practice.

It is believed generally that more crimes are committed in our society which go unreported than those that are reported to the proper agencies. On this basis, we wonder if the parents who come to us from Boude-Storey represent only the tip of the iceberg. We have made an ABC Committee field trip to Boude-Storey where we received logical answers to our questions. However, the reports of problems in this area continue to be brought before our committee.

You will remember that our November 24, 1971 report carried enrollment figures for Boude-Storey reflecting federal district court orders, DISD administation assignment and the actual enrollment as of 10-29-71:

	Black	Anglo	Mexican-American
Federal district court	621	664	190
DISD Administration	1,245	250	194
Actual enrollment	1,650	88	111
Eyewitness report that today's enrollment is (estimated)	1,650	8	25

The ABC Committee has several white and Mexican-American children among its case load who are boycotting this school or who have dropped out for the reasons mentioned before—fear for personal safety. These parents are seeking transfer for their children.

The ABC Committee agrees with these parents that this racial mix is untenable. We further believe that this school, because of the high incidence of disorder, is unsafe for the minority whites and Mexican-Americans. It appears that the administration, including the teachers and guidance counseling staff, have been unable or unwilling to maintain sufficient discipline to insure physical safety, much less to insure each child the opportunity to learn in this disordered atmosphere.

The ABC Committee recommends that the Commissioners Court request the Dallas Independent School District initiate a study into the alleged Boude-Storey problems. We further recommend that the parents in this area be allowed to cooperate, advise and testify in hearings to seek solutions to this potential powder keg—Boude-Storey Junior High School.

DORIS HOLDEN, *Chairman.*

FEBRUARY 28, 1972.

Attention: Mr. Emanuel Celler, Chairman.
U.S. House of Representatives,
Committee on the Judiciary,
Washington, D.C.

DEAR MR. CELLER: Pursuant to your letter of January 31, 1972, the following is submitted to you on behalf of the Roseville Action Group as a statement of our purposes and objectives for insertion in the record of your hearings on proposed amendments to the Constitution of the United States regarding the transportation and assignment of public school students.

We, of the Roseville Action Group, have united in opposition to cross district busing, whether it be to promote racial integration or alleged equal opportunity of education. We cannot in good conscience stand by and allow our children and the children of our community to be used as pawns by the Federal Judiciary in this social experiment in which they are currently engaged. We deeply believe in the concept of the neighborhood school and that our children would be irreparably harmed by this social experiment.

We are a nonviolent and nonpolitical organization dedicated to the proposition of retaining local control of our neighborhood schools. We intend to employ all peaceful avenues available to us to demonstrate our support of the concept of the neighborhood school and to oppose the questionable action of the Federal Courts.

It is our belief that, if necessary, a Constitutional amendment should be enacted guarantying the children of our community and every community throughout the country the right to attend their local neighborhood school.

We thank you for allowing our position to be submitted to you and hope you will take all actions necessary to prevent our children from suffering this grave injustice.

Very truly yours,

ROSEVILLE ACTION GROUP,
VICTORIA MEADE,
Executive Recording Secretary.

STATEMENT FROM CASEY JENKINS, NASHVILLE, TENN.

(Submitted on behalf of the Concerned Parents Association)

Court ordered busing is destroying our school system in Nashville, Tennessee. It has adversely affected the lives of almost every citizen in our community and is unnecessarily risking the lives of almost 50,000 students daily.

What have been the results?

1. DESTRUCTION OF THE FAMILY STRUCTURE

Because of geographic distances involved and fear of physical harm the school is no longer the social and interest center for the family. Social events have been completely terminated in the public schools of Nashville. Athletic events have been seriously hampered and ultimately will be at an end. Many P.T.A.'s have disbanded and others are on the brink of collapse. Men's groups, who used to provide thousands of dollars of extra equipment for schools, no longer exist. Because of bus schedules, after school activities have been cut out by thousands of children. Scout troops are on the decrease. Parents no longer consult with teachers about the problems of their children. The children and parents are growing apart. The list is endless.

2. STAGGERED BUS SCHEDULES CREATE HARDSHIPS

We operate on staggered school hours. The first school opens at 6:30 A.M. which means some children are standing on street corners at 5:15 A.M. or 1½ hours before daylight. The last group of school children begin the school day at 10:30 A.M. and finish at 5:00 P.M. This is after sundown. These are elementary school children who are (1) walking home after dark if they do not live in excess of 1½ miles from the school grounds, and (2) riding buses half way across town after dark and being let out on a street corner no further than 1½ miles from their homes, and (3) in some instances, waiting in vain at a school, far from home, in the darkness, for a school bus which never arrives. The first cold spell in Nashville this year resulted in some 60 school buses breaking down. Over 15,000 children were left standing at bus stops for three extra hours. For the working mothers are the sole support of their families and whose elementary school child starts the school day at 10:30 A.M. is indeed in an insoluble plight of momentous proportions. She can leave her young child (children) alone, unattended for hours after she leaves for work in the morning. This is not only dangerous, it is, of course, illegal; or she can quit her job and go on welfare. She can resign as a taxpayer and join the ranks of those on the receiving end. These are her choices. Is this where we want middle-class America, the backbone of our economy and our Country? On the receiving end of a welfare check?

3. CHILDREN HAVE LOST INTEREST IN LEARNING

There has been an immense decrease in available courses, qualified instructors, time spent in instruction, time actually spent in class rooms, field trips, home work and motivation for superior or even average achievement. This has produced lethargy in the children.

4. THE GOAL OF QUALITY EDUCATION FOR ALL, RATHER THAN BEING ACHIEVED, HAS RESULTED IN MEDIOCRITY FOR ALL

Money that is needed for education is now being used for transportation. The better teachers and students are leaving the public school system. Approximately 8,000 students left the Nashville School System at the beginning of the 1971 school year. It is undisputed that practically without exception these were the maximum achievers. This has, of course, resulted in approximately 16,000 parents withdrawing their support of public education. It is also undisputed that these are the parents that had the most interest in their children and the ability and means of helping the schools the most. Hundreds of teachers have left the system for private schools or other employment. These are the teachers who taught for the love of teaching and have been willing to sacrifice financially in order to enjoy a proper teaching environment. Ask any teacher in the Nashville public school system, black or white, about class room conditions and you will be told "we are no longer teachers, we are high paid babysitters more involved in trying to keep order than in teaching. We cannot teach and thus the children cannot learn."

5. A COMPLETE BREAKDOWN OF DISCIPLINE IN THE SCHOOLS

Regardless of the history of the situation, it is a fact that there is a vast difference in the mores, morals, interests, behavior patterns, physical appetites, language, family structure and aptitudes of not only the races but of different economic classes. Forcing children with these differences into close association has produced chaos in the public schools. Cursing, fighting, property destruction, molesting, thievery and general disorder has become a daily occurrence in the public schools of Nashville. If the goal was to allow the unruly and undisciplined child to observe and associate with those of higher standards and thus imitate them, it has been a total failure. Just the opposite has occurred. The heretofore disciplined child in the public schools is now contributing to the problems. The instances of the police having to be called to the schools and stationed at the schools are to numerous to detail. This was unheard of in Nashville in any schools prior to this school year.

6. BUSING HAS INCREASED THE BELIEF THAT THE MINORITY RACE

The court order requiring forced association of the races is itself a message to the people, black and white, that the blacks cannot learn to achieve if left isolated in their own culture. It says to the blacks, "your teachers are inferior, your parents are inferior, and you are inferior and you can only learn if you are forced into white schools with white teachers." It says to the whites, "your teachers are superior, your parents are superior, and the blacks can only learn from association with you." That is the only logical reason that can be deduced from such an order. But the facts do not support the theory. The only equalization that has occurred has been to bring those with the ability to achieve down to the lower level, with the attendant knowledge that there is a vast difference. There is no evidence that forced association has improved the learning ability or desire of the minority child. If anything, it has produced a heightened degree of bitterness and frustration.

7. BUSING HAS FURTHER SEPARATED THE PEOPLE FROM THE GOVERNMENT

If members of Congress think that the American people believe that their government is working in their best interest, then they are sadly mistaken. So-called middle class people of this Country have always been its backbone. Destroy their motivations or their support of the government and this Country is through. They produce, pay taxes, raise their families and heretofore have supported governmental actions even when those actions were wrong. Their inherent motivation has always been to provide order and well being for their children. Forced busing robs them of this motivation. It says to them, "why work, your children are not going to be allowed to enjoy the fruits of your labor" and it says to the child, "why learn, your increased earnings will not benefit you anyway." The middle class feels trapped. The poor don't care and the rich escape. The middle class feels bitter and frustrated and it is only an engrained spirit of law and order that is keeping them from erupting. No one knows how long this restraint will prevail. Big government has now reached into their homes and taken their children away from them. They will soon realize that to effect a change, they will have to do away with big government, one way or the other. They will soon return to the belief of our founding fathers that "the essence of freedom is the limitation of government."

These are but some of the reasons why I support a constitutional amendment or any other form of legislation which would prohibit the government from forcibly busing our children out of their neighborhood schools for any reason. Not being a lawyer, I will leave the discussion of law and the constitution to others. Frankly, I do not believe that Congress or the Federal Courts are any longer interested in the legality of their actions. I do believe that, if you are made aware that forced busing may well be the extra pound that broke the government's back, you would stop it. The middle class is being hurt by inflation, high taxes and other actions by their government which takes the fruits of their labor. If you take their children by forced busing, you will have destroyed them and the greatest system of government in the history of civilization.

Chairman CELLER. The Chair wishes to place in the record, also, a statement by the Governor of the State of Florida, Governor Reubin Askew, as the same appears in the Washington Post in today's edition.

(The article referred to follows:)

[From the Washington Post, Feb. 29, 1972]

FLORIDA'S GOVERNOR TAKES A STAND ON BUSING

On March 14, Florida voters will be asked on their primary ballot whether they favor an amendment to the U.S. Constitution outlawing "forced busing" of school children. Last week, in a speech at the opening of the Central Florida State Fair in Orlando, Governor Reubin Askew, a Democrat, urged voters to reject the proposal and to support a companion question on the ballot affirming equal educational opportunity and rejecting a "return to the old dual school system." What follows are excerpts from that speech:

I come before you today to say a few things with which you may disagree, a few things which are decidedly unpopular, but a few things which I feel must be said in the interest of Florida and her people—all of them. . . .

I strongly oppose a constitutional amendment to outlaw busing—not because I particularly like it or think it's a panacea for our problems. . . . Busing is an artificial and inadequate instrument of change. It should be abandoned just as soon as we can afford to do so. . . .

Yet by the use of busing and other methods, we've made real progress in dismantling a dual system of public schools in Florida. And I submit that until we find alternative ways of providing an equal opportunity for quality education for all . . . until we can be sure that an end to busing won't lead to a return of segregated public schools . . . until we have those assurances, we must not unduly limit ourselves, and certainly not constitutionally.

We must not take the risk of seriously undermining the spirit of the Constitution, one of the noblest documents ever produced by man. And we must not take the risk of returning to the kind of segregation, fear and misunderstanding which produced the very problem that led to busing in the first place.

I certainly hope that the overwhelming majority of Floridians are committed to the goal which busing was designed to pursue. That goal is to put this divisive and self-defeating issue of race behind us once and for all. . . .

I think we're well within reach of understanding one another, caring for one another and affirming our principles of justice and compassion which made this country what it is today. How sad it will be if we turn back now—not only for minority children—but for all of us.

Of course we don't want our children to suffer unnecessary hardships. That goes without saying. But neither do we want our children to grow up into a world of continuing racial discord, racial hatred and, finally, a world of racial violence. . . .

It is my hope that we're moving beyond racial appeals here in Florida and in the rest of the South as well. I say it's time we told the rest of the nation that we

> aren't caught up in the mania to stop busing at any cost, that we're trying to mature politically down here, that we know the real issues when we see them, and that we no longer will be fooled, frightened and divided against ourselves. . . .
>
> I hope we can say to those who would keep us angry, confused and divided that we're more concerned about a problem of justice than about a problem of transportation, and that while we're determined to solve both, we're going to take justice.
>
> It is not my intention to impose my will on anyone. But it is my intention to give the people of Florida cause for sober reflection, so that they're sure—very sure—before they encourage an amendment to the United States Constitution, one that for the very first time, I believe, would seek to reverse our efforts to make that great document a living testimony to the pursuit of liberty, freedom and justice—for all.

Chairman CELLER. The committee will now adjourn until tomorrow morning when we shall hear from the Chairman of the Commission on Civil Rights and from Representative Lent of the State of New York. The committee will now adjourn.

(Whereupon, at 12:45 p.m., the committee recessed, to reconvene at 10 a.m., Wednesday, March 1, 1972.)

SCHOOL BUSING

WEDNESDAY, MARCH 1, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5, OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141 Rayburn House Office Building, Hon. Emanuel Celler, chairman, presiding.

Present: Representatives Celler, Brooks, Hungate, Jacobs, Mikva, McCulloch, Poff, Hutchinson, and McClory.

Also present: Representative David W. Dennis.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Hebert E. Hoffman, counsel.

Chairman CELLER. The committee will come to order.

The Chair wishes to announce the schedule of witnesses for the week of March 5.

On Monday, March 6, 1972: Members of Congress.

Wednesday, March 8, 1972:

Mr. David Selden, president, American Federation of Teachers.

Mr. James F. O'Neil, member, Michigan State Board of Education.

Mrs. Robert C. Anderson, president, PTA Council, Pontiac, Mich.

Mr. Charles J. Hause, president, Save Our Country, Inc., Wilmington, N.C.

Mr. David J. Doherty, executive director, Pontiac Urban Coalition.

For Thursday, March 9, 1972:

Mr. Joseph H. Yeakel, chairman, Concerned Citizens for Improved Schools, Nashville, Tenn.

Mr. Don W. Mantooth, Marion County chairman, the American Party of Indiana.

Dr. Gordon L. McAndrew, superintendent of schools, School City of Gary, Ind.

Mrs. Richard P. Holmes, president, City Council of Parent-Teacher Association, Richardson, Tex.

Mrs. Edna Wade, president, Unified Concerned Citizens of Alabama.

Our first witness this morning——

FROM the FLOOR. Excuse me, but when will a spokesman for white citizens be allowed to speak in this committee? I just want clarification here because we have applied to testify before your committee and haven't received a satisfactory response.

Chairman CELLER. We will accommodate as many people as possible.

FROM the FLOOR. That is evasion, and you know it.

Chairman CELLER. Please be seated. You have your answer.

Please be seated. Otherwise you will be removed from the room.

(The members of the Nazi Party departed.)

Chairman CELLER. Our next witness is a distinguished Member from the State of New York, Mr. Norman F. Lent.

STATEMENT OF HON. NORMAN F. LENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LENT. Mr. Chairman, distinguished members of the subcommittee, I appreciate your affording me this opportunity to testify on behalf of my proposed constitutional amendment, House Joint Resolution 620, which now has the overt support of nearly 150 Members of the House.

House Joint Resolution 620, as you are aware, provides for an amendment to the Constitution of the United States relative to neighborhood schools. It reads as follows:

> SEC. 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.
>
> SEC. 2. Congress shall have the power to enforce this article by appropriate legislation.

Mr. Chairman, communities throughout this Nation are in a state of turmoil or are being threatened with turmoil because of numerous court orders calling for the achievement of "racial balances" in our public schools. The Nation's traditional neighborhood school system is being systematically dismantled in an effort to attain the utopian goal of racially numerical exactitude in public schools. It is my firm belief that if remedy is not forthcoming, these rulings will succeed in making a complete shambles of the Nation's public school systems.

The most far-reaching court decision to date, the so-called *Richmond* decision, has required the consolidation of all school districts in three counties into one entity, charged with the responsibility of achieving a relative racial balance throughout.

Los Angeles is facing the most massive and costly busing order yet imposed on any city—one that would transport 240,000 youngsters for distances ranging up to 25 miles and at an estimated cost of $180 million over the next 8 years.

Other cities confronted with court orders to forcibly bus include Kalamazoo, Indianapolis, Seattle, Denver, Tulsa, Oklahoma City, Detroit, Las Vegas, Nashville, Jacksonville, Corpus Christi, Mobile, Norfolk, Savannah, New Orleans, and San Francisco.

Mr. Chairman, I would like to relate to the subcommittee a typical citizen complaint. As the sponsor of this legislation which has received much attention, I have received literally thousands of similar letters:

> DEAR SIR:
>
> I am the wife of a Fayetteville attorney, the mother of two school-age children, and a former public school teacher. I was educated in the public schools of New York City and believe very strongly in the neighborhood school concept and freedom of choice.
>
> Next week, my seven-year-old daughter, a second-grader, is to be bused to a distant school on the other side of a dangerous highway. We live just five minutes away from our neighborhood school. I can't believe that this is being allowed to happen in the United States of America.

(From a letter dated October 17, 1971 signed by Mrs. Joe H. Morris, Fayetteville, N.C.)

Clearly, Mr. Chairman, the public is looking to the Congress for relief from these sweeping, court-ordered busing edicts. The purpose of House Joint Resolution 620 is to return control of education to local school boards, to preserve the neighborhood school system, and to eliminate forced busing and the threat of school district consolidation to achieve purely arbitrary racial balances.

The legal background:

In *Brown* v. *Board of Education*,[1] the U.S. Supreme Court held that Negroes cannot be "denied admission to schools attended by white children under laws requiring or permitting segregation according to race."

This ruling has been universally understood to mandate the elimination or racially separate public schools established and maintained by State action.

In the second *Brown* case,[2] the Supreme Court instructed the district courts to proceed "with all deliberate speed" to admit the parties to the cases "to public schools on a racially nondiscriminatory basis. . . ."

Under this decision, little Miss Linda Brown, who had been previously required to attend an all-black school several miles from her home in Topeka, Kans., was permitted entrance to her neighborhood school without regard to her skin color.

The principle enunciated in the *Brown* decisions was that the Constitution requires that States must not, on the basis of a child's race or color, designate where he is to attend public school. To do so, said the Court, violated the equal protection clause of the 14th amendment to the Constitution.

For 12 years after the *Brown* decisions, no court suggested seriously that *Brown* did anything more than condemn racial segregation in the public schools. Indeed, many decisions[3] specifically so stated: the cases holding that *Brown* condemned segregation but did not compel integration. It was not until *United States* v. *Jefferson County Board of Education*,[4] that any circuit court suggested that *Brown* did more than prohibit segregation; yes, that it compelled integration. It was in *Jefferson* that the concept of a school board's "affirmative duty" to eliminate the "last vestiges of a dual school system" and establish a "unitary" system found its inception.

From *Jefferson*, Mr. Chairman, followed a proliferation of irreconcilable individual decisions culminating in *Swann* v. *Charlotte-Mecklenberg Board of Education*[5] which held that the same 14th amendment requires that States *must*, on the basis of a child's race or color, designate where he is to attend public school. Indeed, we have come full circle from the *Brown* case.

House Joint Resolution 620 is intended to restore the rule of the *Brown* cases to our Constitution, our laws and our institutions and to reverse *Swann* and other departures from the *Brown* mandate of color-blindness imposed by the 14th amendment's guarantee of equal protection of the laws.

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[1] 347 U.S., 483 (1954).

[2] 349 U.S., 294, 300–301 (1955).

[3] *Bell* v. *School City of Gary, Ind.*, 324 F. 2d 209 (7th Cir. 1963), *cert. denied*, 377 U.S. 924 (1963); *Deal* v. *Cincinnati Board of Education*, 369 F. 2d 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967); *Briggs* v. *Elliott*, 132 F. Supp. 776 (E.D. S.C. 1955).

[4] 372 F. 2d 836 (5th Cir. 1966), *aff'd en banc*, 380 F. 2d 385, *cert. denied*, 389 U.S. 840 (1967).

[5] 402 U.S., 91 S. Ct. 1267 (1971).

I have been somewhat amused that the very clear and unambiguous language of H.J. Res. 620 should have been the subject of such an excess of scholarly attack by a bevy of law professors who have variously described the amendment's language as "misleading," "delphic," and "devastatingly simple."

Interestingly enough, many of these very same critics are ardent supporters of the civil rights law of 1964, which, at section 2000c (b) defines "desegregation" in title IV of that law:

> "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

Indeed, it is difficult to square the many critics' snipings at H.J. Res. 620 with their vehement support and acclaim of the 1964 civil rights law.

The fact is that H.J. Res. 620 utilizes the typical garden variety language of most all of our antidiscrimination statutes in the fields of fair housing,[6] financing of housing,[7] public accommodations,[8] federally assisted programs,[9] equal employment opportunity,[10] and voting rights.[11]

As you are well aware, Mr. Chairman, we now have laws on the books which condemn virtually every aspect of discrimination based on race, color, or creed.

But none of these laws presume to mandate any form of forced integration or to establish any sort of a quota system—for this would be just as repugnant to the American system as is State-enforced segregation.

The *Brown* decision's mandate pioneered this policy of color blindness in the field of education, and I believe it should continue to be retained in our law. The principal thrust of the Court, in *Swann*, on the other hand, is to require the assignment of students to the public schools in this Nation on the basis of race, in order to achieve racial balances or quotas.

I believe it is difficult to reconcile these two cases. Where is the line to be drawn between allocating people by law to schools or other institutions or facilities according to color to promote segregation, and doing the same thing to promote integration? The underlying principle in both cases is racism.

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[6] Public Law 90–284, title VIII, Fair Housing, sec. 804—. . . "It shall be unlawful . . . to refuse to sell or rent . . . a dwelling to any person because of race, color, religion or national origin".

[7] Public Law 90–284, title VIII, Fair Housing, Sec. 805—". . . it shall be unlawful for any bank . . . to deny a loan or other financial assistance to a person . . . because of the race, color, religion or National origin of such person . . ."

[8] Public Law 88–352, title II, Public Accommodations, sec. 201(a)—"All persons shall be entitled to the full and equal enjoyment of all the goods, services, facilities, privileges, advantages and accommodations . . . without discrimination or segregation on the ground of race, color, religion or national origin."

[9] Public Law 88–352, title VI, Nondiscrimination in federally assisted programs, sec. 601—"No person . . . shall, on the ground of race, color or national origin, be excluded from participation in . . . any program receiving Federal financial assistance."

[10] Public Law 88–352, title VII, Equal Employment Opportunity, sec. 703(a)—"It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge an individual . . . because of . . . race, color, religion, sex, or national origin; or (2) to limit, segregate or classify his employees . . . because of . . . race, color, religion, sex or national origin."

[11] Public Law 89–110, Voting Rights Act of 1965, sec. 2—"No voting qualification or requisite to voting . . . shall be imposed . . . by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."

If it was wrong in 1954 to assign a black child to a particular school on the basis of race, it is just as wrong to do the same thing to other children in 1972. This "Jim Crowism" in reverse, as practiced by our courts, is what House Joint Resolution 620 is aimed at stopping.

Why an amendment?

The reason I have proposed an amendment to the U.S. Constitution, as opposed to a statute, lies in the fact that all previous statutes to accomplish the very same end have been proven ineffective or they have been stricken down as unconstitutional.

The New York State neighborhood school law which I authored as a State senator in 1969,[12] containing language much the same as House Joint Resolution 620, was held unconstitutional by decision of a three-judge Federal panel in Buffalo.[13] This decision was affirmed without opinion by the U.S. Supreme Court on May 3, 1971.[14]

A similar North Carolina statute was held unconstitutional in *Board of Education* v. *Swann*[15] on similar grounds—that is, it violated the equal protection requirement of the 14th amendment. The Court noted that "(t)he legislation before us flatly forbids assignment of any student on account of race."[16] The Court, however, went on to strike down the provision because they said race was an indispensable factor needed to desegregate the schools and statutory bars prohibiting it absolutely interfered with the "constitutional obligation to eliminate existing dual school systems."[17]

Federal statutory limitations directed against busing, which appear in title IV of the civil rights law of 1964,[18] have been completely disregarded by the courts and have proven totally ineffective. The U.S. Supreme Court has taken the position that the statute does not take away its historic equitable powers to remedy conditions of alleged de jure segregation by massive cross-busing plans.

Indeed, the distinctions which formerly existed between de jure and de facto segregation appears to be disappearing at the hands of lower Federal court judges who have literally tortured obvious cases of de facto segregation into "findings" of de jure segregation.

For these reasons, Mr. Chairman, I believe that any further statutory efforts by Congress to restrict busing would meet the same fate as the New York and North Carolina statutes. The Constitution is what the judges say it is, and they have said the equal protection clause overrides such statutes. The only way to "cure" the judges' interpretations is to present the Court with a principle having equal footing with the 14th amendment, a principle of law similarly enshrined in the U.S. Constitution.

THE EDUCATIONAL QUESTION

Now that I have touched on the legal niceties, gentlemen, the real policy question in this entire matter should be: "Do we want quality education for all children?" I only wish, Mr. Chairman, that we could come to agreement today on the fact that forced busing had produced some really substantive results in upgrading education in this Nation—then these hearings could take a positive tone.

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[12] New York Unconsolidated Laws. (Ch. 342, L. 1969).
[13] *Lee* v. *Nyquist*, 318 F. Supp. 710 (D.N.Y. 1970), *affirmed* 402 U.S. 935.
[14] *Nyquist* v. *Lee*, 402 U.S. 935 (1971).
[15] 402 U.S. 43 (1971).
[16] Id., at 45.
[17] Id., at 46.
[18] 78 Stat. 241, 246; 42 U.S.C. 2000.

But the fact is that forced busing has not proven to be a substantive educational tool in improving our children's achievement or learning capacity.

At a time in our history when schools across the country find themselves going to split shifts just so all children can go to school; when numerous school districts are in such dire financial straits that they are forced to cut back on the number of teachers rather than hire additional ones; when many school systems face such austere budgets that they have been forced to decimate or drastically curtail sports programs and other extracurricular activities that contribute so much to the total development of our children—then what possible reason on earth can there be to require hard-pressed taxpayers to spend hundreds of millions of dollars to hire or buy buses and employ bus drivers so our children might have a daily bus ride to a more distant school?

There are those children, to be sure, who are educationally deprived. They need extra help. But I think it is ludicrous to suggest that 1 hour or 2 hours per day of traveling across town in a bus is going to enhance their education. Learning problems, Mr. Chairman, are student problems. They know no social, racial, or genetic heritage.

The artifacts of busing—district consolidation, destruction of the neighborhood concept of education, and the like—have not been, and in all likelihood will not be, successful if the goal is to improve the quality of education.

If, on the other hand, the object is to get complete social and racial integration ratios, then the numbers game can be attained, but it will be attained at a sacrifice neither economically nor educationally sound. Children should not be subjected to the hazards of crosstown busing regardless of their race solely to permit the attainment of a desired racial quota any more than they should be required to give up their identity as individuals within a school that, because of the size of its enrollment, treats them as computerized subjects rather than responsive human beings.

I am positive that the people of this country would much rather part with their hard-earned tax moneys to go toward meaningful educational programs to help deprived youngsters acquire the missing elements of culture that middle-class pupils take for granted.

I am well aware, Mr. Chairman, that witnesses will follow me here championing forced busing as the only way to remedy unequal educational opportunities. But just as many critics of this amendment have mistakenly appraised its intent as racist, so have many civil rights leaders who have not experienced firsthand the resulting educational disruption that comes with busing mistakenly seized on busing as another milepost to be achieved in the onward march for full civil rights.

Largely because of continuing monetary deprivation in the inner-city schools, they have cast their lots with busing as the only foreseeable savior of education for the ghetto child.

But we need only take a close look at our native New York, Mr. Chairman, to see how that thought has deteriorated after years and years of trial and experience with busing.

As you well know, in 1969, at the urging of New York City civil rights leaders, the New York City school system was "decentralized" into more than 20 community-controlled school systems. The experiment in forced busing, which had begun nearly 10 years earlier, was largely abandoned, acknowledged as a failure.

Martin Mayer, an authority on public schools and American education, authored an article in the New York Times entitled "Close to Midnight for New York Schools" (May 2, 1965).

Mr. Mayer's thoughts emerged in the midst of ongoing busing plans in New York, and I recall when I read them how much respect I had for Mr. Mayer because he was big enough to admit that forced busing had been a failure after championing it for so long—

> Not long ago, many of us felt that a large share of the Negro failure in these (New York City) schools was itself a product of segregation, but almost nobody whose opinion is worth considering believes it today. Public confidence in the New York City school system is fearfully low and dropping. White children are leaving the city's public schools at a rate of 40,000 a year and the Allen Report, in a little-known passage, predicted a rate of 60,000 per year in the near future.
>
> Of the leaders of the school system itself, the nine-member Board of Education and the 20-odd deputy and associate superintendents, only a handful have children who attend or ever did attend the New York City public schools. Even worse, the Negro middle class has almost entirely disappeared and of the Negro leaders of the integration drive, the Wilkinsons and the Clarks, the Farmers, the Joneses and the Rustins, the Youngs and the Galamisons, not one has or ever had a child in the New York City public schools.

Mr. Chairman, there are numerous other authorities which I could cite, and you could certainly counter with appraisals of forced busing's educational value or lack of it. I think that is pointless, for an impasse would surely result.

But one of the most convincing impressions on my thought came just 2 weeks ago when the national officers of the Congress of Racial Equality requested a meeting with me to determine how they might assist in backing my amendment. I understand they have also sought permission to testify before this committee, and I certainly hope their request will be honored.

That meeting was an extremely fruitful one, and the CORE officers reiterated their opposition to forced busing. CORE rejects the concept that, in order to learn something, a black child must ride across town in order to sit next to a white schoolmate. I think we can all imagine why this notion is viewed as both condescending and arrogant by blacks.

What CORE urges instead of busing is enriched cultural programs in reading and writing skills.

In essence, Mr. Chairman, I think it is imperative that we return to a position of mutual trust where local school boards are charged with education, where legislators are charged with making our laws—and the judiciary must cease assuming both roles in absentia.

I am hopeful, Mr. Chairman, that this subcommittee will see fit to report my proposed amendment to the full committee as written so a truly effective remedy for this educational deterioration can be offered to the American people. Thank you.

Chairman CELLER. Mr. Lent, do you believe in integration?

Mr. LENT. I certainly do, Mr. Chairman. I don't think it should be forced on people by government, but I believe in it.

Chairman CELLER. Do you believe that the constitutional amendment that you propose will promote desegregation of the public schools?

Mr. LENT. I think it will promote an ending of the bar of segregation in the public schools. This was the thrust of the petitioner's brief in the *Brown* case.

Chairman CELLER. Please elaborate on that. Why would it mean the elimination of separate schools?

Mr. LENT. It would mean the elimination of separate schools?

Chairman CELLER. How?

Mr. LENT. The *Brown* decision said, and this amendment also says, that no child may be assigned to any school on the basis of his race. In the *Brown* case, children were being assigned to schools on the basis of race. There was a racial classification.

Brown said race may not be a factor. We must be colorblind, and we must have our school systems assign our youngsters without regard to race, color, or creed. I think this is a good principle. It is a principle which I support and which my constitutional proposal seeks to enhance and to carry forward in our law.

Chairman CELLER. Suppose we have separate black schools and white schools in a community. How are you going to integrate them under your constitutional amendment?

You cannot bus one child from a black school or white school to another school. How are you going to change that situation, if you cannot bus or assign them on the grounds of race?

Mr. LENT. Mr. Chairman, I think we have a lot of areas where we have segregation. We have it in housing. We have it in employment. I don't think we should forcibly integrate youngsters using race as a criteria any more than I think we should have forced housing or forced employment.

It would be just as repugnant were we to take the parents of these children and say, "You are living in a white community and society believes in integration, and we are going to force you to change your location, move your house from here to there so that that other neighborhood might be better intergrated," or to take the working father of one of these youngsters and say, "We are going to have forced employment. This factory on the other side of town where you work is racially segregated, and we are going to make you change jobs from here to there." There is no real distinction, and I think the chairman will see the point I am trying to make, between using the children and forcing them as the object of this integration and to using the parents. If it is right with children, then let's be consistent and have forced housing and forced employment as well as forced busing.

Chairman CELLER. You are just trying to justify one evil by giving us anoher evil. I can't see how you can ever transfer a black child to a white school under your amendment because there could be no transfer of that child on account of race because he is black. You would retain the status quo as far as separate schools are concerned, and there are many communities where some schools are 100 percent black and others are 100 percent white. How are you going to remedy that situation?

Mr. LENT. Mr. Chairman, I don't believe that government should attempt to remedy that situation forcibly. I think it should come about as a natural consequence of desegregating our society.

Chairman CELLER. Will it be able to do that under your amendment?

Mr. LENT. Under my amendment, children will not be assigned to public school on account of race. This is the thrust of our Nation's antidiscrimination laws in many fields. I have set them forth for you in my statement.

What I am saying is that I don't believe that government should be in the business of classifying children by race or color any more than we should classify the parents of those children by race and sending them hither and yon as though they were pawns on a chessboard. I think this is wrong.

I would not attempt to alleviate problems of segregation by establishing racial quotas. There are other tools which are available.

Chairman CELLER. In other words, you eliminate a method that has been used to provide for integration? You say you don't want that?

Have you any other method by which public schools could integrate?

Mr. LENT. When Thurgood Marshall was the attorney for little Miss Brown in the *Brown* case, he asked the Supreme Court to do away with the racial classifications of that school system. He asked that little Miss Brown be assigned to the school that was most convenient to her home. Heretofore, she had been attending a school several miles away.

Under the *Brown* decision, she was permitted to go to her neighborhood school. She was integrated. This was a social good. It came about without using race as a classification, and there are thousands of situations in our society where the courts, if they find evidence of deliberate segregation, can find other ways of assigning the youngsters based on other criteria.

Let me elaborate on that, if I could, for a moment. In other words, let's eliminate all of the evidences of a dual school system in those communities where one is found to exit. The factors that would be taken into consideration in realining the school districts would be the physical condition of the school plants, the school transportation problem, personnel, the more efficient revision of school districts and attendance areas into compact units, conditions of classroom size, overcrowdedness, dangerous intersections and highways could also be considered. But all of these other factors that would be considered would be nonracial.

Chairman CELLER. That sounds like separate but equal schools that you are reciting now.

Separate but equal. Is that what you want?

Mr. LENT. Certainly not. But I think, Mr. Chairman, you are trying to get me to say that. I just spent a half hour trying to tell you what the *Brown* decision said in striking down separate but equal. Separate but equal is wrong. The *Brown* decision is right, and this bill puts into the Constitution the mandate of the *Brown* decision.

You believe in the *Brown* decision, and I believe in the *Brown* decision. It said youngsters should not be assigned to schools on the basis of their skin color.

Chairman CELLER. Let me ask another question.

Would your proposed amendment prohibit voluntary efforts by elected school boards to desegregate the public schools?

Mr. Lent. Absolutely not. This amendment is not intended and would not restrict so-called open enrollment or voluntary plans to permit the assignment of pupils in a manner requested or authorized by his parents or guardian.

Chairman Celler. But your proposed amendment proscribes any transfer of pupils on the ground of race, whether voluntary or involuntary.

Mr. Lent. No, Mr. Chairman, I think the legislative intent should be very important, and the purpose of this hearing is to establish that. Let me make it abundantly clear there is nothing in this amendment that would bar voluntary efforts.

Chairman Celler. You don't say that in your constitutional amendment. The constitutional amendment must be made crystal clear.

Mr. Lent. I don't think it need be because of section 2 of the proposed constitutional amendment. When I enacted a statute as a New York legislator in 1969, that statute had a great deal of detail in it which spelled out that the right of voluntariness would be preserved and open enrollment would be preserved. It even went into the question of religious discrimination in the case of denominational schools. But when we amend the Constitution, I don't believe that we should clutter it up with statutory language. So this amendment is couched in broad-based language much the same, I might add, as the 15th Amendment, the so-called voting rights amendment, with a subdivision 2 giving to the Congress the authority to implement the constitutional amendment by appropriate legislation.

Of course, we know the 15th Amendment, for example, has been implemented each year by Congress, and we have the Voting Rights Act of 1965 and all of the other subsequent amendments thereto.

So here again in the case of this amendment, it would be the Congress on a year-by-year basis which could fill in the gaps. Congress could particularize by means of statutory language and carry out the overall intent of the principle of law which is embodied in the amendment.

Chairman Celler. So you would have an open-ended amendment which would be subject to all manner and kinds of statutory changes in the future?

Mr. Lent. Yes, much like three or four existing amendments to the Constitution, including the 14th, the 15th, and I believe the 18-year-old vote amendment also has a similar provision. Yes, it follows that pattern exactly.

Chairman Celler. And your view would be satisfied with such amendment so open-ended that it could be changed any time Congress wishes?

Mr. Lent. The amendment's basic, underlying principle, of course, could not be changed. That would be unconstitutional. But the principle could be implemented by statutes which carried out and fulfilled the principle inherent in the proposed amendment.

Chairman Celler. If one reads your amendment, he would not understand what it really means then; would he?

Mr. Lent. I have no trouble understanding what it means. It means exactly what the *Brown* decision said, that children may not be classified, any more than their parents, on the basis of skin color and they may not be assigned on that basis to schools.

Chairman CELLER. So one would query: Are we to be prohibited from doing this voluntarily or are we only to be prohibited from having to do this involuntarily. That is going to be open-ended, and wouldn't that create tremendous confusion?

Mr. LENT. I don't think it would. If it would help the chairman to report the bill out, I would be glad to add language to this amendment which would make it abundantly clear that open enrollment and voluntary plans would in no ways be hampered or impeded by this amendment.

Chairman CELLER. You would amend your amendment?

Mr. LENT. Either I could or this committee could do it. I certainly intend as author of the amendment that open enrollment and voluntary plans would be permitted. If you would look at the New York State statute that I offered in 1969, it specifically provides for open enrollment, so there is no question and that can be found in the New York Laws of 1969, chapter 342 of the unconsolidated statutes.

Chairman CELLER. That is found in the New York State statute, not in the amendment?

Mr. LENT. Right.

Chairman CELLER. But not in the amendment?

Mr. LENT. Right. Mr. Chairman we could, if we wanted to, clutter up this proposed amendment with a lot of language which might better be put into statute at a later time. The voting rights amendment, 15, passed over a hundred years ago, is very short and yet we have had volumes of legislation to implement that. Recently, the 18-year-old vote statute in Federal elections was added. And this has been upheld in the courts as implementing the thrust of the principle contained in the 15th Amendment to the Constitution.

Chairman CELLER. You say you agree with the *Brown* v. *Board of Education* decision; am I correct?

Mr. LENT. I certainly do. I think it is a wonderful decision and this amendment is intended to carry it out.

Chairman CELLER. The Supreme Court has held that statutory language identical to that proposed as your constitutional amendment House Joint Resolution 620 "would render illusory the promise of *Brown* v. *Board of Education*."

The Supreme Court said that such language "would deprive school authorities of the one tool absolutely essential * * * to eliminate existing dual school systems." (*Board of Education* v. *Swann*)

What is your comment on that?

Mr. LENT. I commented on that particular evolution from the *Brown* case in 1954 to the *Swann* case in 1971 in the first three or four pages of my prepared testimony. I said then, and I will reiterate it for you, that the *Brown* decision started out from a sound principle—namely, there should be no classification of youngsters or assignment of youngsters to schools on the basis of race, color or creed. *Brown* struck down the dual school systems in the South and in other parts of the country.

What has happened during the ensuing years in the evolution of the decisions has been that now—most recently in the *Swann* decision, which I think the chairman is referring to, which struck down the North Carolina statute similar to this statute—now school districts must use color as a clasification and they must assign youngsters to schools having regard for their skin color.

I think the *Swann* decision is wrong in holding that. The Supreme Court said that the North Carolina statute is unconstitutional because it violates the equal protection clause of the 14th Amendment.

It is hard for me to reconcile the *Swann* case with *Brown*. The U.S. Supreme Court said in *Brown* that separate school systems were unconstitutional because racial classifications violated the equal protection clause of the 14th Amendment.

The only way that we are going to get the Court back on the right track, the track of the original *Brown* decision, since the courts have stricken down all of these statutory efforts which have been made, is to pass a constitutional amendment such as I have proposed which will have the same status to the Supreme Court as the 14th Amendment, and it will be interpreted in conjunction with the 14th Amendment and the Court will realize that in their subsequent interpretations of the 14th Amendment they will have to bear this amendment in mind.

In other words, the courts will go back to the *Brown* theory of nondiscrimination.

Chairman CELLER. How can we do that with your amendment which you admit is ambiguous and open ended?

Mr. LENT. I didn't admit it is ambiguous and open ended. I think the chairman is putting words in my mouth.

Chairman CELLER. Your amendment is subject to all manner and kinds of interpretations. How could the Court be helped by that amendment?

Mr. LENT. Mr. Chairman, the Constitution says that we will have freedom of speech and we will have freedom of religion. These provisions have, in the almost 200 years since our Constitution was ratified, been subject to countless interpretations. Any constitutional amendment is going to the subject to diverse interpretations. But I say we should have the least amount of trouble possible with the statutory construction of this amendment because it amplifies and carries forward so much of the civil rights legislation already on the books. It uses the exact same words of nondiscrimination.

Look at the last page of my testimony, the footnote section. I have given you six citations, and I could have gone on ad nauseum, of statutes in fair housing, in public accommodations, in nondiscrimination in federally assisted programs, equal employment opportunity, voting rights, all of which use the selfsame garden variety language or my proposed amendment. You shall not do something. You shall not run your business. You shall not hire and fire. You shall not admit or refuse admission into your union or into your restaurant or into your motel on the basis of race, color, or creed. Color blindness has been the thrust of all of our antidiscrimination laws since the beginning of our Republic, and I believe in that principle, and I believe my amendment carries forth that principle.

And for the Court too, in one field only: Education of youngsters—change that whole milieu, that whole background, and say we are going to change from color blindness. We are going to now assign kids to schools on the basis of their skin color just the way they did it a hundred years ago in the South, and send them to schools, only instead of sending them to separate schools, we are going to send them to integrated schools. I think this is wrong.

Chairman CELLER. I would like to ask this question:

Most of the race-conscious remedies used heretofore to desegregate public schools apparently would be outlawed under your amendment. For example, pairing and clustering of schools, changes in the attendance zones, selection of new school sites, as well as, pupil transportation.

What remedies do you propose in their place to achieve the ending of segregation in public schools?

Mr. LENT. I think any artificial attendance areas or artificial school district lines which would be deliberately conjured up for the purpose of gerrymandering youngsters, so that black youngsters would head off in one direction and white youngsters in another, should be dismantled and stricken down as the *Brown* decision did in *Topeka, Kans.*, case.

Chairman CELLER. Such revisions have been used and have measureably succeeded in the cause of desegregating public schools.

If you are going to do away with those methods I have just mentioned, then to that degree you are going to set back the process of desegregation many decades, and you will be in a position where you were before the *Brown* decision.

Mr. LENT. I don't think so, Mr. Chairman. And I don't think that forced integration is as important a public policy goal as is the protection of the individual rights of the youngsters who are being uprooted from their communities and forced to bus or walk long distances in order to sit next to a youngster of another color.

We believe in individual rights, too, and this proposed constitutional amendment gives the right to children not to be assigned to public schools on the basis of their race, color, or creed just as you or I, when we apply for a job, have a right not to be discriminated against on the basis of race, color, or creed. Just as you and I who own a home, and want to lease or rent it, may not discriminate against a possible buyer or tenant on the basis of race, color, or creed.

Race, color, or creed should not be considered. The social objective may be beautiful; integration, that happens to be the social objective today. Two hundred years ago people believed that we should have segregation, and they structured the schools for that purpose. But the concept that has prevailed in our statutes and in our Constitution all through the years has been that we should not classify people by race and then say "Yes" or "No" to them. I think color blindness is a good concept. As long as we stick to that concept, Mr. Chairman, we are not going to get ourselves in trouble.

Sometimes the cure is worse than the disease. Segregation is a disease. Busing is one of the medicines that has been applied to cure it. But like many medicines, in many cases, it has proven to be worse than the original disease.

Chairman CELLER. Mr. Hungate.

Mr. HUNGATE. Thank you, Mr. Chairman.

Mr. Lent, as I understood, you favor integration, is that correct?

Mr. LENT. That is correct. I favor it, but I don't favor Government-ordered integration.

I don't favor segregation or Government-ordered segregation. You may live in a white neighborhood, Mr. Hungate, and I may live in a white neighborhood. Government should not pass a law ordering you to sell your house and move to the southeast section of Washington in order to integrate. I think that would be wrong. Government should not require you to quit your job in the Congress, which is predominantly white, and take a job somewhere else in order to integrate. I don't believe in forced employment, forced housing, or forced busing of little children.

There have been injustices perpetrated on black people over the years, but I don't think they are going to be remedied by making little children pay the price.

Our forebears treated many black people terribly, and things ought to be made right, but let's not make these youngsters bear the entire burden for correcting injustices.

Mr. HUNGATE. Thank you.

Now, it seems to me that as I read *Brown* I and II and as I read *Swann* and some of the later cases, *Brown* I and II opted for an end to segregation but not necessarily for integration. That is why I am interested in your reply that you favor integration, because it seems to me that the policy is in the later cases where they go from simply striking down segregation to implementation of integration.

Mr. LENT. I don't think we have to speculate what the *Brown* decision says. I have it in front to me. This is what the second *Brown* case said. It ordered the local school board to consider problems related to administration arising from physical condition of the school plant, the school's transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis.

I believe in that decision. The key words are "compact school areas" and "non-racial."

And this is what my amendment purports to do.

Mr. HUNGATE. You would agree, would you not, that the courts have gone beyond *Brown* and the present trend is integration, not merely abolition of segregation, and that is again why I said I was interested in your testimony that you favor integration, because I think that is the import of the *Swann* case and some of the later cases.

What would you say was the problem where we have 100 percent black schools and 100 percent white schools?

In some areas, of course, you have counties that are 100 percent white; I guess in other areas they would be 100 percent black.
black.

What would you say for integration and what action should or should not be taken?

Mr. LENT. There are any number of actions we could take. We could require white people to move into those areas. We could require white employees to take jobs in those areas, or we could do what we are actually doing, order white children to integrate into those areas and go into the core cities and go to school.

I think any one of these alternatives is unacceptable, and yet we have accepted one of those alternatives in the *Swann* decision.

Mr. HUNGATE. What solution would you recommend? Do you think there should be any attempt to a solution by Government?

Mr. LENT. I would recommend the solution of the *Brown* decision which was the solution that Thurgood Marshall——

Mr. HUNGATE. All right. Then we might agree on this. If you have an area of several hundred square miles and there are no black people, or conversely you might have a situation with no white people. I suppose you have to call that *de facto* segregation. Are you suggesting that Government is not required, or should not be required to take action in those circumstances?

Mr. LENT. If there is *de jure* segregation——

Mr. HUNGATE. I said "*de facto*" segregation.

Mr. LENT. If there is *de facto* segregation, I don't think the Government should order enforced integration of that community.

Mr. HUNGATE. Do you think part of the problem in which we find ourselves is related to the fact that we are using the language of corporation law, *de jure* and *de facto*, to deal with difficult human social problems?

Mr. LENT. Yes, and I think you will find if you read the cases in Pontiac, Mich., that the courts have largely obliterated distinctions which formerly existed between *de facto* and *de jure*. They are saying in the *Pontiac* decision that even though there is no deliberate segregation, the mere fact that it existed and that the school board over the years did nothing to eliminate it, is tantamount to *de jure* segregation, and then they go ahead and order these cross-busing schemes.

Mr. HUNGATE. I take it then you are not in particular disagreement with the courts' rulings on the *de jure* situation. It is the *de facto* situation that causes you more concern?

Mr. LENT. The decisions that cause me concern, Mr. Hungate, is any decision where the court gets into the business of classifying American people by skin color and any decision where that is done, I think is wrong. If you look at the decisions that have occurred recently in Richmond and in Detroit and Pontiac, where whole school districts have been dismantled and children are being required to be bused an hour or 2 hours a day, you will see how far afield the courts have gone in using this tool of busing.

Mr. HUNGATE. I suppose we still agree that the right to decide is the right to be wrong?

Mr. LENT. I believe that the right of a family to settle in a particular community should be uninhibited by Government. I believe the right of that family to settle in a community where their youngster can be nearby to a neighborhood school should not be inhibited by Government, and that is being inhibited by Government when Government takes the child from the parent against the parent's wishes, not on a voluntary basis, against the parent's wishes, and says:

> Mom and Dad, we are going to involve your youngster in a noble sociological experiment called integration. We don't know whether it is going to work. We don't know whether he is going to learn or get along as well, but we are going to put him on a bus and send him an hour across town to a different neighborhood and let him sit beside a youngster with a different color skin, and in the afternoon he will be bused back home. He can't go to Cub Scouts. He can't go to religious instruction. He can't be on the football team, and take musical lessons, but we are hoping the world is going to be a better place as a result of this experiment. We don't have a whit of evidence to justify it, but we are going to do it nonetheless.

Chairman CELLER. Now the resolution as we have it here, House Joint Resolution 620, section 1, reads: "No public school student shall because of his race, creed, or color be assigned to or required to attend a particular school."

Now, it is your view, I take it, that this language would deal with the school busing problem?

That would resolve that problem in your view?

Mr. LENT. I don't know whether we should always put it in the context of school busing because buses are not mentioned in this section.

The real context here is a prohibition against racial classifications, a carrying forward, if you will, of the rule of *Brown* which said educators should be just as colorblind as real estate brokers.

Mr. HUNGATE. Let me ask you in the same vein if some related recent school decisions would give you pause. The *Richmond, Va.*, case, for example, which would seem to assert the courts' power to redraw boundaries of political subdivisions. What would your view be on that problem?

Mr. LENT. Since the court definitely and affirmatively took into consideration skin color and assigned youngsters to school because of their skin color, I would oppose that decision. This amendment is designed to curtail the courts' excesses in the business of being in the school board business.

Mr. HUNGATE. Are you not troubled by the courts' power to redraw boundaries of political subdivisions?

Mr. LENT. I sure am.

Mr. HUNGATE. That is inherent, is it not, in the *Richmond, Va.*, decision?

Mr. LENT. Yes.

Mr. HUNGATE. Would you think Congress in dealing with this problem should address itself to that phase, also, the power of the court to say, "Well, we are going to redraw the boundaries of school districts." What do you think of that?

Mr. LENT. I think the court is going overboard when they start redrawing county lines. State lines is the next step, as I understand it.

I would say to you that, if you have in mind some statutory curtailment of that excess on the part of the courts, that it could be introduced and I would support it, Mr. Hungate, as implementing article 2 of my proposed amendment which says that the Congress may make laws implementing this principle.

Mr. HUNGATE. I yield to the chairman.

Chairman CELLER. In Virginia they did not always recognize the State or county lines, buses did go over State lines, and they actually paid money for transporting pupils over county lines. They paid the parents as an inducement that they go over State lines.

Mr. HUNGATE. You mean county lines I presume.

Chairman CELLER. Yes.

Mr. HUNGATE. The real thrust of what I am aiming at there is the power of the court to decree change in the boundary lines of political subdivisions. I take it, Mr. Lent, that you would question the advisability of a court having such power?

Mr. LENT. Yes.

Mr. MCCULLOCH. Will the gentleman yield?

Mr. HUNGATE. Yes.

Mr. MCCULLOCH. Do you mean you would object to a court's use of that power in all cases that come before it? And as a followup question so that you might be better prepared to answer my first question, are you of that opinion with respect to the judicial power to fix the boundary lines of congressional districts in New York?

Mr. Lent. Hopefully the courts won't have to fix the boundary lines in New York. The legislature will do that. But the principle is the same, Mr. McCulloch.

Mr. McCulloch. That answer isn't quite satisfactory to me.

Mr. Lent. The principle is the same. If the court finds evidence in the drawing of lines, whether they be congressional lines or school district attendance lines, that it is done on a basis to separate the races or it is being done on a basis of racial classification, then by all means the court should strike those lines down.

But I do not think that, absent such a finding, they have any right to do that. In Richmond they certainly could not find that all three counties were set up specifically to achieve a racial segregation. It was possible that there was a clustering of people in one county of one color and a clustering of people of different color in the other two counties. But there was no evidence as far as I am aware—and I am not an expert on constitutional law—there was no evidence of a deliberate effort to segregate the people of the races in the three counties in the Richmond area.

Mr. Hungate. I yield to the gentleman from Illinois.

Mr. Mikva. If you go back and read your statement, it seems to me you are in a position of defending the Richmond case. Since it was a de jure situation initially, therefore the court had the power to strike it down and come in with a remedy or "lines" that would desegregate.

That is a tough decision to defend, and I commend you for trying to do it.

Mr. Lent. Let me make myself clear.

Mr. Hungate. I assure the gentleman I did not understand him to be defending the Richmond case.

Mr. Lent. I find my words very often misconstrued.

Mr. Hungate. There are several phases of this problem. One is the so-called busing problem and the other is the power to draw boundaries. I suppose you would assert that many county and other subdivision lines were drawn long before the *Brown* case and even before *Plessy* v. *Ferguson*; is that not right?

Mr. Lent. Yes.

Mr. Hunate. Now, another phase of what I think is the same problem, Mr. Lent, and one that I would like to have your views on, concerns the courts' power to decree a restructuring of the tax system. I have in mind the California case, as I am sure you are familiar, and then there also are two Federal cases in Minnesota and Texas.

Under the equal-protection clause it was found that the same tax rate, the higher tax rate, produced less money in some districts and a lower tax rate would produce more money in others. In some cases the States would contribute according to what was raised locally and therefore move it further out of balance and, as I understand, the courts seem to be holding that you can't do that anymore, that the statewide tax structure must be the same for education.

Mr. Lent. Mr. Hungate, we could go far afield in a philosophical discussion of these tax base cases. Frankly, I see no useful purpose. I am not that familiar with them in discussing them.

I am here to talk to you about my amendment, and if you want me to try to discuss it, if you feel it is somehow relevant, but I don't think it is.

Mr. HUNGATE. You think it is not relevant to this problem?

Mr. LENT. That is right.

Mr. HUNGATE. Thank you.

Chairman CELLER. Mr. McCulloch.

Mr. Poff.

Mr. POFF. Mr. Chairman, thank you.

I take it from your testimony today that you are willing to accept a substitute or consequential amendment to your proposal, is this a fair statement?

Mr. LENT. No. I did not mean to give that particular slant to these hearings. I think my purpose and the purpose of this amendment is abundantly clear. I have tried to set forth the principle of law of the *Brown* decision and the principle that I believe in, in as clear and concise language as is possible in House Joint Resolution 620.

I don't have the best lawyers working for me. If you have got a better lawyer who can draw a better bill or a constitutional amendment which will carry out the same purposes, if you want to change a comma or add language to it, I would not oppose this. I would welcome this.

I do feel that as a result of some study that I have made in this field, unlike the California case where I am not at all schooled, that this language is best equipped to carry out my purposes.

But certainly there is nothing in this language that is etched in stone, Mr. Poff.

If the committee can do a better job of drawing this bill, then by all means I would welcome that.

Mr. POFF. I noticed that section 2 of House Joint Resolution 620 is somewhat different in syntax from section 5 of the 14th Amendment. Do you intend the difference?

Mr. LENT. I actually modeled my constitutional amendment after the 15th Amendment, the voting rights amendment. I believe section 2 in the 15th amendment and section 2 in the proposed amendment are identical, word for word or very close to it. I don't have it in front of me.

Mr. POFF. Under your section 2 and under the "necessary and proper" clause of the Constitution, to what extent do you think the Congress might be able, if it thought it necessary to do so, to implement your constitutional amendment?

Mr. LENT. I think a lot of the bizarre interpretations which have been raised by critics of my amendment could be easily resolved under article 2 of this proposed amendment by the Congress in its wisdom filling in the cracks, so to speak, answering many of the questions which have been raised. The Congress could also maintain some check on the court in the event the court misconstrued the clear intent of House Joint Resolution 620.

Mr. POFF. What you are saying is that the Congress would have the power to legislate, but there might be some dispute as to what the purposes are?

Mr. LENT. Yes. I think that we can equate article 2 of the 15th Amendment with article 2 of this amendment. We have volumes of laws on the books in the field of voting rights. The Voting Rights Act of 1965 and all of the amendments thereto are perhaps classic examples of the Congress filling in the cracks.

All the voting rights amendment says is you shall not be discriminated against in voting because of your skin color or your race or previous condition of servitude. The Congress in its wisdom has implemented the voting rights amendment by a whole series of laws which go into primary laws and poll taxes, and 18-year-old voting rights, and so forth. Congress has filled in the cracks and the exact same thing could be done in the case of my constitutional amendment.

Mr. POFF. Your amendment would have the effect of prohibiting busing on account of race. Would it have the effect of prohibiting busing on account of distance from the schools of the student's residence?

Mr. LENT. No, it would not.

Mr. POFF. As an adjunct to other techniques of desegregation, busing sometimes has been employed. To what extent would your amendment prohibit the use of busing for such techniques?

Mr. LENT. Busing could not be ordered on a racial basis. Buses could not be required where racial considerations were paramount. If a youngster moves into a country town and there is a school 5 miles away and he takes a bus to get to that school—and there are vast numbers of children who take school buses to get to schools—that would not be prohibited, certainly, by this amendment.

But if a child lives a block away from a school, and he is white, and that school is predominantly white, and he lives 30 miles from a ghetto area predominantly black and the courts say to that white youngster, "We are ordering you away from your neighborhood school to take a bus to go to the distant school to help integrate that school," that would be prohibited by the language of this amendment.

Mr. POFF. May I fashion a case and get your response? Let's imagine a school district that is perfectly square in configuration. We will assume that if you strike a line across the middle of this square, east to west, that all of the population of the north half would be black and all in the south would be white.

Now, would a court be permitted to rearrange that district by erasing the east-west line and drawing a north-south line and order busing the distance required to get the children to school in the eastern half and western half of the district?

Mr. LENT. If the court, Mr. Poff, were to find that that original line was drawn for the purpose of keeping those youngsters separate, then the court would be justified in striking that down as invidious discrimination under the 14th Amendment.

In redrawing the new line—and I don't even think the court should redraw that line, I think the school district should redraw that line—race would not be a factor either in the hands of the school board or at the hands of the court.

The factors that would be taken into consideration instead, would be all of the other factors that other school districts use on a day-to-day basis in drawing school attendance areas. The physical condition of the school plant. The location of where the existing schools are in this quadrant. The school transportation problem. Personnel. The ability to redraw the lines in a way which would give each child the many advantages which flow from a neighborhood school. Compactness. These are the criteria which could be used, as well as consideration of the intersections and the highways. But zoning could not be redone on a racial basis. There is no question but what this amendment would take away one of the tools that the courts and the school boards use when they find de jure segregation. It would take away busing. This might make the job more difficult, but I think it is worth it.

I used the analogy before of the illness and the medicine where the medicine brings about a worse result than the original illness. And I think we need only look at what has happened in some of our large cities across this Nation where busing edicts, bizarre in nature, have been foisted upon an unwilling community, to see what I mean where I say sometimes the cure is worse than the disease. Therefore, this amendment is proposed to curb the courts' use of racial classifications.

Mr. POFF. Thank you, Mr. Chairman.

Chairman CELLER. Mr. Jacobs.

Mr. JACOBS. In your testimony you spoke of a statute which you authored in the State of New York providing for open enrollment. My question is: How do you reconcile this freedom of choice on the part of a pupil with the neighborhood school concept?

Mr. LENT. I am not quite sure if I understand the thrust of your question.

Mr. JACOBS. Well, if you require a neighborhood school, you could not very well let anybody in that neighborhood go into another neighborhood to another school.

Mr. LENT. You certainly could.

Mr. JACOBS. Which would you do? Would you require neighborhood schools?

Mr. LENT. We are not requiring neighborhood schools, but if there is a school in the neighborhood and you live there and you want your youngsters to attend that school, they can.

Mr. JACOBS. But they wouldn't have to?

Mr. LENT. If you want your children to go to a private school or to a distant school or to have advantages that might flow from attending a community inhabited by Orientals because you believe that Orientals have a wonderful society——

Mr. JACOBS. Well, you say you would not require people to go to the school nearest to their home?

Mr. LENT. Certainly not. I thought I had answered that question before.

Mr. JACOBS. Good. How do you go about this open enrollment?

Say Johnny Jones is to go to a school outside his neighborhood. He wishes to go, he lives in a black ghetto, and for some reason—possibly a school building that is in better condition or perhaps a swimming pool at the school, or maybe better audiovisual aids, perhaps better physical facilities generally, maybe less air pollution, not so close to a factory, all of those reasons, he chooses with his parents, to go to the suburban school.

What would be the administrative procedure for him to do that? How does that operate in New York?

Mr. LENT. Let me give you an actual example that did not come to fruition but was a proposed program. The Great Neck School District is predominantly white. Across the county line in Queens there are some predominantly black areas. The school board of Great Neck wanted to

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establish a program to enable a group of black youngsters to be bused into the Great Neck community and have the advantages of the enriched educational opportunity afforded in the Great Neck community which spends more money to educate a child than almost any other school district in the State of New York.

There was nothing in that plan which would have required any black youngster to take the bus to go to Great Neck. But if any youngster, black or white, wanted to participate in this plan voluntarily, he or she could take that bus ride every day and go into Great Neck.

Mr. JACOBS. Right.

The question is——

Mr. LENT. Let me just add.

Chairman CELLER. That is a violation of your proposed amendment.

Mr. JACOBS. That is what I am getting at. Let me say why I think the chairman said that.

Physically speaking, the procedure through which a child is enrolled in a school at his request does require finally on the part of the school administration an assignment, does it not?

Mr. LENT. That is correct.

Mr. JACOBS. Good. Then that "freedom of choice" violates your amendment.

Mr. LENT. No, this amendment does not say that every child will have——

Mr. JACOBS. The point is that, if for some reason, probably a silly idea in the first place, but if I don't like wind or pollution or I like pastel colors, if for some reason because of my own peculiarities of choice, and say I am black and live in a ghetto, and I want to go out to a suburban school, I go down to the school district and say, "Mr. Lent says I can go to any school I want to, and I want to go out here to this school," somebody at the school board has to sit down and fill out a form and assign that child to that school.

You can't have anarchy. There is some kind of procedure, I presume.

When he sits down and assigns that child to that suburban school, at the child's and parent's own initiative and request, he is then violating your proposed amendment, as I read it. That child then has been assigned on the basis of race.

Mr. LENT. Why don't you read it?

Mr. JACOBS. Suppose the child says, " I want to be assigned there because I like white people"?

Maybe he doesn't have any reason to, but, "I kind of like them, and because of that, because I am black I want to go out and associate with my white brothers."

Then he could not be assigned there even though it was his own choice?

Mr. LENT. He could be assigned there.

Mr. JACOBS. Could he?

Would that violate your amendment? He said his reason was on account of his race and then he would be assigned?

Mr. LENT. Are you asking whether he would be voluntarily assigned to; or be required to attend.

Mr. JACOBS. Let's go up to the disjunctive. Let's run up to that fence and stop. Let's say that the little black boy says, "I like white people, and I am black, and I want to go to school with them out in a suburban neighborhood."

You say, "Very well. Mr. Lent says you can be assigned, and so we will assign you out there."

And then somebody is going to come along and say, "Why, Mr. Lent's amendment says that you can't be assigned." And they file a lawsuit on the amendment. Won't they win the lawsuit?

Mr. LENT. No, certainly not, because the situation is different from what this amendment is directed at.

Mr. JACOBS. I don't know what it is directed at.

I only know what it says.

Mr. LENT. Perhaps you didn't hear me, but I indicated to the chairman earlier in my testimony that there was nothing in this amendment or in the intent of this amendment which would in any way inhibit voluntary open enrollment.

Mr. JACOBS. You say it doesn't say that.

When you use the words——

Mr. LENT. This amendment says what it says, that no child is going to be assigned, no child shall, mandatory language, be assigned to any school on the basis of his skin color. If a child wants to be assigned, if he wants to be bused——

Mr. JACOBS. Then he shall not be so assigned under your amendment.

Mr. LENT. No, if he wants to, this is a civil right.

Let me give you an example. The Constitution says you will have freedom of speech. The Constitution says you will have freedom of religion. If you want to sit there and keep your mouth shut, or if you don't want to go to church on Sunday, nobody is violating your constitutional right. On the other hand, if you want to talk and someone shuts you up, or, if you want to go to church and someone bars the door, then your constitutional right is being violated. This constitutional right set forth in my amendment says a youngster will not be assigned to a school on the basis of his race, color, or creed. It is a right.

Mr. JACOBS. But what if he asks to be assigned?

Mr. LENT. Then there is nothing to stop him.

Mr. JACOBS. But you say he cannot be assigned. He says, "I want to be assigned."

You understand that. Are you kidding me?

Mr. LENT. No, and I don't think you are having quite as much difficulty as you pretend to, because this amendment is only 34 words long and even you can understand that.

Mr. JACOBS. Well, I will pass.

Wait a minute, Mr. Chairman.

Do I understand you to say that the money to finance ghetto schools is irrelevant to this problem? That is, whether they have quality schools in the ghetto is irrelevant?

Mr. LENT. No, and I don't think that came up except in my opening statement when I said CORE, which seeks an opportunity to testify here on behalf of this amendment, would rather have a hundred million dollars, which is being spent on busing, put into enriching the educational opportunity of the schools, spent on quality programs for enriching the reading, writing, and vocabulary programs.

You asked me if that was irrelevant, and I said it was not irrelevant.

Mr. JACOBS. Mr. Lent, I heard you say to Mr. Hungate this tax-equalization thing is not relevant to this issue of busing. I heard you say that.

I can find that in the record.

Mr. LENT. Mr. Hungate asked me about a tax case and tax-equalization case. He did not put it in the context of more money for ghetto schools. You asked me if I am for more money for ghetto schools.

Mr. JACOBS. What does the phrase "tax equalization" mean?

Mr. LENT. It is a very philosophical discussion.

Mr. HUNGATE. Will the gentleman yield briefly?

What I had in mind there, you recall the exchange, was the *Swann* v. *Board of Education*, construction of new schools. They must decide questions of location, capacity, and population growth, and that was why I thought this might be considered relevant to the situation.

Mr. LENT. The *Swann* case has nothing to do with tax equalization.

Mr. HUNGATE. Well——

Mr. LENT. The tax-equalization case in California, as I understand it, says that the system for financing education in California, which is a composite of State aid from Sacramento and money raised locally at the real estate tax level, is wrong.

Mr. HUNGATE. I apologize for taking too much time.

The California case I mentioned only for its philosophic pronouncements, and I think the Federal cases would be treated more relevant in Minnesota and Texas. And the reason that I thought it was relevant again is because we discussed finances and the courts have shown a willingness to deal with the field of financing.

Mr. JACOBS. Mr. Chairman, I do have a question which, I don't know if the witness would agree, but I do think is relevant to the problem.

Chairman CELLER. Father Hesburgh is supposed to testify this morning, and I don't want to cut you off, but I will ask you to be brief.

Mr. JACOBS. Could I ask one more question?

Mr. Lent, I take it that you would agree, though, that the question of adequate education facilities and opportunities in the ghetto is very much relevant to this question?

Mr. LENT. It certainly is.

Mr. JACOBS. With that in mind, do you favor comprehensive preschool kindergarten education, day-care centers, and that sort of thing, especially for very low-income and educationally deprived children?

Mr. LENT. Yes, I do; and I might say as a State legislator for five terms I not only supported, but sponsored, legislation providing for day care centers and for enriched educational opportunities for our culturally deprived children, and I strongly believe philosophically that if we are going to help these youngsters break out of the cycle of poverty, that it is far more relevant to do it through prekindergarten, through enriched programs, through team teaching, than to put these youngsters on a bus for a couple of hours a day and send them across town and then back to the ghetto in the afternoon.

I might say that I have had a lot more experience in my State with busing and had an opportunity to see how it does not work, and I can warn you that is the wrong way to approach the problem.

Mr. JACOBS. I understand. I am trying——

Mr. LENT. The one thing we haven't discussed here today is the relevance of busing to quality education.

Mr. JACOBS. I am trying to do that now.

How did you vote on the Child Development bill last year?

Mr. LENT. I voted against that bill.

Mr. JACOBS. Thank you.

Chairman CELLER. Gentlemen——

Mr. LENT. But I voted in favor of the Headstart program.

Chairman CELLER. Gentlemen, I just received word from Father Hesburgh that he has to leave at 12 o'clock, and I do want to accommodate him, and I wonder, if you are willing, Mr. Lent, to postpone continuation of your testimony?

Mr. LENT. I will be happy to come back, and I will turn the microphone over to Father Hesburgh.

Chairman CELLER. Thank you. You may proceed, Father Hesburgh.

STATEMENT OF THEODORE M. HESBURGH, CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY JOHN A. BUGGS, STAFF DIRECTOR; JOHN H. POWELL, JR., GENERAL COUNSEL; MARTIN SLOANE, ACTING DEPUTY STAFF DIRECTOR; AND LAWRENCE B. GLICK, DEPUTY GENERAL COUNSEL

Mr. HESBURGH. Mr. Chairman and members of the subcommittee, I am Theodore M. Hesburgh, Chairman of the U.S. Commission on Civil Rights. I am accompanied today by John A. Buggs, staff director-designate of the Commission, on my left, Mr. Martin Sloane, acting deputy staff director. On my right, John H. Powell, and next to him Lawrence B. Glick, deputy general counsel.

I am pleased today to present the views of the Commission on Civil Rights concerning House Joint Resolution 620, a proposed constitutional amendment.

Amending our Constitution is not an act to be taken lightly. It has been done only 26 times. Several letters from outstanding constitutional scholars were introduced into the record yesterday by Chairman Celler. They point out the danger of using that fundamental document to deal with issues that are of less enduring nature than have been traditionally the case when the Nation has been asked to amend it.

The Commission on Civil Rights has conducted a thorough study of the proposed amendment and its effects. Our analysis leads us to conclude that its enactment would be a major step backward in the quest for equal rights for all Americans—that it would undermine what progress we have made in race relations, both in our schools and in society as a whole.

Mr. Chairman, I would like to introduce our study of the amendment for the record, if I might.

Chairman CELLER. That will be accepted for the record.

(The study follows:)

APPENDIX B

THE PROPOSED AMENDMENT AND RECENT LEGAL DEVELOPMENTS

I. THE PROPOSED AMENDMENT TO THE CONSTITUTION RELATIVE TO PUBLIC SCHOOL ASSIGNMENT OF PUPILS

On May 6, 1971, U.S. Representative Norman F. Lent, Republican of Nassau County, New York, introduced a joint resolution, H.J. Res. 620, proposing the following amendment to the Constitution of the United States:

Section 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

Section 2. Congress shall have the power to enforce this article by appropriate legislation.

The Congressman stated that the purpose of the amendment was to preserve the neighborhood school concept, which he described as the "only truly nondiscriminatory form of educational system, as it is the only one that does not take account of racial distinctions." (Press Release issued May 4, 1971). He further said: "Let me state categorically that I do not believe in segregation. I would strongly oppose *any* system that assigned children to a specific school on the basis of their race, whether the intention was to combine or separate the races. It is for that very reason that I oppose busing—a policy that intensifies racial distinctions by imposing artificial 'quotas' on local school systems. (*Id.*)"

Mr. Lent further stated that his move came in response to the action of the Supreme Court on May 3, 1971 affirming the decision of a three-judge Federal court invalidating the Lent-Kunzman law of New York State which he had sponsored when he was a member of the New York State Assembly.[1] That law forbade the assignment of pupils on the basis of race, except with the consent of an elected local board of education.

Discussion of Amendment

On its face, the amendment would seem to embody a neutral principle, applicable to black and white pupils alike which may be stated thus: in assigning pupils to particular schools, school officials may not consider race as a factor in determining which school they shall attend. It may even be argued that the amendment embodies the oft-repeated dictum that, under the Constitution, racial classifications are "constitutionally suspect", *Bolling* v. *Sharpe*, 347 U.S. 497, 99 (1954), bear a "heavy burden of justification" *Loving* v. *Virginia*, 388 U.S. 1, 9 (1967), and that the amendment is designed to prevent discrimination in the public schools.

Such an argument is difficult to sustain in the context in which the Amendment is being proposed. The principal fallacy of this argument is that to achieve the objective of nondiscrimination in education such an amendment is unnecessary; it is abundantly clear that under the 14th Amendment no state may maintain school systems segregated on the basis of race.[2]

The best source for evaluating the purpose and efiect of the amendment is the Lent-Kunzman Act of New York, which is its direct ancestor. That law provided in part that: Except with the express approval of a board of education having jurisdiction, a majority of the members of such board having been elected, *no student shall be assigned or compelled to attend any school on account of race, creed, color or national origin* . . . (emphasis added).[3]

In *Lee* v. *Nyquist*[4] the court described the legislative history of this law. Before its enactment, the Regents of the University of the State of New York, who have broad supervisory powers over all of the State's public schools, were committed to a policy of ending *de facto* segregation in New York's public schools. Their efforts met with considerable local resistance. The court found that: It is quite apparent from the legislative history of Section 3201(2) that it was designed to turn the tables in favor of those recalcitrant local groups.[5]

In examining the constitutionality of the Lent-Kunzman Act, the court assumed that the State had no affirmative duty to correct in the schools racial imbalance which had been created by residential patterns.[6] Nevertheless, it held that the Lent-Kunzman law was invalid because this statute created an "explicit and invidious racial classification". The court found that with regard of educational policy in general under New York law, the State Commissioner of Education does not need the consent of elected local school boards to implement its policy. By creating an exception to the broad supervisory powers of the Commissioner for the single category of plans designed to alleviate racial imbalance in the schools, the State made it more difficult for minority persons "to achieve their goals", without adequate justification for the differential treatment. The statute thus placed a special burden on minorities based on their race alone.[7]

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[1] *Lee* v. *Nyquist*, 318 F. Supp. 710 (W.D. N.Y. 1970) aff'd per curiam 402 U.S. 935 (1971). See discussion *infra*.

[2] *Brown v. Board of Education*, 347 U.S. 483 (1954) and cases discussed in part II of this memorandum.

[3] New York Education Law § 3201(2) (McKinney 1970).

[4] 318 F. Supp. at 716–17.

[5] *Id.* at 717. The court quotes several passages from (then) State Senator Lent in support of this view.

[6] *Id.* at 714. The court recognized, however, in *dictum* that a policy to overcome such imbalance, which was actively pursued by New York State's educational officials prior to the enactment of the statute considered in *Lee* was beneficial to the education of majority and minority children. *Id.* Moreover, earlier decisions of State and Federal courts upheld the authority of the State to pursue such a policy even in the absence of any constitutional requirement. *Id.* at 715. See also discussion in Section B of this memorandum.

The U.S. Supreme Court affirmed *Lee* on appeal without opinion (with Justices Burger, Black and Harlan calling for further argument.)[8] The Supreme Court did however consider a statute very similar in wording to the Lent-Kunzman Act and the proposed amendment in *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971). The Court's opinion in this case makes it clear that it would view this amendment, in the context of *de jure* school desegregation, as a limitation on the rights protected by the 14th Amendment.

While the litigation involved in *Swann* v. *Charlotte-Mecklenburg Board of Education*[9] was in process, the North Carolina legislature passed a law providing in part that: No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origin. Involuntary busing of students in contravention of this article is prohibited, and public funds shall not be used for any such busing.[10]

The operation of this statute, known as the Anti-Busing Law, had been enjoined by a three judge court. The Supreme Court affirmed. The Court held that the statute violated the Federal Constitution insofar as it operated to obstruct the constitutionally required disestablishment of a dual school system. In discussing the statute's failings, the court reaffirmed the need for school officials to consider race in remedying segregation in schools.

The legislation before us flatly forbids assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools. The prohibition is absolute, and it would inescapably operate to obstruct the remedies granted by the District Court in the *Swann case*. But more important the statute exploits an apparently neutral form to control school assignment plans by directing that they be "color blind"; that requirement, against the background of segregation would render illusory the promise of *Brown* v. *Board of Education*, 347 U.S. 483 (1954). Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems.[11]

The Court stated also that a prohibition on involuntary school transportation could not stand in the face of the constitutional requirement for desegregation of the Charlotte school system.[12]

Conclusion

By the adoption of the proposed amendment, the constitutional objections to statutes such as those of New York and North Carolina referred to above would be moot. Thus, both Congress and the States would have the authority, which they now lack, to prevent school desegregation by means of race-conscious pupil assignments. Even in the absence of implementing legislation, the amendment by its own force, would probably make such assignments susceptible to judicial attack.

The amendment would inescapably have a profound effect on efforts to achieve school integration. In disestablishing *de jure* dual school systems, the Supreme

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[7] Such special burdens had been held to be unconstitutional by the Supreme Court in the landmark case of *Hunter* v. *Erickson*, 393 U.S., 385 (1969) which struck down a statute requiring fair housing ordinances, but no other ordinances, to be subject to local referenda.

[8] *Lee* v. *Nyquist* was followed in *Bradley* v. *Milliken*, 433 F. 2d 897 (1970) (Michigan law designed to obstruct Detroit school board desegregation plan held invalid); *San Francisco Unified School District* v. *Johnson*, 92 Cal. Rptr 309, 479 P 2d 669 (1971) (California statute prohibiting involuntary transportation of pupils narrowly construed to avoid invalidation as violative of 14th Amendment) and *Keyes* v. *School District Number One, Denver, Colorado*, 313 F. Supp. 61 (D. Colo. 1970, 445 F 2d 990 (10th Cir. 1971) cert. granted 40 LW 3329 (1972)). (Recision of voluntary desegregation plan by newly elected anti-integration board held violation of the 14th Amendment). For further discussion of *Keyes*, see *infra*, p. 34–35.

[9] 402 U.S. 1 (1971).

[10] N.C. Gen. Stat. § 115–176.1 (Supp. 1969).

[11] 402 U.S. 45–46.

[12] *Id.* at 46.

Court has characterized race conscious assignments as "the one tool absolutely essential" to eliminate dual systems.[13] Unless the courts were to construe the proposed amendment as relating only to assignments made to overcome *de facto* school segregation, it would seriously hamper or halt further desegregation in the South.

In actual effect the amendment would bring a halt to and reverse the principles which have emerged in the past five years of school desegregation litigation. Those developments, which will be discussed in more detail during the course of this memorandum have been threefold; first, that *de jure* segregation is to be eradicated "root and branch" and that the necessary remedy to *de jure* segregation must be one which is conscious of the racial composition of the student body of each school. Second, that *de jure* segregation is to be found not only in the south but in the north and other parts of the country, as well, where government involvement in segregating schools has taken forms other than a statutorily mandated dual school system. Third, that even where racially imbalanced schools have not been created by government action, the government, as a matter of policy should be free to assure an integrated education. Moreover, these remedial principles have not been directed solely at schools. They are fundamental principles which are applicable to the whole range of problems created by denials of equal protection.

Most of the devices approved by courts under their equitable powers to remedy school segregation would be outlawed by this amendment. Pairing of schools to achieve racial balance; changes in attendance zones designed to achieve better racial integration; race conscious selection of sites for new schools and transportation designed to overcome school segregation would be subject to challenge on the grounds that they involve assignments based on race.

II. SCHOOL DESEGREGATION—THE PAST FIVE YEARS

The 1954 Supreme Court ruling that school segregation sanctioned by State statutes violated the Equal Protection Clause of the Fourteenth Amendment,[14] was not the end, but rather the beginning of judicial efforts to eliminate dual school systems. This part of the memorandum will discuss legal developments in the area of school desegregation which have occurred during the past five years.[15] Particular emphasis will be given to the constitutional duty of school officials to take affirmative measures to desegregate dual school systems and the broadening concept of *de jure* segregation.

A. Duty to Take Affirmative Action to Desegregate Schools

In *United States v. Jefferson County Board of Education*,[16] the U.S. Court of Appeals for the Fifth Circuit ruled that a State has an affirmative duty to eliminate the effects of *de jure* or State-imposed, school segregation.[17] At issue in *Jefferson*, was the constitutionality of school desegregation plans drawn pursuant to HEW guidelines. The guidelines were based on free choice of schools, and in upholding the guidelines the court emphasized that freedom of choice plans were acceptable only if they actually resulted in integration.[18] The decree issued by the Fifth Circuit dictated elements which must be contained in a free choice plan to assure the existence of a unitary system. These included mandatory annual exercise of choice, with notice and explanation of the decision involved, equalization of school faculties, maintenance of remedial programs, and desegregation of faculty and staff.

In 1968, the Supreme Court issued its first significant school desegregation ruling involving the procedures used to implement *Brown's* desegregation requirement.[19] In *Green* v. *School Board of New Kent County*,[20] the court essentially adopted the position of the Fifth Circuit. New Kent County, a rural Virginia County, had operated a total of two schools, one black and one white. In 1965, the school board adopted a freedom of choice plan.

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[13] *Id.*

[14] *Brown* v. *Board of Education* 347 U.S. 483 (1954). [*Brown I*]. One year later, the Court ordered that racially nondiscriminatory school systems be created "with all deliberate speed." *Brown* v. *Board of Education*, 349 U.S. 294, 301 (1955). [*Brown II*]

[15] The discussion, however is limited to student desegregation. Not treated is the desegregation of faculties and staffs, a less controversial area, and one not affected by the proposed constitutional amendment. There is a significant body of law requiring teacher desegregation, which is well summarized in Emerson, Haber, and Dorsen "*Political and Civil Rights in the United States*, 1971 Supp. to Volume II. (1971) 70–73 (hereinafter cited as Emerson, 1971 Supp.)

[16] 372 F. 2d 836 (5h Cir. 1966), aff'd on rehearing en banc, 380 F. 2d 385, cert. denied sub nom. *Caddo Parish School Bd. v. United States*, 389 U.S. 840 (1967).

[17] 372 F. 2d 868.

[18] "Freedom of choice means the maximum amount of freedom and clearly understood choice in a bona fide unitary system where schools are not white schools or Negro schools—just schools." *Id.* at 890.

The Board contended that by adopting the plan, it had desegregated the school system in compliance with the law, although there was little actual integration. Using a results test, the court held that the mere existence of a freedom of choice plan was insufficient, and that *Brown II*[21] required that dual school systems be abolished.

> School boards such as the respondent then operating state-compelled dual systems were . . . clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch.[22]

In ruling that mere freedom of choice is impermissible if it does not result in a "unitary nonracial" school system, the court did not outline what steps a school board must take to desegregate, but left to the district courts the responsibility of assessing the effectiveness of desegregation plans. Such plans, the Court stated, must promise "meaningful and immediate process toward disestablishing state-imposed segregation."[23] Without dictating the means of desegregating a school system, the Green decision clearly mandated that dilatory tactics and tokenism were constitutional violations and that school boards must take affirmative measures to eliminate *de jure* segregation.

After the Green ruling, many school boards continued to use tactics designed to avoid full integration in light of the Court's not yet having addressed itself to the question of what measures a school board must take to produce a unitary school system, nor having defined "unitary nonracial". Subsequently, the circuit courts of appeal rejected freedom of choice plans which produced little integration.[24] The lengthiness of litigation, however, allowed most school boards to use this system for the 1968–69 school year. School boards then, with assistance from the Department of Health, Education, and Welfare, were compelled to prepare desegregation plans utilizing school attendance zones, pairing of schools, busing of pupils, etc. In addition to rejecting "freedom of choice," circuit courts also prohibited the use of attendance zones based on racially identified neighborhood lines and which produced little desegregation.[25]

In October 1969, the Supreme Court again expressed its intolerance of measures that either produced less than complete desegregation or delayed desegregation of school systems. In August of 1969, the Fifth Circuit Court of Appeals had granted a request by the Department of Health, Education and Welfare to delay by one year the implementation of desegregation plans for 30 Mississippi school districts.[26] When HEW's plans were withdrawn, no other desegregation measures were substituted. All of the districts affected would therefore continue using their old freedom-of-choice plans.

In *Alexander* v. *Holmes County Board of Education*,[27] the Supreme Court reversed the Court of Appeals delay, stating that: . . . continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.[28]

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[19] The court had been silent on the question of school segregation for a decade during which time virtually no progress was made in desegregating southern school systems. U.S. Commission on Civil Rights *Southern Desegregation* 1966–67" (1967)

[20] 391 US 430 (1968)

[21] *Supra* n.14. See also *Cooper* v. *Aaron* 358 U.S. 1 (1958) prohibiting segregation by virtue of state Executive and Legislative action and ordering immediate desegregation of the Little Rock, Ark. school system.

[22] 391 U.S. at 437–38.

[23] *Id.* at 439.

[24] Eg. *Hall* v. *St. Helena Parish School Board*, 417 F2d 801 (5th Cir.) cert. denied, 396 US 904 (1969); *U.S.* v. *Hinds Co School Bd. of Educ.*, 417 F2d 852 (5th Cir 1969); *Felder* v. *Harnett County Bd. of Education*, 409 F.2d 1070 (4th Cir 1969); *Walker* v. *County School Bd. of Brunswick County*, 413 F.2d 53 (4th Cir. 1969); *Jackson* v. *Marvell School Dist. No. 22*, 416 F.2d 380 (8th Cir. 1969).

[25] *United States* v. *Greenwood Municipal Separate School Dist.*, 406 F.2d 1086 (5th Cir.) cert. denied, 395 U.S. 907 (1969); *Henry* v. *Clarksdale Municipal Separate School Dist.* 409 F.2d 682 (5th Cir.) cert. denied, 396 US. 940 (1969); *United States* v. *Indianola Municipal Separate School Dist.*, 410 F.2d 626 (5th Cir. 1969), cert. denied, 396 U.S. 1011 (1970); *Brewer* v. *School Bd. of Norfolk*, 397 F.2d 37, (4th Cir. 1968); *Clark* v. *Board of Education of Little Rock*, 426 F.2d 1035 (8th Cir. 1970); *Monroe* v. *Board of Comm'rs Jackson*, 427 F.2d 1005 (6th Cir. 1970).

[26] *U.S.* v. *Hinds Co. School Board* 417 F. 2d 852 (5th Cir. 1969).

[27] 396 U.S. 19 (1969).

In *Swann* v. *Charlotte-Mecklenburg Board of Education*,[29] the Supreme Court for the first time considered the type of remedial action needed to create a unitary school system. The district court had appointed an expert to prepare a plan for desegregating the Charlotte-Mecklenburg school district. This plan, which the district court ordered implemented, went much further than the school board's plan toward achieving racial balance throughout the system.[30] The plan, as finally approved by the district court and circuit court of appeals necessitated extensive busing of students.[31] In upholding the expert's plan, the Supreme Court not only reaffirmed the duty of school boards to take affirmative measures to eliminate dual school systems, but attempted to outline the type of actions to be taken.[32] The guidelines issued by the court dealt wtih four methods commonly used to desegregate school systems:

1) *Racial quotas*, the Court ruled, may be used as part of the remedy for eliminating school segregation.

2) *One-race schools* are permitted in a district if there are only "some small number" [33] of them and if they are shown not to be part of de jure segregation. The Supreme Court emphasized that district courts and school authorities must attempt to eliminate such schools. There is a presumption against the constitutionality of these schools, and the school authorities have the burden of providing "that their racial composition is not the result of present or past discriminatory action on their part." [34]

3) *School Attendance Zones* may be redrawn in order to eliminate segregated schools. Racially neutral assignment plans may often be inadequate to achieve desegregation. Zones need not be contiguous, nor must they result in students attending "neighborhood schools", if they are designed with the purpose and effect of achieving nondiscriminatory assignments.

4) *Transportation of students* was treated gingerly by the Supreme Court. Noting that "[b]us transportation has been an integral part of the public school system for years",[35] the Court stated that ordering of busing is a proper remedy in school desegregation cases. The test of how much busing is permissible is essentially one of reasonableness: An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.[36]

The *Swann* decision, although it leaves many issues untouched, is a major contribution to the law of school desegregation, in that it sustains the power of the district courts and school authorities to take strong measures, including those based specially on the race of students, to eliminate de jure segregation.[37]

B. Judicial Challenges to Race-Conscious Remedial Action

In 1967, the U.S. Commission on Civil Rights analyzed the many cases which challenged the right of State and local school officials to achieve school desegregation in the north and south by student assignment based on the race of pupils involved. The Commission concluded that: The Courts consistently have upheld actions at the State or local level designed to eliminate or alleviate racial imbalance in the public schools against the charge by white parents that it is unconstitutional or unlawful to take race into consideration.[38]

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[28] *Id.* at 20.

[29] 402 US 1 (1971).

[30] 311 F. Supp 265. (W.D. N.C. 1970).

[31] 431 F2d 138 (4th Cir. 1970).

[32] The problems encountered by the district courts and courts of appeals make plain that we should now try to amplify guidelines, however incomplete and imperfect, for the assistance of school authorities and courts." 402 US at 14.

[33] *Id.* at 26.

[34] *Id.*

[35] *Id.* at 29.

[36] *Id.* at 30–31.

[37] In a companion case, *Davis* v. *Board of School Commissioners of Mobile County*, 402 US 33 (1971), the Supreme Court refused to uphold the desegregation plan of Mobile, Ala. because it treated the predominantly black eastern section of the metropolitan area as an isolated area, requiring no busing to desegregate its elementary schools, all of which were over 90% black. The Supreme Court remanded the case to the Circuit Court of Appeals with instructions to consider non-contiguous zoning and busing in order to fashion an effective desegregation decree.

[38] U.S. Commission on Civil Rights *Racial Isolation in Public Schools* 234(1967).

Remedying de jure segregation

In two recent school desegregation cases, the Supreme Court explicitly affirmed the authority of school boards to consider the race of pupils in desegregating *de jure* school districts. In *McDaniel* v. *Barresi*,[39] the Court reversed an injunction against a school desegregation plan, granted by the Supreme Court of Georgia because it treated students differently on the basis of race. Chief Justice Burger, for the Court, found that: The Clarke County Board of Education, as part of its affirmative duty to disestablish the dual school system, properly took into account the race of its elementary school children in drawing attendance lines. To have done otherwise would have severely hampered the board's ability to deal effectively with the task at hand.[40]

Justice Burger then referred to the affirmative duty of school boards to eliminate racial discrimination required by *Green*: In this remedial process, steps ruling involving the procedures used to implement *Brown's* desegregation requiretheir race" . . . Any other approach would freeze the status quo that is the very target of all desegregation processes.[41]

In *Swann* v. *Charlotte-Mecklenburg Board of Education* [42] the Supreme Court considered two specific remedial measures that involved assignments which take race into consideration. One was the use of racial quotas in each school, towards which desegregation efforts should be aimed. The Court held that a court could not require, as a matter of constitutional right, any particular degree of racial balance in each school. In this case, however, the mathematical ratios were used as a "starting point in the process of shaping a remedy, rather than an inflexible requirement." [43] Such a use of racial ratios constituted a permissible equitable remedy for the circumstances of the case.

The Supreme Court also considered the legality of the system of selection of attendance areas used by the district court to disestablish the dual school system. This system was clearly designed to transfer students on the basis of race. The Supreme Court discussed in some detail the need for such remedial measures:

> Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.
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> . . . "Racially neutral assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly nondiscriminatory assignments. In short, an assignment plan is not acceptable simply because it appears to be neutral.[44]

Remedying Racial Imbalance

Lower court decisions have (affirmed in some cases by the Supreme Court)[45] affirmed the power of school officials to overcome *de facto* segregation, even though such action, unlike the steps taken in *Swann*, has not been held to be constitutionally required.

The power of the State to undo the effects of school segregation has been broadly defined in other decisions. In *Jenkins* v. *Township of Morris School District*, No. A–117 (June 25, 1971)[46] the Supreme Court of New Jersey stated that the State Commissioner of Education had the power to ignore district boundaries to effectuate school integration.[47]

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[39] 402 US 39 (1971).

[40] *Id.* at 41.

[41] *Id.*

[42] 402 US 1 (1971).

[43] *Id.* at 25.

[44] *Id.* at 28

[45] *Lee* v. *Nyquist*, supra n. 1 and *School Committee of Boston* v. *Board of Education*, infra at n. 21.

[46] Cited in Emerson, 1971 Supp. at 79–80.

[47] However, districting by the State which had the effect of increasing racial imbalance but was dictated by legitimate considerations unrelated to race was upheld in *Wright* v. *Emporia City Council*, 442 F.2d 570 (4th Cir. 1971) and *Spencer* v. *Kugler* 362 F. Supp. 1235 (D.N.J. 1971).

State laws designed to overcome racial imbalance in the schools have generally been upheld as legitimate exercise of the State's police power. The Massachuetts Racial Imbalance Act[48] which requires the withholding of State funds from districts which do not prepare and implement plans to eliminate racial imbalance, was held constitutional in *School Committee of Boston* v. *Board of Education.*[49]

Under the Illinois statute upheld in *Tometz* v. *Board of Education Waukegan City School District No. 61,*[50] the Illinois Superintendent of Education has issued stringent regulations requiring every school district to achieve approximate racial balance in each school, corresponding within 15 percent to the racial composition of the school district. The regulations provide for State and Federal fund cutoffs for non-compliance. They have not yet been subject to judicial challenge.[51]

C. De Jure v. De Facto Segregation

The distinction between *de jure* school segregation—that imposed by law—and *de facto* segregation—that which is not the result of State law or purposeful discrimination by school authorities—is one that has been drawn by the courts in defining the type of school desegregation prohibited by the Fourteenth Amendment.[52] School desegregation rulings in the past few years, however, have construed almost all forms of school segregation as *de jure* or have rejected the *de facto* concept with increasing frequency. The effect of these cases is to minimize the significance of the *de jure—de facto* distinction.

1. *The Distinction*

The argument that only legally sanctioned school segregation violates the Constitution is based on the Supreme Court's ruling in *Brown* v. *Board of Education I.*[53] There, the cases before the Court all challenged state sponsored and required segregation and therefore the holding only reached *de jure* segregation. The language of the Court does not explicitly limit the holding of *Brown* to state-compelled segregation. The stated rationale of *Brown* reached all forms of racial isolation in education, and the role of the state in segregating students was not emphasized in the wording of the opinion: Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greated when it has the sanction of the law; . . .[54] (Emphasis added)

The Court concluded "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."[55]

To date, the school desegregation cases which have reached the Supreme Court have all originated in States which had officially sanctioned segregation at one time. The Court has not heard a so-called "de facto" school case,[56] and there has been disagreement among the circuit courts of appeal whether the Equal Protection Clause of the Fourteenth Amendment imposes a duty upon school officials to correct adventitious segregation.

Four courts of appeals have held that there is no such duty.[57] These rulings were all made at least six years ago, and at least one Circuit Court of Appeals, the Sixth, has changed its position on the issue of *de facto* segregation.[58]

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[48] Mass. Gen. Laws, Ch. 71 Sec. 37D (1965).

[49] 352 Mass. 693, 227 N.E. 2d 729 (1967) app. dism. 389 U.S. 572 (1968).

[50] 39 Ill. 2d 593, 237, N.E. 2d 498 (1968).

[51] Article "Illinois Desegregation Law is One of the Stiffest" Washington Post, Dec. 13, 1971.

[52] The leading defining case defining *de facto* segregation is *Bell* v. *School City of Gary,* 213 F. Supp. 819, (N.D. Ind.), Aff'd, 324 F. 2d 209 (7th Cir. 1963), cert. deneid 377 U.S. 924 (1964) where adventitious segregation in the schools of Gary Ind.—racially imbalanced because of the application of a neighborhood school policy in the context of racially segregated housing patterns—was challenged. The law does not require, said the court, "that a school system developed on the neighborhood school plan, honestly and conscientiously constructed with no intention. . . . to segregate the races, must be . . . abandoned because the resulting effect is to have a racial imbalance in certain schools where the district is populated almost entirely by Negroes or whites." See also, *Gilliam* v. *School Board (Hopewell)*, 345 F. 2d 325 (4th Cir.), vacated and remanded on other grounds, 382 U.S. 103 (1965); *Deal* v. *Cincinnati Board of Education*, 369 F. 2d 55 (6th Cir. 1966). *Downs* v. *Board of Education* (Kansas City), 336 F. 2d 988 (10th Cir. 1964), cert. denied, 380 U.S. 914 (1965).

[53] Supra n. 14.

[54] 347 U.S. 494.

[55] In 1958, the Supreme Court expressly prohibited school segregation resulting from state executive, as well as legislative, action. *Cooper* v. *Aaron* 358 U.S. 1 (1958).

[56] However, in January 1972, the Court granted certiorari to *Keyes* v. *School District No. 1, Denver, Colorado, supra* n. 8, a case involving *de facto* segregation in the Denver School system. (See discussion, *infra.*)

[57] Supra n. 52 p. 22.

2. *Abandonment of the De Facto Concept*

During the past five years lower Federal court decisions have virtually nullified the distinction between *de jure* and *de facto* segregation by expanding the *de jure* concept to include activities which several years ago would have been termed *de facto*.

Rather than rejecting the concept of *de facto* segregation, courts continue to hold that only *de jure* is forbidden by the Fourteenth Amendment. However, courts have used factual analyses of the discrimination before them to find that almost all forms of school desegregation are *de jure*, and therefore in violation of the Constitution.

The most prevalent form of school segregation, other than that imposed by law, is segregation which results from racial residential patterns. As early as 1961, a Federal district court held that the New Rochelle, N.Y. school board could not maintain a segregated school system which was based on racial residential districts.[59] The court noted that prior to 1949, school attendance zones had been gerrymandered to isolate black children within one school, and that the school board's failure to take affirmative measures to eliminate segregation was a violation of the Fourteenth Amendment. The court relied heavily on a broad interpretation of *Brown*, stating that it was premised on the inherent inequality of segregated education, rather than on the illegality of a state-operated dual school system.

Other Federal courts have been slow in adopting the view expressed in *Taylor*. It was not until 1967 that the position that a school board cannot purposefully use residential segregation as a basis for racially-designed school attendance zones became more widely accepted.

One of the first circuit courts of appeals to adopt this position was the Fifth. In *U.S.* v. ***Jefferson Co., Board of Educ.***, the court characterized segregation in the South which results from residential patterns as "pseudo de facto." It stated: Here school boards, utilizing the dual zoning system, assigned Negro teachers to Negro schools and selected Negro neighborhoods as suitable areas in which to locate Negro schools. . . . Segregation resulting from racially motivated gerrymandering is properly characterized as "de jure" segregation. See *Taylor* v. ***Board of Education of the City of New Rochelle***, S.D., N.Y. 1961, 191 Supp. 181.

The courts have had the power to deal with this situation since *Brown I*. In ***Holland*** v. ***Board of Public Instruction of Palm Beach County***, 5 Cir. 1958, 258 F. 2d 730, although there was no evidence of gerrymandering as such, the court found that the board "maintained and enforced" a completely segregated system using the neighborhood plan to take advantage of racial residential patterns.[60]

Affirmative use of exclusionary residential patterns as a basis for pupil assignment was also struck down in ***Hobson*** v. ***Hanson***.[61] There the Federal District Court for the District of Columbia found that the District's use of neighborhood school policy as modified by the use of optional transfer zones designed to permit white students living in racially mixed neighborhoods to escape to an all white or majority white schools violated the Fourteenth Amendment.

School boards have argued that they have no obligation to correct a "de facto" system inherited from their predecessors. This contention was rejected in *U.S.* v. ***School District 151 of Cook Co.***[62]

The district operated six grammar schools. Two located in a predominantly Negro area of Cook County called Phoenix, had "about 99% Negro" enrollment according to the court's findings. The other four schools were located in areas outside of Phoenix which were "almost exclusively" white.

The court of appeals affirmed findings that defendants "inherited from their predecessors a discriminatorily segregated school system which defendants subsequently fortified by affirmative and purposeful policies and practices which effectually rendered *de jure* the formerly extant *de facto* segregation."[63] These policies and practices included drawing of attendance zones, busing of pupils, and the formulation of a plan to restructure the school district. The court held that the Board's conduct constituted a violation of the Fourteenth Amendment.

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[58] The Sixth Circuit, in ***Davis*** v. ***Dis. of Pontiac*** 443 F.2d 573 (6th Cir. 1971), distinguished ***Deal*** v. ***Cincinnati Bd. of Educ., Supra*** n. 52, on factual grounds and, in effect, ordered the school board to overcome the effects of what would have been termed *de facto* segregation six years earlier.

[59] *Taylor* v. *Bd. of Educ.* ***of the City of New Rochelle School District***, 191 F. Supp. 181 (S.D. NY 1961), 294 F.2d 36, cert. denied, 368 US 940 (1961).

[60] 372 F. 2d 836, 876 (5th Cir., 1966).

[61] 269 F. Supp. 401, 403, 499 (DCC 1967); ***aff'd*** sub. nom. ***Smuck*** v. ***Hobson***, 408 F. 2d 175 (D.C. Cir. 1969).

[62] 404 F. 2d. 1125 1125 (7th Cir., 1968).

[63] Id. at 1131.

Other decisions have gone further, and adopted an "effects" test, holding that the use of a neighborhood school plan, even without racially discriminatory motives, is unconstitutional if such plan results in a high degree of segregation. One of the issues in *Brewer* v. *School Board of City of Norfolk, Va.*[64] was the gerrymandering of high school attedance zones. The circuit court of appeals, in remanding the case to the district court, instructed it to determine:

> Whether the racial pattern of the districts results from racial discrimination with regard to housing. If residential racial discrimination exists, it is immaterial that it results from private action. The school board cannot build its exclusionary attendance areas upon private racial discrimination. Assignment of pupils to neighborhood schools is a sound concept, but it cannot be approved if residence in a neighborhood is denied to Negro pupils solely on the ground of color.[65]

In *U.S.* v. *Board of Education, Independent School District No. 1, Tulsa Co., Okla.*,[66] the court found that residential segregation in Tulsa was partially the result of the use of restrictive covenants prior to 1954. The imposition of a neighborhood school policy upon this residential pattern was one of the grounds on which the school system was found to violate the Fourteenth Amendment. The court dismissed the relevancy of school officials' intent in designing the neighborhood school policy:

> Before the "good faith" of the school administrators becomes constitutionally relevant, it must first be shown that the neighborhood plan has evolved from racially neutral demographic and geographical considerations.[67]

Relying on *Brewer*, the court held that the attendance zones were discriminatory from their very inception.[68]

Brewer and *Tulsa* go very far in broadening the *de facto* concept, and, in effect, make the dichotomy between *de jure* and *de facto* much less meaningful. First, they hold that the discrimination involved need not be that of the school board. Second, even private discrimination, if it is relied upon in good faith by a school board becomes *de jure* in the sense that it falls within the ambit of the Fourteenth Amendment.

Davis v. *City of Pontiac*[69] is similar to *District 151* in its approach to the question of de facto segregation, yet it also relies on results rather than intent. The district court found that attendance zones and school construction were used in conjunction with existing residential segregation with the result of perpetuating a segregated school system. As a result, the school board was practicing *de jure* segregation:

> Sins of omission can be as serious as sins of commission. Where a Board of Education has contributed and played a major role in the development and growth of a segregated situation, the Board is guilty of de jure segregation. The fact that such came slowly and surreptitiously rather than by legislative pronouncement makes the situation no less evil.[70]

In upholding the district court, the court of appeals distinguished its earlier *de facto* ruling. It cited *Deal* v. *Cincinnati Board of Education*[71] for the proposition that a school district does not have a duty to act affirmatively to eliminate racial segregation which is "not attributable to school policies or practices and is the result of housing patterns and other forces over which the school administration had no control."[72] Here, however, there was a "quantum of official discrimination" sufficient to make the 14th Amendment applicable.

The involvement of the school board in *Davis* with the segregated housing patterns which resulted in racially isolated schools was not greater than that of a school board in most areas. Although paying lip service to the *de facto-de jure* distinction, the *Davis* court's definition of impermissible conduct is no stricter than that of *Brewer* or *Tulsa*, which forbid reliance on private residential segregation in drawing school attendance zones.

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[64] 397 F. 2d. 37 (4th Cir. 1968).

[65] *Id.* at 41–42.

[66] 429 F 2d 1253 (10th Cir. 1970).

[67] *Id.* at 1258.

[68] *Id.* at 1259.

[69] 309 F Supp. 734 (D. Mich. S.D. 1970), *aff'd* 443 F.2d 573 (6th Cir. 1971), *cert. den* 404 U.S. 913 (1971).

[70] *Id.* at 309 F. Supp. 741–42.

[71] *Supra*, n. 52.

[72] 443 F. 2d 573 at 575.

In *Bradley v. The school Board of the City of Richmond,*[73] Judge Merhige found that the City of Richmond and the adjoining counties had engaged in de jure discrimination. The practices to which he referred as constituting de jure segregation were reliance on private discriminatory housing patterns, school construction and drawing of attendance zones, among others. The court relied heavily on *Brewer, Davis, Tulsa* and similar cases. Although the relief ordered in the Richmond case, the consolidation of three school districts, was novel, the reasoning through which de jure segregation was found was very traditional.

There are several recent cases which suggest that a distinction between *de facto* and *de jure* segregation is not legally valid, although none explicitly holds that there is a constitutional prohibition against *de facto* segregation. The court in the *Hobson* case set out the evils of segregation, whatever its cause, *de facto* or *de jure*. Relying on *Brown I*, it asserted that separation is inherently unequal, that *de facto* segregation harms minority group children, and that the Constitution requires the court to make a "diligent judicial search for justification." [74] for it. The court found no adequate justification for the existence of *de facto* segregation and ordered the school board to make use of alternatives and remedies to counteract its evils. The *Hobson* case is not as novel as it first appears, however. The District of Columbia had maintained a dual school system until 1954, and Judge Wright's *de facto* segregation would therefore be included within the ambit of *de jure* as it has been interpreted by many courts.

In *Spangler v. Pasadena City Board of Education,*[75] the court did not specifically discuss the constitutional violations of segregation as either *de jure* or *de facto*. In fact, the conclusions of law blur this distinction. The court merely concludes that *Brown I* held that separation is inherently unequal; separation deprives minority students of their constitutional rights. The use of the neighborhood school concept and the policy against crosstown busing were means by which the school board perpetrated violations of the Fourteenth Amendment.

The Supreme Court recently granted certiorari in a Denver, Colorado school case in which a central issue is the extent of a court's power to order elimination of so-called *de facto* segregation. The lower court opinions illustrate the present ambiguities of the *de facto* controversy.

In *Keyes v. School District No. 1, Denver, Colorado,*[76] the rescission of a voluntary desegregation plan for some Denver schools, those in the Park Hills area of the city, by a newly elected anti-integration board was held to be an act of *de jure* segregation. In ruling on a motion for preliminary injunction barring implementation of the rescission, the court found that the usual innocent characteristics of *de facto* segregation, e.g., site selection, attendance zone boundaries, school construction, assignment of teachers, and the like, had been used willfully by the Board of segregate, and were therefore *de jure*.

In a subsequent ruling on the merits, the court carefully drew a distinction between *de jure* and *de facto* segregation. On the issue of *de jure* segregation in the Park Hills schools, the court found again for the plaintiff and barred rescission of the plan. The court refused to find *de jure* segregation in the operation of Denver schools in other areas of the city, however, and ruled that it did not have the authority to order total school desegregation because neither the Supreme Court nor the 10th Circuit had held that *de facto* segregation violates the Constitution.[77]

The district court attempted to define de jure segregation in its opinion and construed it fairly narrowly. The elements of state-imposed segregation which the court said must be proven (and were not in this instance) in order for it to be *de jure* were: purpose to segregate, segregatory result, present segregation, and causal connection between present injury and past discrimination.[78]

In affirming the lower court on almost all points, the Circuit Court of Appeals adopted the position that state-imposed racial segregation in the schools violates the Constitution only if it is purposeful. The burden, ruled the court, is on the plaintiffs in a school desegregation case to prove that the segregation was caused by intentional state action. Absent such a showing, the court felt it had no power to order desegregation of the city's schools. It refused to hold that "Denver's neighborhood school policy is violative of the Fourteenth Amendment because it permits segregation in fact.'"[79]

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[73] Civil No. 3353, (E.D. Va., Richmond Div., January 5, 1972).

[74] 269 F. Supp. 406, 508. (DDC 1967), *aff'd.* sub. nom. *Smuck v. Hobson,* 408 F. 2d 175 (D.C. Cir. 1969)

[75] 311 F. Supp. 501 (C.D. Cal. 1970).

[76] 303 F. Supp. 279 (D. Colo. 1969), Supplemental Findings and Conclusions, 103 F. Supp. 289 (D. Colo. 1969).

[77] *Keyes v. School District No. 1 of Denver Colo.,* 313 F. Supp. 61 (D. Colo., 1970).

[78] *Id* at 74–75.

In agreeing to hear the *Keyes* case, the Supreme Court will have to grapple with the issue of the distinction between *de facto* and *de jure* segregation. In *Swann* v. *Charlotte-Mecklenburg Board of Education*, Chief Justice Burger was careful to limit the ruling to "State enforced separation of races in public schools", or the dual school system:

> We do not reach in this case the question whether a showing that school segregation is a consequence of other types of state action, without any discriminatory action by the school authorities, is a constitutional violation requiring remedial action by a school desegregation decree. This case does not present that question and we therefore do not decide it.[80]

In *Keyes* the Court will be faced not only with the question of the necesstiy of discriminatory intent as a precondition to a violation of the Fourteenth Amendment. Additionally, it will have to define the duty which a school board has, if any, to overcome racial imbalance in the schools which is not the direct result of official purposefully racial discrimination.

D. Equalization of School Financing

The two recent decisions which came closest to finding governmental responsibility for purely *de facto* segregation, *Keyes* and *Hobson*, emphasized the physical inequality of majority and minority school facilities in Denver and Washington, D.C.

An important and somewhat parallel development during the past few years has been the increasing number of challenges to the unequal manner in which states finance public schools. This issue relates to school desegregation insofar as one of the aims of school integration is to provide equality of education regardless of race.[81] However, this development in no way obviates the need for school desegregation either as a legal or as a practical matter.

The principal case dealing with inequality in school finances is *Serrano* v. *Priest*, 487 P. 2d 1241 (Sup. Ct. Cal. 1971). In *Serrano* the Supreme Court of California held that the state's system of financing public schools, which is similar to that of most states, violated the Equal Protection Clause of the Constitution. Public schools were financed principally through local property taxes, raised by each school district, and were supplemented by state funds consisting of flat grant per child plus equalization aid. This system resulted in school expenditures in 1968–69 ranging from $577.49 per pupil in one of the poorest districts to $1,231.72 in one of the richest. These inequalities resulted mostly from the wide disparity in the value of taxable property in each district. For the same school year the poorer district mentioned above had a property tax of $5.48 per $100 of assessed valuation, while the wealthy one taxed at a rate of only $2.38 per $100. The California Supreme Court concluded that a fundamental right of poor citizens—the right to equal education—had been abridged without compelling justification.[82]

Inequalities in school financing have generally had an adverse effect on minority children who tend to reside disproportionately in poorer school districts which cannot spend as much on schools as more affluent areas. For example, in a recent New Jersey case, the court found that the state's disparities weighed heavily on black and Puerto Rican families.[83]

Nevertheless, the equalization of per pupil expenditures may work to the disadvantage of minority schools in some cases. Large urban centers often have higher per pupil expenditures (and costs) than rural or suburban districts and equalization may be to their disadvantage.[84] Secondly, available studies show that per pupil school expenditures bear far less relationship to student achievement than one would expect.[85] The role played by the composition of the student body seems to be far more determinative of achievement.[86] Insofar as racial integration brings about socio-economic integration, it seems to be more important than money in furthering the improvement of the education of minority pupils who are now attending low income area schools.[87] But most importantly, equalization of finances does not reach the issue faced by *Brown* v. *Board of Education*—that in a society, in which one race has been stigmatized as inferior by the majority, segregation by race imprints that stigma on the young. Only the integration of education can directly overcome the harm thus created.

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[79] *Keyes* v. *School District No. 1, Denver, Colo.*, 445 F. 2d 990, 1004 (10th Cir. 1971).

[80] 402 US 1, 23 (1971). Although the Chief Justice was careful to characterize *Swann* as a traditional *de jure* case, the district court opinion discussed the patterns of racial residential segregation, documenting the involvement of local, State and Federal governments in the settlement patterns. The district court found that the school board had located schools and assigned pupils on the basis of these housing patterns, and that "now is the time to stop acquiescing in those patterns" 300 F. Supp. 1358, 1365–66, 1372, (W.D.N.C. 1969).

[81] *Hobson* v. *Hansen*, *supra* at 31–32 and *Keyes* v. *School District No. 1*, *supra*, at 33–34.

[82] Other cases reaching similar conclusions are *Van Dusartz* v. *Hatfield*, No. 3–71 Civ 243 (D. Minn. Oct. 12, 1971) and *Rodriquez* v. *San Antonio Independent School District*, Civ. Action 68–175–SA, W.D. Texas, Dec. 23, 1971.

[83] N.Y. Times, Jan. 20, 1972. While Jersey City, Paterson and Camden spent under $900 per year per pupil, suburban expenditures were as high as $1,454.

[84] For example, Newark has a per pupil expenditure rate of $1,121—less than the richest districts, but more than the poorest. *Id.*

ATTACHMENT

RACE CONSCIOUS REMEDIES IN FIELDS OTHER THAN EDUCATION

Race conscious policies are an essential element of achieving equality for Negroes and other minorities. Such measures are used for three different purposes, each one of which is essential in carrying out the purposes of the equal protection clause.

I. MEASURES NECESSARY TO REMEDY THE CONSEQUENCES OF ILLEGAL DISCRIMINATION

As the United States Supreme Court expressly stated in *North Carolina Board of Education* v. *Swann*, race conscious remedies are an "essential tool" in undoing illegal school segregation, and, therefore, forbidding such remedies would have the practical effect of repealing *Brown*.[1]

Race conscious remedies are an essential part of undoing illegal discrimination in all areas—not merely in education. Thus, for example, the courts frequently require race conscious recruitment policies as the remedy for illegal employment discrimination. In *Local 53, Asbestos Workers* v. *Vogler*, 407 F.2d 1047 (5th Cir. 1969), the Fifth Circuit upheld an order requiring a labor union to provide for future referral of blacks on an alternating basis with whites. Comparable relief was recently upheld by the Eighth Circuit in *Carter* v. *Gallagher*, Civ. No. 71-1181, decided January 7, 1972 (8th Cir. *en banc*).

The thread which runs through these cases is the finding that—as the Supreme Court stated in *North Carolina Board of Education* v. *Swann*—the remedy for discrimination against a class must include compensatory relief for that class. Therefore, measures which seem discriminatory on their face, in fact are found upon examination to be necessary to correct the consequences of past discrimination.

The above cases pertain to hiring and recruitment. Race conscious remedies for violation of Title VII of the Civil Rights Act of 1964,[2] which forbids employment discrimination of course have been required in other contexts as well, such as undoing the effects of discriminatory promotion practices. *See, e.g.*, *Papermakers and Paperworkers, Local 189* v. *United States*, 416 F.2d 980 (5th Cir. 1969), *cert. den.* 397 U.S. 919 (1970); *Quarles* v. *Philip Morris*, 279 F. Supp. 505 (E.D. Va. 1968).

The same principle is equally applicable in relation to housing discrimination. Thus, for example, in *Gautreaux* v. *Chicago Housing Authority*, 304 F. Supp. 736 (N.D. Ill. 1969), the court required that the Chicago Housing Authority cease to place public housing principally in areas of minority concentration, as a remedy for past discrimination in the location of public housing units. Here again, a race conscious remedy was found necessary to undo the mischief of past racial discrimination.

II. MEASURES NECESSARY TO PREVENT THE FUTURE OCCURRENCE OF ILLEGAL DISCRIMINATION

In an enormous range of contexts "color-blind" polices virtually assure discrimination. The teaching of those court decisions which have found that Northern style school segregation is unconstitutional is that passive acquiscence may produce segregation just as surely as expressly discriminatory policies.

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[85] See "The Equal Protection Clause in Public Education" by F. Schoettle, in 71 Colum. L. Rev. 1355, 1378-1388(1971) for a comprehensive review of current research and findings.

[86] *Id.*

[87] Equalization can of course facilitate integration by lessening the disparities between schools attended.

[1] *See* supra at 6

[2] 42 U.S.C. 2000(e)

The need for race conscious affirmative measures to prevent the occurrence of discrimination in other contexts has been demonstrated by many court decisions.

In the field of employment, the Supreme Court recently held that the actual effect of employment practices, procedures and tests upon minorities is the concern under Title VII, and that it is no defense that the employer was not aware of, or did not intend, discriminatory effects. *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971).

Another example from the employment field is the race conscious affirmative action required of Federal contractors under Executive Order 11246. The Order requires careful continuing assessment of the impact of employment practices upon minorities, and programs designed specifically to recruit and upgrade minorities.

In the field of housing, it is no less clear that color-blind policies may lead to discriminatory consequences. For example, in *Norwalk C.O.R.E.* v. *Norwalk Redevelopment Agency*, 395 F.2d (2d Cir. 1968) the Second Circuit found that where the renewal authority failed to take steps to neutralize the effects of private housing market discrimination upon minority displacees, it would itself be engaging in discrimination as to the persons displaced. Similarly, in *Kennedy Park Homes Assn.* v. *Cty of Lackawana*, 318 F. Supp. 699 (W.D. N.Y. 1970), *aff'd*, 436 F.2d 108 (2d Cir. 1970), *cert. den.*, 401 U.S. 1010 (1971), the court overturned certain restrictive zoning ordinances noting that deprivation of equal housing opportunity may occur "by sheer neglect or thoughtlessness" as well as by conscious design.

Yet another instance of the need for race conscious scrutiny of the actual effects of actions arises in the field of voting. In *Gaston County* v. *United States*, 395 U.S. 285 (1969), the Supreme Court struck down "fair and impartial" administration of voter literacy tests on the grounds that their practical consequence was to discriminate against Negroes who had been relegated to inferior schooling over the years. Color-blind use of literacy tests, the Court held, "would serve only to perpetuate these inequities in a different form." *Id.* at 297.

III. MEASURES NECESSARY TO OVERCOME RACIAL INEQUALITIES

The school desegration measures adopted by New York, Illinois, Massachusets and many school districts around the Nation, are premised on the view that school segregation—*whether or not illegal*—should be remedied in order to help secure equality for minorities. Such measures as these, again, have been paralleled by race conscious measures in a variety of other fields, similarly aimed at undoing racial inequalities.

It should be noted first that such remedial measures are a proper means of fulfilling the promise of the equal protection clause. Thus, in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), the Supreme Court held that it was a valid exercise of Congress' authority under the equal protection clause, to forbid application of English-literacy voter tests to persons schooled in Puerto Rico. This provision of the Voting Rights Act, the Court held, was plainly adopted to furthering the aims of the equal protection clause since it would be "helpful in gaining nondiscriminatory treatment in public services for the entire Puerto Rican community." *Id.* at 652.

A variety of other steps have been taken by the Federal Government responsive to the specific needs of minorities. In the field of business and manpower, for example, the special needs of minority businessmen have received attention in Federal procurement policies as well as in special minority business programs. With respect to manpower, the disadvantaged position of minorities is reflected in the very definition of "disadvantaged," which, for manpower program purposes, includes membership in a minority group among the indicia of disadvantaged.

In the field of housing and urban development, Congress has recognized the need to overcome patterns of racial concentration, and HUD has responded on a variety of fronts with requirements that recipients of developmental assistance take remedial measures. In connection with water and sewer, and open space grants, for example, jurisdictions must deliberately plan to assure that minorities are able to secure adequate housing opportunities throughout the metropolitan area. Also, in the location and the marketing of Federally assisted housing, HUD has made clear that "neutral," "color-blind" policies are unacceptable since, too often, their practical effect is to adopt and perpetuate existing discriminatory patterns.

> In a broad range of fields, Federal, State and local governments have been required by the courts to adopt, or have voluntarily adopted, measures which are based on express recognition of the historically unequal position of minorities, and of the need for special corrective action to overcome such inequalities.
>
> Such measures are not unfair and discriminatory. On the contrary, given the history of discrimination and disadvantage in which they are set, they are essential in order to secure equality.
>
> In the presence if disadvantage, to forbid effective race conscious remedy is to repeal the equal protection guarantee. The effect of the proposed amendment, thus, would be that the field of public education would stand alone, as the one field in which inequality is to be condoned and perpetuated.

Mr. HESBURGH. Over the years strong national leadership has proven essential in guaranteeing the constitutional right of racially nondiscriminatory schooling. The proposed constitutional amendment not only places the Congress against school integration and reverses the gains made in this area, but would strip away the constitutional right of all children of whatever race or ethnic background to equal educational opportunity, and an equal place in society.

On its face, this amendment seems to embody a neutral principle—no child shall be assigned to any school on the basis of his color.

In the context in which it is proposed, it can have no other effect than to outlaw all of the remedies which have been found effective to desegregate schools. Although proponents of the amendment have stated over and over that what they opopse is extensive busing, their attack reaches just about every form of remedy which brings black and white children together in a school.

Let me cite for you those remedies that school boards, superintendents, educators, and Federal judges have been implementing in district after district for the past two decades, and which would be outlawed by passage of this amendment.

After enactment of this amendment, there could be no pairing of schools, even nearby schools, for integration.

There could be no closing of segregated schools of inferior quality in order to integrate their student bodies.

For the same reasons, there could be no transfer provisions that allow a child whose race is in the majority to transfer to schools in which his race is in the minority.

There could be no redrawing of attendance lines to desegregate schools, no matter how fair or equitable such lines might be to all children in the district.

There could be no busing of children for desegregation—whether the bus trip takes 5 minutes or 30.

Finally, this amendment, of its own force, invalidates every voluntary action taken by a State legislature, State or local board of education or school official for the purpose of redressing racial segregation in the schools.

I would submit, gentlemen, this is the situation we are facing at the moment, a long history of racial segregation throughout the Nation in our schools.

No school district could assign pupils on the basis of race, whether it wanted to or not.

What, then, does this amendment do to the right of children guaranteed by the 14th amendment to attend schools without regard to their race? Behind its deceptive simplicity, this amendment would rob that right of every remedy we now have to implement it. The

14th amendment, as modified by this provision, would prohibit the States from denying equal protection of the laws to all, except to schoolchildren.

Justice Burger characterized a section of a North Carolina statute identical to the proposed constitutional amendment by stating:

> Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems.

Mr. Chairman, in our opinion the lawmakers of this land should remember that passage of House Joint Resolution 620 would whittle away at the protections of the 13th, 14th, and 15th amendments—which made freemen out of slaves, gave these men the equal protection of the laws of the land and granted them the specific right to exercise the franchise.

These three amendments have been as important for minorities as the first 10 amendments have been to all Americans. These three acts of conscience embodied in the organic law of the land have at least symbolized the cleansing of our past acts of inhumanity.

Why, at this point in our history must we now defend the propriety of maintaining the 14th amendment unimpaired? Why is it that such evil resides, not in busing per se, but only in using it as a means of carrying out the requirement of equal protection, as to require the action pending before this body?

Throughout the past 20 years, the Federal courts have wrestled with the problems of school desegregation, and have borne the burden of bringing school districts into compliance with the Constitution. In 1954, the Supreme Court ruled in *Brown* v. *Board of Education* that officially sanctioned segregation in public schools, even though the physical facilities and other "tangible" factors might be equal, violates the 14th amendment. This was not the end, but rather the beginning of judicial efforts to eliminate dual school systems.

Brown had little immediate impact, although the Supreme Court issued a second ruling in 1955 that school desegregation efforts must be made "with all deliberate speed."

Efforts in the next decade were deliberate, to be sure, but not speedy. Throughout the late 1950's and 1960's, many southern school districts adopted so-called freedom of choice plans, which produced little integration. In fact, those who exercised those freedom of choice plans were set upon in multiple ways to make them avoid using their freedom.

In 1968, the Supreme Court felt it necessary to speak out strongly in an attempt to secure the requirement of the Constitution in eliminating the dual school systems. In *Green* v. *School Board of New Kent County*, the Court insisted that Brown required not tokenism but the abolition of dual school systems; that racial discrimination must be eliminated "root and branch"; and that token free choice plans did not comply with the Constitution. It now appears that many of the proponents of this proposed amendment would create a situation which the courts have ruled unacceptable under the 14th amendment.

However, those who had opposed the concept of racial equality continued dilatory tactics, and, in October 1969, more than 15 years after the first *Brown* ruling, so little progress had been made that the Supreme Court was then compelled to be even more explicit in its directives. It ruled, in *Alexander* v. *Holmes County Board of Education*, that:

> * * * continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and thereafter only unitary schools.

As a result, for the first time in the almost 200-year history of this Republic, large numbers of school districts were completely desegregated in the 1969–1970 and 1970–1971 school years.

Last June, in *Swann* v. *Charlotte-Mecklenburg Board of Education*, the Supreme Court for the first time considered specific remedial action needed to create a unitary school system.

Approximate ratios of white to black students in each school, the Court ruled, may be used as part of the remedy for eliminating dual school systems. It also stated that school attendance zones may be redrawn in order to eliminate segregated schools. Racially neutral assignment plans, the Court noted, may often be inadequate to achieve desegregation. Zones need not be contiguous, nor must they result in students attending "neighborhood schools," if they are designed with the purpose and effect of achieving nondiscriminatory assignments.

Finally, noting that "(b)us transportation has been an integral part of the public school system for years," the Court stated that ordering of busing is a proper remedy in school desegregation cases. The test of how much busing is permissible, as phrased in *Swann*, is essentially one of reasonableness:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.

The racially purposeful actions prescribed by the Court to eliminate school segregation are by no means applicable only to the South, but have been required by courts in northern and western school districts as well.

The school system of New Rochelle, N.Y.; South Holland, Ill.; Pasadena, Calif.; Tulsa, Okla.; and Pontiac, Mich., are among those which have been found by the courts to have practiced deliberate school segregation in violation of the 14th amendment.

In addition to legally compelled school desegregation, many school districts have implemented desegregation plans voluntarily, through one or several of the devices I mentioned previously. For every Lanier, S.C., or Pontiac, Mich., there is a district which quietly eliminates its dual school system. Many rural southern districts, for example, have completely desegregated their school systems. The amendment could have the effect of resegregating school districts which have desegregated, voluntarily or involuntarily.

These efforts—voluntary and court ordered—have produced important results. In the 1970–71 school year, nationwide, the number of black students in majority white schools was 33 percent, an increase of 10 percent from the preceding year. In the same year, the number of black students in 100 percent minority schools decreased to 14 percent—941,000—from 40 percent—2.5 million—only 2 years earlier. Significantly, only 12.5 percent of all public school students were isolated in all-white or all-minority schools in the fall of 1970, as compared to 19 percent in 1968.

While this shows some progress, it also demonstrates that much of the job of giving every child the opportunity to attend integrated schools remains to be done.

If one listens to the opponents of integration, one is led to believe that nothing but evil can come from it. One hears an endless chorus of horror stories: fights on the buses and in the schools, parents upset, schools disrupted, learning curtailed, all the rest. But what are the facts?

In order to answer that question, the Commission early this year sent experienced members of its staff to five cities in which busing has been used extensively in order to desegregate schools. The school districts visited were Tampa-Hillsborough, Fla.; Pasadena, Calif.; Pontiac, Mich.; and Charlotte-Mecklenburg in North Carolina.

As the subcommittee can appreciate from that list of cities, we were not concentrating on noncontroversial and "success story" instances of desegregation. Rather, we selected what we considered to be a representative sampling of cities in which busing has been used to a significant degree.

Our staff talked with parents, students, teachers, principals, superintendents, school board members, community leaders, and people from all walks of life, races, and ethnic groups. What the staff members found stands in stark contrast to the newspaper headlines and the television newscasts.

Despite some opposition to desegregation, they did not find parents blocking the school entrances, teachers resigning in droves, or pupils engaged in continuous disorders. On the contrary, the staff found schools being conducted in an atmosphere of relative peace, harmony, and efficiency, in an atmosphere consistent with the Nation's ideals.

The protests have subsided and the television cameras have moved on to other subjects. Students, parents, teachers, and administrators are calmly proving to the world that desegregation can work. In some cases, organizations have been formed to counter the more combustible rumors. Some students who previously resisted desegregation—and they probably were simply echoing the prejudices of their parents—now prefer to stay just where they are, even if it means a daily bus ride of 15 to 30 minutes.

With your permission, Mr. Chairman, I would like to submit these staff surveys for the record.

Chairman CELLER. They will be received for the record.

(The staff studies follow:)

APPENDIX C

SCHOOL INTEGRATION IN SEVERAL URBAN AREAS

PREFACE

The following reports on school integration in Pasadena, California, Tampa-Hillsborough, Florida, Charlotte-Mecklenburg, North Carolina, and Pontiac, Michigan are based upon interviews and material gathered by staff members of the Civil Rights Commission during the period of January 10th through 28th, 1972. In each school district staff members interviewed the superintendent of schools, school board members, principals, teachers and students at elementary, junior and senior high schools, as well as parents of school children. Principals, teachers, students and parents interviewed included black and white persons in each group. In addition, the staff visited classrooms and observed students in their daily school activities. The particular schools were selected with the assistance of the superintendent's office to provide a cross section of experience with integration. Likewise, attempts were made to select the teachers, pupils, parents and school board members interviewed in such a way as to obtain as wide a range of opinions as possible on school integration. Care was taken to interview parents and students, white and black, who favored and who opposed the current school integration plan in their districts. Interviews were also conducted with black and white community leaders or spokesmen for organizations who represented community members with differing points of view toward school integration. The information obtained in the course of the interviews was supplemented by information contained in court decisions dealing with school desegregation in each district, the desegregation plan for each district and statistical and background materials provided by school officials of each city visited.

PUBLIC SCHOOL DESEGREGATION IN PASADENA, CALIF.

In 1970, Pasadena's population was 113,327. Of these, 90,446 were white, 18,256 black, and 4,625 belonged to other races or ethnic groups. Pasadena is the site of one of the U.S. Justice Department's few Northern school desegregation suits. In January 1970, the U.S. District Court for the Central District of California found thatt he Pasadena City Board of Education had used a neighborhood school policy and a policy against crosstown busing to avoid integration of students and faculties in the public schools.[1]

At the time of the District Court order the school board operated 28 elementary schools, five junior high schools, three senior high schools and two special schools. The district contained all of the city of Pasadena, the unincorporated town of Altadena, the city of Sierra Madre, and portions of Los Angeles County near the eastern boundary of Pasadena. For the 1969–70 school year, the district had enrolled 30,622 students—17,859 white, 9,173 black, and 3,590 of other minority ethnic or racial backgrounds. In percentage terms, 58.3 percent of the students were white, 30 percent black, 8.2 percent Chicano, and 2 percent Oriental.

Pasadena is an example of a non-Southern city in which a court-ordered desegregation plan appears to be successful in integrating the school system.

Prior to the court order, Pasadena operated a neighborhood school system, resulting in highly segregated elementary schools. In the 1969–70 school year, 93 percent of the white elementary school students attended white-majority schools and 85 percent of the black elementary students attended eight majority black schools. On one occasion, white elementary students whose school was closed from 1967 until 1969 were bused past three nearby majority black schools, all of which had vacancies, to a distant all-white school. Additionally, there is evidence that school attendance zones were redrawn on several occasions to avoid assigning white students to majority black schools.

Assignments to junior high school also had been made on the basis of race. For 20 or 25 years, students from one all-white area, Linda Vista, were transported to three all-white or majority white junior high schools to avoid assigning them to a majority black school, Washington Junior High, which was much closer to their neighborhood. Each school year until desegregation, Washington had more black students attending it than the total of blacks attending the other four junior highs. In 1969–70, 48 percent of Pasadena's junior high students attended Washington, composing a student body which was 88 percent black and 2 percent white.

The Pasadena school board made some attempt in the 1960's to achieve better racial balance in its three high schools, two of which were majority white. Changes in attendance zones during the same period, however, only increased racial imbalance in the schools.

Litigation

In August 1968, a group of students filed an action against the Pasadena City Board of Education, alleging racial discrimination in the school system. The Department of Justice intervened as plaintiff in December 1968. The District Court opinion was issued in January 1970.[2] The court found that there was racial imbalance and segregation among the student bodies and faculties of the Pasadena Unified School District at all levels—elementary, junior, and senior high. It further found that racial imbalance had been perpetuated by the school board's neighborhood school policy and its policy against crosstown busing. The court ruled that previous desegregation efforts, based primarily on freedom of choice, were inadequate to meet the school board's Fourteenth Amendment obligations, since more effective methods of reducing segregation in both majority white and majority black schools had been available.

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[1] *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501 (C.D. Calif. 1970).

[2] *Id.*

The court ordered the Board to submit a plan by February 16, 1970, which would include measures to desegregate school faculties and staffs, provisions for the location and construction of facilities in such a way as to reduce segregation, and a system of pupil assignments that would result in no school having a majority of minority students by the 1970–71 school year.

In February 1970, the Board of Education voted 3–2 not to appeal the District Court judgment and directed its staff to prepare a plan for elementary schools which would balance the schools racially and ethnically and insure equal educational opportunities for all students.

The plan

The plan adopted by the board and put into effect for the 1970–71 school year was designed to meet five criteria :

1. All schools should have populations as similar as possible to the ethnic composition of the entire district.
2. The neighborhood school concept should be maintained to the extent possible, consistent with an integrated system.
3. The shortest traveling distances to effect integration should be used.
4. Optimum use should be made of existing facilities.
5. Population trends and future mobility should be considered in building a plan for permanent desegregation.

Student assignment

The school district was divided into four elementary school areas which are racially and ethnically balanced. The minority population in Pasadena is presently concentrated in the western area of the city and has been moving eastward. The four school areas are drawn so that they run from east to west. Hopefully, this will provide some sort of permanence to the balancing of racial and ethnic populations within the areas. The areas are subject to annual revision.

These areas are subdivided into individual school zones, and pupils are assigned to a school according to grade level and attendance zones. The old elementary schools were reorganized into 16 primary (K–3) and 11 upper-grade (4–6) schools. Assignment is designed to result in an ethnic and racial composition in each school that approximates composition of the entire school district. Division of the former six-year schools into two groups was planned, in part, so that students will be able to go to a neighborhood school for part of their elementary schooling and ride to a distant school for only part of it. Also, the Pasadena plan enables children to stay with their neighborhood friends for this seven-year period. Under the plan, no elementary school would have a white enrollment of more than 62 percent or less than 47 percent.

Four of the five junior high schools in Pasadena were turned into 7th and 8th grade schools, and the fifth was to be converted to a ninth grade school for the entire school district. Attendance areas for the four "intermediate" schools (7th and 8th grade) were similar, but not identical, to those for elementary schools. It was predicted in the plan that the four schools would have student bodies ranging between 53 and 60 percent white, 28 and 33 percent black, and 7 and 18 percent other minority.

The Pasadena plan's provisions for desegregating the high schools were more complex than those for the earlier grades. In September 1970 under "Phase I", attendance zones were to be used so that the incoming 10th grade class in each school would be racially and ethnically balanced. In so-called "Phase II", one high school, Blair, is to be moved to a site north of another, Pasadena High School. In Phase III, the other high school will be moved to the same site, to form an educational park, together with the 9th grade school. Each school would be racially and ethnically balanced.

In 1970–71, it was projected that the 10th grade student population at each high school would range from 57.6 to 61.5 percent white. The upper two grades, however, would not be racially balanced. When the plan was implemented, 9th graders were also sent to the high schools, and the ninth grade was racially balanced.

Other details

The plan abolished school board policies which allowed transfers for various reasons and which enabled segregation to continue. Instead the board established a much stricter policy. Until 1968 the board had allowed free choice, permitting both black and white students to escape from minority schools. After free choice was abandoned, transfers to schools on the edges of the school district were encouraged to improve racial balance. Few were made. However, many transfers were granted to white students to attend white schools, for reasons such as care of siblings, fear of fights, and bad conditions in the schools.

Certain provisions for school construction were made, the major one of which was building the educational park described above.

The plan required extensive busing. It estimated that approximately 50 percent of the elementary school pupils (8,000 children) would be bused, 50 percent of the junior high students (3,600), and 27 percent of all senior high students (1,900). The total predicted cost was $1,036,000 for the first year.

The district outlined a recruitment program for minority teachers and established racial quotas for minority teacher assignment. Each school in the system was to have no fewer than 15 percent and no more than 45 percent minority teachers. Recruitment efforts also were planned for vacancies in non teaching positions.

Preparation for implementation

During the summer of 1970, extensive work was done on school buildings and grounds. In addition to moving the furniture required to set up the new system of elementary schools, workers installed new doors, blinds, and windows in the more run-down buildings. There was extensive painting and gardening. A dining room was built for Washington Junior High, whose student composition in 1969–70 was 98 percent minority.

The ease with which desegregation was implemented in September, however, was in large part the result of school board and community organizations' efforts to explain and promote the plan. The District began sending mailings to parents as early as May 1970, explaining how the desegregation plan would affect them. These informational mailings were continued throughout the summer.

Over 50 community organizations endorsed the plan and many actively assisted in its implementation. For example, the League of Women Voters manned an information center from May to September, answering questions about the plan, busing, etc. This center also helped to stop unfounded rumors by providing quick, accurate information to citizens.

Information booths were set up at 23 locations throughout the city by volunteers; television and newspapers carried stories about the plan; and books and school integration were placed on reserve at public libraries.

To help students who would be attending school together get to know each other, PTAs sponsored social events. The PTA and another volunteer group recruited and trained so-called "transportation aides" to ride buses and to stand at bus stops in the morning. Technical advice on traffic control was provided by law enforcement agencies. The Automobile Association of Southern California donated leaflets and cards on bus transportation and standards of behavior for students who were to be bused.

School officials, parents, and students interviewed by Commission staff said that they believed that the ease with which the plan was initially put into effect was the result of the widespread public support for the plan. The plan even had the editorial support of *The Pasadena Star-News*, although the paper clearly was not completely behind the desegregation of the schools.

Transportation

The busing required under the plan was, and remains, the most controversial aspect of Pasadena's school desegregation efforts. Busing is widespread. According to the Administrative Assistant to the Pasadena School Superintendent, 105 buses are used to transport children to school, as opposed to the 31 buses used prior to desegregation. The buses now travel 3,957 miles daily as compared to 960 miles previously. A total of 12,882 students are bused, an increase of almost 9,000. The average ride is now 20 minutes, rather than 12 as before, with the longest being 30 minutes.

The daily cost per student has increased from only 2 cents to 57 cents. The additional expense of busing has not been borne by the school board, however. The State pays three-fourths of the almost $1 million cost, and the school board has paid $190,000 for busing in the past. Hence the net increase in cost to the school district has not been great. The district received approximately $228,000 in Federal funds during the past two school years, which more than offsets the cost of busing.

There have been no bus accidents which have injured students. The only accidents have been minor traffic accidents.

Protests against busing were not very militant and came primarily from parents. The reasons for this may be that the transportation system was carefully designed. There are no long bus rides and elementary school children attend school with other neighborhood children, even when they are bused across town. Some buses leave school late in the afternoon so that all students can participate in extracurricular activities.

Reaction by parents

Most of those people whom Commission staff interviewed agreed that parental reaction to the *Spangler* decision and to the plan was much more vehement than the student reaction.

In spring 1970 a group called the Pasadena Appeal Committee was created to oppose desegregation of the schools. Its name reflects its opposition to the school board decision (by a 3-2 vote) not to appeal Judge Real's ruling in *Spangler*. The organization's motion to intervene in the litigation was denied, but many of the parents who were active in PAC are still strongly opposed to busing.

Most of the adult hostility was from white residents in Pasadena. There was an attempt to recall the three school board members who had voted against appealing the District Court's order. About 63 percent of the black community and 50 percent of white community voted in the election held in October 1970. The incumbents won in a close election, with 52, 54 and 56 percent of the vote. It is generally agreed that the large turnout of black voters was a major reason for their victory.

A school district official noted that the desegregation issue polarized the community, but he said that there was only one meeting where there was what he termed an "angry crowd." That was at a junior high school the night the plan was explained to the public. The same official believed that the recall election served as an emotional outlet for much of the hostility against the plan.

One "danger" of desegregating public schools is that often it results in a white exodus ("white flight") from the school district. Pasadena seems to have escaped extensive white flight, although it is too soon to know whether or not the white population will remain stable.

During the first year of desegregation, Pasadena's student population dropped by approximately 2,000. Not all of this decline can be attributed to desegregation, however. The population had been declining by approximately 1,000 pupils annually for the past several years. This was due in part to layoffs in the aerospace industry, which forced families to move. A declining birthrate is another factor.

Some students did leave rather than attend racially mixed schools. Many of the parents strongly opposed to desegregation sent their children to private or parochial schools. It is interesting to note, however, that some of these students returned to the Pasadena system for the 1971–72 school year after seeing that integration was not as calamitous as they had feared. The rate of student population decline has slowed between the 1971–72 school years.

School officials are optimistic about parental reaction to the plan. They believe that time works in favor of integration. Opponents move away, lose their fears, or resign themselves to their circumstances. Many officials and teachers feel that most parents now accept integration.

An article in *The Pasadena Star-News* on September 17, 1971, analyzed data collected by the Pasadena Board of Realtors Multiple Listing Service. The writer found that houses within the Pasadena Unified School District continued to sell as well as or better than they had during the period immediately before the *Spangler* decision. The article concluded that busing did not result in a flooding of the housing market or a depression in it. The article said that complaints that busing had caused a drop in real estate values were simply not substantiated by the evidence, and that the "Pasadena housing market is extremely healthy and has shown an upsurge."

Reaction by students

Students in Pasadena were initially less hostile to desegregation than were their parents. After one full year of operating under the plan, students appear to be accepting the new system very well.

The most successful level of integration appears to be in the elementary schools, where students mingle well with those of other races. One elementary school principal noted that white children in his school had been very sheltered before and had not known any minority children In his view, the white students were benefitting greatly from integration. Other officials mentioned that black and Mexican-American children seemed more self-confident and poised under the new system. Teachers and administrators believe that it is too soon to know if education achievement has improved. They have not noticed any decline, however.

The junior and senior high school students have had a more difficult time adjusting to desegregation. In at least one of the fourth seventh- and eighth-grade schools, Eliot Junior High, the first year was tumultous. Many students who were transferred retained old school loyalties and did not think of the new school as "theirs." There was little interracial mingling outside classrooms. The second year was much easier, however. The present eighth-graders do feel an attachment to the school, and there is more interracial contact than previously.

Of senior high school students interviewed by Commission staff members, all seemed to feel that integration was working. Student leaders interviewed at John Muir High School (one white, one black, one Mexican-American) all had been against desegregation initially but were in favor of it after one year. They felt the curriculum was better and that students were more involved with their school than previously. Blacks allege, however, that they are being channeled into lower ability classes. Students reports that there is still little racial intermingling outside of classes, except at sports events. Two of the three mentioned that socio-economic differences among students caused more friction than racial differences.

One student, a Mexican-American girl who is editor of the school newspaper, feels that integration has made Mexican-American students much more aware of their culture. She also believes that at an integrated school she has a much better chance of being recognized. She feels the atmosphere at school is different, and that all students have an equal chance. "Before," she concluded, "I probably would have ended up as a secretary. Now I have bigger goals."

Educational improvements

The Pasadena school system made many changes in curriculum at the same time it implemented the plan. Students, teachers, and administrators all praised the innovations. As one student put it, "Before integration, the school viewed us as students here to learn what they wanted to teach us." Now students have a role in recommending curriculum changes. More courses are offered in areas such as history, music, and literature. Ethnic study courses are given.

Incidents

Since desegregation, there have been no major outbursts of racial hostility. The rate for all forms of incidents—personal fights, vandalism, etc.—is lower than it has been in six years. Although during the first year of desegregation the incident rate was about the same level as the preceding year, the Pasadena schools have been very calm this year—calmer than those of neighboring non-integrated school systems, according to one school official.

PUBLIC SCHOOL DESEGREGATION IN HILLSBOROUGH COUNTY, FLA.

The Hillsborough County School District consists of the city of Tampa and surrounding Hillsborough County, Florida. The County population in 1970 was 484,490, of whom 274,359 lived in Tampa.

Tampa is a light industrial center, the main industries being lumber, canned fruits, and scrap metal. Tampa's 1959 median family income was $5,602. The median income in rural Hillsborough County was slightly lower. The median family income for non-whites in Tampa, where most of Hillsborough's non-white population is concentrated, was $2,949.

The Hillsborough County School District was the 26th largest in student population in the nation in 1970. The district's student population is 101,298, of whom 19.5% are Negro. The land area is 1,037.9 square miles.

History of school desegregation efforts

In light of the U.S. Supreme Court's decision in *Swann* v. *Charlotte-Mecklenburg* in May 1971, the Federal district court for the middle district of Florida (Tampa

Division) on its own motion reopened the Hillsborough County school case[1] and ordered the Hillsborough County school board to completely desegregate all of the County's schools in the 1971–1972 school years.[2] The court issued an opinion setting forth the history of school desegregation litigation in the County and the legal basis for its directive. The court characterized the situation in 1971 as follows:

> "Almost ten years ago this Court found as a matter of fact that prior to and after May 17, 1954, defendants operated, maintained and staffed a completely dual school structure. The school board made no attempt whatever to dismantle the system until September 1961. In the intervening ten years the defendants have at no time taken any steps which have had the effect of significantly altering the system's racially biased student assignment system."[3]

A review of racial statistics dating from 1956 led the court to conclude that of the one-race schools identified as "white" or "Negro" 10 or more years ago, nearly all were still racially indentifiable. Changes in the racial makeup of schools have generally resulted in resegregation.

The first desegregation plan, adopted in 1963, provided for integration at the rate of one grade a year. It contained a transfer provision under which white students could avoid attendance at black schools, even if they lived closer to a black school than to a white school. From 1967 to 1969, the system operated under a variety of freedom-of-choice plans termed "equally ineffective" by the court.[4] From 1969 to the current order, the system functioned under plans consisting of various geographic attendance zones. As of October 1970, 46 percent of the system's black students attended 15 all-black schools; 69 percent of the black students (though only 19 percent of the total student population) were in schools which were at least 50 percent black. The school board's figures also showed that 69 percent of the white students attended all-white or 95% white schools. The court concluded that all desegregation plans implemented prior to 1970 had failed to abolish the dual system of student attendance. The reasons cited were excessive reliance on free choice, liberal transfer provisions which enabled white students to avoid desegregation, and an absence of serious attempts to eliminate black schools.

The school board was ordered to submit, by June 15, 1971, an effective plan for desegregation of all schools. The court required the school board begin with the proposition that a white to black ratio of 86 percent to 14 percent was appropriate for senior high schools, 80 percent to 20 percent proper for junior high schools, and 79 to 21 percent appropriate for elementary schools. These ratios reflected the ratios of the white-to-black student populations for each type of school. The court ordered that the plan accomplish desegregation by pairing, grouping, clustering, and the use of satellite (non-contiguous) attendance zones. The court here that if the school board failed to submit an acceptable plan, the court would formulate its own plan. The court would rely upon the plaintiffs' proposed plan or would appoint an expert at the school board's expense.

The current desegregation plan

The superintendent of schools and a member of the school board told Commission staff members that following the May 1971 order there was a consensus among board members that there was no longer any point in delaying desegregation. Thus they did not appeal the order. Instead the board appointed a desegregation planning committee, consisting of about 150 representatives of diverse segments of Hillsborough County, including prominent business leaders, civic leaders, and important black and white community spokesmen. The committee was divided into sub-committees which worked on various aspects of the desegregation plan. The plan was developed within the prescribed time limit and was accepted by the court.

The plan contains separate arrangements for elementary, junior and senior high schools. There are 89 elementary schools in Hillsborough County, and the principal method used to desegregate them is a "clustering" plan. Seventy-seven elementary schools are integrated through 17 clustering arrangements. In each of these, one formerly predominantly black elementary school is clustered with from two to five formerly predominantly white elementary schools. The black elementary school has become a sixth-grade center, and all sixth graders from the black school and each of the white schools attend this sixth-grade center. First to fifth graders from the formerly black school are distributed among the formerly white schools through the use of satellite zones which cover the boundaries of the black school. First through fifth graders who reside in the boundaries of white schools continue in attendance at the schools previously attended, The other elementary schools are integrated through a variety of zoning devices.[5] In this way, large scale busing does not begin for white children until the sixth grade, but it begins for black children in the first grade.

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[1] In 1958 the NAACP Legal Defense Fund had brought a school desegregation suit against the Hillsborough County Board of Public Instruction. The Board of Public Instruction is the policy-making body for the school system. It is presently composed of six men and one woman, all of them white. There has never been a black member of the school board. Last year board members began to run in county-wide elections on a non-partisan basis.

[2] *Mannings* v. *Board of Public Instruction of Hillsborough County (Fla.)* No. 3554 Civ. T., May 11, 1971. (hereinafter cited as Order)

[3] Order p. 36

[4] Order p. 38

The 23 junior high schools and three junior-senior high schools are integrated through clustering and satellite zoning. There are eight cluster arrangements in the plan. In each arrangement for junior high schools, one formerly predominantly black school is clustered with from one to three formerly predominantly white schools. The black junior high school is a seventh grade center, and all seventh graders attend it. Eighth and ninth graders from the black junior high school are distributed among the white junior high schools through satellite zones. Eighth and ninth graders who reside within the boundaries of the white school continue in attendance at the schools previously attended. No junior high schools were closed under the plan.

When the plan was drafted there were 14 senior high schools in the County, including three junior-senior high schools. The two formerly black high schools, Blake and Middleton, were made into junior high schools.[6] The name of the formerly white high school, Hillsborough High, was changed to Hillsborough-Middleton high and received most of the black students from Middleton. The other Middleton students were assigned to other formerly white high schools. The attendance area which formerly was served by Blake was divided among a new high school, which is not yet constructed, and formerly white high schools. Since the new school is not yet finished, its students attend the afternoon session at another formerly white high school. Rezoning and satellite zoning were also used to integrate the rural high schools. The one vocational high school has no precise boundaries, but is integrated.

Under the plan for elementary schools the white-to-black student ratio was to be 79% to 21%, for junior highs it was to be 80% to 20%, and for high schools 85% to 15%. Actual attendance figures do not vary significantly from these proportions.

Before accepting the plan, the court held a hearing and permitted community members to voice objections. Throughout this period the school board, the superintendent of schools, the Chamber of Commerce, responsible civic groups, and the press actively supported the plan. Until the court's May 1971 mandate, the majority of the school board and the superintendent had been openly opposed to extensive integration of the schools.

Opposition to the plan

A very important feature of the Hillsborough school desegregation plan is that it makes every white family in the County share equally in busing to formerly black schools. During the summer there were some attempts by white anti-integrationists to thwart the court's order. There were, however, no large organizations opposing adoption of the plan and none have caused disruptions in the schools.

During the summer and continuing throughout the school year, there has been considerable dissatisfaction in the black community over the large amount of busing for black children and the changing of the two formerly black high schools to junior high schools. The black community feels strongly that the facilities at Blake and Middleton could have been expanded to retain these schools as high schools. The two schools had been important sources of pride and identification for the black community. They had won many State athletic championships, while no other high school in the County had won any. In addition the schools had been centers of black social life.

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[5] Two other elementary schools are integrated through rezoning, and another elementary school is integrated through the use of a satellite zone. Four elementary schools had been integrated in the 1970–1971 school year and did not have changes in their attendance boundaries. The plan called for the closing of one black elementary school. The board justified the closing of this school on the ground that the school was not adequate to serve as a modern elementary school.

[6] By converting the two black high schools to junior high schools, with attendance for only two-year periods, the board hoped there would be a minimum of white flight to private schools. The court had permitted the school board to take into consideration factors which might prevent white flight.

Adoption of the plan

At the time the school board submitted its plan to the court, the Bi-Racial Advisory Committee, appointed by the court in 1970, filed objections to the plan.[7] The committee maintained that the plan discriminates against the black student population and their parents because it requires most black students to be bused out of their communities ten of their 12 school years, while whites are bused out of their areas for only two years. The committee also objected to the reduction of the number of grades taught at previously black schools. The committee particularly criticized the changing of the two formerly black high schools to junior highs.

White flight

It is believed that about 2,000 children have been lost to private schools because of the current integration plan. About 1,000 of those left the sixth grade, about 500 left the seventh and the other 500 were spread through the other grades.[8] One of the reasons there were not any greater losses to the private schools is that many private schools resisted expanding their school enrollments for students seeking to avoid integration. The superintendent has noted that now there seems to be a trend of private school students returning to the public schools. One seventh grade center, for example, reported that in the last month alone 12 students who had left the public school system for private schools had returned to the center. Many more children are expected to return to the public schools in September 1972.

Attempts to ease adjustment of students in the integrated schools

To ease adjustment to integrated schools the school board adopted the rule that all students who held school offices, were cheerleaders or were members of any organization or team in their former schools would automatically retain their positions in the school to which they are assigned for 1971–72. This means that the president of a class in a formerly black school is co-president with the president of the class at his new school.

To further aid adjustment, every junior and senior high school was assigned a community relations specialist and an assistant specialist. Many of these people are former teachers. Their salaries are being paid through an Emergency School Assistance Program (ESAP) grant.[9] White community relations specialists have black assistants, and vice-versa. During the summer the specialists held seminars with teachers, principals and students to help them in inter-personal relations with people of different races. In the school year the specialists have been involved in working out inter-personal relations problems, and providing a means for students to talk with the administration. Every high school and junior high school has a student advisory committee of 12 black students and 12 white students, picked by the student government to work with the community relations specialists. The specialists and student bi-racial committees play important roles in moderating any antagonisms arising between blacks and whites.

The facilities at formerly black schools were greatly improved and made equal to those at formerly white schools. For example, several of schools were air-conditioned, covers were put on bare light bulbs, and supplies were greatly increased. This reduced complaints among students and parents.

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[7] The Bi-Racial Advisory Committee consists of five members selected by the NAACP Defense Fund and five chosen by the school board. The Committee was appointed to assist the board in drafting and implementing desegregation plans.

[8] The sixth and seventh grades are the years when white students are bused to formerly black schools.

[9] Emergency School Assistance Program grants are Federal grants to aid school districts which are desegregating. In August 1970 the program was established by an appropriation of $75 million The appropriations are additions to various education acts including Title IV of the 1964 Civil Rights Act and the Elementary and Secondary Education Acts.

The ESAP grant totals $2,225,000. It is being used primarily for learning specialists; a human relations department within the school administration, including the school specialists; aids and supplies.

Integration within schools

The school board has not found it necessary to abolish ability groupings in schools to maintain integrated classes. It has recommended, however, that principals maintain classrooms less than 50 percent black. On the basis of standardized tests and teacher recommendations, high school students are assigned to required classes that are either basic, intermediate or advanced. While black students tend to be concentrated in basic courses, there are many in the intermediate and advanced. In the sixth and seventh grade centers and in the junior high schools, there is some group teaching and the use of other innovative teaching programs. These groups and programs are well integrated.

According to students of both races interviewed by Commission staff, black students are increasingly participating in extracurricular activities in high schools and in junior highs, particularly in sports. It is expected that black students will in future years be even more actively inovlved in extracurricular activities. Whenever a child is on a team or in an extracurricular activity, a school board rule requires that a bus be provided at the school to transport him home after regular school closing hours.

Pupils have explained that the students who play sports with students of another race, or who work with them in other extracurricular activities, are the people most likely to develop interracial friendships.[10]

At the start of the school year, the black students from Middleton high school stayed together and were not a part of Hillsborough school life. They continued to wear Middleton shirts and cheer Middleton cheers. It appears, however, that they are gradually identifying more with Hillsborough. For example, at athletic events they now cheer for the Hillsborough team. Nevertheless, many of the black students express regret that they are losing their identification with Middleton.

Transportation

Last year the school system transported some 32,000 students on 186 school buses. The 1970–71 operating budget for student transportation was approximately $826,000. In that year, each morning, school buses travelled approximately 6,403 miles.

Before the current school plan was officially adopted, the superintendent realized that extensive school integration would require many more school buses. He prepared for the purchase of an additional 125 buses.

Thus when the school plan was finally adopted there was no delay in getting these contracts executed and having the buses ready in September 1971. The new buses are being financed through a $1 million bank loan undertaken by the school board.

Under the plan about 53,000 students are being bused to and from school, an increase of 26,000 students. Of those students being bused across the County for purposes of integration, about 1,627 are black elementary school children and 1,393 white; 936 are black junior high students, 1,028 white; 734 are black senior high students and 194 white. The cross-busing of students each morning requires travel of about 6,232 miles, one way, out of a total one way morning mileage of some 15,609 miles. The system's operationg budget for this year's transportation is $1,369,000.[11]

The express buses which take students from a central location, such as school, to school across the County usually ride about 30 minutes from departure to arrival. Often the white sixth and seventh grade children who are picked up at central stops must ride buses to these central locations. Thus the two rides combined could be 45 minutes to 1½ hours one way. Most black students ride express buses out of the city to schools in the County. Since they live in close proximity to each other, the black students do not have as long to ride as most whites in order to get to their express bus stops. In order to use the same buses for several trips, departure and return times are staggered.

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[10] Several students stated that it was unusal for black students to visit whites at their homes and vise versa. Some students said they were reluctant to invite black students to their homes because they thought their parents would object. Others said the distances between their homes prevented home visiting between blacks and whites. However, some white students who had developed interracial friendships through extracurricular activities did invite black friends to their homes. Some students reported interracial visiting and telephoning was increasing. Nonetheless, black students explained that there was a degree of peer group pressure against friendships with whites. Similar pressure against friendships with blacks was noted by white students.

[11] The operating budget for the entire school system in 1970–1971 was about $63,300,000. For this year it is about $71,567,000. Most of the funds spent on transportation are reimbursed by the State, which pays for student transportation over 2 miles. The sources of this year's operating budget area about $967,000 from Federal Impact Funds, $49,877,000 from State aid, and $23,900,000 from County sources (mostly revenue from real estate taxes).

Some departure buses for elementary school children leave as early as 7 a.m., but most elementary school children leave between 8 and 9 a.m. Most high school students' buses leave at 7 a.m., with junior high students and elementary students following on later routes. The return buses carry the elementary students, then junior high, and then high school students. Because of frequent bus delays, some high school students do not return home until after 5 p.m. (one high school operates a double session. The bus for the morning session departs at 6 a.m. The return bus for the afternoon session leaves about 6:30 p.m.)

Teachers believe that the bus rides do not adversely affect children's learning abilities. The bus ride is, on the other hand, an opportunity for students to misbehave. Frequently there are fights. Since most buses serve segregated housing areas, buses usually have students of only one race. Thus, fights generally either involve black students on their buses or white students on their buses.

One teacher felt that the bus ride seemed to make the children excited, so that at first they are slightly harder to discipline once at school. Although both black and white students at all school levels have been suspended for misbehavior on buses, more black than white students have been suspended. The bus driver is the only supervisor on the bus.

Many white and black parents interviewed complained of the inconvenience caused by the early departures of their children, the staggered schedules of their children, and the long school days.

Several parents said they worried about their children missing the return bus and being stranded in strange neighborhoods. Another concern of both black and white parents is the safety of the ride. There have been, however, no serious bus accidents.

Very few of the students interviewed complained of discomforts in riding the buses, although some said they would prefer to walk to school. Others, particularly the younger chidren, said they enjoyed the rides.

Disciplining students

A problem mentioned by several black and white teachers is the difficulty many white teachers have in disciplining black students. Black teachers have explained that white teachers are often unused to handling black students, are afraid of them, and therefore do not discipline them in classes. This leads to lack of respect among the black students for these teachers, and causes these teachers to refer black students to the principal to be disciplined.

Several black teachers interviewed expressed a desire for more uniform application of rules for punishment of students. Many black teachers have said that white students are not punished as severely as black students. For example, in Hillsborough high school there is a rule that if a student has been absent from class 15 days in the semester without excuse, he is barred from taking exams, which leads to failure. Black students who had been absent this length of time were allegedly barred from exams but white students were not.

Disruptions, violence and crime

Before the opening of the schools there were threats from militant black groups that there would be disruptions at the two formerly black high schools that had become junior high schools, and at various other high schools. Many parents, mostly white, did not send their children to school the first week of the semester for this reason and because many white parents were afraid to send their children to the formerly black schools in the black neighborhoods. This fear was evidenced by the fact that, in the early days of school, many white parents drove their children to school and picked them up after school. The disruptions failed to materialize, however. After the early weeks, parents became more confident and white students started riding the buses in substantial numbers.

About three weeks after the start of school there was a rather serious incident in one of the formerly white high schools. This disruption was caused by two white students who had painted, in a very prominent area of the school yard, "Niggers Go Home". When the black students saw the message, about 50 rampaged through the school yard and halls fighting with white students and smashing windows. Approximately nine white students, mostly girls, were sent to the school infirmary for first aid, and a few were treated at a hospital.

The two white students who caused the disturbance were suspended from school. One was criminally prosecuted and has not returned to school. The other has transferred to a private school. Nine black students were suspended from school for periods not more than 10 days, and two blacks were prosecuted. Although the entire disturbance lasted only 20 minutes, most black and white students returned to their homes for the day.

In another formerly white high school, tensions arose over evening incidents in which some whites, not students, had attempted to drive some black students off the school grounds after a football game. The following school day there were several fist fights between black and white students. Although one of the local newspapers reported these disruptions as a riot, the principal of the school stated that the fights had not been widespread, there were no injuries or damaged property, no one was arrested, and—contrary to the newspaper accounts—police were not called to the school.

Teachers and principals interviewed did not report a substantial increase in petty crime. A junior high school principal, who had formerly been a principal in an all-black junior high school, thought there was far less crime in the integrated junior high school than there had been in the black junior high school. In the black junior high school there had been a concentration of students from low socio-economic levels who seemed prone to commit crimes against each other. In his opinion, the wide mix of socio-economic levels in the integrated schools has reduced the likelihood of crime.

It had been feared by some white parents that black students would commit crimes against whites. Several principals and teachers felt that race was not an issue in the crimes committed in schools. They expressed the view that if students are inclined and tempted, they will steal without consideration of the race of the victim. In the early days of the school year, there were complaints of shakedowns and extortions (blacks against whites) at the junior high schools, but they have largely stopped, suggesting that these crimes were a transitional problem.

Teachers' attitudes toward the plan

The school board was also under court order to desegregate its faculty fully by September 1971. Much of this desegregation had occurred during the 1970–1971 school term. The desegregation faculty ratio required for 1971–1972 is about 80 percent white and 20 percent black at each school. For the 1971 school year, the board ordered that all teachers be transferred to the schools to which their students, or the majority of them, had been assigned. The teachers were to teach the same grade level and subjects that they had taught the previous year. These requirements minimized the problems of teachers' reassignments.

Principals were allowed to select the heads of various departments in their schools. Several of the teachers who had been heads of departments at the formerly black high schools were not made heads of departments at their new schools. Although these teachers have retained their former salaries, their demotions have created bad feelings among many black teachers.

Student and parent relations with teachers, both black and white, are said to be more a function of personalities than race. Some black teachers, however, complain about problems in dealing with the few white parents who act as if the black teacher is not qualified to teach their child.

Several white teachers, in addition to being uncomfortable in disciplining black students, have stated that they resent having been transferred to schools that are often far from their homes and are sometimes in neighborhoods in which they feel uneasy. Various white teachers also have complained about teaching students of widely differing abilities in the same classes. Several white and black parents complained that these dissatisfactions sometimes are reflected in harsh treatment of students of both races.

Attitudes of black and white parents

While not asserting that they favor integrated schools, many white parents are resigned to integration as required by law and are not attempting to thwart it. Some white parents spoke of benefits for black and white children attending integrated schools. These parents feel it is important for children of diverse backgrounds to learn to get along with one another.

Black parents are strongly in favor of integrated schools and are very supportive of the plan, although they often express dissatisfaction over the large amount of busing required of their children and the closing of their high schools.

Evidence of white parents' acquiescence in integration is seen in their continued widespread involvement in PTAs, even in schools in black areas. Since the schools are 80 percent white, white parents dominate the PTAs. Black parents are, for the most part, less active in PTAs, particularly at schools in white neighborhoods. Some black parents have said they don't feel welcome in the formerly white school organizations. In actual numbers, there were more black and white members of PTAs when there were neighborhood schools. In one formerly black junior high, however, black parents are more involved in school activities than previously, apparently because of their desire to make sure their children are being treated fairly.

PUBLIC SCHOOL DESEGREGATION IN CHARLOTTE-MECKLENBURG, N.C.

The city of Charlotte is located in Mecklenburg County, North Carolina. The county is in the south central part of the State near the South Carolina border. It has a population of 354,656 (an increase of 30.3 percent since 1960) and an area of 550 square miles. Almost 25 percent of the county's population (85,527 persons) are black or other minorities. The city is a major retail center and has aspirations of rivaling Atlanta as the retail and trade center of the Southeast. Its population is 241,178, of whom 73,891 are nonwhite.

Mecklenburg County and Charlotte constitute a single school district. The district includes 104 schools and in December 1971 had 79,557 students, of whom 24,890 or 31.29 percent were black. It is the 39th largest school district in the Nation. The system employs an instructional staff of 4,034. The school budget for the 1970–71 school year was $66 million.

History of desegregation of the Charlotte-Mecklenburg system

In 1955, a year after the *Brown* v. *Board of Education* decision, the three North Carolina systems of Charlotte-Mecklenburg, Winston-Salem and Greensboro each announced a freedom-of-choice plan. Under the Charlotte-Mecklenburg plan, a few black students began attending integrated schools for the first time. In 1962 the school system began a program of geographical assignment of students in five schools but continued the freedom-of-choice plan for the remainder of the school system.

In 1965 a Federal district court found the school system of Charlotte-Mecklenburg in compliance with desegration requirements. This decision was affirmed by the Fourth Circuit Court of Appeals.[1]

In 1969 suit again was brought against the Charlotte-Mecklenburg system to compel complete desegregation. The school board took a number of desegregation steps, including: closing a number of all-black schools, redrawing school zones, desegregating the faculty, and reassigning some black students from overcrowded black schools. Federal District Court Judge James McMillan found, however, that as of November 7, 1969, of 106 schools in the Charlotte-Mecklenburg system, 57 were still racially identifiable as white and 25 were racially identifiable as black, nine were all-white and eleven all-black.

On February 5, 1970, Judge McMillan issued an order calling for the complete desegregation of all schools in the Charlotte-Mecklenburg system.[2] Immediate implementation of Judge McMillan's order was partially stayed by the Court of Appeals for the Fourth Circuit on March 5, 1970. On May 26, 1970, the Court of Appeals vacated the order with respect to the elementary school and remanded the case to the District Court for reconsideration of further plans. The U.S. Supreme Court, on June 29, 1970, agreed to hear this case, but directed that the order of the District Court be reinstated pending these procedures.[3] Thus Judge McMillan's order was to go into effect for the 1970–71 school term, pending the outcome of the Supreme Court's decision. On April 20, 1971, the United States Supreme Court, in *Swann* v. *Charlotte-Mecklenburg Board of Education*, upheld the judgment of the district court ordering the complete desegregation of the Charlotte-Mecklenburg system.[4]

The Charlotte-Mecklenburg desegregation plan

For the last two school years the Charlotte-Mecklenburg system has been operating under a plan pursuant to the order of Judge McMillan. The plan was developed with the aid of an educational expect, Dr. John Finger. For most high schools, the plan called for the creation of attendance zones shaped like wedges of pie extending outward from the center of Charlotte.

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[1] *Swann* v. *Charlotte Mecklenburg Board of Education*, 243 F. Supp. 667 (WDNC 1965), aff'd, 369 F. 2d 29 (CA4 1969).

[2] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 311 F. Supp. 265 (WDNC 1970).

[3] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 399 U.S. 926 (1970).

[4] *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).

For junior high schools the plan called for substantial rezoning of attendance areas, coupled with the creation of nine "satellite" zones. (A satellite zone is an area which is not contiguous with the main attendance zone surrounding a school.) Inner-city black students from nine attendance zones were assigned to nine outlying and predominantly white junior high schools.

Elementary school children were assigned through a combination of zoning, pairing, and grouping which were to result in student bodies ranging from 9 percent to 38 percent black throughout the system. Nine inner-city black schools and 24 suburban white schools, however, could not be desegregated with these techniques. To desegregate these schools, two or three white schools were grouped with one black inner city school. Black students from grades one through four would be transported to the outlying white schools, and white fifth and sixth graders would be transported from the outlying white schools to the inner city black schools.

Implementation of the plan

This basic plan is being followed this school year with a major change: the adoption of a feeder system. Under a feeder system, once a pupil is assigned to elementary school he knows which schools he will attend throughout his school career. Each elementary school feeds into a specific junior high school, which in turn feeds into a senior high school. In this way, students would attend all 12 grades with many of the same students. Such a plan is consistent with the court order since presumably the ratio of black to white students in the elementary schools would remain constant in the junior and senior high schools.

Implementation of the plan led to a certain amount of confusion. In the summer of 1970, approximately 30,000 students were transferred to new schools as part of the implementation of the "Finger" Plan. There were also a substantial number of teachers transferred to new schools.

In the summer of 1971, implementation of the feeder plan resulted in a large number of students being reassigned for a second time in two years. More satellite areas were created to accommodate the feeder plan. Thus, many students have attended three different schools in the last three years. In addition, in the summer of 1971 the board of education gave seniors the option of attending the school which they had attended during the 1970–71 school year. This necessitated postponing the opening of school for two weeks and led to a great deal of confusion.

The school board also adopted a policy during the summer of 1971 permitting students to sign up to transfer from one school to another. The requirement for transfer was that a student swap schools with another student of his race in the school to which he wished to transfer. School officials, however, began hearing rumors that some students were offering other students up to $400 to exchange places. They decided, therefore, to discontinue the program. Instead they granted transfer privileges to all students who had signed up to swap schools, regardless of whether a student of the same race replaced the student transferring out of a particular school. The consequences of these transfer provisions was that black students tended to transfer into previously all-black schools and white students tended to transfer out of these schools. Such transfers were particularly prevalent at West Charlotte High School, the only previously all-black high school still being used as a high school. As a result, the school today is nearly 50 percent black.

The majority of schools on September 15, 1971, according to a local newspaper, had a black enrollment of between 20 and 40 percent. The highest percentage of black students at any school in the system was at Hoskins Elementary and West Charlotte High Schools, each with a black enrollment of 45 percent. Six schools, on the other hand, had a black enrollment of 20 percent or less. The lowest figure was at Matthews Elementary School, with a black enrollment of 10 percent.

Busing

During the 1969–70 school year, the year prior to extensive desegregation, the school system had a total of 84,500 pupils. Of this enrollment, 23,600 were bused by the school district and another 5,000 rode common carriers.

During November 1971, a total of 46,826 students were being bused. This was 23,200 over the number bused during the 1969–70 school year. Fifty-nine percent of the students now are transported by buses. Of the 46,826 students presently being bused, 19,724 (over 42 percent) are black. Black students are, therefore, bearing the major burden of busing. Even though black students make up only 33.12 percent of the total number of elementary students in the district, over half of the first-through-fourth-grade students being bused were black, because students from nine previously all-black schools are being bused to previously white schools in outlying areas.

Judge McMillan found that during the 1969–70 school year the system had 280 regular buses and 107 other buses, or a total of 387 buses. The system is presently (January 1972) operating 535 buses. One hundred and sixty-eight buses urgently need replacement. At the time the order went into effect two years ago, the school system borrowed buses from the State. These borrowed buses had been turned back to the State by local municipalities because they were no longer fit to be on the road. In addition, the school board would like to buy 140 additional buses to improve service. At present, some buses are operating on three different schedules. It was generally agreed by everyone interviewed that although there is a need for new buses, there is little likelihood that voters would approve a bond issue to purchase new buses. Likewise, there is little likelihood that the County Commission (which must appropriate funds for the school system) will approve additional funds for new buses.

Notwithstanding the multiple routes for the buses, only four of the system's 104 schools do not open between 8 a.m. and 9 a.m. Three high schools open at 7:30 a.m. and one junior high school begins at 7:55 a.m.

Disruptions and petty crime

There were no major incidents or disruptions in the school system during the first five or six months of total school desegregation in the 1970–71 school year. From February 1970 until the end of that school term, however, the school system was plagued with numerous disturbances. It was generally reported that there was also a substantial increase in extortions, fights, and petty crimes. During the 1971–72 school year, however, it was generally reported that the number of extortions, fights, etc., had greatly decreased and was not much greater than prior to integration.

There is one major difference, however, between the types of problems that exist at the various schools since integration. For the first time, school disturbances often have involved large numbers of students, and they have pitted white and black students against each other. These disturbances have been characterized by school officials, police, and the news media as riots.

There have been three such disturbances this school year, all within a week of each other. On October 29, 1971, there were disturbances involving 150 to 200 students, black and white, at one high school and a second disturbance involving 100 to 150 students of both races at a second high school. On November 2, 1971, fighting involved nearly 200 students, black and white. A total of nine students were taken to the hospital as a result of these disturbances and some property damage was reported.

As a result of the three incidents, 15 black students were excluded from school: 11 black students were suspended; 16 black and two white students were readmitted after suspension; and 75 black and two white students were arrested. A white member of the school board and several people in the black community questioned whether the black students had received fair treatment. Since there were both black and white students involved in all three of the confrontations, it was alleged that authorities tended to see only allegedly unlawful acts by the black students and not similar acts by the white students. Since these three incidents, there have been no major disturbances at any school.

Commission staff impressions in January 1972

As a result of visits to a large number of schools in the Charlotte-Mecklenburg system, Commission staff made a number of observations.

Almost all the white students interviewed stated that their parents were very upset by the desegregation plan, especially the busing. Very few expressed such feelings themselves, however, although many white students had some misgivings at the time the plan was announced. There seemed to be widespread acceptance and, in many cases, enthusiasm for the new reorganization among principals and faculty, both black and white.

Many black students, however, felt that they were unfairly being required to bear the major burden of desegregation, both because of having to be bused more than white students and because many black schools were closed or downgraded. None, however, preferred the old system of neighborhood schools which had resulted in segregated schools.

There was widespread belief that a reason for the many disturbances during the first year under the plan was the general feeling that total desegregation would only last a year. Many expected that the Supreme Court would reverse Judge McMillan's order or that Congress would provide relief. Thus, many students went to school during 1970–71 with the attiude that the year didn't count.

There is apprehension among some people in the black community, and among some black teachers and principals, that black teachers and principals will be eased out. Concern was expressed that the movement toward "merit pay" for teachers and subjective approval standards could permit black teachers to be forced out of the system. This belief persisted, even though reportedly there are more black principals today than there were ten years ago. School officials stated that they have made an effort to insure that the widespread loss of jobs by black principals, teachers, and coaches after school desegregation in the South did not occur in Charlotte-Mecklenburg.

With the exception of parents who live in the "model cities" areas, there is generally no transportation available to the PTA meetings in the evenings. This is possibly one reason for the low participation by black parents at most PTA meetings.

There generally are no ability groups within the schools. Some teachers deplored this because they felt that slower students held back more advanced students. Others thought that it was an advantage in that it distributed potential discipline problems and also gave an incentive to some students to try harder. There are electives in the high schools which students are permitted to take, and some of these tend to attract a disproportionate number of students of one race.

One junior school reported that some white children who had left the public schools to attend private schools had returned to the public schools during the year. While there are some indication that this was occurring at several schools, the number of students returning to public schools does not appear to be large.

Commission staff impressions at specific schools

As mentioned previously, the school in the system with the highest percentage of black students is West Charlotte High School, a formerly all-black high school. The principal of West Charlotte High School was hopeful, however, that next year the black-white ratio would be closer to the norm of the school system. Next year there will not be the problem of seniors finishing high school at their previous high school, nor presumably will the school board permit transfers among the schools. In addition, the consensus among students and the principal at West Charlotte High School was that because there had been only one major incident at the school this year, there would not be continued white flight out of the school. The one incident which occurred shortly after school opened involved fighting between 40 to 50 black and white students. Five students were treated by a local hospital for minor injuries and released. Police made several arrests. Two students were excluded from school and 20 students were placed on probation.

A time of widespread tension and unrest in the schools in recent years has been the anniversary of the birth and death of Dr. Martin Luther King. To alleviate some of this tension, principals in the school system decided to plan a program in memory of Dr. King. Some members of the school board were distressed by this and had the school board pass a resolution that attendance at any such assemblies, or other observances of Dr. King's birthday, would have to be purely voluntarily. At West Charlotte High School, it was reported, about 50 percent of the student body attended the observances, including a large number of white students. Similar responses by both black and white students were reported at other schools, and there were no reports of disturbances.

Major incidents occurred throughout last year at Northwest Junior High School, a formerly all-black junior high school. Many white parents kept their children out of school from time to time. Because of the disruptions, and presumably also because of the unhappiness of large numbers of white parents at having their children attending a formerly all-black school, a number of steps were taken during the summer. A new principal was appointed (he had formerly been the principal at an elementary school which served one of the all-white areas from which children are now being bused to Northwest), the number of students attending the school was cut almost in half, an additional guidance counselor was added to the school, and numerous repairs were made to upgrade the school. There have been no major incidents this year. It was generally conceded by everyone interviewed, including white parents with children in the school, that school desegregation was progressing very smoothly at the school this year. This year the ratio of black to white students has remained fairly consistent, estimated at 63 percent white and 37 percent black.

One problem that has remained at Northwest is the reluctance of a number of white parents to permit their children to stay for extra-curricular activities immediately after school. As a result, while the number of white students attending activities after school has been increasing, the majority of students attending such activities are black. The reasons given most often are parents' fears of the black neighborhood in which the school is located and inconvenience, since the school is located six or seven miles from most white students' homes. This means that unless students have their own cars (it is a junior high school, and most don't) they are dependent on their parents for transportation home. Since many of the black students live in the immediate area, they can walk home.

It is hard to tell how much of the problem is fear and how much is inconvenience. It should be noted, however, that for many of the white students Northwest Junior High is no farther from their homes than the junior high school they would have attended if the desegregation plan were not in effect.

School officials, community leaders, and the press generally considered Independence High School to be the most successfully desegregated high school in the system. The school is only five years old and was built to replace formerly all-black and formerly all-white high schools. Although only 100 of some 1,300 students were black in the school's first year, it has been integrated from the beginning. The capacity of the school is approximately 1,300, although there are now 2,100 students requiring some 25 mobile units. It is the most over-crowded school in the system.

Presently about 400 of the students are black. Approximately 25 percent of the black students come from surrounding areas; the rest are bused in from the central city. Most of the white students come from the areas surrounding the school, although—since the area is largely rural—many of them are bused also. Like the other high schools, it has had a constantly changing student body during the last few years. Much of the credit for the success of Independence High School is given to the white principal who is young, dynamic and has established a very good relationship with his students. During the day he spends much of his time in the school halls and open areas and thus is "on top" of anything that occurs in the school.

The school also has been fortunate in other respects. Because some of the black students are from a model cities area, a bus supplied by model cities is available to take them home late in the afternoon after extracurricular activities. Thus, unlike students at most of the high schools, some of the students who are bused in from long distances are able to participate in events after school. Also an attempt has been made by some teachers, parents, and students to drive black students home after school to enable more of them to participate in activities. The model cities bus is also available for PTA meetings, resulting in better-than-usual participation by members of the black community.

The school system requires that for all student elections there be three black candidates on a slate, three white candidates, and three candidates chosen at large. The president of the Independence student council, who was elected by members of the council, is black.

The principal at Independence reported that there was a possibility that there had been a slight decline in academic progress at the school since total integration. This he attributed to the overcrowding, and not to the influx of black students as such. He also thought that having so many new teachers, as well as students, may have been a factor. There generally has not been much of a problem of shakedowns or extortions or other petty crimes at the schools, although (as was generally true at all schools) there were some problems at the beginning of the year. The principal attributed such incidents to the fact that the school was going through a transitional period.

Students are generally free to sit wherever they like in classes and in the cafeteria. In both there has been some mixing of black and white students, although the majority of black and white students sat separately.

Opposition to the total desegregation plan

The Commission staff used a number of barometers to gauge the extent of opposition to the plan. Among the indicators were growth of private school enrollment, political opposition to school board members, and the growth of organizations to oppose the plan.

It has been estimated by various sources that anywhere from 5,000 to 8,000 students left the system as a result of desegregation in the last two years. An article in The Charlotte Observer reported that the system had lost 4,300 white students since 1970 while gaining 1,900 black students. The article also reported that if the system had continued to grow in the last two years as it had in the past, it would now have had an enrollment of 88,500. Thus the school system is 8,500 below what would have been expected two years ago.

At least five new private schools have been established which are reported to be of adequate quality and which are expected to survive. There have been a large number of private schools set up in churches or other temporary quarters, but school officials do not expect these to last more than a year or two.

There has been little loss of staff from the public school system to the private schools. The reasons given for this include the fact that there presently is a tight job market for teachers, and present teachers have tenure and retirement benefits which they would lose if they left the public schools. The turnover rate among faculty members was actually smaller this year than it has been in the last few years. The school system had to employ only 400 new teachers this year, compared with a norm of around 600 new teachers each year.

Two organizations have been formed to oppose the desegregation plan. One organization, called Citizens United for Fairness (CUFF), consists primarily of white middle and lower middle class home owners located in the northwest section of the city and county. The northwest section of the city has a very high proportion of black citizens, and the movement of black people into this area has been more pronounced than anywhere else in the county. There are, however, five fairly large areas (the largest of which reportedly has 5,000 to 10,000 residents) which are almost entirely white.

The children in these areas are being bused to formerly black junior and senior high schools, as well as to the fifth and sixth grade centers. Thus most children who live in these areas will attend formerly all-white schools only for grades 1–4. Most white children in the district are bused into the black community only for grades 5 and 6, attending elementary, junior and senior high schools in all-white areas. Leaders of the organization state that their members' unhappiness is not over being bused into black areas, but in their children being bused out of their neighborhood areas for eight to ten years of their 12 years in school. It should be noted that for many children living in this area, the distance between the junior and senior high schools to which they are now assigned is about the same distance from their homes as the junior and senior high schools they would have attended prior to total desegregation. This is not true, of course, for fifth and sixth grade children, since previously they would have attended neighborhood schools.

Since most white children in the area have been bused into formerly all-black schools for only two years out of their 12 in school, this group contends it is being discriminated against. It believes that unless the school boundaries are changed, the area will become all-black. Residents point out that one previously all-white area already has had a few black families move into the neighborhood and large numbers of "for sale" signs have sprung up. They brought suit in Federal Court to force the school system to reassign schools, but the suit was dismissed and they reportedly will not appeal.

The other organization that has been formed is called Concerned Area Parents. This organization attempts to represent citizens in the entire city and county and is primarily concerned with opposing busing for the sake of desegregation. The organization put up three candidates for school board elections in 1970 and was able to get all three elected. The election came in the midst of the controversy over Judge McMillan's order. The defeat of at least one incumbent was attributed to the controversy. The consensus of most of the people interviewed was that the organization will not have the same degree of influence on the outcome of the school board election scheduled this year. The general view is that it will not be able to defeat the chairman of the school board, should he decide to run again, or to elect its candidates to the other positions. This may be due in part to the fact that while the school board will carry out the orders of the court, it has done everything it can, through the courts, to have changes made in the desegregation plan.

The consensus among various persons interviewed is that there has been very little community support for the desegregation plan. Many people have charged that the school board has not actively supported the school desegregation plan and there has been little leadership anywhere else in the city or county in support of the plan. The general view among those people sympathetic to the desegregation plan was that it has worked, to the extent that it has worked, in spite of community and school board leaders. Any credit for implementation is generally given to the superintendent of schools and his professional staff.

There have been a few volunteer efforts outside the school system to aid school desegregation. Approximately two years ago a large number of persons (now numbering over 4,000)—mostly housewives and a few college students—volunteered to act as tutors for students having difficulties with reading. A group of ministers has been formed to patrol campuses when there are signs of problems. Generally the patrol teams consist of one black and one white minister.

PUBLIC SCHOOL DESEGREGATION IN PONTIAC, MICHIGAN

Pontiac is a manufacturing city, located approximately 20 miles north of Detroit. Its population is 85,279, of whom 22,760 are black. A substantial number of Pontiac residents work in 3 General Motors plants located in the city. Pontiac's school population is 23,000.

In the last ten years, the black population of Pontiac has increased 60 percent while whites have declined by almost 10 percent. The percentage of blacks among Pontiac's school population has climbed from 35.8 percent in 1969–70 and 36.8 percent in 1970–71 to 37.31 percent in 1971–72. In addition, Pontiac's student population is 5 percent Spanish surnamed (primarily Mexican American). Black students in Pontiac's public schools now total 7,942.

The Pontiac school system includes 27 elementary schools, 6 junior highs and 2 high schools. One school, the 6 million dollar "Human Resources Center," was designed along the "educational park concept" and has 1,800 students. The school district covers an area of 39 square miles, including Pontiac. The area of the district is approximately twice the size of Pontiac. Ninety percent of the district population lives within the city.

A History of Racial Conditions in Pontiac

Pontiac has a history of racial problems. In a 1968 report entitled "A Public Inquiry Into the Status of Race Relations in the City of Pontiac, Michigan," the Michigan Civil Rights Commission said:

"Pontiac is a city divided by racial and ethnic prejudices and fears. Negro and Spanish-American citizens are excluded from full participation in employment, housing, education, and social services. They are often denied equal protection under the laws and equal access to jobs and law enforcement agencies. The physical isolation which has resulted between white and non-white citizens has led to a communications gap of staggering proportions. Civil and governmental leaders have little concern for, or understanding of minority group problems. Negroes and Spanish-Americans grow more and more distrustful of a community they feel is trying to contain them."

School Segregation

These problems have been reflected in Pontiac schools, as in most other aspects of community life. Racial incidents have closed various Pontiac schools periodically over the last five years. In its 1968 report, the Michigan Civil Rights Commission states "residential areas of the City of Pontiac are clearly segregated, with nonwhites confined to a slowly expanding ghetto in the southern part of the city. Although Pontiac adopted a 'Fair Housing Ordinance' last year, conditions remain much as they have been for the past 2 or 3 decades." These conditions persist today, as exemplified by the fact that over two-thirds of Pontiac's black population live within 3 of Pontiac's 16 census tracts.

The Michigan Civil Rights Commission found that the Pontiac schools followed similarly segregated patterns:

"So far, according to witnesses, the school board has taken virtually no action toward desegregation. In fact, some school boundary lines indicate a conscious attempt to maintain racial separation."

Such separation remained through the 1970–71 school year, when 1,236 of Pontiac's 1,738 black students in junior high school attended 2 of the city's 6 junior high schools. These 2 schools, Eastern and Jefferson, had respective black enrollments of 78.74 percent and 98.62 percent. In elementary schools during the 1970–71 school year, 2,780 of the system's 4,641 black elementary school students attended six schools that were 93.8 to 99.5 percent black. In preceeding years, patterns of racial segregation were even more marked.

While Pontiac's two high schools failed to maintain a racial balance corresponding to that of the overall high school enrollment, they were less segregated than the junior high and elementary schools. In 1965, the school board had changed the high school boundaries to increase the black enrollment at Northern High School to approximately 15 percent. For the 1969–70 school year, Northern High School, with an enrollment of 2,187, was 14.7 percent black; Central High School, with a student population of 2,143, was 46.6 percent black. Voluntary action to improve this picture again was taken prior to the 1970–71 school year by changing the boundary lines for the two high school zones. Those already enrolled in high school were not affected by the change, since it only applied to incoming students. Thus the present sophomore and junior classes reflect the recent boundary change but the senior class does not.

Prior to the desegregation order, the Pontiac system had emphasized neighborhood schools. A 1964 resolution by the Pontiac Board of Education, for example, stated:

"The neighborhood school concept is believed to represent sound educational practice. Pupils will be guaranteed the right to attend the school which serves their attendance area as established by action of the Board of Education."

For the 1970–71 school year, approximately 3,500 students were transported to school. While consistently advocating neighborhood schools, the Pontiac board since 1948 had adopted resolutions recognizing the need for integration in faculties and student bodies.

Faculties of the Pontiac schools also have been segregated. A 1968 report by the Pontiac School District's Citizens' Study Committee on Equality of Educational Opportunity,[1] found:

". . . teaching staffs of the individual schools, with minor exceptions, and the school district in general, is by and large segregated; and, with minor exception, racial imbalance of faculties is worsening. . . . The committee finds that in those schools that are predominantly white or predominantly black by student attendance, the school district followed consciously or unconsciously, a 'matching' process; white teachers are assigned to predominantly 'white schools,' black teachers to predominantly 'black schools.' "

Thus, in the 1967–68 school year, half of the district's 218 black teachers were assigned to six of the district's 36 schools. These schools were located in black neighborhoods, and had virtually all-black student bodies.

The Pontiac school board consists of 7 members, each having a four-year term. There are two black members of the board. One black member's term expires this June, and the other's expires in June 1973. Neither plans to run for re-election. In the last election, two candidates running on an anti-busing platform were elected.

In votes on desegregation issues, the board has generally divided along racial lines. For example, prior to a court decision in the Pontiac case, attorneys for the plaintiffs submitted a desegregation plan to the board as a basis for negotiation. The board rejected the plan and voted 5–2 not to propose a counter plan. The board's attitude—after carrying the Pontiac desegregation case all the way to the Supreme Court and losing—was to accept the court's order without taking one side or the other. Thus instructions were issued to all school principals not to take sides on the desegregation issue.

Chronology of the Pontiac School Case

Litigation revolving around segregation in the Pontiac school system dates back to a 1958 action concerning site selection for the all-black Bethune Elementary school.[2] In that case, the court failed to find evidence of discriminatory site selection.

On February 17, 1970, as a result of suit filed by NAACP cooperating attorneys in Pontiac, U.S. District Judge Damon J. Keith ordered immediate integration of Pontiac schools and required that a complete desegregation plan be submitted.[3]

On September 2, 1971, Judge Keith refused an injunction against implementation of the busing order and NAG attornies filed an appeal with the Sixth U.S. Circuit Court of Appeals. On October 26, 1971 the U.S. Supreme Court denied certiorari to hear the appeal of the Pontiac Board of Education. The NAG suit is still pending before the Court of Appeals.

Davis Case Background

Plaintiffs in the *Davis* case alleged that the school district (1) had discriminated in hiring and assigning teachers and administrators, and (2) had denied blacks the right to be educated on the same terms as whites by drawing school attendance lines that maintained separate schools for blacks. Plaintiffs also contended that Pontiac schools operated under a system of *de facto* segregation resulting from defendant's policy of shifting boundary lines and building new schools in such a manner as to diminish the prospect of achieving maximum integration.

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[1] A group created by the Board of Education to examine policies, programs, procedures and practices of education in the district.

[2] *Henry* v. *Godsell*, 165 F. Supp. 87 (D.C., 1968).

[3] *Davis* v. *School District of the City of Pontiac, Inc.*, 309 F. Supp. 734. (E. D. Mich. 1970)

While admitting racial imbalance, defendants contended that historically the policy of the school board was that all pupils should attend neighborhood schools without regard to race. The defendants blamed housing patterns for the imbalance.

In his opinion, Judge Keith noted that it was undisputed that Negro children were being deprived of quality education in the Pontiac system. He found that the Pontiac board of education had never considered achievement of racial balance as a factor in setting school boundaries originally, and that the construction of 9 new schools between 1955 and 1963 served only to reinforce the segregation patterns. The court found that the Pontiac board of education had intentionally utilized the power at its disposal to locate new schools and arrange boundaries in order to perpetuate segregation. The court went on to state that:

"Where the Board of Education has contributed and played a major role in the development and growth of a segregated situation, the Board is guilty of *de jure* segregation. The fact that such came slowly and surreptitiously rather than by legislative pronouncement makes the situation no less evil."[4]

The court concluded that the Pontiac school board could not use the neighborhood school concept as a disguise for the perpetuation of racial discrimination when the school board had participated in the segregated policies. It held that school officials who had located new schools in such a way as to intensify racial imbalance actually created a situation of *de jure* segregation, and that officials had a duty to eradicate the results of their discrimintory acts. The Pontiac school district was ordered to submit a comprehensive plan for the complete integration of the entire school system, to be accomplished by revising boundary lines and by busing to achieve maximum racial integration. The system also was ordered to integrate its faculties and administrators, and to accomplish these results prior to the beginning of the September 1970 school year.

On appeal, the United States Court of Appeals for the Sixth Circuit held at 443 F. 2d 573, 575 (1971):

"After a thorough review of the record on appeal and upon consideration, we have concluded that the District Court's findings of purposeful segregation by the school district are supported by substantial evidence and are not clearly erroneous.

". . . although as the District Court stated, each decision considered alone might not compel the conclusion that the board of education intended to foster segregation, taken together they support the conclusion that a purposeful pattern of racial discrimination has existed in the Pontiac school system for at least 15 years."

The court of appeals affirmed the district court's judgment and order and remanded the case to the district court for continuing supervisory jurisdiction.

The Pontiac Plan

As mentioned previously, the plan presently in effect in Pontiac does not include high schools, which were integrated by a change in the boundary line between the two high schools prior to the 1970–71 school year. The Pontiac plan also excluded kindergarten students, who attend their neighborhood schools.

All students from first grade through ninth grade are covered. The plan requires every school serving these students to have between 20 and 40 percent black pupils. This variation was chosen to give schools a ten percent leeway above the black student population at the time of the order. Schools approaching a 40 percent black enrollment are not necessarily those in black neighborhoods, and those with a 20 percent black population are not necessarily in white neighborhoods. Students attend their neighborhood schools for kindergarten and grades one, two and three, or for kindergarten and grades four, five an six. For the three elementary school years in which a student is not attending his neighborhood school he is transported to another school.

Elementary schools are clustered in groups of three or four, with some schools enrolling primary children and other schools enrolling upper elementary children. Junior highs are organized so that each enrolls only one grade and draws students from half of the Pontiac School District. Thus within the Pontiac district there are two seventh-grade, two eighth-grade and two ninth-grade schools. One school of each pair serves each half of the city and generally feeds into a senior high school serving that half of the city.

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[4] *Supra*. at 742.

The plan assures that students who are together in the first grade will probably remain together all their school years. Ninety-five percent of the students who are together in the sixth grade will remain together through the 12th grade. Under the plan, most students will be required to attend five different schools from kindergarten through 12th grade. For example, a student may attend one school for kindergarten through third grade, another from fourth through sixth grades, separate schools for seventh, eighth and ninth grades, and a fifth school for high school. For other students, the plan entails some variation on this arrangement.

The plan requires establishment of a cross city busing program involving approximately 9,600 students. Students are required to go to their neighborhood school, where they are picked up by bus and transported to their assigned school. Elementary schools on one half of the city run from 8:30 a.m. to 2:30 p.m., while those on the other half run from 9:30 a.m. to 3:30 p.m. Junior high schools follow a similar schedule. Central and Northern High Schools run respectively from 8 a.m. to [illegible] p.m. and from 8 a.m. to 3:15 p.m. Central has cut out its lunch hour and stu[illegible] halls because of the shortened schedule.

Transportation

Of the 9,619 Pontiac students bused, some 30 to 35 percent are black. Prior to desegregation approximately 3,500 students were transported by bus. In order to accommodate the extra students, Pontiac had to increase its bus fleet from 50 to 106 buses, of which 91 are in regular use. The average trip for the 1971–72 school year is 4 miles in the morning and 4 miles in the afternoon, taking approximately 20 minutes each way. During the 1970–71 school year the average mileage was approximately 6 miles in each direction.

During the 1970–71 school year, the Pontiac bus fleet was involved in 27 accidents. From July 1, 1971 through December 31, 1971, the fleet was involved in 25 accidents. Considering the increase in the number of buses, the accident rate per bus for each year is about the same.

According to school officials, there was an increase in disciplinary problems at the beginning of the school year, and monitors were placed on the buses. These problems have steadily declined, however. As of late November the situation is comparable to previous years. School officials believe monitors are no longer necessary.

Cost of the Integration Plan

The school district has estimated that the cost of the integration plan will total $540,000 for the 1971–72 school year. Of this, $370,000 is attributable to busing. The district also has budgeted $125,000 for remodeling facilities. The total budget of the Pontiac district is $21.7 million.

In order to meet the new costs, some 200 teachers were laid off in April 1971. Because teachers with the least seniority were laid off first, a disproportionate number of black teachers, who had been hired more recently, were laid off. School officials put the figure at 70 percent. In August 1971, these teachers were offered an opportunity to return to their jobs. Many teachers had found jobs in the interim, however, and over 100 did not accept the offer to return. Those who did return worked without contracts until October 1971. There are now 115 fewer teachers in the Pontiac school system than last year. Because of a decline in school enrollment, however, the student-teacher ratio has remained approximately the same.

The district has been forced to cut back on some services, such as psychological counseling. An Elementary School Assistance Program (ESAP) grant of $278,000 is being used, in part, to pay the salaries of personnel involved in busing.

Reaction of Adults in Pontiac

Pontiac in recent months has gained national notoriety as a bastion of resistance to school desegregation. In September 1971, there were a number of incidents involving resistance by such organizations as the National Action Group (NAG) and the Ku Klux Klan. In late August, 10 Pontiac school buses were destroyed by bombs. Five Ku Klux Klan members have been indicted in the bus bombings. On the opening day of school, nine NAG followers were arrested for chaining themselves to the gate of the school bus depot to protest the court-ordered plan. Other NAG followers picketed outside the schools, primarily those in white neighborhoods. They carried signs saying "Nigger, go home" and shouted insults at black children. Some NAG followers blocked school doors, attempting to prevent children from entering. At one elementary school, the principal had to escort black students through a line of jeering pickets. Other protesters boycotted the schools and urged their friends and neighbors to do the same. Some white students reported visiting their friends who were being kept out of school to assure their friends that the schools were safe and that bad publicity about school conditions was underserved.

Mrs. Irene McCabe, Chairman and organizer of NAG, claims that those causing violence, shouting racial epithets, and blocking school doors do not represent NAG views. NAG claims to be opposed to forced busing and to abandonment of neighborhood schools, but not to integration. While there are virtually no black NAG members, a NAG spokesman stated that the majority of blacks support NAG's opposition to busing.

According to educators, the incidents when schools opened spread a great deal of tension, adding to the tensions which would normally exist on opening day and in newly desegregated schools. Students were already somewhat agitated about going to a new school where they did not know anyone; where they were not known and could not be identified by faculty; which involved traveling to a strange part of town; and which often meant attending school for the first time with another race. Burning school buses, mothers chaining themselves to the bus depot gate, and mothers blocking buses with baby carriages contributed to the agitation. When students had to fight through a picket line and endure verbal abuse, school officials point out, the situation was aggravated even more.

As a result, there were a number of incidents within the schools during the first two weeks of the 1971–72 school year, involving such things as fighting and extortion. It was estimated by a school official that 90 percent of the extortion incidents were black against white. NAG claims that school-related crime rose some 850 percent from the previous year. Particularly, the city's two 9th grade schools and two high schools experienced a great number of racial conflicts.

It is difficult to assess the degree to which such conflicts were prompted by turmoil outside of the schools, but even students in schools where no picketing occurred expressed anger and resentment over the actions of the pickets. The greatest number of problems occurred in the schools which were being picketed, and the incidents ceased at about the same time as the pickets left. A school official commented that the level of tension at the schools was almost intolerable. Police statistics show that nine-tenth of the school related crime cited by NAG occurred during the first month of school, when the greatest turmoil occurred.

A police counsellor who was interviewed noted that contrary to previous years, every little incident was written up by police. For example, one official stated that white parents started reporting to the police when their children were bumped in the lunch line. Undoubtedly, these occurrences would have been overlooked in previous years and certainly would not be reported to the police department. Further, the statistics cited by NAG refer only to reported incidents which were verified, and not to convictions or even prosecutions.

Moreover, school officials questioned the attitudes of the Pontiac police force, which has 8 black members out of approximately 140 members, and which attempted to give a $300 donation to NAG in support of its cause. Now school incidents are down sharply and administrators and principals agree that they are no worse than in previous years. Some principals commented that things are going better than ever.

The burning of buses, picketing, and boycotting of schools gained Pontiac much publicity. On top of these events was a NAG Labor Day rally of some 6,000 persons and in NAG sponsored picket line which temporarily halted production at the nearby Fisher Body Plant in mid-September. The picketing succeeded in slowing down other factories which depended on the struck plant for parts. NAG cites this event as a display of its strength. A factory worker disagreed, claiming that workers in the struck factory already were discontent and would have struck for almost any reason. He stated that there was a great deal of anger in other factories due to the slowdown.

NAG now claims to have 71 chapters with 20,000 supporters in Michigan, plus 10 chapters in other states. Partially as a result of NAG boycotts, enrollment at the beginning of the 1971–72 year was 2,500 below projected enrollment. It was feared that this boycott would lead to decreased Federal and State aid, since under Michigan law aid is based on enrollment on the fourth Friday of the school year. So far, NAG-sponsored boycotts have been successful in reducing school enrollment as much as 22 percent below normal for a day or two at a time. However, such campaigns have failed to last over a long period of time. NAG's success may occasionally have been bolstered by such tactics as picketing houses of white parents who sent their children to school during a boycott.

As noted, enrollment has decreased by some 2,500 students, almost all of whom are white. A few students still are being kept home as part of the NAG boycott. Other factors in the enrollment decrease have been transfers to parochial schools, movement from the school district, and enrollment in private schools.

It is difficult to assess the degree to which each of these factors account for the enrollment decrease. At the beginning of the school year a group of unaccredited "freedom schools" were opened to accommodate students whose parents objected to busing. The freedom schools failed to achieve accreditation. They are now decreasing drastically in enrollment and are experiencing financial difficulty. NAG claims that it never supported the freedom schools, recognizing that they would never be viable. Originally over 2,000 students were signed up for the freedom schools. No more than 300 ever attended classes at one time, according to the project coordinator, and enrollment now is approximately 175 and decreasing.

Pontiac school officials believe that the number of students being totally withheld from school is approximately 100. Officials are now in the process of submitting the names of the parents of these children to juvenile court authorities, and the children are beginning to return to classes.

While white flight has been a factor in the enrollment decline in Pontiac, it is difficult to measure. The Pontiac district is surrounded by primarily white middle-class communities, such as Waterford and Clarkston, which maintain their own school system, are within the income range of Pontiac residents, and would cause only slight commuting inconvenience for Pontiac workers. There has been no great exodus of whites or rash of for sale signs, according to school officials, but a number of white families have been moving out of the city. The fact that the percentage of black population in Pontiac has been steadily on the increase in past years indicates that white movement is not caused solely by desegregation. Officials noted that most families who wanted to move did so prior to the opening of school. Since October 1971, there have been very few families moving out of the Pontiac district. Officials believe the district has stabilized.

Reactions of students

While NAG points to alleged crime increases and white flight as the consequences of the school desegregation plan, others believe that desegregation has gone smoothly ever since the initial problems in September. The majority of principals and students who were interviewed expressed this point of view. When asked about NAG's claim of representing the vast majority of people in Pontiac, one administrator commented:

"The fact that 21,000 students are now attending integrated schools in Pontiac demonstrates that their families are willing to go along peacefully with the court order."

Most of those who supported school integration were enthusiastic about the Pontiac plan. Both blacks and whites felt that it was fair to all involved and places no unfair burden on either group. The only problem mentioned was that children would be required to attend five schools, rather than three, during their school career. One official stated, however, that there is "nothing sacred about attending three schools." He added that since most students would stay together as they moved from school to school, only the buildings would be different. Students would normally have new teachers every year anyway.

Administrators and students believed that the majority of students were somewhat indifferent to the integration plan. They stated that students were more concerned about their personal activities; going to an integrated school was not a major event for students, despite the concern of many parents.

This "indifference" may also reflect the increasing stabilization in the schools, according to an official. After 4½ months of school, students were getting to know their classmates and dispelling some of their fears and misconceptions based upon race. A number of students reported being literally terrified at the opening of school and feeling a desire to stay home. These students stated that they had become very happy with their schools after the first few weeks and realized that their fears had been unfounded. They cited misleading publicity and a few isolated incidents as the cause of their misconceptions.

Students also mentioned misconceptions which they had received from their parents as causing them to be frightened about attending an integrated school. Some students, in fact, stated that they were attending school against the wishes of their parents, who would have preferred to enroll them in a private school. One student, whose mother had been arrested for chaining herself to the bus yard gate, expressed continuing fear over attending an integrated school. Her fear, she said, was based upon encounters with black students, in which she was called various names, and upon an incident when her purse was snatched.

The greatest number of problems occurred in the two 9th grade schools, Lincoln and Kennedy. Several reasons were given for this:

1. Ninth graders, at 14 or 15 years old, are at a difficult age anyway.
2. The pressures of dating, which often begin around the 9th grade, cause tension and competition among students and anxiety among their parents. When dating becomes a primary topic of conversation, black and white students tend to drift apart, since they date within their own circles.
3. Ninth graders suddenly have lost the seniority which they maintained in the 8th grade and are no longer looked up to.
4. NAG pickets appeared in the greatest concentrations at the two 9th grade schools, and disturbances at these schools reportedly coincided with the presence of the NAG people.

At some schools, extracurricular activities are reported to have tapered off. The fact that black and white students live in different neighborhoods has made it difficult for students to associate after school, although buses are provided for students who wish to participate in extracurricular activities. In many schools, athletic teams tend to be either all-white or all-black and spectators are drawn primarily from the communities surrounding the school. Some schools provide transportation for students from other neighborhoods who wish to attend sports activities, but so far the response has not been great. An administrator felt that getting students to work together for a common goal, whether winning a football game or presenting a play, was one of the most effective methods of overcoming racial barriers.

At one 7th grade school, students who became increasingly upset with the publicity gained by NAG decided to form a group of their own to express support of integration. Their organization, known as "the Group," consists of 30 members, evenly divided between blacks and whites. "The Group" travels to other schools to put on skits and appear before the media. Between 1,000 and 1,500 students have signed up as members after viewing the skits. Members of "The Group" meet once a week and write their own material. Their skits attempt to show conditions in a school with racial problems, contrasted with a school where students are in harmony. They have appeared in schools of 7th grade and below. In addition, members of "The Group" have appeared on NBC News and been interviewed by the National press and local media.

Parents of these children have also joined together. They meet approximately once a month in different homes to have open discussions of school problems. Their school, Jefferson Junior High, a formerly all-black school, has been calm throughout the busing turmoil and has reportedly experienced fewer problems than in past years.

Some 300 to 400 parents, evenly divided among black and white, generally show up for PTA meetings and school conferences, according to a school official. An administrator attributed the success at Jefferson to the leadership exercised there in helping to make integration work. He criticized the school board for its lack of leadership.

The Pontiac PTA, which has approximately 7,000 members supported the desegregation plan and has adopted the slogan "Let's make it work." The PTA recently lost several hundred members, and officials attributed this partially to the organization's stand on segregation. Parents from one school cluster—consisting of Hawthorne, Alcott and Bagly schools—have joined together to periodically hold meetings to discuss activities and mutual concerns. The PTA is working to promote similar groups in other schools. The PTA also stationed black and white monitors in the schools during the opening days, so that students in a new school could see a familiar face and so that someone would be available to identify disruptive students.

PUBLIC SCHOOL DESEGREGATION IN FORSYTH COUNTY, NORTH CAROLINA

Methodology

The Civil Rights Commission's information concerning the progress of school desegregation in Forsyth County is based upon statistical data and written materials sent to the Commission by the County Board of Education, upon court opinions and upon telephone interviews conducted during the week of February 12, 1971, with the Associate Superintendent of Schools and with black and white community members.

Demography

Forsyth County is in Northwest, North Carolina. It is roughly rectangular in shape and comprises 424 square miles. The 1970 population of the County was 214,348 of whom approximately 20 percent were non-white. Winston-Salem, the principal city in the County, comprises 57.5 square miles; it is located in the South-Central part of the County and its estimated population was in 1970 about 132,913, of whom about 31% were black. Less than 10% of the County's population outside the city of Winston-Salem is black. In the more rural parts of the County there are several small unincorporated towns and villages.

Pursuant to a special act of the State general assembly and by vote of the people of Forsyth County, in July 1963, the school administration of the City of Winston-Salem and the Forsyth County School administrative unit merged. In the fall of 1971, the Forsyth County School district was the 82nd largest in the nation. Its total student population is approximately 47,757 of which 29% are black.

History of School Desegregation

In October 1968, the NAACP Legal Defense Fund instituted a suit against the Forsyth County school board, charging that the school system was being operated on a racially discriminatory basis. In a June 1970, decision the district court found that in 1969 there were 67 schools in the system with approximately 50,000 students. Of these schools, 15 were all Negro and seven all white. Of the remaining schools, 31 had less than 5% of its students of the minority race.[1]

The district court concluded, that despite the racial imbalance of many of the schools, the school attendance zones had been drawn in good faith and without regard to racial considerations. Therefore, the court approved the school board's plan for further school desegregation for the 1970–1971 school year. The plan retained geographic zoning and freedom of choice transfers, with priority for majority to minority transfers and improved racial balance in a few schools. However, the court modified the school board's plan to prevent minority to majority transfers, ordered the clustering and pairing of several other black elementary schools with white schools, and required the school board to consider innovative programs to increase contact between the races. Faculty desegregation in the ralo of about 70% white to 30% black, which had been achieved in January 1970, was ordered to be continued, along with continued desegregation of facilities, extra-curricular activities and transportation. The court held that under the proposed plan there would be a unitary school system, despite the continued existence of some all white and all black schools. All parties appealed the court's order to the Fourth Circuit Court of Appeals.

Following the decision of the Supreme Court in *Swann* v. *Charlotte-Mecklenburg* the court of appeals vacated the judgment of the district court and remanded the Forsyth County school case to the district court with instructions to obtain a new plan for school desegregation for the 1971–1972 school year that would comply with *Swann*.[2] The Fourth Circuit directed that the district court and the school authorities consider the use of all techniques for desegregation, including pairing or gouping of schools, non-contiguous attendance zones (satellite zones), restructuring of grade levels and the transportation of pupils. The district court was also warned by the court of appeals that if it approved a plan achieving less actual desegregation than could be achieved under an alternative proposed plan, it must find facts that make impracticable the achievement of a greater degree of integration.

Complying with the court of appeals and district court orders, in July 1971 the school board submitted a new plan to the district court, which was approved by the court without modification. At the time the proposed plan was filed, the board also submitted a resolution urging the court to reject the plan. In its resolution the board reported that though the proposed plan was the least expensive, least disruptive, least burdensome and most equitable plan that could accomplish racial balance in the schools, it was not a sound or a desirable plan because the residential pattern of Forsyth County makes the fulfillment of the plan impossible without massive and expensive busing.

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[1] *Scott* v. *Winston-Salem/Forsyth County Board of Education*, 317 F. Supp. (M.D.No. Ca. 1970)

[2] *Scott* v. *Winston-Salem/Forsyth County Board of Education*, 444 F. 2d 99 (4th Cir. 1971)

Following the district court's approval of its plan the board applied to Chief Justice Burger, as Circuit Justice authorized to issue temporary restraining orders, for a stay of the Fourth Circuit's July 1971 order and for a stay of the subsequent order of the district court. On August 31, 1971 Justice Burger denied the board's application for stays. The Chief Justice cited the tardy filing of the application for stays, the imminence of the start of the school year and the failure of the school board to explicitly describe the burdens of transportation of students as the reasons for his denial of the stays. Together with these reasons, Justice Burger also wrote an in chambers opinion explaining his view of the applicable law. It appeared to the Chief Justice that the district court and the school board had misread the *Swann* opinion. He suggested that the school board was wrong in believing it had been required to achieve a racial balance in all schools. Justice Burger pointed out that the *Swann* opinion had expressly negated any requirement that all schools reflect the racial composition of the student population. The Chief Justice's opinion is not an authoritative interpretation of *Swann* since the Justice's decision and opinion were issued in his individual capacity to deny a stay, without the agreement of the other members of the Court. On October 26, the Court refused to review the case.

With the application for stays denied the school board had no alternative but to implement its plan in September 1971. Sometime in November 1971, the district court gave the school board the option of submitting a revised plan that would decrease the amount of busing on major highways required of pupils in grades one through four. The school board did not seek modification in this manner because it found the current transportation system the only effective one for implementing the plan.

Later in the year, in light of the Chief Justice's opinion, the district court gave the school board the option of submitting by March 15, 1972 a plan for 1972–1973 that would reduce the amount of integration and busing in the school system.

The Current Desegregation Plan

Under the plan the school system is divided into primary schools consisting of grades one through four, elementary schools with grades five and six, and secondary schools of grades seven and eight, nine and ten, and eleven and twelve. Attendance at the primary and elementary schools is determined on the basis of geographic zones. These schools feed into the upper grade schools. Through the feeder system a student knows from his place of residence what schools he will attend for each grade. Under the plan, those assigned to the same school in the first grade are assigned to the same schools through all twelve grades, thereby allowing a student to travel with other students with whom he began. It is hoped this arrangement will ease students' adjustments to new schools, since they will already know many fellow-students.

Under the system two formerly predominantly white elementary schools, now serving grades one through four, are grouped with one formerly predominantly black school now serving grades five through six. The black pupils residing in the attendance zones of the grades five and six school zone attend one of the one through four schools for the first through fourth grades, along with the pupils residing in the attendance zone for that first through fourth grade school. For grades five and six, the white pupils residing in the attendance zones for the two first through fourth grade schools attend the fifth and sixth grade school, along with the black pupils residing in the attendance zone of the fifth and sixth grade school. Following completion of the sixth grade students go to seventh and eighth grade centers, which were formerly black schools, from there students attend eighth and ninth grade high schools, in formerly white schools, and then to eleventh and twelfth grade senior highs, also formerly white schools.

Two formerly black elementary schools have been converted to other uses because of the plan. In addition, under the plan the formerly black high school, and a former white high school have been converted to ninth and tenth grade schools.

Under the plan, in each school there is approximately the same racial balance at all grade levels, ranging from a low 18.60% black to a high of 41.07% black, with an average minority population of 28.31% for all the schools.

The school board and superintendent have found that a benefit of the plan is that the school system can obtain maximum utilization of classroom facilities. The number of mobile units in this school system has been reduced from approximately 114 to 34.

To achieve the racial ratios required by the plan approximately two-thirds or about 9,250 of the black pupils are always required to attend schools outside of their neighborhoods and about one-third or approximately 11,250 of the white pupils are always required to attend schools outside their neighborhoods.

The school board has justified the plan as being the only feasible way to balance as nearly as possible, the time all pupils have to spend on buses. It is explained that it takes a long time to pick up a bus load of pupils in an outlying area and to transport them to an outlying school, because of the distances between their residences and the school. In contrast, a bus load of those who are centrally located can be picked up with one to three stops and can be transported to an outlying school about as quickly as others in the outlying areas can be picked up and transported to the same school. In addition, the school board has found there is no other practical way to achieve the desired racial balance, since approximately 29% of the pupils of the school system are black and the great majority are centrally located.

Transportation

In 1970–1971 school year approximately 22,300 students were transported to school, primarily because they lived further than 1½ miles from their schools. Implementation of the current plan necessitates the transportation of between 11,000 and 12,000 more students than were transported during the 1970–1971 school year. This year a total of about 32,220 students are being bused to their schools. The average daily miles traveled per bus in 1970–1971 was 37. This year it is 51. The total bus miles traveled in 1970–1971 school year was 1,803,864. This year it is estimated it will be 3,269,692. In addition many senior high school students drive their own cars to school. A substantial number of them are required to drive many more miles than would be necessary on a neighborhood school basis.

The current system is utilizing 351 buses, 75 more than last year. These buses are required to run double routes in the morning and afternoon. County buses pick up children in the County, bring them to the inner city and return other students to the County, thereby completing two routes.

Studies from the superintendent's office show that the average time spent on a bus by students involved in cross-busing, who would not ride a bus under a neighborhood school plan, is 80.24 minutes for a round trip. The length of time of travel of a loaded school bus on a one way trip ranges from a high of about 69 minutes to a low of about two minutes, with the average one-way ride about one hour, including the time of travel to central loading places.

The total budget for this year's school operations is just over $37 million. Out of this some $1,350,000 (3.65%) will be spent on transportation, but it is not known how much of the total transportation expense wil be for busing for integration.[3] The superintendent estimates that to eliminate staggered school schedules, necessitated by double routing of buses, the school system would need an additional 184 buses, costing approximately $1,453,600.

Data collected by the superintendent's office indicate that per day because of the cross-busing, there are an average of 294 bus trips of students on interstate highways and other four lane express-ways. Per day these buses travel on interstate highways and express-ways approximately 1,963 miles, carrying some 8,500 pupils, most of them black, in grades one through four. The total number of miles that buses loaded with students travel in 65 miles per hour traffic zones per day is 1,114.

Opposition to the Plan

The current school plan was devised by the staff of the superintendent's office, without substantial consultation with community groups. After the plan had been approved by the school board, it was submitted to the court, and made public. The plan has drawn criticism from large segments of the black and white communities.

White opposition to school desegregation in Forsyth County has been strong for many years. In January 1970 faculty desegegration was achieved on an approximately 70% white to 30% black ratio for each school. Following this integration there were many meetings of white parents protesting the integration. A white organization called the "Silent Majority" held meetings and raised a considerable amount of money to fight faculty integration and other integration efforts. This group has continued to be active in opposing integration.

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[3] Roughly 68% of the school's system's funds come from State sources, about 20% from County taxes and the remainder from Federal and other sources.

In the spring of 1970, when the district court approved the school board's desegregation plan, there was considerable white opposition to the required clustering of several black elementary schools with white elementary schools. The "Silent Majority" and other small white groups were again active in opposing these changes. The opposition generally took the form of meetings, large scale attendance at school board meetings, letters to the editors of the papers, comments on radio and television and other forms of verbal protest. There were also some student boycotts of schools.

After disclosure of the current plan the white opposition again expressed itself through meetings, attendance at school board meetings and communications in the media. The white community's objections to the plan primarily have centered on the busing of fifth through eighth grade white youngsters to inner city formerly black schools. The white opposition has argued that it is unfair and unnecessary for their children to be bused long distances into black neighborhoods. White resentment has also focused on the change of the formerly most elite white senior high school to a ninth and tenth grade school.

Blacks have criticized white complainants of busing because for a long time they have borne the burden of busing. Prior to 1963 there had been a central high school in the inner city to which all black students from the County were transported. Although there were very few blacks in the County, those who lived there were required to travel two to two and a half hours each way to the central high school. The blacks feel whites have no right to complain of having their children travel about an hour each way, when blacks for many years had to travel much longer.

The "Silent Majority" and a group that developed after the start of the school year, "Citizens Against Busing" have presented the only organized white opposition to the current plan. People in "Citizens Against Busing" are primarily those whites who live in the far reaches of the County whose children ride the longest distances to the inner city schools. Both of these groups conduct regular meetings in the community, trying to increase support for their positions. This fall there was a rally held to bring together all opponents. The rally was very poorly attended.

Since the announcement of the plan the white opposition has been far more organized and vocal than the black. The black community's opposition to the plan has primarily concerned the long distance busing of black students from grades one through four to County schools. The blacks have maintained that the burden of busing, in terms of the number of years students must be bused out of their neighborhoods, should be borne equally by blacks and whites. Instead blacks are bused out of their areas for approximately eight of their twelve school years while whites are bused out of their areas for only four of their twelve school years. There has also been black opposition to the plan because it required that the formerly all black senior high school be converted to a ninth and tenth grade school.[4]

There is also some feeling among blacks that the school board and administration designed the plan purposefully to arouse opposition among both blacks and whites. These blacks believe that the same degree of integration could have been achieved with less extensive cross-busing.

To avoid integration some whites have left the County, but the number has been very small. The superintendent's office can make no estimate of the number who have left the County for this purpose. About five or six hundred have left the public school system for private schools in the County. Most of those who have left have gone from the fifth, sixth, seventh and eighth grades, the years when white students would go to formerly black schools. Two new private schools have opened in the County and the previously existing private schools have expanded their enrollments. The superintendent's office seems to think, however, that there has been a leveling off of the number leaving the public school system for private school. In fact, a few schools have had students transfer from the private schools back to the public schools, as parents and students have seen that the school system is functioning well.

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[4] The school board supported its decision for changing this school, and a former white high school to ninth and tenth grades on the inadequate size of the facilities and their inconvenient locations.

Community Support for the Plan

After the first weeks of the school year black opposition subsided substantially. As a result of implementation of the plan many of the formerly black schools have been very greatly improved in terms of facilities, supplies and surrounding areas. Many blacks have recognized that the formerly black schools have been improved more than they would have been without adoption of the plan. Many blacks also believe that their children are getting better educations in the formerly white schools. Recently, a black leader spoke at a school board meeting, urging the board to retain the plan for 1972–1973, stating that, "it has worked beyond our highest dreams".

There also appears to be a substantial segment of the white community that feels that the school system is operating quite well, that the quality of education has not deteriorated and that the reorganization of the grade structure of the schools has been beneficial because it has enabled the schools to introduce innovative teaching techniques. Although these whites are not publicly expressing approval, they are supporting the system through their silent cooperation.

A reason why the white opposition and the black supporters of the plan have in recent weeks become more vocal is that in November four members of the school board will be up for reelection. The board members are elected along partisan lines, and primaries will be held this spring. The opposition is attempting to present a slate of candidates and the blacks are working toward having a black candidate. There have not been blacks on the school board in the past few years though before the merger of County and City school systems there were blacks on the City school board.

Uncertainty about Continuation of the Plan

Because the district court has given the school board an opportunity to submit by March 15 a revised plan for the 1972–73 school year, in the near future the school board will be holding public meetings on three alternative proposals that are being suggested to the board by opponents of the current plan. The three alternatives the board is considering involve: (1) a plan which would retain the same grade structure, but in which the youngsters, grade one through four, would go to neighborhood schools. This would mean resegregation in the first through fourth grade levels, but would allow complete desegreation beyond that level; (2) changing the grade structure to a one through six grade arrangement and having neighborhood schools for the first through sixth grades, with integration of secondary schools. This proposal would involve even more resegregation than the first proposal because no one would be bused for integration in grades one through six. Although there are some integrated neighborhoods, this plan would lead to some seven or eight black elementary schools, and an equal number of white schools; (3) a return to a grade structure of one through sixth grade, seventh through ninth and then tenth, eleventh, and twelfth, all based on geographic zoning. Integration would arise only through zoning of contiguous areas. There would be almost no busing for integration. Pursuant to the directive of the Fourth Circuit, the district court cannot approve a modification of the plan which reduces the amount of desegregation without finding facts to show a greater degree of desegregation could not be achieved.

Thus, far, the white supporters of the current plan have not publicized their feelings. However, as decision time approaches, there is a strong possibility this segment of the community will make itself heard.

It must be noted that in the past two weeks the white opposition's position has been strengthened considerably because of public statements made by the President and other prominent political figures in opposition to cross-busing for school integration. The white opposition in Forsyth County, believing that the President and other important political leaders will take steps to bring a halt to extensive busing for integration, argues that this is a good reason to reduce the amount of busing currently required. Since there is considerable pressure on the board from all sides, the board is now in a very difficult position.

Adjustment of Students to the Integration Schools

To help ease the adjustment of students to the integrated schools, in late August 1971 all schools held open house and parents and students visited their schools and met with the principal and teachers. The superintendent's office also sent memoranda to all school principals urging them to be aware of the special needs and feelings of those students coming to their school for the first time. The memoranda stressed that the involvement of students in the schools' academic and social activities in ways that are meaningful and useful must be a vital concern of all school personnel.

To further aid adjustment to integration, there is a human relations specialist working in the superintendent's office and human relations specialists working in the high schools and senior high schools. In the summer and throughout the school year they have conducted seminars to aid students and teachers in their relations with people of different races and backgrounds.

In reference to participation in extra-curricular activities, the superintendent's office required that traditions and rules for admission to various clubs, teams or other extra-curricular activities be relaxed to encourage participation of minority students. The school board issued a policy requiring any student who held a position of school leadership, either elected or selected, or who was a member of a school organization retain that position in the school to which he is assigned for the 1971–1972 school year. The board's rule further required that any group representing the student body, such as cheerleaders and student government, have an adequate representation from the minority race. As a result, in several schools, there are black and white co-presidents, and expanded cheerleader and athletic squads.

Blacks have been participating in all types of extra-curricular activities, but particularly in sports. The school administration believes that black participation in athletics has done a lot to improve feeling among black and white students generally, as well as leading to friendships among blacks and whites who are involved in the same team or activity. Buses are provided to transport students who participate in extracurricular activities after school. Buses are not provided to bring spectators to activities. There have been some complaints from students who have difficulty obtaining their own transportation for these activities.

The superintendent's office describes the interaction of blacks and whites in the high schools and senior high schools as phenomenal. The superintendent's office reports that there have been fewer disturbances and problems this school year than in the past several years. There have been no confrontations, one small walkout of white students at a junior high, no riots and no occasions for calling police to school grounds.

In addition, there have been very few complaints of fights between blacks and whites. The few fights that have occurred between blacks and whites have not been racially motivated.

The superintendent's office has received some complaints from black students that they are being more severely disciplined by white teachers than are white students. Percentagewise, more black students have been suspended from school than white students. However, the superintendent's office reports that the number of suspensions of blacks or whites has not been higher than in other school years. It appears to the school administration that students are making an attempt to work out their problems through discussions and conferences.

Reaction of teachers, principals and the superintendent

This winter quite a comprehensive survey of teachers and principals was conducted by the superintendent's office to see how the staff feels about modifying the current plan. The survey indicated widespread approval of the current plan and an overwhelming desire not to have further changes next year. Teachers and principals noted that there have been two different plans in the past two years, and that implementation of a new plan would cause students to again be anxious about where they will be going to school, to feel that this year doesn't count and possibly to become disruptive.

Teachers are also excited about the opportunity to use innovative teaching techniques and are pleased with the way students are reacting. Teachers have indicated to the superintendent's office that they have not noticed a significant decline in academic achievement of students. Some white teachers have mentioned problems of disciplining black students, but it is believed by them and by the superintendent's office that the problems stem from lack of experience in dealing with black students. The teachers and principals have recommended that the current plan be maintained for several years, at least.

In public discussions of school integration the superintendent has taken the position that he is an agent of the board. Since the board recommended that the court reject the plan, he has not publicly supported it. Members of his office, however, have expressed optimism about the new plan. The superintendent's strongest support has involved statements that the present grade structure is the best for good education as well as integration.

Parents' Reactions

In the early days of school, white parents were reluctant to send their children to schools in the formerly black areas. Many brought their children to school and often remained throughout the day. Many of these parents volunteered to help in the schools as teachers' aides, in the health clinics, in the library and in other school areas. Despite the fact that there have been no disturbances in the schools and the students have been interacting freely, many of these white parents have continued to give daily volunteer service in the formerly black schools. There are also a considerable number of white parents volunteering in the schools in the white areas. A few black parents also act as volunteers in the school.

Membership in the PTA and in other school organizations has suffered substantially this year. It has been difficult for parents who have several students in different schools to join several PTA's. Black parents have also had difficulties in attending meetings in the white areas. There have been a few attempts by principals to meet with black parents in their neighborhoods but these have drawn little response from the black community.

Mr. HESBURGH. In addition, to give the subcommittee a sampling of what one finds behind the headlines, I would like to dwell briefly on our findings in two cities—one northern and one southern—in which busing has received national publicity. Those cities are Charlotte and Pontiac.

Charlotte, of course, is the city that produced the landmark *Swann* decision—the decision which said, correctly, that busing is but one tool, and a proper tool for implementing school desegregation.

For 2 years now, Charlotte schools have been operating under the desegregation plan approved by Judge McMillan. The plan was developed by an education expert and calls for school attendance zones that slice outward from the city like the wedges of a pie. In addition to busing, extensive use is made of school pairings and groupings. More than half the system's 85,000 pupils are bused.

As one might expect when young people are put together under unfamiliar circumstances, at first there were incidents and disturbances. Since November, however, these incidents have shown a marked decline. Now they are not much more numerous than they were prior to desegregation.

I believe that I know something about young people and I think what I have just said deserves some elaboration. Each time we hear of some incident in connection with desegregation that involves students, we ought to ask ourselves: Can this incident be attributed to racial integration or is it the sort of incident that might occur among young people anywhere, anytime under everyday circumstances?

I am sure the subcommittee will agree that many incidents have been blown all out of proportion simply because the highly controversial issue of busing was involved.

In any event, the staff found many Charlotte parents opposed to busing. But among teachers, administrators, and students there were many who were not unhappy that Judge McMillan ruled the way he did. There were black students who didn't like to ride the buses, any more than white pupils like it, but very few of these black students preferred their old segregated schools. Some felt that the incidents were a temporary thing, resulting from the uncertainty about whether Judge McMillan's decision would stand. Some of the white students who opted for private schools originally now are returning to the public schools.

Now let us look briefly at Pontiac, about which we have read a great deal. The headlines from Pontiac have told about 10 buses destroyed by bombs, about parent protesters who chained themselves to the bus yard gates, about black children being escorted through lines of jeering pickets, and about school boycotts by whites.

What the headlines have not described is the 21,000 students going to integrated schools, learning, and learning to live with each other.

Nor has much publicity been given, relatively speaking, to an organization at one seventh grade school called the group. The group, consisting of an equal number of white and black members, was formed to counteract the adverse publicity desegregation was receiving in Pontiac. Members travel to other schools, put on skits and contact the media in behalf of biracial education. Between 1,000 and 1,500 Pontiac students have signed up for the group's activities after watching its skits.

Nearly 10,000 Pontiac pupils are bused. There were disciplinary problems at the beginning of the year, but these have declined steadily. Now school officials believe bus monitors are no longer necessary.

We often say, Mr. Chairman, that the Nation's race problems would not be nearly as severe if they were left in the hands of our youth. The Commission's surveys have found that incidents in the five cities often came at the beginning of desegregation, and often seemed to be spurred by the outlandish activities of parents. The message was clear: Desegregation involving busing can work given even half a chance; decent behavior on the part of our young people is not only possible but almost certain if their elders do not provide them with too many disgraceful examples to follow.

Commission staff found young black pupils who were raising their scholastic sights to new career horizons in integrated schools. And they found young whites with a new understanding and appreciation of what discrimination has done to their fellow Americans who are black.

And keep in mind, none of this could have been achieved without the deliberate assignment of pupils on the basis of race in order to eliminate segregated schools—and doing so with the use of a number of desegregation techniques, including some that involve busing. None of this could have been achieved if the constitutional amendment currently being considered by this subcommittee had been adopted.

There could have been little integragtion of Pontiac or Charlotte schools if no children had been bused. This is the reason why I have to support busing, because in our racially divided cities it is often the only means of bringing children of various races together. Let me quote to you what a southerner, the Governor of the State of Florida, said about it last week:

> . . . (B)y the use of busing and other methods, we've made real progress in dismantling a dual system of public schools in Florida. And I submit that until we find alternative ways of providing an equal opportunity for quality education for all . . . until we can be sure that an end to busing won't lead to a return of segregated public schools . . . until we have those assurances, we must not unduly limit ourselves, and certainly not unconstitutionally.

If I might put in a personal note, I would like to publicly salute the Governor of Florida for his statement in this matter.

Of course, children have ridden buses to school for years. School desegregation has not been a significant factor in the steady increase in the number of children transported to school each year, from 9 million in 1950 to over 19 million today. In rural areas, a bus trip to and from school has long been viewed as a necessary part of getting an education. Between 1954 and 1969 our national fleet of school buses grew from 150,000 to 238,000 for reasons unrelated to desegregation. School consolidation, and not school desegregation, was primarily responsible for the increase.

It is sometimes forgotten that for years black and white pupils were bused, often past each other, many miles each day to maintain school segregation. Throughout the South, before desegregation, some school districts bused all their pupils to uniracial schools. Then there was no outcry. Black and brown children would sometimes trek long distances to their school, unable to ride the white school bus which passed them by.

Then there were no protests.

I recall hearing Charles Evers telling me once his first experience with busing was walking down a muddy road and having the white school bus passing by and splashing mud on him, and the white school students hollering, "Nigger, Nigger."

I think we have passed that period in our history.

The reactions which we found in Pontiac and Charlotte were typical, in many ways, of what we found in other cities. Opposition to desegregation occurred primarily when plans were first implemented, and declined sharply after this time. Opposition from parents, we found, was much more prevalent than from students.

It would have been a minor miracle had there not been some such resistance. It is a well known sociological phenomenon that people, particularly adults, generally react negatively to a change in any social situation that disrupts a well-established daily routine or introduces elements of an unknown quality into their lives.

We have seen the agonizing legal fight to desegregate our schools, and the relative smoothness with which desegregation has been achieved in many school systems. Let us now see what racial conditions would prevail in our schools were the amendment adopted.

A primary thrust of the proposed amendment would be a return to the neighborhood school, which would reflect the racial characteristics of the neighborhood. All-black or all-white neighborhoods will produce segregated schools, and the evidence is overwhelming that the vast majority of neighborhoods in this country are segregated.

President Nixon in his June 1971, statement on equal housing opportunity stated that:

> Despite the efforts and emphasis of recent years, widespread patterns of residential separation by race and of unequal housing opportunity persist.

To see how these racially separate patterns have been reflected in neighborhood schools let us look at a few recent statistics. In the fall of 1971, 86 percent of the black students in Atlanta's public schools attended schools that were 80 to 100 percent black. In Detroit, the percentage of black students attending schools that were 80 to 100 percent black was 79 percent, while it was 63 percent in Boston, 86 percent in Houston, and 79 percent in Milwaukee.

I could continue, but these figures are illustrative; they tell a story of racial separation that is dramatized every day in schools throughout the country.

These patterns of segregation did not come about only by chance or by free choice. They were condoned, and actively promoted, by local, State, and Federal governments. Unfortunately, these patterns are not going to chance in any reasonable length of time. This would be the only way in which our schools could be desegregated without the use of the tools and techniques now being required by the courts. To support an amendment that would outlaw such tools and techniques is purposefully to consign this Nation's commitment to desegregate our schools to the national scrap heap.

Our Government and our courts have come to recognize that this malignancy, this racial separation, will not just disappear on its own effort. It requires active, intensive treatment.

The Federal Government has been a leader in this effort, through measures such as title VIII of the Civil Rights Act of 1968, which requires that Federal executive agencies take affirmative action to promote fair housing, and Executive Order 11246 which requires that Federal contractors take affirmative action to end minority underrepresentation in their work force. These medicines may be inconvenient to take and slow to work against a malady which has been nurtured for years, but we are seeking a cure, we are trying to undo discrimination in housing and employment however long it may take.

These developments also demonstrate what I feel is a rather sad irony in the debate over the proposed amendment. We have recognized Government responsibility for ending housing and employment discrimination, and we are doing something about it. Now we come to schools, perhaps the most crucial area in which to achieve desegregation, an area where Government has a long and acknowledged history of creating and perpetuating segregation. Instead of recognizing Government responsibility and making a commitment to desegregation of our schools, we do the opposite; we talk about outlawing pupil assignments intended to achieve desegregation, and of overriding the courts by constitutional amendment. Instead of cursing the disease, we curse the medicine, we curse the doctors, we seek to ignore what will happen if all remedies are abandoned.

In the course of the 15-year life of the Commission on Civil Rights, I have had occasion to view with shame and sorrow the kind of housing to which hundreds of thousands of our fellow Americans are relegated. They do not live in squalor because they like it. They do not enjoy using outdoor privys or unheated rooms nor do they revel in sleeping in roach- and rat-infested apartments. They tolerate it because there is nothing better that their earning capacity can afford them.

Millions of Americans of all races are merely existing today in this land of plenty, at points far below our governmentally established poverty levels. Minority group people; the chicanos, the blacks, the Puerto Ricans, the American Indians, suffer these liabilities in far greater proportion than their percentage in the population would suggest.

It is as near certain as anything I know that in the absence of massive housing subsidies and a much more ambitious family assistance program than has been seriously discussed by the Congress, this condition will continue. It will continue unless the children of these families are provided with the opportunity to secure the kind of education that will permit them to compete on a basis of equality with those who now are more privileged than they.

There are those who call this amendment an antibusing amendment. Nothing could be further from the truth. For the amendment has effects which go far beyond merely outlawing schoolbusing. First, it is an anti-school-desegregation amendment. But even this is an understatement of the effect of House Joint Resolution 620. It is also fundamentally an antiblack amendment. Its effects greatly transcend the walls of the classroom. We are really asking whether we are going to give minority citizens an opportunity to learn, to earn, and to live at the same level as the rest of society, or whether we are going to forget about the future of generations of minority children.

Where you go to school—the quality of the education you receive and the attitude which you acquire toward learning—has a determinative effect upon your life. A slum school can have, as our courts have recognized, an effect upon children which could probably never be undone. No wonder many blacks regard this amendment as another way of saying: "Don't touch me. You are not a human being."

Finally, this amendment is contrary to the principles that we subscribe to when we speak of being "an American"—it negates the Judeo-Christian ethic that we claim to support.

It deprives the Nation's children of the only chance presently available to give real meaning and purpose to the ideals of a democratic society. Schools are now and always have been socializing institutions. They are the only institutions in our society which practically every person in our Nation is required to attend. It is in the schools that children are introduced to the process of living and getting along with other people outside the protective custody of their parents in a society of other human beings.

We have been asking ourselves over the past 10 years or so "Why?" Why the riots and civil disturbances in Watts, Newark, Detroit, and scores of other cities? Why, we ask, are our Armed Forces in Vietnam and Germany and here on American soil wracked with internal strife between black and white servicemen? The answer to these queries and others of a similar nature that could be raised is simple: They never learned how to live together as equals. And, now, after the meager progress in the last few years to remove the barrier preventing boys and girls of whatever race from learning to live together, we are faced with the prospect of another barrier in our long fight to create a society in which all men can be brothers.

I can, therefore, think of no greater tragedy than the adoption of this amendment.

Equal opportunity has been a keystone in the structure of American life, and the availability of quality education to all on a nondiscriminatory basis has been held by the courts to be an essential aspect of equal opportunity. By denying this right, the proposed amendment will have the effect of relegating millions of minority schoolchildren into shamefully inferior educational systems which, only recently, our country had been abandoning as part of its segregated past.

Thank you very much, Mr. Chairman.

Chairman CELLER. That is a very comprehensive statement and will be very helpful to the committee.

Are there any questions?

Mr. MCCULLOCH. I have no questions, Mr. Chairman. But I should like to say that I have known Father Hesburgh since he came to the Commission as an appointee of President Eisenhower 15 years ago. His effective role in guiding the Commission has made equal opportunity in America possible.

Mr. HESBURGH. Thank you, Mr. McCulloch. I appreciate that.

Chairman CELLER. Are there any questions?

Mr. JACOBS. Mr. Chairman, I did not have a question, but my colleague from Indiana, Mr. Brademas, asked me to extend a welcome to Father Hesburgh.

Chairman CELLER. Mr. McClory.

Mr. MCCLORY. I will comment that it is a very impressive statement. I think in some respects, however, it deals emotionally, especially when it refers to some comment that Medgar Evers made some time ago, which, in my opinion, indicates precisely the racist aspect of this subject.

I would agree with that part of the statement that underscores the necessity and the wisdom of trying to develop a desegregated society. The statement about trying to achieve a Christian-Judeo concept of a harmonious society is perhaps what is involved in part of the desegregation effort.

In other words, we are trying to achieve idealistic social goals through our children and our schools. I am wondering if our inability to provide better employment opportunities and to provide fairer housing are not, in fact, being retarded by large-scale and long-distance busing programs in which we try to achieve what we can't achieve through other means.

Do you think that schoolbusing is going to accelerate or retard efforts made elsewhere?

Mr. HESBURGH. I have felt, Mr. Congressman, that the schoolbusing issue has been completely overblown for a lot of obvious political reasons.

It is a very unpopular thing to push for schoolbusing. It is very unpopular to stand up and say a word about busing despite the fact that 40 percent of the schoolchildren in America go to school on a bus every day.

The fact that busing has been used for very nasty reasons in the past, is not a reason it cannot be used for equally beneficial reasons now.

What happens at the end of the busline?

For many young pupils, the only way they are going to get access to a decent education is by taking a ride on the bus to get to a good school. Then I think the education they get at the end of the busline far transcends that ride.

Mr. MCCLORY. I have noticed in the newspaper that one of my black colleagues from Illinois, in being asked to comment on the busing issue, responded he thought there should be limitations of distance and limitations of time.

Mr. Hesburgh. I agree with that. Nobody would disagree with that. The Supreme Court say it agrees with that. Anything that would be too time consuming and in a sense hurting the educational benefit of the rider, would be self-defeating.

The problem we have in the issue is that busing has become a code word, and it is very easy from the President on down to say, "I am against busing." It becomes popular.

The fact is, if you are against busing, you are against 40 percent of the children getting to school every day. That is oversimplifying the case entirely.

I would still say the Supreme Court puts down good guidelines. It says the busline should not be too long or harmful physically to the child and should not get in the way of the education.

I am still saying, which is so hard for us the understand, there are children in this country who go to absolutely horrible schools.

They happen to be the schools in the neighborhood. The neighborhoods are as bad as the schools.

Those youngsters for the rest of their lives are facing frustration, failure, welfare, and everything else because they don't get a decent education and they can't get it in that school.

If anybody has a better idea of how to get it, they say, "Improve the school." We have had a century and a half to do that. And we have not done a very good job. Poor neighborhoods have always had poor schools.

Mr. McClory. There is a continuing movement of people from the inner city to the suburbs, and if we develop long-distance busing programs, what is going to prevent this continued emigration from going way out into the countryside? And then what do we do about busing? Do we continue to expand these pie-shaped areas farther out into the countryside?

Mr. Hesburgh. The simple fact is that the concentration of minority groups in the inner city has increased, and the emigration is mainly emigration of whites, and jobs have emigrated with them.

This is one of the problems that has upset this Commission. We have had several hearings about it in St. Louis and Boston and Washington. It seems this country is dividing more and more in a dual nation.

You speak about segregation. We are talking about a segregating society where the poor minority all live in the central city with poor facilities of every kind, and everybody escapes that by going out to the suburbs where they have good schools and pay less taxes than they do in the city.

Mr. McClory. Let me emphasize one policy of this administration—their policy of locating Federal facilities in areas where equal job opportunities and equal housing opportunities are available. To the extent we improve job opportunities and housing opportunities, we also improve educational opportunities.

It would be unfortunate if, given this relationship, we would cut off any opportunities by requiring the busing of children back into the area where they came from.

Mr. Hesburgh. No, what I am saying is, I don't want to see any child bused to a bad school, but I want to see any child that has a chance to be bused to a good school get that chance.

The nub of this question is for minority kids who now don't have the the opportunity to go to good schools that they may get the opportunity of going to a good school.

Mr. McClory. I think our problem arises not because of any desire of the outlying area to deny an opportunity to the black child from the inner-city to attend its schools but because of the requirement that the parent in the outlying area bus his children into a ghetto school or inner-city school which is a bad school.

Mr. Hesburgh. That is right, and it has been bad for a long time, and no one worried about it as long as it was just for blacks.

I would say, make it a good school, of course.

Of course, let's make it a good school, but it has been a bad school for blacks for years.

The moment a white youngster has to go, than it is called a bad school.

Mr. McClory. Do you think legislation might help alleviate some of the more critical problems?

Mr. Hesburgh. I don't think we are going to solve this problem ultimately until we get open housing and until we have neighborhoods that reflect the general population of the country.

Mr. McClory. I would agree with that.

Mr. Hesburgh. As long as you have segregated housing, you are going to have segregated schools and bad schools.

The simple fact is, and this is the reason for the California school financing decision——

Mr. McClory. In other words, if we changed the housing patterns, then the busing problem would vanish?

Mr. Hesburgh. That is right, but I don't think the housing problem is going to be solved that quickly. It involves a good deal of money and all kinds of programs.

Mr. McClory. Is busing children going to help the housing problem?

Mr. Hesburgh. I don't think it really has reference to the housing problem. It is something done because of the housing situation.

What I am saying is that in this situation at this particular juncture, child A, B, C, or D, who happens to be black, who is not going to get a good education where he is, is only going to get a good education if he can go where that happens.

Let me illustrate a case from Boston. We had had a hearing there, and we talked to a mother in Roxbury which is the black section of Boston. It was a rather small black population, about 8 percent in the city. This mother said that her child was going to a school in their black neighborhood and the child was getting "A" grades and never had any homework. It was an all-black school.

A friend of hers who lived out in Newton said, "If you want to, you can bring your daughter out to our school because we have room for extra kids."

They got a few of the people in the black area together and the parents took turns driving them out to the school in Newton.

The first thing she found was that the child had a lot of homework and was expected to perform, which the child was never expected to do in the black school. The child slipped down to a "C" student immediately, and over the ensuing year came back up to an "A" status again, but that was a legitimate "A."

Now, I asked this mother, "It must be terribly inconvenient to get up at 6 o'clock and get your child out to the school in Newton?"

She said, "It was worth it because my child now has hope for the future. This school my child was going to, even though she was a bright child, has put one student in Boston Latin in the whole history of the school. It has only qualified one student to go to a good high school. The child has no problem at all getting in Boston Latin coming from the Newton school, but never would have gotten in if she had stayed where she was.

I think if we put more emphasis on quality of education, and busing is one means of getting a child to a good school and get a good education, then I think we see the importance of busing.

Just to say busing is bad is a very bad approach to the problem.

Mr. McClory. I won't continue the questioning. Thank you very much.

Mr. Hesburgh. Thank you, Mr. McClory.

Chairman Celler. Father Hesburgh, would you agree with what Chief Justice Burger said in the *Swann* case:

> All things being equal, with no history of discrimination, it might be well and desirable to assign pupils to schools nearest their homes, but all things are not equal, and in a system that has been deliberately constructed and maintained to enforce segregation, the remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

Would you agree with that?

Mr. Hesburgh. I agree with that, and I think this illustrates a larger problem.

We have inherited a very bad situation because we inherited, first of all, the situation of slavery and now we have been undoing effects of that over our generation.

We have done more probably in the last 10 years to try to undo the bad effects of this situation than had been done in hundreds of years previously.

I don't think we can do it without pain, and strain, and misunderstanding, and all kinds of means which at times may not be successful and may not even be good, but the fact is that we are making an effort to move forward in this, and we are making an effort not just in schooling, but in housing and employment and public accommodations and administration of justice.

And it seems to me that what this country needs is forward motion toward our ideals, and my big objection to the amendment is that I think it is a backward motion.

Chairman Celler. If there are no other questions, I want to state we are very grateful to you and your associates and the names of your associates will be recorded in the record.

Mr. Hungate.

Mr. Hungate. If the Chair please, Father Hesburgh, would you think that a one-race school, whether de jure or de facto, would automatically constitute denial of equal protection of the law?

Mr. HESBURGH. I would think in the concrete historical circumstances of this country, yes.

Mr. HUNGATE. What about a situation where there is a political subdivision in a county unit of 1,400 square miles with all one race. Would the children there be denied equal protection of the law unless there were pupils from another race?

Mr. HESBURGH. My concern is for minority children. In other words, I don't think all of the white kids in Scarsdale are being denied equal protection of the law because they go to a white school, but I think that the black kids in Detroit and South Chicago and Harlem and Washington and many places are really not going to good schools, and to the extent that they don't have access to good schools, I think it is an affront to the requirement of equal protection of the law.

Mr. HUNGATE. Isn't it stated in some of the opinions which struck down "separate but equal" that going to school together is part of the process and in that sense wouldn't the white children be deprived of the necessary experience?

Mr. HESBURGH. You could argue this, I think, and this is in fact the effect of the Coleman study and the effect of our study on racial isolation in the schools. I think in our country certainly it would be more advantageous to learn how to live with more kinds of people who make up the country.

I think if it were Sweden, for example, or Norway, or some country that is fairly monolithic in its racial makeup, one would understand that this problem does not exist.

But let's face it. We are a curious experiment in modern life. We say many races are trying to make one country.

Mr. HUNGATE. An incomplete experiment.

Mr. HESBURGH. That is right, an incomplete experiment, but a novel one. I think the youngsters in many ways are much more able to cope with this than their elders.

You are not born with prejudice. You have to develop it.

Youngsters don't have it. Youngsters learning, I think, at an early age to understand each other and to appreciate each other's values, eliminates a lot of the prejudice that follows later on in life.

Mr. HUNGATE. One last question, please.

I believe that the decisions of the fifth circuit in the Jefferson County Board of Education cases say this:

> During the Senate debate on the 1964 Civil Rights Act Senator Byrd (W. Va.) asked Senator Humphrey if he would give an assurance "that under Title VI school children may not be bused from one end of the community to another . . . at taxpayers expense to relieve so-called racial imbalance in the schools."
>
> Senator Humphrey replied: "I do . . . . That language is to be found in Title IV. The provision [§ 407(a)((2)] merely quotes the substance of a recent court decision which I have with me, and which I desire to include in the Record today, the so-called *Gary* case."

The Fifth Circuit's opinion reads:

> The thrust of the *Gary* case was that if school districts were drawn without regard to race, but rather on the basis of such factors as density of population, travel distances, safety of the children * * * those districts are valid even if there is a racial imbalance caused by discriminatory practices in housing.

Senator Humphrey then went on to say that title IV of the Civil Rights Act of 1964 did not attempt to integrate the schools but did attempt to eliminate segregation. Senator Humphrey said that if school districts are not gerrymandered and in effect deliberately segregated then "the fact that there is racial imbalance per se is not something which is unconstitutional."

In the en banc decision of the Fifth Circuit subsequently the court cited a statement made by Congressman Celler:

> There is no authorization for either the Attorney General or the Commissioner of Education to work toward achieving racial balance in given schools.

Now, I wonder how would we explain, or do you think we can explain the court's decision to legislators who were propounding those inquiries and receiving those replies?

Mr. Hesburgh. I would like to ask our counsel to say a word on that because he is a lawyer.

Mr. Powell. I think the term "racial balance" is subject to a lot of interpretation. The courts looking at the Federal statutes which prohibit racial balance have taken the position that where de jure segregation exists, there can be approximation of races in schools.

The question that is open is, in that instance where there is segregation which is not shown to be de jure, which is not shown to be caused by the State, whether there must be racial balance. Clearly where there is de jure segregation, there can be approximation of races. You have to have race consciousness to desegregate.

Mr. Hungate. What about the de facto situation? Do you think that is still an open question?

Mr. Powell. If you read *Swann*, they left two questions open there. They left the question of de facto segregation open. They left the question of whether there are other forms of de jure segregation extending to actions beyond school districts. Those two questions are left open.

De facto segregation, the question of whether there is to be relief, other than in court of appeals cases, is left open.

The Supreme Court of the United States has not ruled on whether there is to be relief granted in de facto segregation. The Supreme Court has ignored de facto segregation to this day.

Mr. Hungate. Suppose you have a State like Missouri which had de jure segregation in 1954?

Mr. Powell. Continuing effects of de jure segregation under the law can be the basis for relief. A pronouncement, the mere pronouncement that there will no longer be segregation is not sufficient.

Mr. Hungate. Would it be fair to say they are holding that if you had de facto segregation, it had arisen out of de jure segregation there?

Mr. Powell. There is no such thing as de facto segregation which originated from de jure segregation. There comes a point beyond which there is no longer de jure desegregation. The courts have not decided what point that is. The courts today have said no more than dual systems must be eliminated.

Mr. Hungate. I was under the impression that de jure system would be established and maintained under approval of the law. Suppose the law is repealed and also overruled by the Court. Do you still have de jure segregation?

Mr. Powell. You do so long as you have continuing effects of that de jure segregation. The mere pronouncement doesn't desegregate.

Mr. HUNGATE. But I think you are having segregation without de jure segregation. Originally you would have violated the law to have integrated. But now we do not have segregation mandated in a statute. Don't you see the difference there?

Mr. POWELL. Would you put that question again, please?

Mr. HUNGATE. Where the law required segregation, you would have violated the law to have integrated. When that law is repealed, it seems to me we have some changes.

Mr. POWELL. Looking at the facts, sir, the mere changes of words in the statute doesn't change the segregation. The law looks at the substance here. Continuing effects of de jure segregation are illegal under opinions of the Court.

Mr. HUNGATE. You would not consider it de facto?

Mr. POWELL. I certainly would not.

Chairman CELLER. The Chair will now adjourn until 2 o'clock, when we will resume the testimony of Congressman Lent.

We want to thank you again, Father Hesburgh.

(Whereupon, the subcommittee recessed at 12:25 p.m., to reconvene at 2 p.m., the same day.)

AFTERNOON SESSION

Chairman CELLER. The committee will come to order.

We will resume testimony of our colleague from New York, Mr. Lent. Mr. Mikva, I think you wanted to ask some questions.

FURTHER STATEMENT OF HON. NORMAN F. LENT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. MIKVA. Mr. Lent, do you think this is a charade?

Mr. LENT. I should certainly hope not, Mr. Mikva.

Mr. MIKVA. Do you think that Congressman Celler or Congressman McCulloch are farcists?

Mr. LENT. No.

Mr. MIKVA. You were quoted in Detroit saying hearings on the bill would be a farce and a charade. Is that political propaganda, or were you misquoted?

Mr. LENT. I believe I said those statements over the telephone to a group that was having a neighborhood school rally in support of this bill, and the question was put to me, Mr. Mikva, whether, in view of the fact that these hearings were being scheduled, they could let down their efforts in Pontiac to obtain support from the Members of the Congress to this bill. At that time I said, "Don't let the hearings fool you. As far as you are concerned, they are a farce and a charade. Maintain your efforts to get support of your Michigan Congressmen for House Joint Resolution 620."

Mr. MIKVA. Then you do think this committee consists of people who play charades and engage in farcist activities?

Mr. LENT. Certainly not.

Mr. MIKVA. I don't understand, it either is a farce or it isn't. If that was just a political speech you were making in hustings, that is one thing; but these people take themselves very seriously. I am a junior member of the subcommittee and I have been very impressed in the 4 years I have been on this committee that these are serious constitutional lawyers who take their responsibilities very seriously, and who have learned how to disagree without being disagreeable. The last thing I would accuse them of engaging in when they are in a hearing so weighty a matter as amending the Constitution, is of being involved in a farce or charade.

If those weren't your words I will stop right now, if they were, I hope you would retract them. I think it casts a cloud over your testimony and the conduct of this committee.

Chairman CELLER. Will the gentleman yield?

Mr. MIKVA. I will be glad to yield

Chairman CELLER. Mr. Lent, I always have the highest regard for all Members of Congress because I always respect the esprit de corps that should exist between all Members of Congress.

Do I understand that you repeated that very language outside before the television cameras this morning when they asked you for comment? Did you make that same statement?

Mr. LENT. I don't believe I did, Mr. Chairman. I was asked about that report which, as I said, I was in Rockville Centre, Long Island, when I made a statement to a woman who asked me a question over the telephone. The telephone conversation was being amplified and apparently recorded in a city in Michigan, in Pontiac. And the thrust of her question was whether—and I hope you would understand the context in which it was given—these folks in Pontiac were having a rally, it was a hoopla like a political convention and they were looking for encouragement from me for the effort that they were making. So that, really, with all deference to the members of the committee, I think we should not let this thing be blown out of proportion. You have to understand the context that it was made in.

Now, if you want to ask me whether I think that there is a Chinaman's chance of this committee reporting this bill out, I have to say to you as a fellow legislator that in my opinion, and I have heard this from other Members of Congress, there is very little chance of it being reported out of committee. Therefore, I don't think that those in our country who are opposed to the forced busing, who support the neighborhood school concept, should be led, through the medium of these hearings, into a false belief that Government is going to act affirmatively on their requests.

My language, which perhaps was overly colorful, was designed to keep them——

Chairman CELLER. Mr. Lent, we have not only before us your proposed amendment to the Constitution, but also other resolutions involving constitutional amendments, as well a great many other bills relating to busing. It is not only your bill that we are considering before this committee. Now I will ask you a question:

Did you get a fair hearing this morning?

Mr. LENT. Yes, as far as I am concerned.

Chairman CELLER. Did you express yourself to the world and to those to whom you made those statements over the television, and otherwise, to the effect that you got a fair hearing from this Judiciary Committee?

Mr. LENT. I would so state. I would say while I got a fair hearing there were many people who are seeking a chance to testify before this committee who have not been given that opportunity. For example, as long as you want to go into that——

Chairman CELLER. Now just a minute. Who has asked for a hearing before this committee and has been denied?

Mr. LENT. There were people right in this room, Mr. Chairman. There are two representatives of the Charlotte-Mecklenburg school system who spoke to me a little while ago and said they can't get on. Roy Innis, the national executive director of CORE, came to the hearing.

Mr. BROOKS. I want to advise the Congressman that this committee worked all day Monday and Tuesday and heard about 20 Members of Congress, of which I guess 25 were in favor of either the legislation or the amendment. We heard you today at great length. We are going to meet tomorrow. We are hearing a long list of people who have written and asked to testify. The people from Texas that I know that wrote and asked to testify, we shall hear at a subsequent date. We don't just hear them when they arrive and say, "We ought to be heard."

One other thing about charades and farces. You know there are some members of this committee that were voting for antibusing amendments on education bills long before you were in Congress, and so when you start charging the committee, you better look at all of the members and find out who you are charging.

Mr. MIKVA. Mr. Chairman, if I still have the floor. I think there is some trouble about your suggestion that no one favoring the amendment is going to be heard. It isn't a question of whether, it is a question of when. I wanted to ask you these questions this morning but there were a lot of other people who had questions and I waited my time and you waited your time to be heard today. There were senior members that were heard yesterday and the day before, but I don't know anybody who wants to be heard who has been told flat out they can't be heard.

But I think, Mr. Lent, as a member of this body you owe it to some of your supporters to explain to them that with 435 Members representing 210 million people, sometimes the clock has to be adjusted for everybody's sake. Is that an unreasonable position for the committee to take?

Mr. LENT. No; it certainly isn't. I am gratified that the committee is going to give these folks, some of whom are in the room, an opportunity to be heard. Mr. Smothers over here, this man indicated to me he wanted an opportunity to be heard. I am not trying to change the system of the hearing but I would hope, Mr. Chairman and Mr. Mikva, that you would take the statement that I made in the context in which it was given. It was made at a political rally to arouse enthusiasm.

Mr. MIKVA. It was political rhetoric. Now, you said that the thing was going to be shot down by a group of ultraliberal professors and sociologists who would shoot it down. Father Hesburgh is one of those ultraliberals, I suppose. He testified against the amendment.

Mr. LENT. I don't see anything wrong with the statement that the amendment is going to be "shot down" or "attacked," and it has been by a number of liberal law professors from Harvard and Yale and Cornell.

Mr. MIKVA. Some of them aren't so liberal. I could label you as ultradeintegrationist. That doesn't mean anything. My concern is that I think you were trying to demean the process of this committee. If you weren't, I am glad to know that. I hope you will clear that up on the record because I think a constitutional amendment deserves to be fully considered by the Congress and the people. It is very important that the committee process apply fully and fairly. If you really think in advance that you aren't going to get a full hearing, then what you have said is that the committee process does not work.

That is a substantial charge.

Mr. Jacobs. Mr. Chairman, I would like to make this observation: The big problem with a large number of witnesses who wish to be scheduled on a national issue is that they all come to focus on this tiny dot on the map and it is like threading a needle with a rope. It does represent a very difficult problem for scheduling, and I am very well aware of that. I would like to say for the record, however, two members of the Charlotte School Board in North Carolina who are present today not only were mentioned by Father Hesburgh's testimony this morning, but, if I understand the testimony correctly, their views were represented or purported to be represented by his testimony also.

It does seem to me that under the traditions of the House, when another Member is mentioned, that perhaps sometime today they might be permitted a few moments to speak for themselves and then perhaps come back in their fair place in line. I commend that to the members of the committee as possibly not by the book but a commonsense and reasonable approach.

Mr. Mikva. If I still have the floor, I think we are going to have to recess shortly for the vote. I would like to ask a couple of substantive questions.

I will describe the situation in my town of Evanston, where an elected school board, reacting to a de facto situation (there has never been any suggestion there was any de jure segregation) decided to turn what had theretofore been an all black school into a laboratory school to which pupils would come based on need and desire. The board also reassigned the rest of the school district so that every one of the schools which had theretofore been all white now are integrated, and pupils are bused. Many of the kids now riding school buses weren't before.

One of the reasons, and probably the main reason was that the Evanston school board, an elected board, decided they wanted integrated schools. Those board members stood for reelection and some of them were defeated, others were reelected. The people of Evanston overall support their elected representatives on the school board and this is the way they want to run the school system.

As I read your proposed constitutional amendment, if it were to be adopted, Evanston would be forced to resegregate the schools. Would you tell me why I am wrong?

Mr. Lent. I would say any youngster who felt himself aggrieved by the busing scheme in Evanston would have a valid complaint under this proposal if he could demonstrate that he was in fact being assigned on a racial basis.

Mr. Mikva. That is correct. So Evanston would have to undo its desegregation plan and go back to segregation.

Mr. Lent. I don't think Evanston as a whole would have to undo it but any youngsters who didn't want to go to this school, who wanted to insist on his right, would have that ability.

Mr. Mikva. Then I don't understand that. You say any individual child would be free. But won't the action of the Evanston School Board in assigning these kids on the basis I just described be unconstitutional if your amendment was adopted?

Mr. Lent. If they did it solely on racial basis. If there were other considerations that could justify it——

Mr. Mikva. So anyone could enjoin them from continuing school assignments on that basis, is that correct?

Mr. Lent. That would be my understanding.

Mr. Mikva. That would apply to every school district in which a desegregation order has been entered since 1954 if, in fact, the original desegregation order assigned pupils on the basis of race. Since that is the constant of the assignment, and it happens every year, all of those districts could be resegregated if your amendment were adopted. Is that correct?

Mr. Lent. No.

Mr. Mikva. Why not?

Mr. Lent. In the first place, it is a well-known and recognized principle of the statutory construction that the statutes do not operate retroactively unless they specifically say they do act retroactively.

Mr. Mikva. This isn't a statute. This is the Constitution. Let's get this clear. Are you suggesting that a constitutional amendment has no retroactive effect?

Mr. Lent. I will try to find my authority. That is a good question.

Mr. McClory. Mr. Chairman, I think the second bell has rung and there is a rollcall vote on the floor. I do have some questions and I would suggest that we recess for 10 or 15 minutes so we can all vote on the pending measure and then return.

Chairman Celler. The committee will be in recess for 15 minutes so the Members can attend a rollcall.

(Brief recess.)

Chairman Celler. The hearing will resume. We are sorry that we had interruptions, but you understand.

Mr. Mikva, I think you had some questions.

Mr. Mikva. Yes; we were talking, Mr. Lent, about what impact your amendment would have on districts which have desegregated by assigning pupils on the basis of race. You were saying that it would not have any retroactive effect.

Mr. Lent. That is correct. Of course, *Brown* against the *Board of Education*, which is our landmark case in this field, did first lay down, before my constitutional amendment even came into consideration, the basic principle that children may not be assigned to a school on the basis of race either for the purpose of segregation or for the purpose of integration.

On the question of retroactivity, in the area of statutory construction, the general rule is found in Second Sutherland Statutory Construction. (Third ed.)

Mr. Mikva. What statute are you talking about?

Mr. Lent. Since legislative intent is so important and since this retroactivity question has arisen, I have researched it and have here the fruits of that research as given to me by the Library of Congress Congressional Research Service; so perhaps if I read this statement in, it will adequately answer your point:

> In the area of statutory construction, the general rule is that "a law will not be construed as retroactive unless the Act clearly by express language or necessary implication, indicates that the legislature intended a retroactive application."

And this is in Second Sutherland Statutory Construction, Third Edition.

This noted, scholarly authority takes the view that a similar rule applies both to constitutional construction and statutory construction. Thus, Prof. Thomas F. Cooley states that:

> A constitution should operate prospectively only, unless the words employed show a clear intention that it should have a retrospective effect. This is the rule in regard to statutes, and it is one of such obvious convenience and justice, that it must always be adhered to in the construction of statutes, unless in cases where there is something on the face of the enactment putting it beyond doubt that the legislature meant it to operate retrospectively. Retrospective legislation, except when designed to cure normal defects or otherwise operate remedially, is commonly-objectionable in principle, and apt to result in injustice; and it is a sound rule of construction which refuses lightly to imply an intent to enact it. We are aware of no reasons applicable to ordinary legislation which do not, upon this point, apply equally well to constitutions.

And that is from Cooley, who is the outstanding constitutional authority, in his work "A Treatise on the Constitutional Limitations, "Seventh Edition, page 97.

Mr. MIKVA. Maybe we are disagreeing about the meaning of the word retroactive. Let me be very specific. The 13th amendment was retroactive. The fact that a slavery relationship had existed prior to adoption of the 13th amendment did not keep it from being unvalidated as a result of the 13th amendment. Correct?

Mr. LENT. Yes.

Mr. MIKVA. That is the sense in which I was using the word retroactive. Let's apply that same principle to House Joint Resolution 620. Every year students are assigned or required to attend a particular public school. Now in a large number of school districts, particularly in the South, they have been assigned as a result of *Brown* v. *Board of Education*, and other cases implementing the *Brown* decision. They have been assigned on the basis of race in order to desegregate the school system where the court found de jure segregation. Is there any dispute about that fact?

Mr. LENT. Yes.

Mr. MIKVA. Then what did the courts do in those cases?

Mr. LENT. *Brown*, in the "all deliberate speed" ruling, second *Brown* case, 349 U.S. 244, pages 300, 301, said to the school board:

> To that end you may consider problems related to administration arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis.

Mr. MIKVA. Let me stop you there.

Mr. LENT. So you are presupposing that the *Brown* decision, and every case since the *Brown* decision, uses race as a criterion and that this amendment is somehow going to roll back all of that. I am saying to you that this isn't so.

Mr. MIKVA. Then let me ask you what is the need for your amendment? Isn't it that some court decisions have come down which have assigned pupils on the basis of race?

Mr. LENT. Right. Not a decision that came down for 12 years after *Brown* because all of those decisions, and this is in my opening statement, all those decisions never varied from the *Brown* rule that it was wrong to take race into consideration. And where it had been taken into consideration you had to dismantle the school system and it had to be put back together again with all deliberate speed into compact units on a nonracial basis until we get into those cases which are *Swann* against the *Board of Education*, and that bunch, which are very recent, including the *Charlotte-Mecklenburg* case, where the court said, in order to really do a good job of restructuring these school districts, we are now going to come full circle from *Brown* and we are going to use race as one of our tools, and we are going to use busing as one of our tools to achieve an integration, and what I am saying is that his amendment would roll back *Swann* but not *Brown* or any of the cases along the *Brown* line.

Mr. MIKVA. You were out of the room when Father Hesburgh testified, but there is a long appendix submitted by the U.S. Commission on Civil Rights that was made a part of the record. I would commend it to you and perhaps we can at least find out how many school districts would be affected by your amendment if adopted.

According to the Commission on Civil Rights, just about every desegregation plan, whether as a result of court order or of voluntary action on the part of a local school board, would be affected because, in most instances, those students are being assigned on the basis of race. This was a question my colleague from Indiana was asking you about this morning. They are being assigned sometimes to undo the prior de jure assignments because of race, creed, or color. The new assignment is based on race, creed, or color.

In other words, if they were going to an all white school and they are all whites, the court orders have assigned some of them to mixed schools based on some being white and some being black. Is there any doubt that your amendment, if adopted, would roll those plans back?

Mr. LENT. There certainly is. There certainly is a doubt. Any case where a dual school district was restructured by a court acting under *Brown* and restructured according to the rule of *Brown* on a compact and nonracial basis would not be touched by this decision. It is only where the court or the school board affirmatively used race that there might be trouble. The youngster who felt himself aggrieved by a racial order just as little Miss Brown felt herself aggrieved by a racial order, could go into court under this amendment, and say, "I want to be sent to the neighborhood school. I don't want to be assigned on the basis of my skin color." And if she could demonstrate to the satisfaction of the court that her skin color played a role in her school assignment, then I think the court would make the same kind of a ruling as they made in the *Brown* decision.

Mr. MIKVA. Which would strike down the entire plan of assignment for all students, not just for little Miss Brown.

Mr. LENT. Well, which would strike down the plan of assignment insofar as racial factors were considered.

Mr. MIKVA. I don't want to monopolize the questioning but could you, Mr. Lent, for the purposes of at least knowing what the parameters of our disagreement are, submit to this committee an estimate, in your opinion, of the number of school districts that would be affected if your amendment were adopted. State as many districts as you can, because as I indicated, the Civil Rights Commission suggests in their appendix, if not in Father Hesburgh's testimony, that just about every school district that is engaged in desegregation since *Brown* v. *Board of Education* would be affected adversely by your amendment.

You did agree that my town would be adversely affected by your amendment and I think that would be true of most of the other plans of desegregation that I know of. I would like to know what your opinion is of the full impact of your amendment. Would you submit such a list?

Mr. LENT. I don't know that I have the resources, Mr. Mikva, at my disposal to make such a monumental study of all of the school districts where this has taken place.

Regarding Dr. Hesburgh's statement, I did catch the very end of his statement and I could not agree with what I heard more because he said:

> I don't want any child bused into a bad school but if a kid gets a chance to go to a better school, this is good.

I heard Father Hesburgh say that and I think that is the best argument for my amendment that I have heard, because open enrollment, a voluntary transfer is OK. Nothing in this proposal would stop that. What I am objecting to and what many mothers and fathers object to is precisely what Father Hesburgh alluded to, forced busing of a child away from a neighborhood school he is happy with. It may not be the greatest school in the world, but it is his neighbrohood school. His friends go there, his mether is in the PTA there, his brothers and sisters go there. And he is suddenly confronted with a busing edict which says to him, "You have to go to a school in the core of a city 25 miles away."

And it may not be to his liking and he is being bused on the basis of his race. So Father Hesburgh and I are on all fours as far as that is concerned. I didn't hear Father Hesburgh talk about Charlotte-Mecklenburg, but there are two people in this audience who have spoken to me, who are on the school board, and they said to me that what Father Hesburgh reported to you about happiness with busing in Charlotte-Mecklenburg does not square with the facts as they know them.

Mr. MIKVA. I was not talking about Father Hesburgh's testimony, I was talking about his statement about the number of school districts that were affected by the proposed amendment embodied in H.J. Res. 620. What I suggest is, could you at least go through the document that was filed with this committee as a part of the appendix to the testimony of Father Hesburgh and tell us where you disagree with the position taken by the Civil Rights Commission in terms of a number of districts that will be affected?

If we are not to turn this into a charade or farce, this is something clearly we ought to know, the people out to know, and our colleagues ought to know.

Will this amendment have an impact on all of the decisions that have come down since *Brown?* How many school districts will be affected by your amendment? You have agreed it would affect the one in my district. That is something the people in my district would like to know, and I would like to know. I would like to know also how many other districts would be affected. I am not asking you to do a monumental research job, but will you go through the findings of the Commission and tell us in writing, or in testimony, if you choose to come back, where you think their analysis of the impact of your amendment is wrong. As I understand their study it is that just about every desegregation order that has been entered since 1954 would be affected by your amendment.

If that is not so we would like to know the reason for dispute.

Mr. LENT. I don't want to imply that I am going to do some research job that I don't have the wherewithal or research staff to do. Someone would have to go back to every little school district and over 3,000 of them in the country, and every school district where some busing order had taken place, and there are many of them in New York State alone, and try to find out what the facts were and what the considerations were and I suppose there would be different stories for each case.

I am not going to do what the Civil Rights Commission has done, just come up with some claim that every civil rights decision that was made or every busing order that was issued since 1954 is going to be uprooted by this constitutional amendment. Father Hesburgh is opposed to this amendment and he is entitled to paint as dark a picture of the amendment as it is possible for him to paint. I am telling you right here——

Mr. MIKVA. Now Mr. Lent, so far all you have told us is that they are wrong, but I would like to know how you describe the impact of your amendment in specifics. Which districts would be affected and which would not.

Mr. MCCLORY. If the gentleman would yield——

Mr. MIKVA. I will yield in a moment. A lot of people would like to know specifically.

Mr. MCCLORY. Mr. Chairman, the last inquiry lasted 40 minutes and I want to ask about 5 minutes' worth of questions if I may, at some appropriate time.

Chairman CELLER. Are you finished, Mr. Mikva?

Mr. McClory.

Mr. MCCLORY. Let me say every lawyer on this committee knows that a constitutional amendment would apply generally throughout the country and would affect every school district in the country. I would like to comment on the gentleman's testimony which he has given here today as being very constructive, very valuable, and helpful. He has done a good research job of analyzing the decisions and of presenting the problem and presenting one solution as he sees it and has directed himself specifically to the subject which is before this subcommittee.

If there is anything that is emotional or inflammatory or prejudicial in this area, it seems to me it was exemplified by the highly inflammatory statement of the prior witness who tried to persuade this committee by quoting Medgar Evers as saying his recollection of busing was when a bus of white children went by and shouted "Nigger, Nigger" at him. I am not going to be persuaded by that kind of testimony before this committee, and I compliment the gentleman for not trying to appeal to any of our emotional instincts.

There are several practical questions which it seems to me present themselves directly to us. One very practical question is this: Do you think that if this committee reported a constitutional amendment, that it would stand a chance of being ratified by the States? Or, are we going through some kind of exercise here which is, in my opinion, tending to polarize the country and does excite the emotions and raises the question whether or not we are focusing too much attention on this kind of a constitutional change.

Mr. LENT. I think that the chances for passage of such a constitutional amendment would be very good. Take my own State of New York, which is perhaps the most liberal State in the Union, where my antibusing bill passed both houses of the legislature by very substantial margins, with bipartisan support, I might add.

I think people through the country are concerned about these busing orders and there is general upset with the scope of some of them.

Mr. MCCLORY. You have commented at length on the *Swann* case, which appears to be the case that is most upsetting to those that adhere to the neighborhood school plan. The board of education plans for the junior high schools and the high schools in Charlotte were acceptable to the court. The only plan that was revised by the Court was the one affecting the grammar schools, as I understand it. Would you restrict a duly elected school board from working on a desegregation plan such as was worked out there?

Mr. LENT. I don't think that any arm of government of the State should get into the business of classifying people on the basis of their race, color, or creed. I think we must maintain a distinction in our minds.

Mr. MCCLORY. But the constitutional amendment is directed as an effort, is it not, to overrule the decisions of the courts and to substitute a constitutional change for the court decisions? So it is really the court rulings that you are directing your thrust toward, is it not, and not the voluntary actions of school boards or even actions of school boards, in fact, required by the 14th amendment?

Mr. LENT. That is correct.

Mr. MCCLORY. The following line of questioning my colleague, Congressman Hutchinson, intended to propound. He is an outstanding constitutional lawyer, may I say, and I want you to give very thoughtful attention to these questions. Is it not true that your proposed amendment to the Constitution would alter or amend or modify the 14th amendment?

Mr. LENT. The 14th amendment, the equal protection clause of the 14th amendment which I think Mr. Hutchinson is referring to, was held in the *Brown* decision to require that school district attendance lines be drawn on a nonracial basis. That was the limit of the holding in *Brown* insofar as the 14th amendment is concerned. In the *Swann* versus *Charlotte-Mecklenburg* case, on the other hand, the Court held that the same 14th amendment requires that the State must, on the basis of a child's race, designate where he is to attend public school. It has been said very often that the 14th amendment or any provision of the Constitution means exactly what the Supreme Court says it means. In *Swann*, the Court held that color should be taken into consideration in school assignments under the 14th amendment.

I think that decision is wrong but that is what the Court has held. The purport of my amendment is to get the Supreme Court to interpret the 14th amendment in conjunction with this House Joint Resolution 620.

Mr. McClory. That would not alter the effect of the 14th amendment as interpreted by the Supreme Court?

Mr. Lent. Yes; it would. In the *Swann* case——

Mr. McClory. In addition, you have provided in your amendment that the Congress shall have power to enforce by appropriate legislation the provisions of this article. In other words, the Congress by legislation can interpret your amendment, is that not correct?

Mr. Lent. Congress can spell out in detail much the same as is done with many amendments, including the 15th amendment, and the 14th amendment, and the first amendment and second amendment, exactly what is meant.

Mr. McClory. All right.

Now, the 14th amendment also provides that same authority, does it not? If it does, why is not the Congress authorized to interpret the 14th amendment in the same way that it could interpret your proposed amendment and accomplish the same objective?

Mr. Lent. Congress tried this. This is why I am going the constitutional amendment route. Congress tried this in the Civil Rights Act of 1964, section 2003(c), when they spelled out what desegregation would mean and they were very clear in stating that it would not include the assignment of youngsters to schools on the basis of their skin color. In the *Charlotte-Mecklenburg* case the courts said, in effect, our equity jurisdiction to right this wrong is so great that we don't have to pay attention to that section. It does not limit our equitable powers to remedy a wrong and, therefore, we are going to assign youngsters on the basis of race. That section of the law enacted by Congress to the contrary notwithstanding. And this is why I feel that we need a constitutional amendment instead of another statute. I went the statutory route as a State legislator in New York. We had a statute on the books for two and a half years that said the same thing as this amendment. The New York law said you could not assign youngsters on the basis of skin color. And the courts said that law was violative of the 14th amendment. So, therefore, in order to somehow influence the Supreme Court to get back on the track of the *Brown* decision, we would pass this amendment which would clarify exactly the 14th amendment and restate the rule of *Brown*.

Mr. McClory. What we said in the 1964 act was this:

"Nothing herein shall empower any official or court of the United States to issue any orders seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another."

Now, certainly one reason why we did not enlarge court jurisdiction is because under the 14th amendment the courts already had that authority and already had been exercising that authority, isn't that true?

Mr. Lent. That section is in the civil rights law of 1964 but there are other sections. Section 2000(c), which defines desegregation, in title IV says, "Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, or creed."

This is exactly what my amendment says. In a way, you might say that the amendment language was plagiarized from the civil rights law of 1964. It follows it so closely.

Mr. McClory. An objection to transportation of students may have validity when the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process. So said the Supreme Court.

If we wanted to impose time or distance limitations with regard to school busing, we could follow the legislative route instead of the constitutional route in that respect, could we not?

Mr. Lent. I wish I could say yes. And it may be that ultimately the Congress will accept some statutory modification and hope for the best. The only thing I can say is that New York State tried it. North Carolina tried it. The Congress tried it in the Civil Rights Law of 1964 and the courts are still ordering busing on the basis of race.

Mr. McClory. You stated, Mr. Lent, in the course of your testimony that you favor integration and also that you favor school desegregation. But in view of demographic changes that are occurring, how are we going to achieve desegregation and achieve integration if we don't authorize or at least permit the courts to order busing?

It is going to get worse. It is going to get more segregated, is it not?

Mr. Lent. I think that history has shown in places like St. Louis, New York, and Washington, D.C., that these efforts, noble though they may be to integrate these school systems, actually result in resegregation as the end result after a period of time, and social scientists can almost calculate that period of time. The result is much worse segregation than existed before.

I think we should remember the distinction between what is required by the Constitution and what may be desirable as a matter of social policy. What is unconstitutional is not the clustering together of people, whether that be voluntary or as a result of the working of personal social factors, but the forced separation by the State of people along racial or ethnic or religious lines or invidious discrimination imposed upon people by the State on the basis of their differences in social, economic, and political conditions.

Mr. McClory. You would favor a comprehensive program which included greatly expanded employment opportunity, much greater opportunities for housing in suburban or white neighborhoods, coupled with a school program which resulted in desegregation? Is that correct?

Mr. Lent. That is substantially correct, and as I pointed out in the footnote, the last page of my prepared testimony, I cited a number of statutes in the fields of housing, mortgage financing, equal employment, public accommodations—where the thrust of all of our civil rights laws is that we should be colorblind and we should not discriminate against people on the basis of their skin color. The only place that I am aware of where color is used affirmatively for forcing integration is in the field of education. And I say if we are going to go this route, then we ought to go it all the way and we should have forced housing and forced employment as well.

Mr. McClory. Is it not true that the Supreme Court, either on appeal of the *Richmond* case or on some other school desegregation case, could clarify whatever portions of the *Swann* case are objectionable to you and thereby obviate the need for this constitutional change?

Mr. Lent. This is something that we would hope for, that there would be clarification from the Court which would be forthcoming.

Mr. McClory. I would like you to give thoughtful consideration to appropriate legislation in order to give the Court a further opportunity to clarify this subject as a possible resolution of this extremely difficult problem. Again, I want to compliment you, and I think it would be wise for you when you want a hearing before this committee on any matter to communicate with all of the members. I never heard about your desire to be heard until after the discharge petition was on the Speaker's desk and there was a number of signatures on it and I was getting letters from people asking me to discharge my committee on a bill that I didn't even know was pending with any request for hearing. So, I feel very jealous of the prerogatives of this committee, and I can assure you that you are going to get a full and fair hearing. The witnesses that want to be heard, I know we will try to accommodate a great many of them, although I understand they number more than a hundred and there must be some limitation on witnesses. I might say further that I am sure the chairman would receive any written statement that anyone chooses to forward to the committee for purposes of our consideration and for purposes of the record.

Thank you very much, Mr. Chairman.

Chairman Celler. Counsel wishes to ask questions.

Mr. Polk. Mr. Lent, I am confused as to what your position is on a couple of points.

If House Joint Resolution 620 is ratified and becomes the law of the land, and if then a school board were to make racial assignments, could a Federal court provide a remedy for that violation?

Mr. Lent. If any youngster felt that he was being assigned to a school on the basis of a racial classification, he could go to court under this amendment just as Little Miss Brown did in 1954, and have that racial classification overturned.

Mr. Polk. Then if the school board has assigned children on the basis of race clear across town, I take it that the Federal court could unassign those children?

Mr. Lent. If the Federal court found that the assignment across town was based on a racial reason rather than the reason of overcrowdedness in the neighborhood school, or something else, they could order the school board to go back just as the *Brown* Court did in 1954 and tell the local school board to draw some new lines with all deliberate speed and not to do it on a racial basis. To do it, instead, on the basis of convenience of the kids and the best educational opportunity.

Mr. Polk. So under your amendment, the Federal court would have the power in the appropriate case to order the unassignment, as it were, of children who were originally assigned on the basis of race?

Mr. Lent. Exactly as in the *Brown* decision, yes.

Mr. Polk. Whenever the Federal court would make such an order, won't it be color conscious?

Mr. Lent. The court would be color conscious to the extent of determining whether the assignment of the pupil had been on the basis of color, certainly.

Mr. Polk. And also in drafting the order to unassign them?

Mr. Lent. They would do what the Court said in drafting its order in the *Brown* decision, which was to order the school board to create a system of attendance areas in compact units on a nonracial basis, with all deliberate speed. That is the ruling in the *Brown* decision.

Mr. Polk. Let me ask another question: If 2 years or so had intervened between the order of the school board assigning the children across town on the basis of race and the lawsuit in the Federal court, and if in that 2-year period some of the children who had been assigned across town on the basis of race had their parents move with them across town, would the Federal court, in unassigning the children, require that the children be bused across town so that they could be unassigned?

Mr. Lent. Certainly not.

Mr. Polk. There would be no remedy for the constitutional violation?

Mr. Lent. No, the remedy would be to "unbus" the children, to stop assigning them on the basis of their skin color.

Mr. Polk. In my hypothetical, the children were assigned across town on the basis of race. Then they and their parents moved into the area of the school to which they were assigned.

Mr. Lent. That is what happened to Little Miss Brown. She was assigned across town and sent to an all-black school, and the court said Topeka, Kans., was wrong in having a statute on the books that permitted this. They struck the statute down and ordered the school board to redraw the lines on a basis other than race. What you are saying is that this family moved to the other side of town in the meanwhile and now are attending their neighborhood school.

Mr. Polk. Yes, but on the basis of race.

Mr. Lent. If the family liked going to that school, then they would not go into court and seek to undo the decision.

Mr. Polk. What if the plaintiff were a white parent who did not want blacks or whites assigned to his school on the basis of race, and said, "These blacks were bused across town into this school on the basis of race, and I demand under House Joint Resolution 620 that they be sent back." Would busing result under House Joint Resolution 620?

Mr. Lent. The white parent would not have a cause of action under this amendment. The person who would have a cause of action under this amendment would be the aggrieved child, who felt that he was assigned because of his skin color. The amendment speaks in the terms of the child. No pupil shall be assigned to any school on the basis of race, color, or creed. The only one who could object to such a plan would be that pupil who felt himself inconvenienced or aggrieved by the busing plan and could prove a case that he was sent to the other school because of his skin color.

Mr. Polk. If that is so, what you are trying to do is not only change the law on desegregation but the law on standing. If whites can bring a desegregation suit today, I would think they could sue under House Joint Resolution 620 as well.

In my hypothetical, suppose that the racial assignment by the school board had occurred before House Joint Resolution 620 became law. Could an aggrieved party bring a lawsuit after the adoption of the constitutional amendment because of the racial assignment which had occurred previously?

Mr. Lent. Well, I would think that he could if he felt it was a continuing violation of his rights, yes. He could also bring a cause of action on the basis of the due process clause or the equal protection clause of the Constitution.

Mr. Polk. As I read many of the court decisions today, they aren't saying anything different from what you have said. Basically, they are saying that they are unassigning children who were previously assigned to particular schools on the basis of race. The question presented is, Do you have any particular or special meaning to the word "assignment"?

If you do not, I don't see how House Joint Resolution 620 would change what courts are doing now.

Mr. Lent. The word "assignment," of course, implies some official action. I got in this discussion with Congressman Jacobs before about whether a child who wanted to go to a school could, under that amendment, if his motives were racially inspired, and I tried to indicate that the word "assignment" implies official action in that case, and he could not be required to be assigned to a distant school on the basis of his race. If he wanted to be assigned to a distant school and there was a program in that school district which permitted it, then his rights would not be violated. I may not have answered your quesstion. Perhaps if you repeat it.

Mr. Polk. To repeat, as I read many Federal court decisions today, they are simply unassigning children who were previously assigned to given schools on the basis of their race. And, on the basis of your testimony, I understand that under your amendment, the Federal courts would be empowered to provide a remedy which would unassign the racially assigned.

Mr. Lent. The reasoning that the courts have adopted in the *Swann* v. *Charlotte-Mecklenburg* case, as distinct from the *Brown* decision, is to say that the 14th amendment requires that the school district or the official body in charge must, on the basis of a child's race or color, designate where he is to attend a public school. *Swann* ordered long-distance busing: not just "unassigning". Indeed, we have come full circle from the original *Brown* decision which said pupil assignments must be made regardless of race, to the point where today the Supreme Court has said assignment now must be because of race or on the basis of race, and the objective seems to be not to protect the child's right against being victimized by a racial classification, but to achieve a social panacea: namely, integration, something we all agree is a social good. The only place we disagree is whether the Government ought to get into the business of forcing integration through busing.

Mr. Polk. If I may, I would like to pose a slightly different question. Under House Joint Resolution 620, there is no prohibition as to assignments of schoolchildren by chance or at random, is that correct?

Mr. Lent. That is correct.

Mr. Polk. I think in your statement you have indicated that you did not wish to return to the law of *Plessy* v. *Ferguson*, where school facilities would be equal but separate. You also indicated you were opposed to the *Swann* decision.

I am troubled in that House Joint Resolution 620 would apparently produce a result which you clearly do not advocate but would seem to allow—schools which are separate and unequal. In other words, the result would not be even as good as the promise of *Plessy* that facilities be separate and equal.

Mr. Lent. If in a given school district, the parents of children of a particular race feel that their neighborhood school is somehow being shortchanged in the scheme of things, that the school on their side of town does not have as good a library, does not have as good teachers, et cetera, they would have their cause of action to demonstrate before the courts that this was the case, that because of race or because of some other factor they were not getting their fair share of educational opportunity, and they would make out a case that way.

I think that that would be a good thing, and that type of proceeding should be brought in order to upgrade the schools and put them all on a par no matter where those schools might be situated. But I think it is self-defeating to take a young black, a youngster, who comes out of a culturally deprived home who has never had a story read to him, who has never held a crayon in his hands, who has never visited the zoo, and put that youngster on a bus and send him 25 miles across town to a distant school where he is going to sit next to a white youngster, and then bus him back again in the afternoon. This is self-defeating and it is objectionable to many black people who feel that this is an arrogant and condescending viewpoint foisted upon them by the white liberal community, and this is why I put in a pitch to this committee to let the Congress of Racial Equality (CORE) testify here. They represent a substantial segment of the black community, particularly in New York State, and they feel exactly the same way I do.

Mr. JACOBS. Mr. Lent, you alluded to our exchange earlier. In order to allow a child to pick out another school and be successfully enrolled there or assigned there by the school system, do you think perhaps your resolution should read: "No public school student shall without his agreement or without his consent, or against his will," or something like that? Don't you think it should read that way?

Mr. LENT. Mr. Jacobs, if I could be assured of your support for this amendment, I would be perfectly willing to amend it to read: "No public school student shall, because of his race, creed, or color, be required to be"—insert three words—"required to be" assigned to or required to attend a particular school. If that would clarify the matter for you, and get you over this difficulty, then I would be the first to urge that the committee in their wisdom add those three little words "required to be" in front of the word "assigned" and that might ameliorate the difficulty.

Chairman CELLER. Mr. Lent, you made the suggestion that we invite CORE to testify. It might be interesting to you to know that we have already done so.

Mr. LENT. Terrific.

Chairman CELLER. I will ask you one or two questions.

We have asked the Department of Health, Education, and Welfare and the Department of Justice to express their views on the question of a proposed constitutional amendment. We have not as yet received those views. Do you not think that it is advisable for us to pause until we receive the views of the administration on this very important matter?

Mr. LENT. I would certainly think those views would be important, Mr. Chairman.

Chairman CELLER. You always seem to imply that it would be very easy for the constitutional amendment to be ratified by the States. You spoke of what you deemed to be the ease with which it could be ratified by my State and your State, the State of New York. Have you in mind the dismal defeat of the school bonds issue that was decisively defeated recently by a plebiscite in New York State?

Mr. LENT. Will you name the plebiscite?

Chairman CELLER. There was defeated recently a very substantial financial bond issue.

Mr. LENT. For transportation? Was it $2.5 billion for transportation?

Chairman CELLER. For schools. It was a school finance issue.

Mr. LENT. Mr. Chairman, we have not had——

Chairman CELLER. It was a bond issue, and that was very decisively defeated.

Mr. LENT. I don't know what the chairman is referring to. We do not raise money for schools statewide by bond issues. You may be referring to a bond proposal that was put up in a particular school district, but we have not had any statewide bond issues for schools. For transportation, for nursing homes, for hospitals, but not for schools.

Chairman CELLER. Yes, I think schools were included. However, may I ask you this: Very influential Members of the other body have come out against the constitutional amendment. They are the majority and minority leaders, as a matter of fact, of the other body. Now, would that not militate against the success of the constitutional amendment in the other body?

Mr. LENT. Of course, I think the last thing that we, as the House of Representatives should do, would be to legislate or refuse to legislate on the basis of what the other body might or might not do. We have never done that before, and I would hate to see us do it now.

Chairman CELLER. We can't fail to realize what the other body may do, and if the majority leader and minority leader of the other body have emphatically opposed a constitutional amendment, to that degree it is going to make it difficult for that body to pass any constitutional amendment.

Mr. POLK. One final question: I believe somewhere in your statement you indicated that Congress had tried the legislative approach before and had failed with regard to this busing issue. I was wondering if you had reference to any provision other than title IV of the 1964 Civil Rights Act?

Mr. LENT. No.

Mr. POLK. The language that I think you referred to is as follows: "Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another." Is that the language you were referring to?

Mr. LENT. No. I was referring to section 2000.

Mr. POLK. That act is not codified; so all I have is the act itself.

Mr. LENT. Look at B.

Mr. POLK. What did Congress say about the ——

Mr. LENT. When you say it is not operative, that is what the Court said, and that is why I say statutory corrections of the situation have not proven to be very helpful because the Court says that section is not operative. The Congress spoke. They defined what they think desegregation means, but the courts want to go their route.

Mr. POLK. But no definition is ever operative in itself. We have to look at the statutory phrasing and see how the words are used. It says that, "Nothing herein shall empower * * * ." The statute doesn't say that busing is prohibited, does it?

Mr. LENT. No, that section doesn't. But "desegregation," which expresses the intent of Congress pure and simple as of that day 1964, was the "desegregation" shall not involve the "assignment of children to public schools on the basis of their race, color, or creed." The Supreme Court looked at that statute and said exactly what you said, that it is not operative. It may not interfere with our equitable powers to order busing on a racial basis. This was discussed very thoroughly in the *Swann* v. *Charlotte-Mecklenburg* case where they passed over that expression of statutory intent.

In closing, and I assume we are getting near the end, let me just say that if this committee in its wisdom can come up with language by statue or through some other means to correct my constitutional amendment, since you have far greater legal talent at your disposal than I do, I will be the first to support it, provided it accomplishes the purposes which are involved in my amendment as proposed. And I wish you well in your struggle because you will find, as I did, that it is difficult to try to find language that will be acceptable to everyone, which people will not pick at and try to tear apart and some of the criticism is not always constructive, to say the least.

Mr. POLK. Thank you, Mr. Lent.

Mr. HUNGATE. Mr. Chairman——

Chairman CELLER. I will ask you to be brief because it is 4 o'clock and Mr. Lent has been very patient and he has answered the questions with great facility and showing a great knowledge of the subject.

Mr. HUNGATE. It is against my nature to be brief, Mr. Chairman. Thanks. I would like to express some sympathy with the position which the witness takes regarding the statutory provisions in the 1964 Civil Rights Act we have just been discussing. This morning I quoted some of the legislative debates but I don't believe you were here at that time, Mr. Lent. During the Senate debate on the 1964 act, Senator Byrd of West Virginia asked Senator Humphrey, who was floor manager of the bill, if he would give an assurance that schoolchildren would not have to be bused across town "to relieve so-called racial imbalance in the schools." Senator Humphrey said he would give such an assurance. Senator Humphrey said: "The fact that there is a racial imbalance per se is not something which is unconstitutional." This legislative dialog was quoted by the fifth circuit court of appeals in *United States* v. *Jefferson County Board of Education*, decided in 1966.

Is this the reason you believe that existing statutory language contained in the 1964 act is not adequate, Mr. Lent?

Mr. LENT. I had not read that colloquy in the record. My concern with the question of a statute not working and my rationale is set forth as best I can express it in my statement under the subject "Why A Constitutional Amendment?" And basically what I am saying is we have tried the statutory route before. New York State tried it. North Carolina tried it. A bevy of other States tried it.

Congress tried it in the civil rights law and it has not changed anything. We still have these decisions.

Mr. HUNGATE. Yes, sir. I think we would agree that if the problem could be reached statutorily, that would be a quicker remedy not requiring three-fourths of the States for ratification. If it were possible to reach it statutorily rather than through a constitutional amendment, would you favor such a procedure?

Mr. LENT. I would.

Mr. HUNGATE. Thank you.

Speaking of statutes, don't you find running through the cases a great deal of reference and perhaps deference to HEW guidelines? Don't you find that the courts adopt more or less HEW guidelines and that is where we find ourselves in some of these busing situations?

Mr. LENT. I am not really up on the HEW guidelines.

Mr. HUNGATE. The point is, if that is true, then might it be possible through statutory action to restrict the power of HEW in the drafting of guidelines?

Mr. LENT. I don't think that we would really be getting at the heart of the problem. We would just be sniping around the circumference of it. The heart of the problem is that Government is classifying children by race and then sending them to schools. And if we can somehow stop that, then I think we have gotten right to the heart of it without horsing around with HEW, which is like a sponge: Push it in one place and it comes out over here.

Mr. HUNGATE. Would you agree that courts frequently refer to title VI of the 1964 Civil Rights Act and that that act might be amended by statute?

Mr. LENT. This is possible. I am satisfied with the language in title IV of the Civil Rights Act, section 2000 right now. The only problem with it is the courts say it does not have the status of the 14th amendment, and the 14th amendment mandates, so the courts said in *Swann*, taking race into consideration and busing, and therefore we are in the dilemma of having to come up with something that the Supreme Court will look at and pay attention to, and the only thing they seem to honor is something having the status of the Constitution.

Mr. HUNGATE. Would you think a good bit of the problem could be dealt with by action of the Attorney General under section 407(a) of title IV of the Civil Rights Act?

Mr. LENT. I understand that he has intervened in a number of these cases without any appreciable success.

Mr. HUNGATE. I am saying he may not have to intervene nor institute school desegregation suits because the statute confers discretion on the Attorney General. Don't you think he may not have to bring some of the lawsuits to compel forced busing? Wouldn't that forbearance be a quicker remedy than either a statute or constitutional amendment?

Mr. LENT. I would rather not answer that because I really don't know that much about that particular subject.

Mr. HUNGATE. As you know title VI of the 1964 Act is the basic authority for HEW school desegregation guidelines. Those guidelines are often referred to in courts' opinions. Section 601 of Title VI in part reads:

> No such rule or regulation or order shall become effective unless and until approved by the President.

Do you think that the President thereby would have discretion to disapprove some of these orders and regulations which are found repugnant?

Mr. LENT. No. I don't think that follows. You keep bringing up HEW and the Attorney General. I read all of these cases and I see very little of HEW and the Attorney General involvement in *Swann* v. *Mecklenburg* and these other cases.

Chairman CELLER. I wish to thank you, Mr. Lent, for your testimony, and leave you with this word of advice as a result of long, long experience in the practice of law: Some lawyers, when they find that they have a bad case on the facts, they attack the law. When they have a bad case on the law, they attack the facts. When they have a bad case on the law and the facts, they attack the judge.

Mr. LENT. Thank you, Mr. Chairman.

Mr. HUNGATE. If the Chair will grant me leave I will file some quotations from several opinions with extensive HEW references to at this point in the record.

Chairman CELLER. It will be accepted.

(The material referred to follows:)

[Excerpt from *Swann* v. *Board of Education*, 402 US 1 (1971)]

* * * * * * *

"On remand the District Court received two new plans for the elementary schools: a plan prepared by the United States Department of Health, Education, and Welfare (the HEW plan) based on contiguous grouping and zoning of schools, and a plan prepared by four members of the nine-member school board (the minority plan) achieving substantially the same results as the Finger plan but apparently with slightly less transportation."

[Excerpt from *U.S. v. Jefferson County Board of Education*, 380 F2d 385 (1967), cert. denied, 389 U.S. 840 (1967)]

* * * * * * *

"In constructing the original and revised decrees, the Court gave great weight to the 1965 and 1966 HEW Guidelines. These Guidelines establish minimum standards clearly applicable to disestablishing state-sanctioned segregation. These Guidelines and our decree are within the decisions of this Court, comply with the letter and spirit of the Civil Rights Act of 1964, and meet the requirements of the United States Constitution. Courts in this circuit should give great weight to future HEW Guidelines, when such guidelines are applicable to this circuit and are within lawful limits. We express no opinion as to the applicability of HEW Guidelines in racially imbalanced situations such as occur in some other circuits where it is contended that state action may be found in state tolerance of de facto segregation or in such action as the drawing of attendance boundaries based on a neighborhood school system.

The Court reaffirms the reversal of the judgments below and the remand of each case for entry of the decree attached to this opinion.

The mandate will issue immediately.

[Excerpt from *U.S.* v. *Jefferson County Board of Education*, 372 F2d 836 (1966)]

* * * * * * *

The great bulk of the school districts in this circuit have applied for Federal financial assistance and therefore operate under voluntary desegregation plans.[180] Approval of these plans by the Office of Education qualifies the schools for federal aid. In this opinion we have held that the HEW Guidelines now in effect are constitutional and are within the statutory authority created in the Civil Rights Act of 1964. Schools, therefore, in compliance with the Guidelines can in general be regarded as discharging constitutional obligations.

Some schools have made no move to desegregate or have had plans rejected as unsatisfactory by districts courts or the HEW. We expect the provisions of the decree to be applied in proceedings involving such schools. Other schools have earlier court-approved plans which fall short of the terms of the decree. On motion by proper parties to reopen these cases, we expect these plans to be modified to conform with our decree. In some cases the parties may challenge various aspects of HEW-approved plans. Our approval of the existing Guidelines and the difference owed to any future Guidelines is not intended to deny a day in court to any person asserting individual rights or to any school board contesting HEW action.[121] In any school desegregation case the issue concerns the constitutional rights of Negroes, individually and as a class, and the constitutional rights of the State—not the issue whether federal financial assistance should be withheld under Title VI of the Civil Rights Act of 1964.

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[180] "Although only 164 (3.4 percent) of the 4,941 school districts in the South have qualified by the court order route, these districts include most of the major cities of the South and, accordingly, a large share of the population. Court orders are a significant method of qualification particularly in Louisiana, where official resistance to compliance with Title VI has been most widespread. In Louisiana, 32 court orders have been accepted, affecting 86.5 percent of the school districts judged qualified." 1966—U.S. Comm. on Civ. Rights, Survey of School Desegregation in the Southern and Border States 46. See also Table 3 in Appendix B.

When school systems are under court-ordered desegregation, the courts are responsible for determining the sufficiency of the system's compliance with the decree. The court's task, therefore, is a continuing process, especially in major areas readily susceptible of observation and measurement, such as faculty integration and student desegregation. (1) As to faculty, we have found that school authorities have an affirmative duty to break up the historical pattern of segregated faculties, the hall-mark of the dual system. To aid the courts in its task, the decree requires the school authorities to report to the district courts the progress made toward faculty integration. The school authorities bear the burden of justifying an apparent lack of progress.[122] (2) As to students, the decree requires school authorities to make reports to the court showing by race, by school, by grade, the choices made in each "choice period." A similar report is required after schools open to show what actually happened when schools opened.

What the decree contemplates, then, is continuiag judicial evaluation of compliance by measuring the performance—not merely the promised performance—of school boards in carrying out their constitutional obligation "to disestablish dual, racially segregated school systems and to achieve substantial integration within such systems."[123] District courts may call upon HEW for assistance in determining whether a school board's performance measures up to its obligation to desegregate. If school officials in any district should find that their district still has segregated faculties and schools or only token integration, their affirmative duty to take corrective action requires them to try an alternative to a freedom of choice plan, such as a geographic attendance plan, a combination of the two, the Princeton plan,[124] or some other acceptable substitute, perhaps aided by an educational park. Freedom of choice is not a key that opens all doors to equal educational opportunities.

Given the knowledge of the educators and administrators in the Office of Education and their day to day experience with thousands of school systems, judges and school officials can ill afford to turn their backs on the proffer of advice from HEW. Or from any responsible government agency or independent group competent to work toward solution of the complex problem of de jure discrimination bequeathed this generation by ten preceding generations.

Now after twelve years of snail's pace progress toward school desegregation, courts are entering a new era. The question to be resolved in each case is: How far have formerly de jure segregated schools progressed in performing their affirmative constitutional duty to furnish equal educational opportunities to all public school children? The clock has ticked the last tick for tokenism and delay in the name of "deliberate speed."

* * * * * * *

In the suit against the Caddo Parish School Board July 19, 1965, the United States moved to intervene under § 902 of the Civil Rights Act of 1964 (42 U.S.C. § 2000h–2). The motion was filed twelve days after the Board submitted its plan in compliance with the district court's decree of June 14, 1965, but two days before the original plaintiffs filed their objections and before the court issued its order approving the plan. The district court denied the motion on the ground that it came too late. In these circumstances we consider that the motion was timely filed and should have been granted.

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[121] For an HEW approved desegregation plan held insufficient to protect constitutional rights of Negro students see Brown v. Board of Education of DeWitt School District, E.D. Ark. 1966, F. Supp. See also Thompson v. County School Board of Hanover County, E.D. Va. 966, 252 F. Supp. 546; Turner v. County School Board of Goochland County, E.D. Va. 1966, 252 F. Supp. 578.

[122] "Innumerable cases have clearly established the principle that under circumstances such as this where a history of racial discrimination exists, the burden of proof has been thrown upon the party having the power to produce the facts . . ." Chambers v. Hendersonville City Board of Education, 4 Cir. 1966, 364 F.2d 189, 192. In *Brown II*, permitting desegregation with "*deliberate* speed" the Supreme Court put the "burden . . . upon the defendants to establish that [additional] time is necessary to carry out the ruling in an effective manner", 349 U.S. at 302.

[123] U.S. Comm. on Civil Rights, Survey of School Desegregation in the Southern and Border States 1965–66, p. 54.

[124] The Princeton plan involves establishing attendance zones including more than one school and assigning students by grade rather than by residence location. Thus all of the zone's students in grades 1 through 3 would attend school A, while all students in grades 4 through 6 would attend school B. For a discussion of the plan see Fiss. Racial Imbalance in the Public Schools: The Constitutional Concepts, 78 Harv. L. Rev. 564, 573 (1965).

This Court denied the motion of certain appellants to consolidate their cases, but allowed consolidation of briefs and, in effect, treated the cases as consolidated for purposes of appeal. The Court, however, in each case has separately considered the particular contentions of all the parties in the light of the record.

The Court **REVERSES** the judgments below and **REMANDS** each case to the district court for further proceedings in accordance with this opinion.

COX, District Judge: I reserve the right to dissent in whole or in part at a later date.

Appendix A—Proposed Decree

It is **ORDERED ADJUSTED** and **DECREED** that the defendants, their agents, officers, employees and successors and all those in active concert and participation with them, be and they are permanently enjoined from discriminating on the basis of race or color in the operation of the school system. As set out more particularly in the body of the decree, they shall take affirmative action to disestablish all school segregation and to eliminate the effects of past racial discrimination in the operation of the school system:

I—SPEED OF DESEGREGATION

Commencing with the 1967–68 school year, in accordance with this decree, all grades, including kindergarten grades, shall be desegregated and pupils assigned to schools in these grades without regard to race or color.

II—EXERCISE OF CHOICE

The following provisions shall apply to all grades:

(a) *Who May Exercise Choice.* A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice is exercised for him by his parent or other adult person serving as his parent during the choice period or at such later time as the student exercises a choice. Each reference in this decree to a student's exercising a choice means the exercise of the choice, as appropriate, by a parent or such other adult, or by the student himself.

(b) *Annual Exercise of Choice.* All students, both white and Negro, shall be required to exercise a free choice of schools annually.

(c) *Choice Period.* The period for exercising choice shall commence May 1, 1967 and end June 1, 1937, and in subsequent years shall commence March 1 and end March 31 preceding the school year for which the choice is to be exercised. No student or prospective student who exercises his choice within the choice period shall be given any preference because of the time within the period when such choice was exercised.

(d) *Mandatory Exercise of Choice.* A failure to exercise a choice within the choice period shall not preclude any student from exercising a choice at any time before he commences school for the year with respect to which the choice applies, but such choice may be subordinated to the choices of students who exercised choice before the expiration of the choice period. Any student who has not exercised his choice of school within a week after school opens shall be assigned to the school nearest his home where space is available under standards for determining available space which shall be applied uniformly throughout the system.

(e) *Public Notice.* On or within a week before the date the choice period opens, the defendants shall arrange for the conspicuous publication of a notice describing the provisions of this decree in the newspaper most generally circulated in the community. The text of the notice shall be substantially similar to the text of the explanatory letter sent home to parents. (See paragraph II(e).) Publication as a legal notice will not be sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Copies of this decree shall be posted in each school in the school system and at the office of the Superintendent of Education.

(f) *Mailing of Explanatory Letters and Choice Forms.* On the first day of the choice period there shall be distributed by first-class mail an explanatory letter and a choice form to the parent (or other adult person acting as parent, if known to the defendants) of each student, together with a return envelope addressed to the Superintendent. Should the defendants satisfactorily demonstrate to the court that they are unable to comply with the requirement of distributing the explanatory letter and choice form by first-class mail, they shall propose an alternative method which will maximize individual notice, i.e., personal notice to parents by delivery to the pupil with adequate procedures to insure the delivery of the notice. The text for the explanatory letter and choice form shall essentially conform to the sample letter and choice form appended to this decree.

(g) *Extra Copies of the Explanatory Letter and Choice Form.* Extra copies of the explanatory letter and choice form shall be freely available to parents, students, prospective students, and the general public at each school in the system and at the office of the Superintendent of Education during the times of the year when such schools are usually open.

(h) *Content of Choice Form.* Each choice form shall set forth the name and location of the grades offered at each school and may require of the person exercising the choice the name, address, age of student, school and grade currently or most recently attended by the student, the school chosen, the signature of *one* parent or other adult person serving as parent, or where appropriate the signature of the student, and the identity of the person signing. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, may be required or requested, without approval of the court.

(i) *Return of Choice Form.* At the option of the person completing the choice form, the choice may be returned by mail, in person, or by messenger to any school in the school system or to the office of the Superintendent.

(j) *Choices not on Official Form.* The exercise of choice may also be made by the submission in like manner of any other writing which contains information sufficient to identify the student and indicates that he has made a choice of school.

(k) *Choice Forms Binding.* When a choice form has once been submitted and the choice period has expired, the choice is binding for the entire school year and may not be changed except in cases of parents making different choices from their children under the conditions set forth in paragraph II (a) of this decree and in exceptional cases where, absent the consideration of race, a change is educationally called for or where compelling hardship is shown by the student.

(l) *Preference in Assignment.* In assigning students to schools, no preferences shall be given to any student for prior attendance at a school and, except with the approval of court in extraordinary circumstances, no choice shall be denied for any reason other than overcrowding. In case of overcrowding at any school perference shall be given on the basis of the proximity of the school to the homes of the students choosing it, without regard to race or color. Standards for determining overcrowding shall be applied uniformly throughout the system.

(m) *Second Choice Where First Choice Is Denied.* Any student whose choice is denied must be promptly notified in writing and given his choice of any school in the school system serving his grade level where space is available. The student shall have seven days from the receipt of notice of a denial of first choice in which to exercise a second choice.

(n) *Transportation.* Where transportation is generally provided, buses must be routed to the maximum extent feasible in light of the geographic distribution of students, so as to serve each student choosing any school in the system. Every student choosing either the formerly white or the former Negro school nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules.

(o) *Officials not to Influence Choice.* At no time shall any official teacher, or employee of the school system influence any parent, or other adult person serving as a parent, or any student, in the exercise of a choice or favor or penalize any person because of a choice made. If the defendant school board employs professional guidance counselors, such persons shall base their guidance and counseling on the individual student's particular personal, academic, and vocational needs. Such guidance and counseling by teachers as well as professional guidance counselors shall be available to all students without regard to race or color.

(p) *Protection of Persons Exercising Choice.* Within their authority school officials are responsible for the protection of persons exercising rights under or otherwise affected by this decree. They shall, without delay, take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan. Such interference shall include harassment, intimidation, threats, hostile words or acts, and similar behavior. The school board shall not publish, allow, or cause to be published, the names or addresses of pupils exercising rights or otherwise affected by this decree. If officials of the school system are not able to provide sufficient protection, they shall seek whatever assistance is necessary from other appropriate officials.

III—PROSPECTIVE STUDENTS

Each prospective new student shall be required to exercise a choice of schools before or at the time of enrollment. All such students known to defendants shall be furnished a copy of the prescribed letter to parents, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Where there is no pre-registration procedure for newly entering students, copies of the choice forms shall be available at the Office of the Superintendent and at each school during the time the school is usually open.

IV—TRANSFERS

(a) *Transfers for Students.* Any student shall have the right at the beginning of a new term to transfer to any school from which he was excluded or would otherwise be excluded on account of his race or color.

(b) *Transfers for Special Needs.* Any student who requires a course of study not offered at the school to which he has been assigned may be permitted, upon his written application, at the beginning of any school term or semester, to transfer to another school which offers courses for his special needs.

(c) *Transfers to Special Classes or Schools.* If the defendants operate and maintain special classes or schools for physically handicapped, mentally retarded, or gifted children, the defendants may assign children to such schools or classes on a basis related to the function of the special class or school that is other than freedom of choice. In no event shall such assignments be made on the basis of race or color or in a manner which tends to perpetuate a dual school system based on race or color.

V—SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

No student shall be segregated or discriminated against on account of race or color in any service, facility, activity, or program (including transportation, athletics, or other extracurricular activity) that may be conducted or sponsored by or affiliated with the school in which he is enrolled. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer or newly assigned student except that such transferees shall be subject to long-standing, non-racially based rules of city, county, or state athletic associations dealing with the eligibility of transfer students for athletic contests. All school use or school-sponsored use of athletic fields, meeting rooms, and all other school related services, facilities, activities, and programs such as Commencement exercises and parent-teacher meetings which are open to persons other than enrolled students, shall be open to all persons without regard to race or color. All special educational programs conducted by the defendants shall be conducted without regard to race or color.

VI—SCHOOL EQUALIZATION

(a) *Inferior Schools.* In schools heretofore maintained for Negro students, the defendants shall take prompt steps necessary to provide physical facilities, equipment, courses of instruction, and instructional materials of quality equal to that provided in schools previously maintained for white students. Conditions of overcrowding, as determined by pupil-teacher ratios and pupil-classroom ratios shall, to the extent feasible, be distributed evenly between schools formerly maintained for Negro students and those formerly maintained for white students. If for any reason it is not feasible to improve sufficiently any school formerly maintained for Negro students, where such improvement would otherwise be required by this subparagraph, such school shall be closed as soon as possible, and students enrolled in the school shall be reassigned on the basis of freedom of choice. By October of each year, defendants shall report to the Clerk of the Court pupil-teacher ratios, pupil-classroom ratios, and per-pupil expenditures both as to operating and capital improvement costs, and shall outline the steps to be taken and the time within which they shall accomplish the equalization of such schools.

(b) *Remedial Programs.* The defendants shall provide remedial education programs which permit students attending or who have previously attended all-Negro schools to overcome past inadequacies in their education.

VII—NEW CONSTRUCTION

The defendants, to the extent consistent with the proper operation of the school system as a whole, shall locate any new school and substantially expand any existing schools with the objective of eradicating the vestiges of the dual system and of eliminating the effects of segregation.

VIII—FACULTY AND STAFF

(a) *Faculty Employment.* Race or color shall not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff members, including student teachers, except that race may be taken into account for the purpose of counteracting or correcting the effect of the segregated assignment of teachers in the dual system. Teachers, principals, and staff members shall be assigned to schools so that the faculty and staff is not composed exclusively of members of one race. Wherever possible, teachers shall be assigned so that more than one teacher of the minority race (white or Negro) shall be on a desegregated faculty. Defendants shall take positive and affirmative steps to accomplish the desegregation of their school faculties and to achieve substantial desegregation of faculties in as many of the schools as possible for the 1967–68 school year notwithstanding that teacher contracts for the 1966–67 or 1967–68 school years may have already been signed and approved. The tenure of teachers in the system shall not be used as an excuse for failure to comply with this provision. The defendants shall establish as an objective that the pattern of teacher assignment to any particular school not be identifiable as tailored for a heavy concentration of either Negro or white pupils in the school.

(b) *Dismissals.* Teachers and other professional staff members may not be discriminatorily assigned, dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race or color. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system shall be filled through recruitment from outside the system unless no such displaced staff member is qualified to fill the vacancy. If, as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifications of all staff members in the system shall be evaluated in selecting the staff member to be released without consideration of race or color. A report containing any such proposed dismissals, and the reasons therefor, shall be filed with the Clerk of the Court, serving copies upon opposing counsel, within five (5) days after such dismissal, demotion, etc., as proposed.

(c) *Past Assignment.* The defendants shall take steps to assign and reassign teachers and other professional staff members to eliminate past discriminatory patterns.

IX—REPORTS TO THE COURT

(1) *Report on Choice Period.* The defendants shall serve upon the opposing parties and file with the Clerk of the Court on or before April 15, 1967, and on or before June 15, 1967, and in each subsequent year on or before June 1, a report tabulating by race the number of choice applications and transfer applications received for enrollment in each grade in each school in the system, and the number of choices and transfers granted and the number of denials in each grade of each school. The report shall also state any reasons relied upon in denying choice and shall tabulate, by school and by race of student, the number of choices and transfers denied for each such reason.

In addition, the report shall show the percentage of pupils actually transferred or assigned from segregated grades or to schools attended predominantly by pupils of a race other than race of the applicant, for attendance during the 1966–67 school year, with comparable data for the 1965–66 school year. Such additional information shall be included in the report served upon opposing counsel and filed with the Clerk of the Court.

(2) *Report After School Opening.* The defendants shall, in addition to reports elsewhere described, serve upon opposing counsel and file with the Clerk of the Court within 15 days after the opening of schools for the fall semester of each year, a report setting forth the following information:

(i) The name, address, grade, school of choice and school of present attendance of each student who has withdrawn or requested withdrawal of his choice of school or who has transferred after the start of the school year, together with a description of any action taken by the defendants on his request and the reasons therefor.

(ii) The number of faculty vacancies, by school, that have occurred or been filled by the defendants since the order of this Court or the latest report submitted pursuant to this subparagraph. This report shall state the race of the teacher employer to fill each such vacancy and indicate whether such teacher is newly employed or was transferred from within the system. The tabulation of the number of transfers within the system shall indicate the schools from which and to which the transfers were made. The report shall also set forth number of faculty members to each race assigned to each school for the current year.

(iii) The number of students by race, in each grade of each school.

EXPLANATORY LETTER

(School System Name and Office Address)

(Date Sent)

DEAR PARENT:

All grades in our school system will be desegregated next year. Any student who will be entering one of these grades next year may choose to attend any school in our system, regardless of whether that school was formerly all-white or all-Negro. It does not matter which school your child is attending this year You and your child may select any school you wish.

Every student, white and Negro, must make a choice of schools. If a child is entering the ninth or higher grade, or if the child is fifteen years old or older, he may make the choice himself. Otherwise a parent or other adult serving as parent must sign the choice form. A child enrolling in the school system for the first time must make a choice of schools before or at the time of his enrollment.

The form on which the choice should be made is attached to this letter. It should be completed and returned by June 1, 1967. You may mail it in the enclosed envelope, or deliver it by messenger or by hand to any school principal or to the Office of the Superintendent at any time between May 1 and June 1. No one may require you to return your choice form before June 1 and no preference is given for returning the choice form early.

No principal, teacher or other school official is permitted to influence anyone in making a choice or to require early return of the choice form. No one is permitted to favor or penalize any student or other person because of a choice made. A choice once made cannot be changed except for serious hardship.

No child will be denied his choice unless for reasons of overcrowding at the school chosen, in which case children living nearest the school will have preference.

Transportation will be provided, if reasonably possible, no matter what school is chosen. [Delete if the school system does not provide transportation.]

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that desegregation of our schools is carried out successfully.

Sincerely yours,

Superintendent.

CHOICE FORM

This form is provided for you to choose a school for your child to attend next year. You have 30 days to make your choice. It does not matter which school your child attended last year, and does not matter whether the school you choose was formerly a white or Negro school. This form must be mailed or brought to the principal of any school in the system or to the office of the Superintendent, [address], by June 1, 1967. A choice is required for each child.

Name of child ____
(Last) (First) (Middle)

Address ____

Name of Parent or other adult serving as parent ____

If child is entering first grade, date of birth: ____
(Month) (Day) (Year)

Grade child is entering ____

School attended last year ____

Choose one of the following schools by marking an X beside the name.

Name of School	Grade	Location

Signature ____

Date ____

____

____

To be filled in by Superintendent:

School Assigned[1] ____

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[1] In subsequent years the dates in both the explanatory letter and the choice form should be changed to conform to the choice period.

Chairman CELLER. The Chair will place in the record a statement of Richard Fulton, Representative in Congress from Tennessee; a statement of the Honorable Ray Roberts, Representative in Congress from the State of Texas; a statement from Mr. M. Rutherford, candidate, State board of education, of Bryan, Texas; a statement of the Honorable Joe Hawn, State representative of Texas House of Representatives; a statement of Garden City Civic Association, Garden City, Mich., submitted by Mrs. Mary Markowicz, secretary; a letter to the chairman from Mrs. James B. Scott, Charlotte-Mecklenburg Board of Education, and a statement of Mr. Clay Smothers of Dallas, Tex.

(The documents follow:)

STATEMENT OF HON. RICHARD FULTON, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mr. Chairman, I welcome the opportunity to provide my comments to the House Judiciary Committee on H.J. Res. 620 and other proposed Amendments to the Constitution relating to the busing of school students.

This is one of the most difficult problems which many of us have had to face during our careers in public service. But face it we must because I am firmly convinced that unless we provide some appropriate and meaningful relief, this issue is going to grow until it envelops the entire Nation.

Since the first day I was privileged to serve in the United States House of Representatives, I have been a firm and unwavering supporter of equal rights legislation. Every bill of this nature which has come before the House of Representatives over the past 9 years has had my vote and support.

Over these years, the general public has grown to accept, for the most part, these very controversial pieces of legislation passed by Congress to give legal authority to the rights, freedoms and protections guaranteed by our Constitution.

In so doing we have often moved ahead of the Supreme Court. But today we are caught up in the backwash of recent court decisions which threaten to undermine the foundations of our public education system by eroding its support by parent, child and the public in general.

My own community, Metropolitan Nashville-Davidson County, Tennessee, has been particularly hard hit, causing immeasurable resentment and public anger. It is to the everlasting credit of my community that the vast majority of its parents and students have chosen, with profound resentment in many cases, to obey the law rather than follow the irresponsible exhortations of demagogues to disobey or disregard it.

Mr. Chairman, there are two ways to approach this problem. One is through legislation. The other is through a Constitutional Amendment.

There are in the House today many proposed bills which would alleviate the busing problem. One, which I sponsor, would provide a massive infusion of Federal funds for public school construction and renovation which would enable our financially-strapped local governments to construct new facilities where they are needed, renovate existing facilities and redraw school lines to minimize the need for busing and maximize equal education opportunity for every public school child in America.

This is just one of several positive proposals being offered in the House to alleviate the busing problem.

Another bill which I am co-sponsoring and urge approval by this Committee is legislation to remove these school cases from the jurisdiction of the Federal courts. The Congress has this authority under Article III of the Constitution.

These and many other bills are pending in the Congress. Unfortunately, until the commencement of these hearings, no action had been taken.

This is very unfortunate. It is unfortunate for the children and parents who are so justifiably concerned, upset and indignant over the disruptive busing which has been forced by the Courts. It is unfortunate for the Congress because the longer we delay, the greater becomes the pressure upon us as school system after school system is plunged into administrative, financial and emotional chaos. It is unfortunate for the Constitution because as the Congress delays legislation, the demands for Constitutional amendment grow.

Personally, I would prefer to see this matter handled by legislation. The other body this week will indicate whether or not this approach is feasible.

But regardless of the action taken by the other body, these hearings and considerations should move forward. Until such time as the Congress actually passes legislation no weaker than those anti-busing amendments adopted in the Senate on Friday, February 24, 1972, a Constitutional amendment should remain under active consideration.

Mr. Chairman, the most referred to Constitutional amendment proposal is H.J. Res. 620 which would provide that no public school student shall, because of his race, creed or color, be assigned to or required to attend a particular school.

The wording of this proposed amendment raises some questions and concern in my mind. Nonetheless, I am one of the 145 members who have signed the discharge petition on this legislation.

This was not a step I wished to take. Rather, I would have hoped that the proper leadership would emerge in the House to steer relief legislation through appropriate committees and to the floor for a vote.

Unfortunately, this has not happened. These hearings are held today in full knowledge that the names on that discharge petition could very soon reach the required 218.

Therefore, before this happens, I respectfully urge, Mr. Chairman, that this committee and its distinguished members report legislation appropriate to the needs and problems we face.

If you feel that H.J. Res. 620 is lacking, deficient, or retrogressive, then make what corrections the committee, in its wisdom, deems necessary.

I would prefer legislation to a Constitutional Amendment. But if we are going to be denied the opportunity to meet our obligation through legislation, then I respectfully urge this Committee to send an Amendment to the floor where the House can have an opportunity to express its will.

STATEMENT OF HON. RAY ROBERTS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, Thank you for the opportunity of appearing before your distinguished committee today in support of my proposed constitutional amendment to insure the rights of parents and local school authorities to determine which school the children in that locality will attend (H.J. Res. 781).

The purpose of the amendment is readily apparent. The purpose of my appearance is to justify the need for an amendment of this type.

I am acutely aware that a constitutional amendment is a remedy to be proposed only after careful reflection upon its future consequences. I realize also that this is one of the few times in our history when a constitutional amendment has been proposed to deal with what can only be termed a transient issue, that is, an issue—the integration of minority races into the mainstream of American society—which we all know must be effectuated in the future if our society is to be a homogeneous, viable entity. Nonetheless, because of developments which have taken place over the course of American history, and I am speaking now of the unjustifiable imbalance that has developed between the legislative supremacy as advocated in the American Constitution and the judicial supremacy that is dangerously close to an accomplished fact in the ongoing process of American Government today, I feel that the time has come for the Congress to reassert itself as the voice of the people in this matter, and it may be that a constitutional amendment is the only way that a proper balance can be restored and the people's will can be effectuated, at least on the issue of neighborhood schools. I am suggesting that on the particular issue of busing school children out of their respective neighborhoods for the purpose of achieving a proper racial mixture within the various schools—an issue about which the American people feel very strongly, it is necessary that the Congress, the basic representatives and the primary voice of the people, be able to represent the people of this country at this particular time, and to make the will of the people be actualized. It is therefore necessary that the Congress be able to prevail on this particular issue, just as it is their duty to prevail on all matters properly in the legislative sphere.

The introduction of this amendment should not be construed to mean that we regard busing as constitutional and that, therefore, an amendment is only to prevent our courts from carrying out the mandate of the Constitution as it stands today. Quite the contrary. We regard busing as a means to achieve a goal which is not mandated by the Constitution, and an inappropriate means at that. The courts would be well advised to understand us on this matter. Busing for the purpose of achieving a proper racial mixture is not now, never was, nor can be construed in the future to be the proper remedy for segregation under any clause found in the Constitution as it stands at this date. Busing itself is not a constitutional issue. The issue is whether there is anything in the constitution which necessitates the achieving of a racial mixture by busing, a practice which is educationally, psychologically and physically detrimental to school children according to the best evidence available.

STATEMENT OF HON. JOE HAWN, TEXAS STATE REPRESENTATIVE

Mr. Chairman and Members of the Committee on the Judiciary, the recent court-ordered busing of students in the Dallas Independent School District, to create a racial balance by percentages, has created more havoc and disruption than anything that has ever come about in our City. The disbelief and anger that I have heard expressed by individuals and groups has convinced me that this was the most ill-conceived and disruptive order ever handed down by any Court in our land.

Many citizens expressed opposition to court-ordered busing when it was occurring in other cities throughout the Nation and were then asking questions how it might be avoided in our own City and how the Courts could assume such authority over the objection of the majority of the citizens financially supporting their school districts. They expressed disbeliefs and apprehensions when it was happening to other school districts, but when it hit them in their own back yard, they disregarded philosophies and expressed only anger.

Meetings were held all over our school district even while the court decision was still pending. When the first proposed plan was presented to the courts and published in our local news media, the citizens' reaction was immediate and near violent.

I attended, and spoke, to many of these first meetings and my general theme was to advise the citizens to express their opposition to the Court, but to prepare themselves to live with whatever decision was handed down because that would be the law until we could change it. I appealed to them to give our democratic procedures the opportunity to function.

At the very first meeting I attended, I suggested that we consider a Constitutional Amendment to clarify the feeling of the citizens on the busing issue because research had already indicated that some eighty percent of the entire populace, including elected Representatives, was opposed to the busing of students to create the racial balance under the guise of equal educational opportunity.

The citizens of Dallas sincerely felt that our Board of Trustees had done an excellent job in providing educational opportunities for all of the students in the Dallas Independent School District and had conscientiously followed previous Court rulings and guidelines.

We felt then, and still feel, that our democratic system has suffered a severe blow when the will of the vast majority of our citizens is violated by Federal Court orders under the pretense of upholding our Constitution.

We have built the greatest nation in the world and the greatest society known to man under the belief that our Constitution was "of the people, by the people and for the people", and when any Court violates that belief, our whole nation and its citizens are the losers.

We are currently encountering many problems in our schools due to the situations caused by the racially balancing procedures by force of Court edict, and the sooner we show effort in the direction of alleviating this situation, the more faith our citizens will have in our Democracy and the more readily they will accept the current situation when they have hope that it will be corrected by the proper democratic procedures.

Since we already have laws passed by our Congress spelling out their position, as well as financing (or rather the lack of financing) of busing for racial balance, it seems that we can now only pass a short, concise, understandable Constitutional Amendment. This must be an Amendment understandable by the most learned Judge and unschooled citizen alike. It must be an Amendment whose language is definite, understandable and non-negotiable.

I would urge that such an Amendment be adopted with all haste and that we diligently pursue ratification by the several states to settle this issue before it rips our Country apart.

STATEMENT OF M. RUTHERFORD, CANDIDATE, STATE BOARD OF EDUCATION, BRYAN, TEX.

Topic: (School Transportation Busing).

To: Honorable Members; House Judiciary Committee, Washington, D.C.

The Honorable Olin E. Teague, D-Tex., has invited my comments for your scrutiny during your deliberations about the merits of equal educational chances for all our children through fluid transportation policies.

John Kenenth Galbraith has said, "When stumped by a problem the American liberal rarely admits defeat. He takes the offensive with words." [1]

No doubt you have a McKinley-mountain of paper urging to stop America's landslide of educational opportunities afforded our poor children via public school transportation policies now construed as the law of the land (14th Amendment). Let us ponder probusing.

For almost 18 years our federal judiciary has shown reasonable and humane flexibility ordering desegregation of our nation's schools. America is fortunate with the federal judiciary outside political control so that we can remain a nation of laws, not men. This intelligent, Constitutional proviso confirms our forefathers' wisdom under capable leadership of James Madison—who was a brave man for his era.

Efforts to thwart equal educational opportunities for all our citizens arouse my concern for the general welfare of America's humanitarian civilization.

In perspective, the Texas Revolution of 1836 comes to mind. Texas newcomers promptly declared independence March 2, 1836, at Washington-on-the-Brazos, Texas, listing among their complaints and justification for violent revolution poor educational opportunities. Thus Texians fought a war, or revolution, to assure better educational opportunities.

Using history as a guidelight, must we deny equal chances for education, create a mass of discontented persons, and let our poorly-trained National Guard slaughter these disgruntled, deprived American citizens who will rebel over the quality of their lives and lack of opportunities for improvement?

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[1] John Kenneth Galbraith, *American Capitalism, The Concept of Countervailing Power* (Boston: Houghton, Mifflin Company, rev. ed., 1956), 64–83.

We will have large scale revolution in this country if the Congress of the United States, in collusion with the 37th President's unwillingness to enforce laws he has sworn to uphold, halts educational fluidity in this country.

You are requested to show bravery, courageous leadership away from racial bigotry and emotional prejudice. The Fourteenth amendment and federal court decisions upholding Constitutional language must be supported and obeyed.

Twice in this century Constitutional language has been ignored to plummet this nation in two undeclared wars. At great expense American lives, limbs and liberties were taken in these violent conflicts without due process of law.

Now are we to take away equal educational opportunities of our small children, as you have allowed their fathers to forfeit lives, limbs and liberties in undeclared wars without due process of law—as promised, also, in our great covenant of laws, the best yet devised in the history of humankind and the world?

Respect our courts, our seasoned teachers who know first-hand the consequences of class against class without fair chances to develop educational reason, social mobility among rich and poor, racial tranquility among all our people.

Keep transporting our children to better educational opportunities. Our federal judges, school boards, educators, parents will support reason, not force, if shown the light. Beginning 35 years ago, school busing in my district opened equal educational opportunities to farm children living outside towns and city schools. Bus rides complemented the educational process, teaching children how to talk with one another. These buses 35 years ago stopped the practice of children walking up to five miles per day to school, which had included my parents before me.

Do you want American school children today to walk through miles of dangerous city blocks as prey for molesters, dope pushers, abductors, murderers, rapists? Do you want our children loitering on these unsafe streets instead of healthy, safe rides via buses?

Modern man is obsolete in many ways, as former *Saturday Review* editor Norman Cousins eloquently wrote in the 1940s. The neighborhood school concept is a simple blind for racism, economic segregation. The growth of our society also makes the neighborhood school concept obsolete.

In Texas, for instance, our schools have been built primarily to aid real estate development, not academic excellence. Our school bonded indebtedness is one of the highest of any state in the nation, yet most new schools in Texas are constructed in blue-stocking districts or proposed blue-stocking districts.

Transportation is the solution.

Little boys and girls no longer can walk safely from home to neighborhood schools in America.

And would you, honorable members of Congress, stop busing? Then only parents wealthy enough to afford automobiles could transport little children to school. The poor? As in the past, the poor little children would have to walk and therefore, consequently be prey to violence lurking on every street corner.

It costs less than 15 cents per child per daily ride to school. In a large city, for example, is it safer for 5,000 mother-driven automobiles to converge on 50 schools twice a day or just 50 buses?

Reasonable busing, as ordered by our federal courts, will prevent America's humanitarian civilization from being overpopulated with primitivism. We must not let a proliferation of individuals with Orville Faubus attitudes destroy equal educational opportunities for all our children. It is cheaper to transport our students for better educations than to deprive disadvantaged children equal chances to learn all that they can absorb in a fair, democratic learning environment.

Up to 12 years in substandard, segregated school systems assure America of a large, primitive population disillusioned with our society. It is cheaper today to transport our children than to pay tomorrow for increased numbers in prisons, mental institutions and hospitals—the ultimate result of Congressionally-enforced and Presidentially-led ignorance, disease, poverty, and crimes upon our disadvantaged.

We must not allow an unenlightened Congress to cut off the lamp of learning to poor whites, reds, yellows, browns, blacks. All are Americans, our flesh and blood, and deserve full citizenship benefits—including all the education they can absorb.

Affluent children should mingle, learn to get along with our poor. If we halt school transportation programs, freeze them, then you gentlemen aid in paving our Sesame Street with the stones of bigotry right up to Adolf Hitler's grave. Brave, humanitarian, democratic leadership can fulfill Thomas Jefferson's realities. Abraham Lincoln's proclamation—both of which were inspired by James Madison's promises for a great America in Philadelphia almost 200 years ago.

We mustn't bomb our children's futures and America's capitalism and prosperity with school transportation restrictions freeezing learning. If we do, we foxhole equal educational chances for all our children.

Let us help our children grow into resourceful, responsible and energetic American citizens.

Gettting them to the best schools, the best teachers, better social environments—even for as few as 1,000 hours per year—will assure America of political health for eons and eons to come.

A private school's headmaster, a Harvard graduate with over 30 years of teaching experience, says:

"We have no professional counselors at St. John's. Our teachers do the counseling. To advise a student, you must teach him.

"I hope all American families will continue to have the choice of where they live, where they work, and where they send their children to school."[2]

Most poor parents choose to send their children to better public schools. Let us, through reasonable school transportation policies decided by men of law, enrich our poor with upward mobility to academic excellence.

STATEMENT OF GARDEN CITY, MICH., CIVIC ASSOCIATION, BY MARY MARKOWICZ, SECRETARY

We are here to discuss a Constitutional Amendment, while it would appear that the governing body sees but, sees not, hears but, hears not! Let us use the vernacular, "Right on!, but steady as we go." We are indeed embarking on an uncharted course in strange waters. We are obligated to take proper soundings and proceed with care. The decision made by this honorable body will not only affect the lives of all the children of this great Nation, but also, those not yet born.

Let us not consider here the demands of any race. Rather, let us concern ourselves with the health, and welfare of all children; Indian, Oriental, Chicano, Black, White, all of America's great melting pot of nationalities.

As we peruse a Constitutional Amendment let us consider whether or not this will accomplish our purpose. I respectfully refer you to Public Law 88–352, 88th Congress, H.R. 7152, July 2, 1964:

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

Sec. 401(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin but "desegregation" shall not mean the assignment of students to public schools in order or overcome racial imbalance."

In view of this and, from a laymans point of view, the highest court in this land it would appear has already broken a Federal Law.

In Fact, are not all of our children being used for a great political power play? Do the powers to be in this great land expect, or rather believe that the parents of all races are not wholly and, completely aware of the manuvering of our offsprings by the unscrupulous for their own selfish gain?

The use or misuse of our Constitution, the interpretation or misinterpretation of our Constitution not withstanding, the motives are coming clearly into focus. It is alleged that Ben Franklin said after the signing of the Constitution, "We have given you a republic now, it's up to you to hold onto it." That is what we are here for!

Article IX—of the Constitution states, "The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."

We would refer you to Article III—of the Constitution. Nowhere in Article III concerning Judicial power can the Constitution be interpreted to read that any court in this land has the power to deprive the children of this country of their right to equal protection under the law.

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[2] E. K. Salls, The Houston Chronicle, February 17, 1972. St. John's is a college preparatory school near River Oaks in Houston, an affluent area.

Article XIV—of the Constitution states in Section 1. "*All persons* born or naturalized in the United States, and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or *immunities* of citizens of the United States; nor shall any State deprive *any person* of Life, Liberty, or property, without due process of law; nor deny *any person* within its jurisdiction *the equal protection of the law*."

Are we to interpret then, that only the privileged few are to use this Article XIV or misuse it to serve only their purposes? Are we being told that because children are not of a certain race that they are not also protected under Article XIV? What we have here gentlemen is an exercise in futility! How, can any court, or judge be empowered with the authority of judging which child is to be protected under Article XIV and, which child is not?

The Constitution is clear. "*All Persons*". Not just black, white, Indian, Chicano, "*All Persons.*"

It is the duty and responsibility of this Judiciary Committee, the President, The Senate, The Congress, The Courts, The Judges, every man and woman in this country to guarantee "*the equal protection of the laws*" to every child in this country.

There is much yet left unsaid but, we will not bore you with lengthy detail. However, only the ignorant are blind to what is happening in this country. I beg your indulgence to allow me to quote Patrick Henry who stated on March 23rd, 1775. "But different men often see the same subject in different lights, and therefore, I hope it will not be thought disrespectful to those gentlemen if, entertaining as I do, opinions of a character very opposite to theirs, I should speak forth my sentiments freely and without reserve. This is no time for ceremony. The question before the house is one of awful moment to the country. For my own part, I consider it as nothing less than a question of freedom or slavery." "Are we disposed to be of the number of those who, having eyes, see not, and having ears, hear not, the things which so nearly concern their temporal salvation?"

"I know of no way of judging the future but by the past."

"I ask you gentlemen, sir, what means the martial array, if its purpose be not to force us to submission? Can gentlemen assign any other possible motives for it?"

"What have we to oppose to them? Shall we try argument? Sir, we have been trying that for the last ten years. Have we anything new to offer upon the subject? Nothing. We have held the subject up in every light of which it is capable; but it has been all in vain. Shall we resort to entreaty, and humble supplication? What terms shall we find which have not been already exhausted?"

"Let us not, I beseech you, sir, deceive ourselves longer, Sir, we have done everything that could be done to avert the storm which is now coming on. We have petitioned; we have remonstrated; we have supplicated; we have prostrated ourselves before the throne, and have implored its interposition to arrest the tyrannical hands of the ministry and parliament. Our petitions have been slighted; our remonstrances have produced additional violence and insult; our supplications have been disregarded; and we have been spurned with contempt from the foot of the throne."

"Our chains are forged."

"What is it that gentlemen wish? What would they have? Is life so dear, or Peace so sweet as to be purchased at the price of Chains and Slavery? Forbid it Almighty God! I know not what course others may take but as for me give liberty or give me death!"

"The voice of the turtle is heard in the land." I would submit to you with this closing thought, the reality of what is happening in this land. This issue has forced a wedge between the races which should not exist! The country is falling apart. We who love *all children* are torn to bits and pieces inside at the deplorable demonstrations we have witnessed. Although the Constitution states, "All power is in the people", we are here to implore the Judiciary Committee to look out over this country and see the bright, shining, happy faces of the children, let us not change this to misery and trauma.

With respect and humility, we submit that at this point gentlemen, "It's all in your hands."

FEBRUARY 28, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee, Rayburn House Office Building, Washington, D.C.

MR. CHAIRMAN: As you requested, I am submitting my written statement concerning the busing situation in the Charlotte-Mecklenburg school system. Attached to this statement are some statistics which I feel will be of interest to you.

Lest you think this the rambling rationalization of a native Southerner, please note:

I was born in Philadelphia, Pennsylvania, thirty-five years ago. Both my parents were public-school teachers. After receiving twelve years of education in the public-schools, I attended Temple University for two years, from 1955 to 1957, majoring in Elementary Education. During that time, I worked part-time for the Ford Foundation. I married a young medical student in 1956. Six years and two sons later we moved to Charlotte, North Carolina and my husband set up his medical practice in the small neighboring town of Mt. Holly.

I was pleasantly surprised to find that this area enjoyed good-will and warmth between the races which far exceeded that of Philadelphia. In fact, prior to the 1970 District Court Order here, which plunged our county into massive busing, the Charlotte-Mecklenburg School System was held up as a model for the others to follow by the same District Court. Charlotte was hailed by many, as the most progressive area in the South regarding race relations. In the 1968–69 school year, of the 15 systems which had comparable pupil enrollments and comparable percentages of black students, Charlotte-Mecklenburg ranked 5th in the percentage of schools having racial mix.

Since the above mentioned Court Order, the atmosphere here has changed radically. Our schools have been frought with racial tension and torn by riots on numerous occasions. Many whites who previously accepted integration, when faced with having their children spend hours on a bus daily to go to schools miles away from their neighborhoods, have enrolled them in private schools. Our enrollment has dropped from 84,542 in November 1969 to 79,108 as of February 10, 1972. Until this, our enrollment increased on the average of 2000 students yearly.

Last Summer, the Board's Desegregation Committee on which I served, worked many hours to draw an assignment plan which would meet the Court's Order while lessening the trauma for the community and equalizing the burden, as much as possible. However, when we submitted our assignment plan to the District Court it was revised to such an extent that certain white children are bused miles from their neighborhood schools for 8 of their 12 school years while others are not required to leave their traditional schools for even 1 year. Many of the Black children are bused away from their neighborhood schools for 9 to 12 years. Since most of the Black housing, both public and private, is concentrated in one section of the County, this is unavoidable if we are to maintain a less than 50% Black enrollment in each of our 104 schools, as ordered by Judge James B. McMillan, our District Court Judge.

The bitterness which is growing out of this arrangement is staggering. Students, Negro and White, have repeatedly come before the Board pleading to be treated as people, not colors and numbers. I wonder if your reaction would be any different from theirs if you suddenly found yourself stripped of your individual identity and importance to become a nameless, faceless, number in a racial ratio—all in the name of "Quality Education". I ask you, "What quality?" Can anyone truly believe that out of all this transportation, color consciousness and emotional upheaval, will come improved quality education?

I hope you will not turn aside from this and future testimony which I am offering your committee.

There are many kinds of prejudice, other than racial, and it is easy but grossly unfair to sit in judgment of a situation without first hearing both sides of the question. Thus far the Courts have been the only ones to have their say. Please give the people involved in those Orders a chance to tell it like it is.

Sincerely,

JANE B. SCOTT,
Charlotte-Mecklenburg,
Board of Education.

Form TD1 (A)
Rev. July 1, 1970

ANNUAL PUPIL TRANSPORTATION REPORT 1970-71 SCHOOL ADMINISTRATIVE UNIT Mecklenburg

In Section 1-6 include only data relating to regular buses and special education vehicles, and only those pupils whose transportation was paid from the regular transportation codes of the nine months school fund. Record special education transportation in Section 7. *Do not include kindergarten pupils in this report.*

PUPIL DATA (Include Special Education Data)	
1. Total No. Buses & Special Ed. Vehicles Operated Daily	452
2. Average No. Pupils Transported Daily	37,357
a. Elementary	26,817
b. High School	10,540
Total	37,357
Average No. Pupils Per Bus Daily	82.6

MILEAGE DATA (Include Special Education Vehicle Mileage)	Regular School Mileage	Special Program Mileage*1	All Mileage
3. Total Miles Traveled, Regular & Spare Buses	3,748,799	35,529	3,784,328
a. Hard Surface Roads	2,624,159	x x x x x	x x x x x
b. Improved Roads	1,124,640	x x x x x	x x x x x
Average Miles Per Bus, All Regular	8,293.9	x x x x x	x x x x x
Average Daily Miles*Per Bus	45.8	x x x x x	x x x x x

4a. No. of Schools Served by Buses. (Include Special Education Schools) 99

4b. No. of Schools at Which Buses Terminate (Include Special Education Schools) 69

5. AGE AND SEX DISTRIBUTION OF BUS DRIVERS (Include Special Education Drivers)

AGE (Last Month of School)	16		17		18		19		20		21		22		23		24		25		ABOVE 25		TOTAL	
	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.
Number of Drivers (Students)	71	19	172	25	51	3	5																*2 299	*2 47
Number of Drivers (Non-Students)					7	3	16	3	3		6	2	4	5	4	1	5	1	2	2	~~28~~ 9	~~41~~ 28	*2 61	*2 45

6. DATA ON REGULAR BUSES (Include Special Education Buses)

No. Buses Making One Trip (one way daily) 452
No. Buses Making Two Trips (one way daily) 352
No. Buses Making Three Trips (one way daily) 79
No. Buses Making More Than Three Trips (one way daily) 9
Total No. Bus Trips 892 Total No. Pupils Recorded in Col. 12 Form T.D. 10 38020

7. SPECIAL EDUCATION TRANSPORTATION

Type Transportation	No. Vehicles Involved	No. Miles Annual	Avg. No. Pupils Transported Daily	Total Cost Of Operation
a. Regular Buses Transporting Special Education Pupils	x x x x x	x x x x x	834	x x x x x
b. Vehicles Used for Special Education Only	8	103964	151	16,912.87
c. No. Special Education vehicles that meet State Construction Standards		x x x x x	x x x x x	x x x x x
Total	x x x x x	x x x x x	985	x x x x x

8. MECHANICS NAME	TITLE	MONTHS EMPLOYED	ANNUAL STATE SALARY	COUNTY SUPPLEMENT	TOTAL
a. John W. Harrison	Director	12	9840.00	8192.40	16,032.40
b. Donald W. Baucom	Ass't. Dir.	12	519.00	14867.52	15,386.52
c. William J. Harrison	Trans. Spec.	12	519.00	12480.96	12,999.96
d. Walter H. Neely, Jr.	Trans.Spec.	12	519.00	9026.30	9,545.30
e. Carson P. Farthing	Shop Frm.	12	8568.00	2871.96	11439.96
f. Homer D. Blacklweder, Jr.	Mech. II	9	5868.00	1407.45	7,275.45
g. Bennard E. Sherrill	Mech. II	12	7824.00	1818.15	9,642.15
h. Hughes L. Maxwell	Mech. II	12	7824.00	1783.50	9,607.50
i. Julian B. Smith	Mech. II	12	7476.00	1789.20	9,265.20
j. Joe D. Sasser	Mech. II	12	519.00	8576.96	9,095.96
k. Harvey W. Herron	Mech. II	12	7152.00	1976.96	9128.96
l. Samuel H. Cooke	Mech. II	12	6528.00	2021.76	8549.76
m. Alton A. Grayson	Mech. II	12	4671.00	3545.10	8216.10
n. Charles E. Curbeam	Mech. II	12	6653.00	1838.48	8491.48
o. Leroy Wood	Mec. I	12	5676.00	1813.36	7489.36
p. Kenneth Proctor	Mech. I	12	6136.00	1444.94	7580.94
TOTAL	x x x x x	x x x x x			

9. TOTAL TRANSPORTATION EXPENDITURES		STATE	NON-STATE	TOTAL
661-1	Salaries of Drivers	545092.16	174782.81	719874.97
661-2a.	Gas, Oil, Grease, Etc.	96389.86	3391.17	99781.03
661-2b.	Gas Storage Equipment	2258.39	927.14	3185.53
661-3	Salaries of Mechanics	150656.84	146624.58	297281.42
661-4a.	Repair Parts	82814.04	5387.74	88201.78
661-4b.	Tires & Tubes	33193.51	1504.47	34697.98
661-4c.	License & Title Fees	223.00	2469.78	2692.78
661-4d.	Garage Equipment	701.41	9071.78	9773.19
661-5	Contract Transportation	156153.75	28334.97	184488.72
661-6	Major Replacements	174148.[illegible]	x x x x x	174148.55
661-7	Principal's Bus Travel	33[illegible].50	7.50	3360.00
664-1	Original Buses	x x x x x	141459.89	141459.89
TOTAL		1,244,984.01	513,961.83	1,758,945.84

Date 8-13-71

Morgan
J.W. Harrison
Superintendent

*1 This should indicate that portion of the Total School Bus Mileage for which the State Nine Months School Fund has received

NOTE.—These cost figures do not include capital needed to replace 168 old buses, loaned to us by the State of N.C. These had been put in the "Obsolete" category by the State of N.C. before they were loaned to us and desperately need replacing.

Form TD 1 (B)
Rev. July 1, 1967

ANNUAL PUPIL TRANSPORTATION REPORT

(Cost originally paid from State funds)

[illegible]

COUNTY Mecklenburg

7. OPERATING COSTS:	SCHOOL BUSES 1	SERVICE EQUIPMENT 2	SUB-TOTAL 3	STATE CARS AND OTHER COUNTIES 4	COUNTY EQUIPMENT 5	TOTAL (Col. 3 + 4 + 5) 6	* SPECIAL PROGRAM REFUNDS 7	COST ANALYSIS State Nine Mo. School Fund Per Mile	Per Pupil	Per Bus
A. 661-1 Salaries of Drivers	543,523.89	XXXXXXXXX	543,523.89	XXXXXXXXX	1,568.27	545,092.16	666.87	.1434	14.27	1201.01
661-2a. Gasoline	80,251.92	4287.44	84,539.36	69.65	12,935.05	97,544.06	635.57	.021	2.20	185.63
Oil	3,077.77	110.47	3,188.24		267.83	3,456.07		X X	X X	X X
Grease	929.73	23.54	953.27		60.48	1,013.75		X X	X X	X X
Anti-Freeze	831.30	36.00	867.30		40.80	908.10		X X	X X	X X
661-3 Salary of Mechanics	138,662.44	4590.00	143,252.44		7,404.40	150,656.84	1,388.25	.0374	3.73	313.85
661-4a Repair Parts	56,269.70	2210.94	58,480.64	54.72	3,553.34	62,088.70	473.27	.0153	1.52	128.33
661-4b Tires & Tubes	23,093.19	892.90	23,986.09		1,620.98	25,607.07	261.37	.0062	.62	52.48
661-4c License & Title Fees	171.00	8.00	179.00	XXXXXXXXX	25.00	204.00	.25	XXXXX	XXXXX	XXXXX
661-7 Principals Bus Travel	3,352.50	XXXXXXXXX	3,352.50	XXXXXXXXX		3,352.50		XXXXX	XXXXX	XXXXX
TOTAL	850,163.44	12,159.29	862,322.73	124.37	27,476.15	889,923.25	3,425.58	.2269	22.59	1900.21
B. 661-4a. Supplies	4,572.31	XXXXXXXXX	4,572.31	XXXXXXXXX	XXXXXXXXX	4,572.31		XXXXX	XXXXX	XXXXX
Utilities	4,693.15	XXXXXXXXX	4,693.15	XXXXXXXXX	XXXXXXXXX	4,693.15		XXXXX	XXXXX	XXXXX
TOTAL	9,265.46	XXXXXXXXX	9,265.46	XXXXXXXXX	XXXXXXXXX	9,265.46		XXXXX	XXXXX	XXXXX
C. 661-2b. Gas Storage Equipment	2,258.39	XXXXXXXXX	2,258.39	XXXXXXXXX	XXXXXXXXX	2,258.39		XXXXX	XXXXX	XXXXX
D. 661-4d. Garage Equipment	701.41	XXXXXXXXX	701.41	XXXXXXXXX	XXXXXXXXX	701.41		XXXXX	XXXXX	XXXXX
E. 661-5 Contract Transportation	156,153.75	XXXXXXXXX	156,153.75	XXXXXXXXX	XXXXXXXXX	156,153.75		XXXXX	XXXXX	XXXXX
F. 661-2a. Bus Delivery Expense	306.00		306.00	XXXXXXXXX	XXXXXXXXX	306.00		XXXXX	XXXXX	XXXXX
661-6 Major Replacements	174,148.55		174,148.55	XXXXXXXXX	XXXXXXXXX	174,148.55		.0455	4.53	381.55
TOTAL	333,568.10		333,568.10	XXXXXXXXX	XXXXXXXXX	333,568.10	1,685.74	.0876	8.72	734.25
TOTAL OPERATING COSTS	1,192,997.00	12,159.29	1,205,156.29	124.37	27,476.15	1,232,756.81	5,111.32	.3171	31.56	2654.96

8. INVENTORY DATA:	INVENTORY July 1970 1	2	PURCHASED 1970-71 3	4	USED 1970-71 5	6	INVENTORY June 30, 1971 7	8	INVENTORY June 30, 1971 9 (ACTUAL)	10	ADJUSTMENT 11	12
	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
Gasoline	5939	689.52	855579	101163.94	824,005	97,544.06	37513	4,998.92	456	54.24	-37057	-4,944.68
Oil	140	79.80	7119½	4262.72	5,421	3,456.07	1835½	886.45	1327	858.00	- 515½	- 28.45
Grease	1001	170.24	8835	1453.90	8,968	1,013.75	868	610.39	3736	640.94	+ 2868	+ 30.55
Anti-Freeze	46	53.36	1960	2404.09	756 3/4	908.10	1249¼	1,549.35	1024¼	1326.74	- 225	- 222.61
Repair Parts	XXXXXX	24965.05	XXXXXX	82225.30	XXXXXX	60,422.97	XXXXXX	46,767.38	XXXXXX	35427.17	XXXXXX	-11,340.21
Batteries	10	244.40	75	1463.63	78	1,665.73	7	42.30	1	16.08	- 6	- 26.22
Supplies	XXXXXX	1472.62	XXXXXX	4572.31	XXXXXX	4,697.89	XXXXXX	1,347.04	XXXXXX	1347.04	XXXXXX	-0-
New Tires	57	2447.69	541	22883.47	335	15,154.83	263	10,176.33	102	4499.25	- 161	- 5,677.08
Recapped Tires	158	1929.48	889	11068.07	772	10,068.21	275	2,929.34	153	2126.52	- 122	- 802.82
New Tubes	77	287.65	194	719.90	100	384.03	171	623.52	104	425.06	- 67	- 198.46
TOTAL	XXXXXX	32,339.81	XXXXXX	232,217.33	XXXXXX	195,315.64	XXXXXX	71,018.39	XXXXXX	46,721.04	XXXXXX	-23,209.98

* This is Refunds from Non-State sources to the State Nine Months School Fund for transportation beyond the services normally provided by the State

Rev. July [illegible]

ANNUAL PUPIL TRANSPORTATION REPORT

SCHOOL ADMINISTRATIVE UNIT

1969-70

In Sections 1-6 include only data relating to regular buses and only those pupils whose transportation was paid from the nine months school fund. Record special education transportation in Section 7. Do not include kindergarten pupils in this report.

1. PUPIL DATA (Do not include Special Education Data)	
1. Total No. Regular Buses Operated Daily	267
2. Average No. Pupils Transported Daily	22023
a. Elementary	15,484
b. High School	6,539
Total	22,023
Average No. Pupils Per Bus Daily	82.4

3. MILEAGE DATA (Do not include Special Education Vehicle Mileage)	Regular School Mileage	*1 Special Program Mileage	All Mileage
3. Total Miles Traveled, Regular & Spare Buses	2,033,358	23,817	2,057,175
a. Hard Surface Roads	1,847,904	x x x x x	x x x x x
b. Improved Roads	205,323	x x x x x	x x x x x
Average Miles Per Bus, All Regular	7439.2	x x x x x	x x x x x
Average Daily Miles Per Bus	41.0	x x x x x	x x x x x

4a. No. of Schools Served by Buses (Include Special Education Schools) 78

4b. No. of Schools at Which Buses Terminate (Include Special Education Schools) 47

5. AGE AND SEX DISTRIBUTION OF BUS DRIVERS (Include Special Education Drivers)

AGE (Last Month of School)	16		17		18		19		20		21		22		23		24		25		ABOVE 25		TOTAL	
	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.	Male	Fem.
Number of Drivers (Students)	36	5	133	33	46	5	1	2	3			2								1			*2	*2
Number of Drivers (Non-Students)						1	3					1		1					1	2			*2	*2

6. DATA ON REGULAR BUSES (Include Special Education Buses)

No. Buses Making One Trip (one way daily) 84

No. Buses Making Two Trips (one way daily) 161

No. Buses Making Three Trips (one way daily) 29

No. Buses Making More Than Three Trips (one way daily) 2

Total No. Bus Trips 501 Total No. Pupils Recorded in Col. 12 Form T.D. 10 799

7. SPECIAL EDUCATION TRANSPORTATION

Type Transportation	No. Vehicles Involved	No. Miles Annual	Avg. No. Pupils Transported Daily	Total Cost Of Operation
a. Regular Buses Transporting Special Education Pupils	141	10541	822	x x x x x
b. Vehicles Used for Special Education Only	9	78,111	185	10,760.16
*3 c. Contracts 3 No. 3	x x x x x	x x x x x	271	x x x x x
Total 3 3	x x x x x	x x x x x	1,278	x x x x x

8.	MECHANICS NAME	TITLE	MONTHS EMPLOYED	ANNUAL STATE SALARY	COUNTY SUPPLEMENT	TOTAL
a.	John W. Harrison	Director	12	9660.00	6670.32	16,330.32
b.	D. W. Baucom	Ass't. Dire.	12		13834.32	13,834.32
c.	William J. Harrison	Trans. Spec.	10		9793.30	9,793.30
d.	Carson P. Farthing	Shop Forem.	12	8412.00	1884.00	10,296.00
e.	Homer D. Blackwelder, Jr.	Mech. II	12	7680.00	701.83	8,381.83
f.	Bennard E. Sherrill	Mech. II	12	7680.00	864.83	8,544.83
g.	Hughes L. Maxwell	Mech. II	12	7680.00	817.38	8,497.38
h.	Julian B. Smith	Mech. II	12	7020.00	1389.98	8,409.98
i.	Harvey W. Herron	Mech. II	12	6708.00	1156.32	7,864.32
j.	Samuel H. Cooke	Mech. II	12	6120.00	1119.30	7,239.30
k.	Charles Burbeam	Mech. II	12	6240.00	1039.52	7,279.52
l.	Joe D. Sasser	Mech. II	12	1530.00	6393.21	7,923.21
m.	Alton A. Grayson	Mech. II	12	1505.72	5417.56	6,923.28
n.	Wallace S. Young	Mehc. II	10	1530.00	3525.75	5,055.75
o.	Grover C. Brown, Jr.	Mech. II	8	1530.00	3427.27	4,957.27
p.	Robert L. Powell	Mech. II	3	1787.96	35.28	1,823.24
	TOTAL	x x x x x	x x x x x			

9. TOTAL TRANSPORTATION EXPENDITURES	STATE	NON-STATE	TOTAL
661-1 Salaries of Drivers	240372.85	81943.06	322,315.91
661-2a Gas, Oil, Grease, Etc.	48304.53	7963.33	56,267.86
661-2b Gas Storage Equipment			
661-3 Salaries of Mechanics	101249.99	94971.96	196,221.95
661-4a Repair Parts	35544.96	1393.70	36,938.66
661-4b Tires & Tubes	22153.92	893.59	23,047.51
661-4c License & Title Fees*	126.75	27875.33*	28,002.08
661-4d Garage Equipment	403.41	5060.22	5,463.63
661-5 Contract Transportation	22350.00	13815.72	36165.72
661-6 Major Replacements	165244.91	x x x x x	165,244.91
661-7 Principal's Bus Travel	2010.00	97.50	2,107.50
684-1 Original Buses	x x x x x	262041.85	262,041.85
TOTAL	637761.32	496046.26	1,133,8[illegible].58

* Includes insurance

August 21, 1970
Date

August 21, 1970
Date

August 21, 1970
Date

J. W. Harrison
Superintendent

Joe B. Steube

*1 This should indicate that portion of the Total School Bus Mileage for which the State Nine Months School Fund has received refunds from local sources.

*2 Must Equal Total Number of Regular Buses and Special Education Vehicles. *3 [illegible]

Form TD 1 (B)
Rev. July 1, 1967

ANNUAL PUPIL TRANSPORTATION REPORT

(Cost originally paid from State funds)

1969-70

COUNTY Mecklenburg

7. OPERATING COSTS:	SCHOOL BUSES 1	SERVICE EQUIPMENT 2	SUB-TOTAL 3	STATE CARS AND OTHER COUNTIES 4	COUNTY EQUIPMENT 5	TOTAL (Col. 3 + 4 + 5) 6	* SPECIAL PROGRAM REFUNDS 7	COST ANALYSIS State Nine Mo. School Fund Per Mile	Per Pupil	Per Bus
A. 661-1 Salaries of Drivers	240,372.85	XXXXXXXXX	240,372.85	XXXXXXXXX	0	240,372.85		.1182	10.91	900.27
661-2a. Gasoline	44,581.87	3026.53	47,608.40	24.83	14,607.97	62,241.20	604.33	.0243	2.24	185.12
Oil	1,428.90	103.80	1,532.70	0	310.05	1,842.75		X X	X X	X X
Grease	474.40	15.18	489.58	0	61.81	551.39		X X	X X	X X
Anti-Freeze	385.60	14.76	400.36	0	19.66	420.02		X X	X X	X X
661-3 Salary of Mechanics	92,120.59	1925.00	94,045.59	0	7,204.40	101,249.99	1,221.40	.0456	4.21	347.65
661-4a Repair Parts	30,838.98	1337.04	32,176.02	0	3,284.81	35,460.83	500.54	.0155	1.14	118.63
661-4b Tires & Tubes	19,476.62	688.97	20,165.59	0	433.72	20,599.31	214.63	.0078	.91	74.76
661-4c License & Title Fees	124.25	6.00	130.25	XXXXXXXXX	23.00	153.25	0	XXXXX	XXXXX	XXXXX
661-7 Principals Bus Travel	2,010.00	XXXXXXXXX	2,010.00	XXXXXXXXX	0	2,010.00	0	XXXXX	XXXXX	XXXXX
TOTAL	431,814.06	7117.28	438,931.34	24.83	25,945.42	464,901.59	2540.90	.2146	19.82	1634.42
B. 661-4a Supplies	3,917.24	XXXXXXXXX	3,917.24	XXXXXXXXX	XXXXXXXXX	3,917.24		XXXXX	XXXXX	XXXXX
Utilities	3,812.52	XXXXXXXXX	3,812.52	XXXXXXXXX	XXXXXXXXX	3,812.52		XXXXX	XXXXX	XXXXX
TOTAL	7,729.76	XXXXXXXXX	7,729.76	XXXXXXXXX	XXXXXXXXX	7,729.76		XXXXX	XXXXX	XXXXX
C. 661-2b. Gas Storage Equipment		XXXXXXXXX		XXXXXXXXX	XXXXXXXXX			XXXXX	XXXXX	XXXXX
D. 661-4d. Garage Equipment	403.41	XXXXXXXXX	403.41	XXXXXXXXX	XXXXXXXXX	403.41		XXXXX	XXXXX	XXXXX
E. 661-5 Contract Transportation	(22,350.00)	XXXXXXXXX	22,350.00	XXXXXXXXX	XXXXXXXXX	22,350.00		XXXXX	XXXXX	XXXXX
F. 661-2a. Bus Delivery Expense	295.03		295.03	XXXXXXXXX	XXXXXXXXX	295.03	-	XXXXX	XXXXX	XXXXX
661-6 Major Replacements	162,102.85	3142.06	165,244.91	XXXXXXXXX	XXXXXXXXX	165,244.91	1212.22	.0806	7.45	614.35
TOTAL	185,151.29	3142.06	188,293.35	XXXXXXXXX	XXXXXXXXX	188,293.35	1212.22	.0980	8.49	700.68
TOTAL OPERATING COSTS	624,695.11	10,259.34	634,954.45	24.83	25,945.42	660,924.70	3753.12	.3104	28.66	2364.04

8. INVENTORY DATA:	INVENTORY July 1, 1969 1	2	PURCHASED 1969-70 3	4	USED 1969-70 5	6	INVENTORY June 30, 1970 7	8	INVENTORY June 30, 1970 9 (ACTUAL)	10	ADJUSTMENT 11	12
	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value	Quantity	Value
Gasoline	9,732	1,181.46	521,562	61,667.28	526,367	52,241.20	4927	607.54	5939	689.52	+1012	+81.98
Oil	85	51.00	1,723	918.05	3,071	1,842.75	1263	873.70	140	79.80	-1123	-793.90
Grease	635	87.70	4,992	1,658.82	4,501	551.39	1126	1195.13	1001	170.24	-125	-1024.89
Anti-Freeze	23	27.60	429	489.73	349	420.02	103	97.31	46	53.36	-57	-43.95
Repair Parts	XXXXXX	24,227.89	XXXXXX	33,064.16	XXXXXX	34,545.44	XXXXXX	22,746.61	XXXXXX	24,965.05	XXXXXX	+2218.44
Batteries	8	207.84	55	929.16	53	915.39	10	221.61	10	244.40	0	+22.79
Supplies	XXXXXX	1043.92	XXXXXX	3,917.94	XXXXXX	3,489.24	XXXXXX	1,472.62	XXXXXX	1,472.62	XXXXXX	
New Tires	53	2,752.02	298	13,715.47	236	12,063.24	115	4,404.25	57	2,447.69	-58	-1956.56
Recapped Tires	112	1436.72	654	8,838.52	636	8,160.23	130	2,115.01	158	1,929.48	+28	-185.53
New Tubes	42	117.01	141	477.75	113	375.84	70	219.92	77	287.65	+7	+67.73
TOTAL	XXXXXX	31,133.16	XXXXXX	125,676.88	XXXXXX	124,604.74	XXXXXX	33,952.70	XXXXXX	32,339.81	XXXXXX	-1612.89

* [illegible] the State Nine Months School Fund [illegible] of the services normally paid for by the State.

STATEMENT OF CLAY SMOTHERS, A COLUMNIST FOR THE OAK CLIFF TRIBUNE OF DALLAS, TEX.

Clay Smothers, reporter for the Oak Cliff Tribune, appeared at the House Judiciary Committee today on school busing. The context of his presentation follows.

I thought that the day had come in this country where I, as a black man, would not be forced to do anything that I did not want to do. As a boy I was forced to pick cotton while my white sisters and brothers attended school. My ancestors were forced to submit to all kinds of atrocities. I was forced to pursue a career in teaching, for there was nothing else in this country opened up for me. Now the highest court in the land is forcing my son to ride the bus many miles to attend schools that I would rather him not attend. Maybe this is why a few weeks back black kids in Gary Elementary School in Dallas made an effort to overturn the buses. The Supreme Court is somewhat like the press. All over the country the press has asked, Why are you, a black man, fighting busing? As a former teacher I am aware that our schools in Texas and other parts of the country are inferior institutions, black and white; therefore, when you say that my son can attain a better education in schools twenty miles from home, I realize that it's a lie. I realize that the courts should have ordered quality education, but instead they ordered busing, hoping that this would achieve quality education. I know that quality education can only be attained through students who hunger and thirst for an education, teachers who are qualified and devoted, and parents who are interested. I realize that the courts are denying black folks a last chance to develop their own institutions, which are our homes, churches, and schools.

I am under the impression that the federal courts, the Congress of the United States, and other government officials, including those in the Office of the Department of Health, Education, and Welfare, where the busing plan was initiated, have not heard from black opponents to busing. Proudly I am black, proudly I am an American, and proudly I am one of those who oppose busing. The difference here is that I have been outspoken and active, and I am elated that I was one of the first anti-busing leaders from the Dallas area. My black support has been quiet support, for my black brothers are unwilling to endure the abuse, the harrassments, heckling, physical threats, unemployment, and various other injustices that come as a result of a political attitude or philosophy such as mine.

The Supreme Court of the United States is a predominately white body, consisting of eight whites and one token black, who must be charged with the responsibility of having renewed hostilities in the South. In Texas we are integrated, particularly in our rural areas and most of our metropolitan areas, unlike the capital of the nation, Harlem in New York, the south side and west side of Chicago, and other parts of the East, Midwest, and North; however, even in Texas we have not reached the point of integration we would like, and the courts are making it almost impossible. These white men (the Supreme Court and other federal judges) who have not lived around black folks and most certainly have not lived with them are apparently assuming they know what is best for black people. I realize that the courts have insulted many of us blacks who are truly proud, for the court order implies that we are too immoral, too indecent, and too lazy to develop our own institutions. To me these are insults of the worst kind.

If the courts had ordered quality education, then the real burden would have been placed on the school boards and probably city councils and state legislatures to provide money for the adequate upkeep of neighborhood schools. Your order would have pressured police departments to get sex out of book rooms and closets, to stop the knifings and attacks on teachers, to save the lives of kids by getting the dope out of our school (which by the way is more abundant in white neighborhoods and schools—my son has not even expressed an interest in cigarettes yet he will be bused where pot is abundant). These evils stand as blockades to quality education.

For the most part, in this presentation I have been talking in opposition to the busing of black kids. But how selfish it is of me not to make an effort to prevent the busing of white kids; therefore, gentlemen, in my numerous speaking engagements across this country I have told white kids that I am not angry about the inequities of the past, just thankful to God for the present and looking with awareness toward the future. At any rate, white kids are not responsible for the injustices of the past. Rather white men, your age, gentlemen, and older, either practiced or went along with the worse kinds of segregation. And I mean whites period: liberals and conservatives. If I hold no malice in my hearth toward you, gentlemen, then I am certainly not angry with white youngsters. White kids, black kids. All are precious in the eyesight of God. Please do not allow the courts to bus little innocent white kids out of their home environments.

Finally, gentlemen, as I have spoken to thousands of whites all over the South, I have warned them that if it is racism that is causing them to fight busing that we would lose this battle. I have warned them that we have grown to a point in this great country of ours where all people will have opportunity to develop to the fullest potential.

May I end in this manner. I live in an all black community. I attend an all black church. When I take a sip, it is in an all black night club. My mother is black, my father is black, my wife and children are black. For some reason I like that. The school that my son attends happens to be ninety-eight percent black. I say so what. If the school he attended was ninety-eight percent white, I still would say so what.

Chairman Celler. We will adjourn until tomorrow morning at 10 o'clock.

Mr. Jacobs. May I make a suggestion, Mr. Chairman, that since it is only 13 minutes past 4 perhaps two representatives from the Charlotte-Mecklenburg Board of Education and one other gentleman from Dallas, Tex., who are present could be accorded a limited amount of time, to make a statement.

It would be an indulgence by the committee but I think it would be worthwhile.

Chairman Celler. Let them come up.

Mr. McCulloch. I would like to know whether or not these witnesses have written statements that they wish to leave with the committee.

Mr. Jacobs. I would suggest further that the gentleman here from Texas has a statement which he has submitted to the committee. I have read it and it has been placed in the record. Perhaps he could just submit a brief comment and then answer any questions we might ask.

Chairman Celler. Mr. Smothers, come forward.

Mr. McCulloch. Mr. Chairman, I would like to ask this question: We have sat in these hearings and will sit for many days. Is it possible that we will set a precedent that people may come in here from tens of thousands of towns and hamlets in America and, after we have heard witnesses who are expert in this field, demand to use this forum without any notice or without waiting their turn?

Mr. Jacobs. If the gentleman will yield, I will support the Chair in asserting this is not a precedent.

Chairman Celler. We will hear the gentleman for 5 minutes. We have placed your statement in the record and we will give you 5 minutes to present a brief oral statement.

STATEMENT OF CLAY SMOTHERS, DALLAS, TEX.

Mr. Smothers. I am Clay Smothers. I am a columnist for the Oak Cliff Tribune, Dallas, Tex. I assume that the court, the Supreme Court and other Federal courts, are calling themselves helping black people. I would be the first to tell you that I think they have gone about it in the wrong manner. We care little about a racial balance. In fact, what the courts have done to my 13-year-old is to make him feel inferior.

They have said, "Clay, the only way you can be educated well is to be transported 25 miles across town to city white kids." My son has been taught that you have just as great a chance as anybody and that you are just as precious in the city of God regardless of your skin being black. But I am afraid that you are hurting us.

What we want and what we want the court to do is to order quality education. The school that my son attends is 98 percent black. So what? If that school was 98 percent white I will still say so what? It is not important to me and it is not important to millions of other black parents that our kids attend school with white kids. The next thing you are doing is something that I have been subjected to for many, many years.

We have been subjected and forced to do all manner of things. My ancestors have endured all manner of atrocities and here today you come back again forcing us, forcing my kid to attend a school that I would rather him not attend. I would rather my son go to school down the street to Holmes Jr. High School. I would like for the school board to put enough money in Holmes Jr. High School to make it a school of quality. I would like for the courts and you to understand that quality education comes from kids who truly want to be educated, parents who are truly interested, and teachers truly qualified and dedicated and devoted.

Quality education will not come from my son going 25 miles to school.

They say, "Clay, where is your black support? How many black people agree with you?" I am sorry that my support is white and my black brothers are unwilling to take the stand that I take openly. It is not the safest thing in the world to do and I think that they are being quite justifiably but I guarantee you that the majority of the blacks feel as I do on the busing situation.

I have been subjected to threats and harassment. I have moved my daughter twice for her safety because of my being in this busing fight. I have warned audiences all over the country, gentlemen. I have been speaking in the last 6 or 7 months to predominantly white audiences; if this is racism, they are trying to invoke in this thing, we are probably going to lose.

We are probably going to lose anyway and I hate to be the pessimist here. I do not have too much optimism for this amendment getting out of this committee. But I have warned them that racism we will absolutely lose. They have promised to me and I hope they have told me the truth and honest that "Clay, we are not racist and that we are not trying to stop integration of schools. What we are trying to do is to preserve neighborhood schools" and with that I am in complete agreement.

The black proponents of busing, you have heard many times. They say we have been bused all of our lives and that is true, gentlemen, and I regret it and it was wrong. But little white kids were not responsible for the injustices that I suffered and I would never be so mean as to wish them the ordeal of busing because I was bused.

I certainly don't want my son to suffer the ordeal of busing because I was bused. You must remember the injustices practiced, the injustices suffered by black people of years back were practiced by men your age and older and the burden of integration should fall on us adults and not these kids.

May I end it this way. I live in an all black community. I chose to live there. I could have moved to a white community. I am not a segregationist either. I attend an all black church. When I take a sip, I drink in an all black nightclub. My father is black. My wife is black and my children are black and I like that.

The school my son attends happens to be 98 percent black. I say, "so what"? If the school you attend was 98 percent white, I still say so what. I call on you, gentlemen of this committee to help us preserve our neighborhood schools in Dallas and across this country.

Chairman CELLER. Thank you very much.

Who is representing the Charlotte group? I will give you 5 minutes also.

STATEMENT OF SAM McNINCH, ACCOMPANIED BY MRS. JANE B. SCOTT, MEMBERS OF THE CHARLOTTE-MECKLENBURG SCHOOL BOARD

Mr. McNINCH. Thank you, Mr. Chairman. This is Mrs. Jane Scott, a member of the Charlotte-Mecklenburg Board of Education. My name is Sam McNinch which rhymes with pinch. We particularly wanted to speak today because Father Hesburgh referred to the Charlotte Mecklenburg system. I think Mrs. Scott is far more qualified to talk about that than I, so I will make my remarks in 1 minute and let her have the other 4.

Mr. Chairman, my minister said the other day that if you punch a hole in a phonograph record off center and try to play it, it doesn't sound too good. I am going to steal that from him today and say that if you recorded the transactions, the chaos, in Mecklenburg County on a record, and played it off center, I don't think you would recognize anything about it.

To make a very fast point, and it is on file with you now, sir, our judges ordered that we can not build a school for any reason unless we show that it will be integrated. We wanted very badly to build a vocational-type specialty school patterned somewhat after the Dallas, Tex., school that was recently completed, costing $21 million. We would hope that the students that would attend this school would be those who have not been able to cope with the academic program or either would like to extend the vocational training they are getting in high school now.

But, sir, we cannot build this school. I think it is a quirk of the court order, but I think it is a prime example of what we are going through in Charlotte. I see no reason why we can't build it except for the court order. However, I will drop that now with the hope that we can come back before you get through with these hearings. Mrs. Scott?

Mrs. SCOTT. Gentlemen, I appreciate the opportunity to speak to you personally and would join Mr. McNinch in hoping we would be given an opportunity at some later time when it is more convenient to you so that you can have questions regarding our case answered by us.

Father Hesburgh made some statements this morning with which I greatly disagree. He first of all mentioned the fact that the attendance zones are like pie-shaped wedges. We have so many different kinds of attendance zones that it would be hard to find a pie-shaped wedge if you tried. You have some children in our school system who have been assigned to three different high schools in 3 different years.

We have many children who will be assigned out of their neighborhood school area, to schools many miles away for nine or 10 of their

12 school years. Mr. Smothers gave it to you firsthand when he said that it didn't matter to him what the color was in a school. It was the quality of education he was looking for.

Father Hesburgh also made a statement that we might expect when young people are put together under unfamiliar circumstances, at first there are incidents of disturbance.

If this is true, why did we have no incidents of disturbance when we closed seven all-black schools because they were unfit facilities and integrated those students into close neighborhood schools that were predominantly white? Why was Charlotte held up as a model for others to follow by the same district judge who handed down this last order which was upheld by the Supreme Court? Why did this district judge hold Charlotte up to the Nation as a model in integration?

If it is natural for people who are put together under unusual circumstances, which those before this certainly were, to rebel, why was there no rebellion? And why are our schools torn right now with rebellion? Yes, we haven't had quite as many riots this month and last month as we had in previous months of these 2 years of chaos.

We now have a task force which is called to a school by a principal or counselor when they see trouble coming, and it is subdued most of the time before it gets to the riot stage. I ask you, is that an educational atmosphere? I don't think so.

Father Hesburgh states in his opinion that many parents opposed busing, but of the students that he had talked to, black students, few of these preferred their old segregated schools. It might interest you to look at the record and see that West Charlotte High School, which is one of our finest facilities and previously all black, has gone increasingly black because not only did the black students want back in, but their parents moved into the district it now serves to get them back in.

We have, gentlemen, before you and before us a much more important question, I think, than just a constitutional amendment. The court has called our children irrelevant. I hope to God that is not true because if in educational assignments the children are not relevant, then what is?

Please give us a chance at a later date to come back and talk with you. I, for one, would welcome any question you have to ask.

Mr. JACOBS. Mr. Chairman, for the record, I wonder if we could have inserted at this point an accurate map of the school zones the witnesses have testified to. And I believe the record should be corrected, ma'am. I think you said quality integration. I believe you meant education.

Mrs. SCOTT. I have corrected the mistake—thanks.

Mr. McNINCH. We will furnish that.

(Subsequently, the following letter was submitted. The school attendance maps referred to are retained in the committee's files.)

CHARLOTTE, N.C. *March 13, 1972.*

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Rayburn House Office Building,
Washington, D.C.

GENTLEMEN: The assignment maps which were requested for the record by Mr. Jacobs, accompany this letter. Also attached are some other statistics to which we referred in our testimony before your committe on March 1, 1972 and we respectfully request that they be entered in the record along with the maps.

As you can see, the Charlotte-Mecklenburg assignment plan does not consist of "school attendance zones that slice outward from the city like the wedges of a pie", as Father Hesburgh's testimony indicated. The black arrows show paired and clustered schools for the elementary grades. Please note the distance these little folks must travel twice daily, frequently involving a bus ride of 1–1½ hours each way. This does not corroborate Father Hesburgh's statement, in which he refers to the "daily bus ride of 15–30 minutes".

Please also note the attached Bus Schedule and ask yourselves how alert we can expect children to be who have to get up at 5:00 or 5:30 A.M. to catch the bus by 6:05 or 6:30 A.M. and then ride an hour or more before arriving at school. Teachers tell us that it is common now to find these youngsters of elementary school age, falling asleep in class. Is it any wonder?

Father Hesburgh's testimony is very misleading in reference to the status of school disruptions here. In the attached Security Director's report please note the hours spent just by him and his two assistants during the past six months, investigating and dealing with school disruptions. That report does not include the hundreds of hours already spent this school year, by the School Task Force which is made up of central office personnel, assigned to individual schools to be on call whenever the principal of a school feels that help is needed because of racial tension. When these people are called to a school, they must leave their educational duties and devote their time to restoring order in the school to which they have been called. This means that much of the educational planning ordinarily handled by these folks is left undone.

The bomb threats, referred to in the same report by our Security Director, have resulted in an atmosphere of fear in many of our schools. The children's and teacher's health is also jeopardized when they must wait in the cold and/or rain while police search to be sure the threat is only a hoax. These calls are particularly hard to trace because they so often come from outside the school's telephone exchange area, thus posing a real problem for the telephone company tracers.

Mr. Celler and Committee Members, these are valid facts, but more than that, they tell a tragic story of how forced racial assignments have torn our progressive, community apart. Our children are suffering the indignity of being no more than numbers and colors to some adults in high positions. Surely you can't believe that past racial injustice justifies punishing this young generation for something they were in no way responsible for creating.

Please help us put sanity and justice back into our school assignments. The children, black and white, are looking to you for help.

Sincerely yours,

JANE B. SCOTT,
Member,.Charlotte-Mecklenburg Board of Education.
SAM S. MCNINCH,
Member, Charlotte-Mecklenburg Board of Education.

CHARLOTTE-MECKLENBURG SCHOOLS, TRANSPORTATION DEPARTMENT, EXTREME LOADING AND UNLOADING SCHEDULES

Grade level	School	School schedule	Earliest students loaded
Morning:			
Senior high	Independence	7:30 to 2:10	6:05 a.m.
Junior high	Kennedy	8:00 to 2:45	6:10 a.m.
Elementary	Davidson	8:00 to 2:30	6:30 a.m.

Grade level	School	School schedule	Latest students discharged
Afternoon:			
Senior high	South Mecklenburg	8:20 to 3:25	5:00 p.m.
Junior high	J. T. Williams	8:15 to 3:15	4:50 p.m.
Elementary	Long Creek	8:55 to 3:25	4:20 p.m.

CHARLOTTE-MECKLENBURG SCHOOLS,
Charlotte, N.C., March 2, 1972.

Mrs. JANE SCOTT,
Charlotte, N.C.

DEAR MRS. SCOTT: In compliance with your request of March 2, 1972, the following is submitted for your information:

1. Hours spent in schools and in the investigation of tension and disruption by security:

September 1971	156
October 1971	79
November 1971	115
December 1971	20
January 1972	87
February 1972	129
Total	586

2. Number of hoax bomb-threat calls received during 1970–71, 173.
3. Number of hoax bomb-threat calls received during 1971–72, 98.
4. There were no records maintained on bus incidents, including fights and objects thrown at and from buses, until January 1972. January 1972, seven incidents investigated; February 1972, six incidents investigated.

Neither the Information Center nor the Security Department has accurate records on the number of times the police have responded to, or have been on standby in the security of schools because of disruptive acts and tension. It might be possible to obtain this information by calling Captain Bartlett of the County Police Department, telephone number 374–2347 and Chief Ken Miller of the City Police Department, telephone number 374–2345.

We hope that this information will be helpful to you. If there are further questions or more information needed, please call us.

Very truly yours,

ROLAND M. SMITH,
Director of Security.

FEBRUARY 28, 1972.

To: Chairman Emanuel Celler and members of the subcommittee.
Subject: Amendments to the Constitution relating to the transportation and assignment of public school pupils.

Without a doubt, you are as aware of as many, if not more, complaints about the effects of Federally controlled desegregation than I, as an elected member of the Charlotte-Mecklenburg Board of Education better known in busing circles as Swann vs Charlotte-Mecklenburg Board of Education, Charlotte, North Carolina. Therefore, I do not intend to insult your intelligence by itemizing these same grievances.

Quite the converse is my objective in pointing out a small but far reaching eccentricity of our district court order upheld by the Fourth Circuit Court and the United States Supreme Court.

The Courts in attempting to render an interpretation of the constitutionality of various charges in Swann vs Charlotte-Mecklenburg Board of Education have through acquiescense penalized the student needing as much protection as any other student, if not more. These students I speak of are those whose capacity to cope with the academic process is little or none and/or some who for one reason or another do not develop an academic interest.

To retain the interest of these students, and to prevent a mass drop-out problem effecting both the individual student and society, and to create an on-going learning atmosphere for the academically inclined student, and to render a genuine service to each student, we desperately want to build a Career Development Center whereby any student wishing to pursue a career offered by our facility can graduate from high school with training adapting him for employment rather than in some cases, a social diploma. Students may be interested in such a program as an extension of their academic pursuits or in lieu of academic pursuits.

The nine members of our Board of Education have recently voted unanimously to proceed in the direction of building such a school encompassing classes in the Performing Arts, Business and Management Technology, Computer Technology, Horticulture, World Languages, Metal Technology, Construction, Climate Control Technology, Aeronautics, Transportation, Photography, Radio and Television, Beauty Culture, Para-Medical and Professional Life-Saving Techniques, Office Machine Use and Repair, etc.

Our business community is as excited as we are for we have an opportunity to do something positive. Dallas, Texas, has recently completed a similar type school costing $21,000,000. With the academic program in conjunction with a Career Development Center, we will be in a much better position to educate each child to the fullest extent he or she is capable of receiving it.

However, our district court order very clearly states that we cannot build this school or any other school unless we first prove to the court that desegregation will prevail.

This order completely ignores the entire purpose of our intentions. We, too, can acquiese and make sure only a certain number of each color be admitted to such a specialty school disregarding the individual student needs; thus we by law, would be guilty of discrimination.

I make this one point, not by any stretch of the imagination conclusive, in describing my utter frustration with Federal intervention in public school matters. It is an attempt to show how far off-center this entire desegregation by Federal force has become.

Try punching an off-center hole in a phonograph record. Then try playing it and what you hear will most probably resemble the progress we are making in our public schools toward quality control of our learning process.

How does it feel to be in a position to control the future of all school age children in the United States? That, I agree, is a moot question intended to point up the fact that we Board of Education members are fast being replaced because of questions unanswered by the Courts, yet vague Court edicts prevail.

I urge you to take the proper steps toward an amendment of the Constitution so we can tend to our students needs.

SAM S. MCNINCH III,
Member, Charlotte-Mecklenburg Board of Education, Charlotte, N.C.

Chairman CELLER. That will end the hearing for today. We will now reassemble tomorrow morning at 10.

(Whereupon, at 4:30 p.m., the committee adjourned, to reconvene for further hearing at 10 a.m., Thursday, March 2, 1972.)

SCHOOL BUSING

THURSDAY, MARCH 2, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141 Rayburn House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Brooks, Hungate, Jacobs, Mikva, Abourezk, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman Celler. The committee will come to order.

This morning's Washington Post carries an article reporting that the departing Attorney General, Mr. Mitchell, said yesterday that he prefers legislation to a constitutional amendment to deal with the issue of busing.

The article will be printed in full at this point in the record.

(The newspaper article referred to follows:)

[From the Washington Post, March 2, 1972]

Mitchell Favors Law on Busing to Amendment

(By Carroll Kilpatrick)

Attorney General John N. Mitchell, on his last day in the cabinet, said yesterday that he preferred legislation to a constitutional amendment to deal with the issue of busing.

Without predicting what President Nixon will recommend in his promised statement on busing, Mitchell's comment in support of legislation rather than a constitutional amendment accorded with comments of other administration leaders.

Mitchell told reporters at a farewell news conference reviewing his three years in the Justice Department that he believed a statute "can be drawn constitutionally which will eliminate this problem of court-ordered excessive busing."

He said he believed one approach might be legislation to delay a busing order of a lower court until the case could be decided by the Supreme Court and pending new legislation by Congress.

Before going to China, Mr. Nixon named a cabinet committee of which Mitchell was a member to study the busing issue. Mitchell indicated that the committee this week would present a series of options to the President without any recommendation.

The President will then decide fairly soon what to recommend to Congress, the outgoing Attorney General said.

Mitchell was in a relaxed and optimistic mood as he parried reporters' questions. His resignation was effective at midnight, when he was succeeded, subject to confirmation, by Richard G. Kleindienst. Mitchell will direct Mr. Nixon's election campaign.

Mitchell asserted that the Justice Department had taken major steps forward in the fight against crime, in controlling drug abuse, in civil rights, environmental protection and other areas.

Claiming "quiet, but substantial, gains" in civil rights, he said that in 1969 when the Nixon administration took office only 6 per cent of all black children in the South attended legally desegregated school systems.

Now, he said, 95 per cent of the black children in the South attend such schools.

With a 50 per cent increase in the number of lawyers in the civil rights division, an effort was made to "give a national, rather than a regional approach, to civil rights," he said.

"A deliberate effort was made to avoid extravagant rhetoric and promises and to substitute action for words," Mitchell declared. "The goal of the school integration effort was to assure maximum reduction in discrimination in a manner that preserved peace in the communities undergoing this social change."

Mitchell said he would like to say that "the tide of rising crime" has been reversed, "but I would be exceeding the facts to say that."

"I can say without a doubt, however, that the increase has been slowed," he said. "I can say further that we are encouraged to note that actual decreases are being registered in greater frequency in our major cities.

The work the Nixon administration has done in launching its anti-crime fight will bring results in the future, he predicted. The Law Enforcement Assistance Administration has increased its aid to cities and states from $63 million in Fiscal 1969 to $700 million now, he said.

"We are particularly proud of the results that have been achieved in the District of Columbia to reverse the crime rate," Mitchell said.

"Through court reform, increased police manpower, LEAA grants and other measures, we have helped officials of the District to bring about an actual, and continuing, decrease in crime."

Chairman CELLER. Our first witness this morning is the distinguished president of the National Education Association.

Mr. Morrison, we are glad to have you. Will you indicate those with you, please.

STATEMENT OF DONALD E. MORRISON, PRESIDENT, THE NATIONAL EDUCATION ASSOCIATION, ACCOMPANIED BY STANLEY J. McFARLAND, ASSISTANT EXECUTIVE SECRETARY FOR GOVERNMENT RELATIONS, AND DAVID RUBIN, DEPUTY GENERAL COUNSEL

Mr. MORRISON. Thank you, Mr. Chairman.

To my left is Mr. Stanley McFarland, assistant executive secretary of NEA for government relations. To my right is Mr. David Rubin, deputy general counsel of the National Education Association.

I am president of the National Education Association, an association whose membership numbers more than 1.1 million educators.

I want to thank you for this opportunity to testify on House Joint Resolution 620 and related proposals. House Joint Resolution 620 would write into the U.S. Constitution the following language:

"No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

"Section 2. Congress shall have the power to enforce the article by appropriate legislation."

Although these words seem innocuous on their face, they are potentially very destructive.

As the Supreme Court recognized, it may be necessary to take race into account in order to counteract continuing effects of past deliberate segregation. This may either be segregation mandated by law under dual school system or as decisions by courts, North and South, have recently shown it may be the result of discriminatory policies and practices of school authorities.

The effect of the amendment may well be to enshrine this type of discrimination into the supreme law of the land and to roll back measures already taken to correct it, whether pursuant to Federal court order, HEW directive, or State law.

Presumably desegregation already achieved in many communities under voluntary desegregation programs would also be vulnerable to challenge as a result of the amendment.

The educational consequences would be disastrous. The central educational issue of our time is how to provide equality of educational opportunity for poor children and children of minority groups. There is a shockingly wide achievement gap between the advantaged white child and the disadvantaged black child. The Coleman report found that at the sixth grade the average black child in the Nation's metropolitan area was about one and one-half grade levels behind the average white child in verbal achievement.

By the 12th grade the gap had widened to 3 years.

A great deal of money has been spent on compensatory education programs in an effort to narrow the gap between middle and upper income students who are primarily white and low income students who at least in the central cities are predominantly black.

These programs have sought to improve the achievement of youngsters in racially isolated schools through such measures as reducing pupil-teacher ratio and introducing innovative programs.

The results generally have been disappointing. At least in their present scope, compensatory educational programs and racial isolation, although they cannot be abandoned without leaving low income pupils in worse straits, are clearly not the panacea for educational ills of blacks or other minority children.

On the other hand, there is evidence that school desegregation is of significant educational benefit to these children. The Coleman report found that the educational resources brought to the school by other children, such as reading material in the home, amount and level of discussion in the home, and parents level of education, bore a stronger relationship to school performance than any other resources in the school.

Children from middle-class backgrounds normally had greater educational resources in their homes than poor children. Since most minority children were poor, they had fewer educational resources in their home than children from the majority group.

As a result, a poor black child was disadvantaged if he was educated in a racially and economically homogeneous school composed of mostly children of his own race and economic class.

The Coleman report contained another significant finding that when the school was composed primarily of students with advantaged backgrounds, the achievement of such students was not reduced by the presence of students with disadvantaged backgrounds.

Subsequent studies of school districts which have desegregated their schools however examined under control conditions the performance of black and white children in integrated settings for the first time. These reports generally have confirmed findings of the Coleman report.

Based on careful review of the existing literature, a report to the Board of Regents of the University of the State of New York published December 1969 concluded that the integrated setting has relatively greater potential for achievement of black students than segregated school environment and that this potential appears to exist at both elementary and secondary levels.

None of the studies reviewed showed that white achievement was impaired by integration.

Subsequent research, including recent studies in Dade County, Fla., and Evanston, Ill., supports these findings.

In *Brown*, on the basis of ample evidence, the high court determined that to separate children "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

While these words were spoken in the context of a dual school system imposed by law, the court acknowledged that school segregation, even without the sanction of law, has a "detrimental effect" upon black children.

Indeed, few children are sufficiently mature or sophisticated to distinguish between the separation of blacks pursuant to a mandatory or permissive State statute and the virtually identical situation prevailing in their district in the absence of such a statute.

A segregated school system sends a devastating message to the black child. It tells him more effectively than words can convey that he is so inadequate or inferior that he must be kept separate and apart.

As the court remarked in *Brown* on basis of available data, a sense of inferiority affects motivation of a child to learn. And we, as educators, can confirm the validity of this conclusion. We know that self-esteem is a critical factor in learning motivation.

If a child downgrades himself, how can he have confidence essential to meet many challenges he must face in the learning process? There is evidence moreover that school segregation has negative impact upon self-perception of the black child in still another respect. At least one court has found, on basis of expert testimony, that the black child's sense of containment, of being confined by a hostile majority, imposes a sense of limited possibilities and decreases his ambition.

Schools consisting primarily of poor minority children are damaging in many other ways. For example, the PTA cannot contribute as much financially to the school as PTA in more affluent communities where parents can and often do give significant sums to the school out of their own pockets.

Because the school is perceived by the community as a poor school, the expectations of teachers and guidance counsellors are low and their attitude toward children often reflect contempt or indifference because the student bodies are not oriented toward academic achievement or college.

There is no clear pressure motivating the child to pursue these goals. On the contrary, peer pressure influences the child to underachieve, give up and drop out of school. The other pupils generally will have poor verbal skills, a significant educational disadvantage since children emulate the verbal patterns of their peers.

Moreover, the child does not receive any realistic preparation for the world he will face when he leaves school. Not only will he get a false impression of the level of competition he will confront, but he is given no opportunity to relate to or understand people of the majority race who control the vast bulk of the access to the job market and with whom he will have to deal in employment relationships.

Most of these inequalities are not remedial by infusing money into racially isolated schools but can be corrected only through school integration. Only in this way can the expectations of educators, freed from stereotypes encouraged by racially isolated schools, begin to correspond naturally with actual aptitude of the individual child.

Only in this way can significant educational resources, which children themselves bring to school, be made available to all schools on an equal basis.

Only in this way can minority schoolchildren have an opportunity to begin to keep realistically with the majority group. Let there be no misunderstanding. School desegregation is not for benefit of minority children alone. Racial segregation breeds false notions of superiority in white children whose own self-perceptions are harmful to their development and a white child educated in isolation from blacks is deprived of the opportunity to relate to the black people.

These are significant deficiencies in a world in which whites will have black coworkers and likely to have black supervisors and black neighbors.

More significantly, as Dr. Kenneth Clark pointed out in testimony before the Mondale committee, the conflict between racial segregation in the public schools and verbal morality taught by those institutions involves a moral schizophrenia and hypocrisy.

This in turn induces confusion and guilt in white youngsters who often react by repudiating reality entirely or rebelling against the parental authority including educational authority.

A hue and cry has been raised about busing but the school bus is simply one tool and at times the only available means to desegregate the schools. It is, however, no novelty in the field of education.

Indeed, although pupil transportation has been gradually increasing in recent years there is no statistical proof that desegregation has substantially increased pupil busing either nationally or regionally.

The schoolbus has been used for years as a device to preserve school segregation by transporting white and black children past the nearest schools intended to serve children of their own race but the schoolbus also is used for a wide variety of legitimate educational purposes entirely unrelated to school segregation.

Bus transportation, as the Supreme Court recognized in Swann, has been an integral part of public education systems for years. It is fair to say busing is now virtually universal and it would not be possible for most school systems to function without it.

Busing was perhaps the most significant factor in the transition from the one-room schoolhouse to the consolidated school. Parenthetically, the closing of one-room schools in many States was accompanied by similar parental protest against the loss of the neighborhood school.

Children living more than a mile or two from school typically are bused. In many school systems children living less than a mile are bused if walking is hazardous because of traffic situations.

School systems have not hesitated to bus children to vocational and special educational programs.

Schoolchildren are regularly bused on field trips serving some educational purpose. In some districts such as Cleveland's Shaker Heights, children are bused home for lunch to give teachers duty-free lunch hours.

Outside central cities the vast majority of children get to school by riding on a bus. The most available statistics covering 1967–68 show 42 percent of the Nation's pupils were transported to schools at public expense.

This does not include significant numbers of children riding public transportation nor private school children transported at public expense.

Mr. ZELENKO. Mr. Morrison, how many children do the statistics include?

Mr. MORRISON. Approximately 20 million children.

Fears have been expressed by some regarding effects of transportation on students. The Supreme Court, however, has made it clear that busing will be required only where it is reasonable and does not impose undue burdens on schoolchildren.

Research moreover shows that bus transportation is safer than walking to school.

Other fears appear to be equally groundless. A recent study showed no difference between transported and nontransported students in achievement test scores or daily attendance. By and large, with possible exception of schools in small towns, the "neighborhood school" is a mythological institution which does not exist.

In our cities and outlying suburbs the attendance areas of schools are constantly changing to adjust to population shifts, new school construction and new school programs. Thus schools in these areas do not serve clearly defined neighborhoods regardless of whether that term is understood to mean a typical geographic area or a community with identity of interest.

Black and white youngsters almost inevitably will have to deal with each other sooner or later. What better place for that encounter than the educational institutions and what better time than childhood when the attitudes have not hardened and biases are easier to dispel.

The schools have long borne the role of preparing youth for participation in American democracy. It is therefore entirely appropriate for the schools, indeed indispensable to their mission, to exemplify the fairness and equality which they would seek to inculcate in the Nation's children.

We have encouraging signs that the Nation's youth have fewer anxieties about school desegregation than parents. In 1970, NEA conducted a survey of teachers in teacher training programs in public and private colleges in Mississippi.

One of the questions was: "Do you favor a school system's maintaining racial balance of pupils and teachers in every school in direct proportion to the racial composition of the school district?"

A total of 67.9 percent of the student-teachers strongly favored or tended to favor such racial balance including 89.7 percent of the student-teachers at predominantly black institutions and 54.4 percent of those at predominantly white institutions. This is not to say there are no problems associated with school desegregation but we should be sure we address the real issues.

Many desegregation plans have placed an unfair burden on black parents and students and have resulted in the unfair dismissal or demotion of black educators.

We must insure that desegregation does not unfairly burden persons of any race and that the desegregation plan is otherwise soundly conceived and implemented in a fashion conducive to meaningful integration.

History will not favor those who in the passions of the moment diminish the Nation's fundamental charter and signal a retreat from the *Brown* decision. The adjustments necessary to remedy this Nation's past mistakes may cause inconvenience for many people but some disruption of established patterns is inevitable if we are serious about implementing the *Brown* decision and achieving equality of educational opportunity.

The public school system offers poor children who have spent all of their lives in a racial ghetto a chance to escape from racial and economic segregation.

Let us devote to making this opportunity a reality instead of searching for alternatives that do not exist. Let us devote our time, energy and resources to making desegregation work rather than to placing obstacles in the path of those laboring constructively to assure its success.

If we do this, perhaps some day teachers and students will be able to say without the hesitation many feel today that we are truly one indivisible nation with liberty and justice for all.

Mr. Chairman, in conclusion, I would ask the Chair to include the complete annotated statement in the record because I have tried to save the committee's time and I have condensed from the longer version to a 12-page oral version.

Chairman CELLER. That will include the footnotes?

Mr. MORRISON. Yes, that is correct.

Chairman CELLER. They will be accepted in the record.

(The statement referred to follows:)

STATEMENT OF DONALD E. MORRISON, PRESIDENT OF THE NATIONAL EDUCATION ASSOCIATION

Mr. Chairman and members of the committee, my name is Donald Morrison, and I am president of the National Education Association, whose membership numbers more than 1.1 million educators. I want to thank you for this opportunity to testify on House Joint Resolution 620 and related proposals.

House Joint Resolution 620 would write into the United States Constitution the following language:

Section 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

Section 2. Congress shall have the power to enforce the article by appropriate legislation.

Although these words seem innocuous on their face, they are potentially very destructive. As the Supreme Court recognized in the *Swann* case, it may be necessary to take race into account in order to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain the artificial racial separation mandated by state law.[1] If race no longer can be considered, literally hundreds of school districts in the South in which actual desegregation finally has been achieved following a generation of evasion and delay would not only be permited, but *required*, to resegregate their schools.

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[1] *Swann* v. *Charlotte-Mecklenburg Board of Educ.*, 91 S.Ct. 1267, 1282 (1971).

Race-conscious assignments are also indispensable in correcting the continuing effects of intentional discriminatory practices by school authorities. Increasingly the courts, North and South, are finding that school segregation is in part attributable to racially discriminatory policies by school officials—including the deliberate location of schools at the core rather than the edge of segregated residential areas and the racial gerrymandering of attendance zones. Such findings have been made in a host of communities including Denver, Colorado; Pasadena, California; South Holland, Illinois; and Indianapolis, Indiana.[2] The effect of the amendment may well be to enshrine this type of discrimination into the supreme law of the land.

Several states, concluding that racial isolation in the public schools is harmful regardless of its origins, have taken steps to require desegregation of schools.[3] The amendment would appear to nullify these measures and roll back the desegregation achieved pursuant to them. Finally, the amendment can be construed to forbid school systems to undertake a voluntary desegregation program where the school board—whether appointed or democratically elected—has determined that the program will provide educational benefits to the children in the district. Presumably, the desegregation already achieved in many communities under such voluntary programs would be vulnerable to challenge as a result.

The educational consequences would be disastrous. The central educational issue of our time is how to provide equality of educational opportunity for poor children and children of minority groups. There is a shockingly wide achievement gap between the advantaged white child and the disadvantaged black child. The Office of Education, in its survey on *Equality of Educational Opportunity*—the Coleman Report—found that black and white students in metropolitan areas began school with a noticeable difference in verbal ability. At sixth grade, the average black child was about one and one-half grade levels behind the average white child in verbal achievement. By the twelfth grade, the gap had widened to three years.[4]

This gap has much to do with the pathology of unemployment and crime in the nation's urban ghettos and the enormous social and economic costs which this pathology entails. Lack of achievement encourages students to drop out of school. For example, according to the recently issued Fleischmann report dealing with education in New York State, in the 1968–69 school year, the wealthy suburban counties of Nassau, Rockland, and Westchester had high school graduating classes which represented 90 percent of the ninth grade enrollment four years earlier, compared with only 55 percent in New York City. A much lower drop-out rate for white than black and Spanish-surnamed students was reported.[5]

A great deal of money has been spent on "compensatory" education programs in an effort to narrow the gap between middle and upper income students who are primarily white and low income students who, at least in the central cities, are predominantly black. These programs have sought to improve the achievement of youngsters in racially isolated schools through such measures as reducing pupil-teacher ratios and introducing innovative programs. The results generally have been disappointing.[6] Perhaps the most expensive effort of this kind was the More Effective Schools program in New York City, where the per pupil expenditure was doubled and the effective classroom size diminished by half. Evaluation showed little or no long-term improvement in the performance of students in that program.[7] At least in their present scope, compensatory education programs in racial isolation—although they cannot be abandoned without leaving low-income pupils in even worse straits—are clearly not the panacea for the educational ills of black or other minority children.

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[2] *Keyes* v. *School District No. 1, Denver Colorado*, 445 F.2d 990, 1000–1001 (10th Cir., 1971); *Spangler* v. *Pasadena City Board of Educ.*, 311 F. Supp. 501, 517–19 (C.D. Cal. 1970); *U.S.* v. *Sch. Dist. 151 of Cook County, Ill.*, 286 F.Supp. 786, 798 (N.D. Ill., 1968); *U.S.* v. *Board of School Commissioners of the City of Indianapolis, Indiana*, 332 F.Supp. 655, 667–670 (S.D. Ind. 1971).

[3] These states include California, New York, New Jersey, Massachusetts and Pennsylvania.

[4] Coleman, et al., *Equality of Education Opportunity*, 273–274 (1966).

[5] Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education, January 1972, *A Summary of the First Three Chapters*, p. 4.

[6] See *Racial and Social Class Isolation in the Schools*, A Report to the Board of Regents of the University of the State of New York (December 1969), pp. 364–377.

[7] D. J. Fox, Evaluating the "More Effective Schools", Phi Delta Kappa, June 1968, pp. 593, 595.

On the other hand, there is evidence that school desegregation is of significant educational benefit to these children. The Coleman Report found that the educational resources brought to the school by other children—such as the reading material in the home, amount and level of discussion in the home, and the parents' level of education—bore a stronger relationship to school performance than any other resources in the school. Children from middle class backgrounds normally had greater educational resources in their homes than poor children. Since most minority children were poor, they had fewer educational resources in their homes than children from the majority group. As a result, a poor black child was disadvantaged if he was educated in a racially and economically homogeneous school composed entirely or mostly of children of his own race and economic class.[8]

The Coleman Report contained another very significant finding—that when the school was composed primarily of students with advantaged backgrounds, the achievement of such students was not reduced by the presence of students with disadvantaged backgrounds.[9]

Subsequent studies of school districts which have desegregated their schools have examined under controlled conditions the performance of black and white children in integrated settings for the first time. These studies generally have confirmed the findings of the Coleman Report. Based on a careful review of the existing literature, a report to the Board of Regents of the University of the State of New York published in December 1969 concluded that the integrated setting has a relatively greater potential for the achievement of black students than the segregated school environment, and that this potential appears to exist at both the elementary and secondary levels. None of the studies reviewed showed that white achievement was impaired by integration.[10]

Subsequent research supports these findings. Very recently, for example, in December 1971, black students in Dade County, Florida, were reported to be making significant gains in desegregated schools with no noticeable adverse impact from two years of major shifting of teachers and pupils to comply with court desegregation orders.[11] In the same month, complete racial integration, partly resulting from busing, was reported to have brought higher achievement for black children in Evanston, Illinois, without adversely affecting white performance. Standardized tests conducted by Educational Testing Service showed black pupils in third grade reading at levels higher than pupils in third grade four years ago. Rates of progress were equal to those of higher achieving white pupils. While the black gains were not as great as the white, black children achieved steadily rising test scores in grades three through six.[12]

Following the Coleman report, the U.S. Commission on Civil Rights reported after a study that even where social class is held constant, racial isolation itself is harmful to black students.[13] Although this finding has been disputed, it is consistent with the Supreme Court's central finding in the *Brown* decision.

In *Brown*, on the basis of ample evidence, the High Court determined that to separate children "from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." [14] While these words were spoken in the context of a dual school system imposed by law, the Court acknowledged that school segregation, even without the sanction of law, has a "detrimental effect" upon black children.[15] Indeed, few children are sufficiently mature or sophisticated to distinguish between the separation of blacks pursuant a mandatory or permissive state statute and the virtually identical situation prevailing in their district in the absence of such a statute.

A segregated school system sends a devastating message to the black child. It tells him, more effectively than words can convey, that he is so inadequate or inferior that he must be kept separate and apart. Several years ago, at a hearing held by the U.S. Commission on Civil Rights, a teacher at an all-black high school was asked about a student exchange between his school and an all-white suburban high school. Explaining how his students felt about themselves and their school following the exchange, the teacher testified that one of his students had remarked: "Well, it was nice of them to come down to the zoo to see us." [16]

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[8] Coleman, *supra* at pp. 22–23, 302.

[9] Coleman, *supra* at p. 22.

[10] *Racial and Social Class Isolation in the Schools*, *supra* at 310.

[11] *Educational Recaps*, Vol. 2, No. 4, Educational Testing Service, Princeton, N.J., Jan. 1972, p. 5.

[12] *Ibid.*

[13] *Racial Isolation in the Public Schools*, U.S. Comm'n. on Civil Rights (1967).

[14] *Brown* v. *Board of Educ.*, 347 U.S. 488, 494 (1954).

[15] *Ibid.*

As the Court noted in *Brown* on the basis of available data, a sense of inferiority affects the motivation of a child to learn.[17] And we as educators can confirm the validity of this conclusion. We know that self-esteem is a critical factor in learning motivation. If a child downgrades himself, how can he have the confidence essential to meet the many challenges he must face in the learning process?

There is evidence, moreover, that school segregation has a negative impact upon the self-perception of the black child in still another respect. At least one court has found, on the basis of expert testimony, that the black child's sense of containment, of being confined by a hostile majority, imposes a sense of limited possibilities and decreases his ambition.[18]

Schools consisting primarily of poor minority children are damaging in many other ways. For example, the PTA cannot contribute as much financially to the school as PTA's in more affluent communities, where parents can and often do give significant sums to the school out of their own pockets. Because the school is perceived by the community as a poor school, the expectations of teachers and guidance counsellors are low, and their attitudes toward the children often reflect contempt or indifference. Because the student bodies are not oriented toward academic achievement or college, there is no peer pressure motivating the child to pursue these goals. On the contrary, peer pressure influences the child to underachieve, give up, and drop out of school. The other pupils generally will have poor verbal skills—a significant educational disadvantage since children emulate the verbal patterns of their peers.

Moreover, the child does not receive any realistic preparation for the world he will face when he leaves school. Not only does he get a false impression of the level of competition he will confront, but he is given no opportunity to relate to or understand people of the majority race who control access to the vast bulk of the job market and with whom he will almost surely have to deal in employment relationships and other adult contexts.

Most of these inequalities are not remediable by infusing money into racially isolated schools but can be corrected only through school integration. Only in this way can we assure that in each school there will be substantial numbers of children from affluent families with a stake in the institution. Only in this way can be expectations of educators—freed from the stereotypes encouraged by racially isolated schools—begin to correspond naturally with the actual aptitudes of the individual child. Only in this way can the significant educational resources which children themselves bring to school be made available to all schools on an equal basis. Only in this way can minority school children have an opportunity to begin to cope realistically with the majority group.

Let there be no misunderstanding. School desegregation is not for the benefit of minority children alone. Racial segregation breeds false notions of superiority in white children whose unrealistic self-perceptions are harmful to their development. And a white child—educated in isolation from blacks—is deprived of the opportunity to relate to black people. These are significant deficiencies in a world in which whites almost surely will have black co-workers and are increasingly likely to have black supervisors and black neighbors.

More significantly, as Dr. Kenneth Clark pointed out in testimony before the Mondale Committee, the conflict between racial segregation in the public schools and the verbal morality taught by those institutions involves a moral schizophrenia and hypocrisy. This in turn induces confusion and guilt in white youngsters, who often react by repudiating morality entirely or rebelling totally against parental and institutional authority, including educational authority.[19]

Many communities voluntarily have adopted school desegregation programs with a view toward affording educational benefits to both black and white children. These programs, since they take race into account in assigning students, would be outlawed by the proposed amendment.

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[16] *Hearing Before the U.S. Commission on Civil Rights in Cleveland, Ohio*, 308 (April 1–7, 1966).

[17] 347 U.S. at 494.

[18] Testimony of Dr. Robert L. Green in *Bradley* v. *The School Board of the City of Richmond*, Civil Action No 3353, Jan 5, 1972, pp. 283.

[19] Testimony of Dr. Kenneth Clark, Hearings Before the Select Committee on Equal Educational Opportunity of the United States Senate, 91st Cong., 2d Sess., Part 1A, p. 71 *et seq.*

An example of the type of school desegregation program which the amendment would jeopardize is Project Concern in the Hartford metropolitan area. This program involves a voluntary, cooperative effort between the Hartford school system and suburban school systems under which minority children from the Hartford ghetto, randomly selected, are bused into affluent suburban schools, bolstered by supportive services consisting of a teacher and a teacher aide for each 25 children bused. Testimony before the Mondale Committee showed that in May 1970, the program had expanded from four to 14 suburban communities; that the number of children enrolled had risen from 265 to about 1200; and that enrollment was expected to double to 2400 the following year. Although the program involved one-way busing, the parents of children currently in the program almost unanimously requested continuation and the addition of siblings and relatives. There were 3,000 children on the waiting list. Testimony further showed that initial opposition to the program in the participating suburban communities had largely been dissipated in light of actual experience under desegregation, that these communities viewed the project as beneficial to their children, and that the following year most of the suburbs would pay the cost of the supportive team—originally borne by the Hartford system.[20]

In light of the evidence that school desegregation is effective as an instrument to improvement the quality of education, it is not surprising that educators at all levels have given it their official endorsement. In its resolutions, the Representative Assembly of the National Education Association has declared it to be "imperative that desegregation of the nation's schools be effectuated," and has recognized that a variety of desegregation devices, including geographic realignment, pairing of schools, grade pairing, satellite schools, and busing—all of which take race into account and presumably would be forbidden under the proposed amendment—are acceptable.[21] Similar positions have been taken by the American Association of School Administrators and the Council of Chief State School Officers.[22]

A hue and cry has been raised about "busing" for the purpose of achieving an arbitrary racial balance. But the Supreme Court has not required busing for that purpose. Rather the obligation which rests upon a dual school system is to achieve the maximum feasible school desegregation.

The school bus is simply one tool, and at times the only available means, to desegregate the schools. It is, however, no novelty in the field of education. Indeed, although pupil transportation has been gradually increasing in recent years, there is no statistical proof that desegregation has substantially increased pupil busing, either nationally or regionally.

The school bus has been used for years as a device to preserve school segregation by transporting white and black children past the nearest school to schools intended to serve children of their own race. But the school bus also is used for a wide variety of legitimate educational purposes entirely unrelated to school segregation.

Bus transportation, as the Supreme Court recognized in *Swann*, has been an integral part of public education systems for years. It is fair to say that busing is now virtually universal, and that it would not be possible for most school systems to function without it.

Busing was perhaps the most significant factor in the transition from the one-room schoolhouse to the consolidated school. Parenthetically, the closing of one-room schools in many states was accompanied by similar parental protest against the loss of the "neighborhood school."

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[20] Testimony of Dr. Alexander Plante, Hearings Before the Select Committee on Equal Educational Opportunity of the United States Senate, 91st Cong., 2d Sess., Part 1A, p. 243 *et seq.*

[21] NEA Continuing Resolution C-4 provides in pertinent part: "The National Education Association believes it is imperative that desegregation of the nation's schools be effected. Policies and guidelines for school desegregation in all parts of the nation must be strengthened and must comply with *Brown* v. *Board of Education*; *Alexander* v. *Holmes County Board of Education, Mississippi*; other judicial decisions; and with civil rights legislation.

The Association recognizes that acceptable desegregation plans will include a variety of devices such as geographic realignment, pairing of schools, grade pairing, and satellite schools. These arrangements may require that some students be bussed in order to implement desegregation plans which comply with established guidelines adhering to the letter and spirit of the law. The Association urges that all laws of this nation apply equally to all persons without regard to race or geographic location . . .".

[22] AASA 1972 Resolution No. 2 adopted by the membership of the American Association of School Administrators at the Annual Business Meeting, Atlantic City, N.J., Feb. 6, 1972. Policies and Resolution adopted by the Council of Chief State School Officers, Nov. 17, 1971 at Annual Business Meeting in Louisville, Ky.

Children living more than a mile or two from school typically are bused. In many school systems children living less than a mile are bused if the walk is hazardous because of traffic conditions. School systems have not hesitated to bus children to vocational education programs and special education programs concentrated in particular geographical areas. School children are regularly bused on field trips serving some educational purpose. In some school districts, such as Cleveland's Shaker Heights, children have been bused home for lunch to give teachers duty-free time. Outside our central cities, the vast majority of students get to school by riding there on a bus.

The most recent available statistics, covering the school year 1967–68, show that 42 percent of the nation's pupils in average daily attendance were transported to schools at public expense.[23] This does not include the significent numbers of children riding public transportation, nor the private school children transported at public expense.

Fears have been expressed by some regarding the effects of transportation on students. The Supreme Court, however, has made it clear that busing will be required only where it is reasonable and does not impose undue burdens on school children.[24]

Research, moreover, shows that bus transportation is safer than walking to school.[25] Other fears appear to be equally groundless. A recent study compared 120 transported and 120 non-transported students randomly selected from an almost all-white urban elementary school. The time range on the bus for the transported students was from 10 to 45 minutes. The study showed no statistically significant difference between the transported and non-transported groups in achievement test scores or daily attendance. The study also failed to substantiate the contention that transported students have fewer friends than their non-transported peers.[26]

By and large, with the possible exception of schools in small towns, the "neighborhood school" is a mythological institution which does not exist. In our cities and outlying suburbs, the attendance areas of schools are constantly changing to adjust to population shifts, new school construction, and new school programs. Thus, schools in these areas do not serve clearly defined "neighborhoods," regardless of whether that term is understood to mean a particular geographical area or community with an identity of interest. The family that purchases a home with a view toward enabling its children to walk to school may well be disappointed when the school boundaries are redrawn and their children assigned to another school for reasons wholly unrelated to school desegregation.

Black and white youngsters almost inevitably will have to deal with each other sooner or later. There is no better place for that encounter than the very institutions responsible for educating our youth. And there is no better time than childhood, when atttiudes have not yet hardened, and biases, if they exist, are easier to dispel. The schools have long borne the role of preparing youth for participation in American democracy. It is therefore entirely appropriate for the schools—indeed indispensable to their mission—to exemplify the principles of fairness and equality which they would seek to inculcate in the nation's children.

We have encouraging signs that the nation's youth have fewer anxieties about school desegregation than their parents. In December 1970, the NEA Research Division conducted a survey of a random sample of student teachers in teacher training programs in public and private colleges in Mississippi, which only a few years ago was the country's firmest bastion of segregation. One of the questions was: "Do you favor a school system's maintaining a racial balance of pupils and teachers in every school in direct proportion to the racial composition of the school district?" A total of 67.9 percent of the student teachers strongly favored or tended to favor such racial balance, including 89.7 percent of the student teachers at predominantly black institutions and 54.4 percent of those at predominantly white institutions.[27]

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[23] U.S. Department of Health, Education, and Welfare, Office of Education, *Statistics of Public Schools*, Fall, 1970, pp. 7–8.

[24] 91 S.Ct. at 1283.

[25] For example, according to the "Summary of School Accidents for a 6-Year Period," published by the Department of Education, Commonwealth of Pennsylvania, pupils in Pennsylvania were three times safer going home from school by bus when necessary than by walking. See testimony of Homer C. Floyd. Hearings Before the Select Committee on Equal Educational Opportunities of the United States Senate, Aug. 4, 1971, Part 14, p. 6185.

[26] White, *Effects on Busing on Urban School Students*, Educational Leadership, December 1971, pp. 255–257.

[27] NEA Research Division, unpublished survey of a random sample of student teachers in teacher training programs in public and private colleges in Mississippi, December 1970.

This is not to say that there are no problems associated with school desegregation. But we should be sure that we address the real issues. Many desegregation plans have placed an unfair burden on black parents and students and have resulted in the unfair dismissal or demotion of black educators. We must focus our attention upon insuring that desegregation does not unfairly burden persons of either race. And we must bring our best efforts to bear to insure that the desegregation plan is otherwise soundly conceived and implemented in a fashion conducive to meaningful integration.

History will not favor those who, in the passions of the moment, diminish the nation's fundamental charter and signal a retreat from the *Brown* decision. The adjustments necessary to remedy this nation's past mistakes may cause inconvenience for many people. But some disruption of established patterns is inevitable if we are serious about implementing the *Brown* decision and achieving equality of educational opportunity.

The public school system offers poor children who have spent all their lives in a racial ghetto a chance to escape from their prison of racial and economic segregation. Let us devote ourselves to making this opportunity a reality instead of searching for alternatives which do not exist. Let us devote our time, our energy, and our resources to making desegregation work rather than to placing obstacles in the path of those laboring constructively to assure its success. If we do this, perhaps some day teachers and students will be able to say, without the hesitation many feel today, that we are truly one indivisible nation "with liberty and justice for all."

Mr. MORRISON. Also, Mr. Chairman, I would encourage the committee, since this country has gone approximately 196 years with a Constitution that does not mention the word "education," I would hope that if it is time to put a statement about education in the Constitution, it would be a positive statement of the rights of a child to equality in education and not a statement of "Thou shall not."

Thank you, Mr. Chairman.

Chairman CELLER. Are there any questions?

Mr. ZELENKO. Dr. Morrison, the membership of NEA consists of 1.1 million educators, is that correct?

Mr. MORRISON. The direct dues paying membership is that figure, sir. However, the NEA represents 1.6 million teachers in affiliates that are connected and related to the NEA.

Mr. ZELENKO. Are those teachers in every State of the Union?

Mr. MORRISON. In every State, in every territory, in the overseas schools, Defense schools; yes, sir.

Mr. ZELENKO. Your statement makes reference to the chief school administrators. Have they taken a stance similar to that expressed by you this morning?

Mr. MORRISON. The chief State School Administrators are a part of a coalition of six organizations and have made that statement with the NEA.

Mr. ZELENKO. Dr. Morrison, a number of witnesses have criticized pupil busing because of attenuated bus schedules and because of split sessions. Does NEA have information as to whether any of these problems, which are serious in many communities, could be alleviated by provision of financial assistance to the school districts involved, for the purchase of additional vehicles with which to transport pupils?

Mr. MORRISON. Sir, from the information we got, the school districts were relying heavily on Federal moneys for buses. Some school districts—one, for example, in the city of Nashville—had ordered buses and was counting heavily on financial assistance for that purpose, and it is the input we get that there were a number of school districts who had their programs badly disrupted because of the prohibition of using Federal moneys for that purpose.

Mr. Zelenko. What I am trying to get at is whether or not an inadequate number of buses is usually the reason for split sessions, rather than the lack of classroom facilities. Or is it the lack of teachers, or the fact that extracurricular activities can't be offered in some schools because there are not enough buses to transport students? What are the reasons?

Mr. Morrison. Sir, we do not have a study or survey on this, but, having traveled in all of the States where busing is going on and which is all of the States, of course, it is my feeling that if the American people decide that they are going to do this so that it is done in the best interest of the students, it will be well done.

I am impressed every time I go out of this city and especially when I have to leave from Dulles Airport and I see the convenience with which the mostly adult passengers are conveyed by a vehicle which I understand in its initial stage cost $265,000 for each one of them, and I am sure that if we set our minds to it, that the program could be made an effective program whether it has to do with curriculum, scheduling, or extracurricular activities.

Mr. Zelenko. You said that approximately 20 million students are being transported to school. Of that figure, how many are being bused due to desegregation efforts?

Mr. Rubin. We don't have figures showing how much is attributable to desegregation. However, there aren't any statistics which indicate any connection between the gradual rise in busing that has taken place over the year and desegregation of the schools. There is nothing to show that busing has increased overall as a result of school desegregation.

Mr. Zelenko. Your testimony then is that the vast majority of public school pupils do not walk to school.

Mr. Morrison. It is not a vast majority, sir. If you include all of the students in private schools who are financed by public money, the public is transporting a majority of the students in this Nation.

Chairman Celler. You concentrated on House Joint Resolution 620, the resolution offered by Representative Lent. Do your objections also apply to the other constitutional amendments before the subcommittee?

Mr. Morrison. Yes, sir.

Chairman Celler. You are of the view that these amendments would cause a rollback to the situation we had before the *Brown* decision, is that correct?

Mr. Morrison. That is the interpretation that our legal counsel's office would put on it, sir.

Chairman Celler. So that it would be inconsistent for one to favor this constitutional amendment and the *Brown* decision?

Mr. Morrison. That would be our interpretation, sir.

Chairman Celler. Do you have questions?

Mr. Poff. Mr. Chairman, only one question. Do your objections also extend to a statutory remedy?

Mr. Morrison. We did not oppose the Scott-Mondale amendment, sir.

Mr. Poff. Thank you, sir.

Mr. ZELENKO. Mr. Chairman, at this point I should like to place the following material in the record.

Chapter II of a 1967 study by the Office of Education, "Race and Place" sets out a long line of cases decided in Northern States as far back as 1828 which raise serious doubts about the historical accuracy of the view that the neighborhood school is a long established institution in public education.

The study cites a 1908 legal survey which reported that the courts "have in numerous cases upheld the action of school boards in requiring pupils to attend a certain school although outside of the district of their residence or at a greater distance than the school nearest their residence."

The study goes on to conclude that "the neighborhood school policy was never an absolute policy, indeed the weight of 19th century court cases cited above is clearly against such a policy. Dedication to the neighborhood school plan grew as official segregation after *Brown* was rejected."

Mr. Chairman, I ask that chapter 2 of "Race and Place" be inserted in the record at this point.

Chairman CELLER. Do you care to make comment on that, Mr. Morrison?

Mr. MORRISON. Sir, that is our perception of it also. We have had numerous cases where a school district has been forced to send a child into a separate school district because a vocational or other program was more appropriate for that student and his parents were demanding that he receive that program.

Chairman CELLER. The material referred to by counsel will be placed in the record.

(The document referred to follows:)

RACE AND PLACE—A LEGAL HISTORY OF THE NEIGHBORHOOD SCHOOL

(By Meyer Weinberg)

CHAPTER II—DISTRICTS AND AREAS

The local school was an ever-present feature of the colonial New England town. It was a common school as it was the only one in the town. Local town authorities presided over the school district, whose boundaries were identical with those of the town itself. At this stage, the school district was the attendance area. Every school child in the district attended the same school.

In 1805, the town of Stowe, Mass., created separate school districts inside one political jurisdiction. The districting law, however, did not restrict itself to a geographical basis; it also named specific families who could attend a certain school without reference to residence. A court voided the law, holding that districting must have a geographical basis. Otherwise, noted the court, "the district would fluctuate with the change of residence of the persons mentioned." [1] That the whole problem was rather new is shown by a similar case in Dover, Mass. There, in 1807, the town was divided into three school districts. Once more, however, several families were mentioned by name as having the right to send their children outside their district of residence. A court struck down the law:

"* * * It can hardly be said that a territorial district was formed. None was defined by metes and bounds. It was not provided that all the remaining territory should form the central district. But certain individuals were to compose the district, and if it included their estates, the territory would change with every change of their estates * * * Towns, in executing the power to form school districts, are bound so to do it, as to include every inhabitant in some of the districts. They cannot lawfully omit any and thus deprive them of the benefit of our invaluable system of free schools." [2]

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[1] *Withington* v. *Eveleth*, 24 Mass. (7 Pick.) 106, 107 (1828).

By midcentury, Boston was divided into 22 attendance areas. While the State school law made no mention of requiring local schools to segregate children by race, Boston authorities chose to do so. They were challenged by the parents of Susan Roberts, a Negro girl. Although a regulation of the school board stated that students "are especially entitled to enter the schools nearest to their place of residence," [3] on January 12, 1848, the board held that this policy was by no means absolute! "In the various grammar and primary schools," the board declared, "white children do not always or necessarily go to the schools nearest their residence; and in the case of the Latin and English high schools * * * most of the children are obliged to go beyond the schoolhouses nearest their residences." [4]

In 1812, New York created its first statewide system of school districts. "School district boundary lines were not established originally by metes and bounds * * * The actual school district boundary lines were dependent, for the most part, on the boundary lines of the property as listed on the tax roll." [5] In 1872 the State supreme court decided *The Dietz* case, a school district case that arose in Albany. A Negro parent sued to force the school board to admit his child to the nearest school. The board insisted the child attend a more distant, all-Negro school

Judge Learned stated:

"Now it is to be observed that in Albany there are no school districts, unless the whole city is one district. In the country, as is well known, there are school districts, and the children residing in each district are entitled to attend the public schools therein. But it was not claimed by the relator that there is any law making a certain part of this city the district belonging to a particular school. I am unable to find such law. No school districts have existed here for many years, so far as I can judge by the statutes." [6]

In country school districts having only one school the district and the attendance area were identical. But as the Albany case indicates, within a city of a multiplicity of schools no statutory geographical attendance area existed. As the court explained: "The schools of Albany are the schools of the whole city * * *. The school which is nearest to his residence is no more his [i.e., an inhabitant of the city] than that which is most distant." [7] The school board was held to have the power to establish attendance areas within the city, including racial attendance areas. In Hempstead, N.Y., geographical attendance areas were first created in 1949.[8] Apparently prior to 1961, Newark, N.J., schools were not geographically districted.[9]

In the Pennsylvania School Code of 1854 (art. 9, sec. 23) school boards of adjoining districts were directed to permit a student in the district to attend a school in the next district "on account of great distance" or "difficulty of access" to a school in his own district. When school board members in Frederick Township refused to transfer several such students, a court warned them of its removal powers if they did not obey the law. "The right of pupils thus situated to the benefits of this arrangement," stated the court, "is as undoubted and well-sustained by the law as the right of a pupil to be taught in his own district." [10] Two years later in a similar case the decision was favorable to the school board.[11]

In 1873 a Negro parent in Wilkes-Barre sued to permit his child to enter a white school which, although located in an adjacent school district, was nevertheless nearer than a school in his home district. The two districts had established a joint school for Negroes and required the child in question to attend. The court ruled in favor of the Negro parent, holding that the school boards had exceeded their discretionary power to apportion students. This was a reference to the fact that the boards had segregated the Negro children even though their numbers were too few to require separate schools.[12]

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[2] *Perry* v. *Dover*, 29 Mass. (12 Pick.) 206, 213 (1831).

[3] *Roberts* v. *Boston*, 59 Mass. (5 Cush.) 198, 199 (1849).

[4] Ibid. *Barksdale* v. *Springfield School Committee*, 237 F. Supp. 544 (1965). *Springfield School Committee* v. *Barksdale*, 348 F. 2d 262 (1965).

[5] New York State Legislature, Joint Committee on the State Education System, *Master Plan for School District Reorganization, New York State* (Albany: Williams Press, 1947), p. 13.

[6] *People ex. rel. Dietz* v. *Easton*, 13 Abb. Pr. Rep. n.s. [N.Y.] 16 (1872).

[7] *Ibid.*

[8] *Matter of School District No. 1, Village of Hempstead*, 70 [N.Y.] *State Dept.* Rep. 108 (1949).

[9] U.S. Commission on Civil Rights, *Hearings * * * Newark. * * ** (Wash., D.C.: Government Printing Office, 1963), p. 232.

[10] *Jacobs et al.* v. *School Directors of Frederick Twp.*, 8 Pa. Sch. Jr. 43 (1859). (1861).

[11] *Freeman et al.* v. *School Directors of Franklin Twp., Washington County*, 37 Pa. 385 (1861).

In 1869 the Michigan Supreme Court decided in *Workman* case.[13] The Detroit school board, in the absence of a State law requiring school segregation, enforced separate schools for Negroes. A judge recalled: "In 1841, when the city contained several districts, the inspectors of the city were required to organize a district having no metes and bounds, but composed of all the colored children in the city, within the school ages, and schools were to be kept up separately for their benefit in the city at large." [14] In an opinion written by Chief Justice Thomas M. Cooley the court struck down the school board's 28-year-old practice.

In Massachusetts, New York, and Pennsylvania, school districting for racial segregation was approved by the courts. This is another way of saying that race was regarded as a legitimate factor in districting. The Detroit experience showed the possibilities of segregation that depended upon local initiative. The geographical nature of districting, in any case, was strongly moderated by racial considerations.

The last third of the 19th century was a time of national school segregation. Brown recalled of the years after 1855: "It is apparent that such segregation has long been a nationwide problem, not merely one of sectional concern." [15] In New York in 1883, a State court rejected a request to compel entrance of a Negro girl to P.S. 5 in Brooklyn: "The system of authorizing the education of the two races separately . . . it is believed obtains very generally in the States of the Union." [16] To the contention that it was unequal treatment to require Negro students to attend separate schools, the court replied: "The fact that by this system of classification one person is required to go further to reach his place of instruction than he otherwise would is a mere incident to any classification of the pupils in the public schools of a large city, and affords no substantial ground of complaint." [17] This opinion was widely cited.

What, then, can be said of the historical accuracy of the court's opinion in *Bell?:* "The Neighborhood school which serves the students within a prescribed [attendance] district is a long and well established institution in American public school education." [18] Almost never are such assertions documented, except with similar assertions. A review of case law suggests the surprising absence of precedents to support the existence of a purportedly "well established institution."

In 1908 a legal survey reported: "The courts, recognizing the necessity for allowing school authorities large discretionary powers, have in numerous cases upheld the action of school boards in requiring pupils to attend a certain school although outside of the district of their residence or at a greater distance than the school nearest their residence." [19] In *Dietz*, cited above, the court denied the existence of a citizen's "absolute right to send his children to that one of the public schools which is near to his residence." [20] In Cincinnati, a court declared: "Children cannot cluster around their schools like they do around their parish church." [21] (Negro children who had to walk 4 miles each way to attend a Negro school were thus precluded from entering a much nearer white school.)

In 1952 the Delaware Supreme Court decided *Gebhart*, a case that was later consolidated into *Brown*. Negro students in Wilmington sought entry into a white school as a matter of constitutional right. While the court found transportation distances required of Negro students to be an unequal burden and ordered relief on this ground, it denied general relief. "Indeed," explained the court, "the policy of consolidation of schools, apparently proceeding at an increasing rate, necessarily requires more and more pupils to attend a school situation in a community of a different type from that in which they live. It may reasonably be inferred that in the opinion of authorities on education school attendance in one's own community is not an important attribute of educational opportunity." [22] Eleven years separate this last sentence from a conflicting one that was to appear in *Bell* in 1963, referring to families living in an all-Negro public housing project: "It is not considered good for children of a closely knit community, such as the [Dorrie Miller] project, to attend different schools." [23]

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[12] *Commonwealth ex rel. Brown* v. *Williamson*, 30 Legal Intelligencer 406 (1873).
[13] *People ex rel. Joseph Workman* v. *Board of Education of Detroit*, 18 Mich. 400 (1869).
[14] *Ibid.* at p. 419: Judge James V. Campbell.
[15] *Brown* v. *Bd. of Ed. of Topeka*, 347 U.S. 483, 491, footnote 6 (1954).
[16] *People ex rel. King* v. *Gallagher*, 93 N.Y. 438, 443 (1883).
[17] *Ibid.* at p. 451.
[18] *Bell* v. *School City of Gary, Indiana*, 213 F. Supp. 819, 829 (1963).
[19] "Case Note," 22 L.R.A. n.s. 584 (1908).
[20] *People ex rel. Dietz* v. *Easton*, 13 Abb. Pr. Rep. n.s. [N.Y.] 16 (1872).
[21] *Lewis* v. *Bd. of Ed. of Cincinnati*, 7 Ohio Dec. Repr. 129, 130 (1876).
[22] *Gebhart* v. *Belton*, 91 A. 2d 137, 146 (1952).

Since 1963, numerous courts have approved slight departures from a neighborhood plan of assignment. In a Teaneck, N.J., case the court held the "the so-called 'neighborhood school' concept . . . is not so immutable as to admit of no exceptions whatsoever." [24] In a Manhasset, N.Y., case, it held; "The court does not hold that the neighborhood school policy per se is unconstitutional; it does hold that this policy is not immutable." [25]

As we saw from the survey above, the neighborhood school policy was never an absolute policy; indeed, the weight of 19th century court cases cited above is clearly against such a policy. Dedication to the neighborhood school plan grew as official segregation after *Brown* was rejected. Judge Luther Bohanon's observation in *Dowell* stands as the most incisive analysis yet of this phenomenon:

"The history of the Oklahoma [City] school system reveals that the Board's commitment to a neighborhood school policy has been considerably less than total. During the period when the schools were operated on a completely segregated basis, state laws and board policies required that all pupils attend a school serving their race which necessitated pupils bypassing schools located near their residences and traveling considerable distances to attend schools in conformance with the racial patterns. After the Brown decision and the Board's abandonment of its dual zone policy, a minority to a majority transfer rule [26] was placed in effect, the express purpose of which was to enable pupils to transfer from the schools located nearest their residences, i.e., the neighborhood school, in order to enroll in schools traditionally served pupils of their race, and located outside their immediate neighborhood . . . thus it appears that the neighborhood school concept has been in the past, and continues in the present to be expendable when segregation is at stake." [27]

The evidence thus far presented is insufficient to assess assertions about the long-term significance of the neighborhood school principle. Little more than general statements have presented. What is required is a detailed historical analysis of the elements entering into the forming of a school attendance area. Once we have studied the concrete rules that have governed admission into schools, we will be in a position to measure that historical experience against assertions concerning the general principle of neighborhood schools.

Mr. ZELENKO. In the *Swann* decision Chief Justice Burger said:

> Desegregation plans cannot be limited to the walk-in school.

Do you agree with that statement?

Mr. MORRISON. Yes, sir.

Chairman CELLER. We have had some testimony that there have been quite a number of accidents as a result of busing. What has been the records?

Mr. MORRISON. Mr. Chairman, bus safety has long been a goal of the National Education Association. It was the National Education Association, in collaboration with the Safety Council, that finally got the buses painted for safety purposes. We are very critical of the low safety standards, the lack of seatbelts, the poor construction of the bodies and frames of many schoolbuses, and that will be something that we continue to address ourselves to.

But we find that even with those, a child riding a bus has less chance of accident than a child walking.

Chairman CELLER. Do you monitor buses and their operations pretty much all over the country?

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[23] *Bell* v. *School City of Gary, Indiana*, 213 F. Supp. 818, 823, 824 (1963). The quotation is from the report of the school board's Boundary Committee.

[24] *Schultz* v. *Board of Education of Teaneck*, 205 A. 2d 762, 766 (1964).

[25] *Blocker* v. *Bd. of Ed. of Manhasset, N.Y.*, 266 F. Supp. 208, 230 (1964).

[26] A minority-to-majority transfer plan is one that permits students to transfer out of a school if they are part of a racial minority in it.

[27] *Dowell* v. *School Board of Oklahoma City*, 244 F. Supp. 971, 977 (1965).

Mr. MORRISON. Yes, sir. We have 9,000 local associations who are constantly watching these problems that children have in relation to safety, bus, or any other kind.

Chairman CELLER. How is your organization financed?

Mr. MORRISON. By voluntary dues from its members.

Chairman CELLER. Throughout the country?

Mr. MORRISON. From all over the country and the overseas Department of Defense schools.

Chairman CELLER. Are there any questions?

Mr. POLK. Mr. Chairman, I have a question.

Mr. Morrison, in your statement you indicated that the studies on the values of integration have indicated, I believe, that there were advantages for the black children and no significant disadvantages for the white children, is that correct?

Mr. MORRISON. That is correct.

Mr. POLK. I would like to have your comment on some material which has appeared in a column by Joseph Alsop. He says that:

> The results predicted by the liberal educationists have not been attained even in these two—

referring to Berkeley and White Plains.

> these two school populations of easily manageable size with strong goodwill to help. The results are obviously bound to be far less moreover where attempt is made to rearrange school populations of tens of thousands in an atmosphere of extreme illwill.

I wonder if you would comment on that stataement?

Mr. MORRISON. I would like Mr. Rubin to respond to this, please.

Mr. RUBIN. I think Mr. Morrison's testimony refers to a study by the so-called Allen commission in New York, a very, very careful and comprehensive study of the research that had been done to date as of December 1969, and its conclusion was that the integrated setting had relatively greater potential for achievement of black students than the segregated setting and that integration did not affect the achievement of the white students, and there is subsequent research, most recently reported in December 1971, with regard to Dade County, Fla., which has been shifting students around pursuant to court order for 2 years, and with respect to Evanston, Ill., which confirms the findings of the Coleman report and the Allen commission which have reviewed quite a number of studies that have been done in this area.

So I would disagree with Mr. Alsop.

Mr. POLK. Would these studies also take into account what happens to the white middleclass child who is bused from his neighborhood to a ghetto school? Do the studies take that into account as well?

Mr. RUBIN. I believe they do.

The Berkeley plan called for cross-busing of students.

Mr. MIKVA. Will counsel yield at that point?

Mr. POLK. Yes.

Mr. MIKVA. Didn't they find in Evanston that there was no disadvantage to the white students, and black students were reading at least one grade level higher after integration was achieved through busing than before?

Mr. RUBIN. They were reading higher, yes.

Mr. **Mikva.** And there was no detrimental effect on the white students?

Mr. **Rubin.** Yes. And the same thing in the Dade County situation.

Mr. **Mikva.** If counsel would yield further, yesterday when Congressman Lent was testifying, I asked him specifically whether his amendment would require the Evanston School Board—which as you know achieved desegregation on a voluntary basis without any court pressure—to resegregate the schools, and he agreed it would.

Do you agree?

Mr. **Rubin.** That is the way we would read it also.

Mr. **Mikva.** And they would have to stop busing children to maintain integration?

Mr. **Rubin.** It prohibits using race in assigning students to school and it seems to us that it follows that, if a school board has voluntarily desegregated the schools, they would have to roll it back, and at least it is susceptible to that interpretation.

Mr. **Mikva.** Thank you.

Mr. **Morrison.** Mr. Chairman, if I may, I am a teacher, and I am on leave following 20 years of teaching, and I voluntarily moved to a school in the city of San Diego, which is composed of 90 percent black and other minorities. I asked a group of ninth-grade students, bright students, lively, energetic, wide-awake students, after I demonstrated to them that the classroom, on a circle graph, was nine-tenths black. I asked these students about the city of San Diego, and those students felt that the city of San Diego, which at that time was about 8 percent minority, they thought the city of San Diego reflected the same racial composition as their classroom.

Furthermore, when I asked them about the United States, they thought the United States was made up of 90 percent black minority people because when these children took a vacation and visited grandparents in other States across the Nation, even though they traveled for 5 days at that time, which was only 3 years ago, they had to stop in areas where they always saw 90 percent black.

That is the Nation to them.

And when I told them that it was the opposite, that this Nation was 90 percent white, they said, "Mr. Morrison, you are a prejudiced man."

Mr. **Zelenko.** One final question, Mr. Chairman.

Mr. Morrison, would you tell us whether NEA could furnish to the subcommittee an estimate of how many school districts now desegregated would be affected by House Joint Resolution 620 and required to reverse their programs?

Mr. **Morrison.** Sir, we could, within a week, get a random sampling for the committee.

Mr. **Zelenko.** And in that sample, Mr. Morrison, would the NEA also indicate not only the number of districts but also the number of students, minority and majority, that would be affected?

Mr. **Morrison.** If we went to the number of districts and did that complete, it would take us a little longer to do it, but I think we could get the data.

Mr. **Zelenko.** Thank you, Mr. Morrison.

Chairman CELLER. We want to thank you and your associates for your contribution. It has been most helpful, and we are grateful.

Mr. MORRISON. Thank you, sir.

(Subsequently, the following information was submitted:)

NATIONAL EDUCATION ASSOCIATION,
OFFICE OF GENERAL COUNSEL,
Washington, D.C., April 5, 1972.

BENJAMIN L. ZELENKO, ESQUIRE,
General Counsel, Committee on the Judiciary, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR MR. ZELENKO: During Mr. Morrison's testimony before Subcommittee No. 5 on March 2, 1972, you requested information regarding the number of school districts in which students have been assigned by race, either to achieve some type of racial balance or to desegregate, and the number of black and white students who would be affected if those whose race has been considered in their school assignments had to be reassigned on a non-racial basis.

Our Research Division has diligently pursued all known avenues to obtain this information but, unfortunately, has not met with complete success. The requested data is not collected in a form suitable to responding to your request by either the U.S. Office of Education or HEW's Office of Civil Rights and is unavailable from boards of education or building principals.

We have, however, received some useful information from the U.S. Office of Education. This information indicates that, in response to your first question to Mr. Morrison, approximately 1400 school districts have implemented desegregation plans since the start of the 1968-69 school year. Since these districts are located in southern states, this number does not include northern or western districts that have desegregated. Nor do these figures include districts in any area that had desegregated before September 1968.

With respect to the second question, concerning the number of students who would be affected by a color-blind reassignment, our information indicates only that the total enrollment of these 1400 school districts is approximately 10 million pupils, of whom an estimated 3.4 million are from minority groups. The information presently available does not permit us to assess the number of students who would be affected if reassignment on a non-racial basis were mandated.

Sincerely,

DAVID RUBIN,
Deputy General Counsel

Chairman CELLER. Our next witness is the Reverend Stanley M. Andrews, National Coordinator, ACTION NOW.

Reverend Andrews.

STATEMENT OF REV. STANLEY M. ANDREWS, NATIONAL COORDINATOR, ACTION NOW, ACCOMPANIED BY WARREN RICHARDSON, GENERAL COUNSEL

Reverend ANDREWS. Mr. Chairman, I have with me Mr. Warren Richardson, who is general counsel, and who has had a part in the research work.

In the light of the legislative events of the last 24 hours, I will beg the indulgence of the committee to add to the position paper that you have in your hands.

ACTION NOW favors the proposed constitutional amendment set forth in House Joint Resolution 620, representing as we do more than 70 local, State, and national groups in 17 States. We have secured thousands of signatures on petitions asking Congress to adopt House Joint Resolution 620.

Mr. Chairman, ACTION NOW today believes, as a result of the legislative action in the last few days, that the majority of parents in this country have lost confidence in the credibility of the Congress and our Federal courts and their abilities to meet the problems created by forced busing.

The polls which are cited in our position paper now before the members of this committee on page 6 clearly demonstrate the majority will of the people.

Chairman **Celler**. Are you reading from the position paper or reading from something else?

Reverend **Andrews**. Yes.

Chairman **Celler**. Do you want your paper placed in the record?

Reverend **Andrews**. Yes, please.

Chairman **Celler**. It will be placed in the record.

(The statement follows:)

STATEMENT OF ACTION NOW REGARDING COMPULSORY BUSING OF SCHOOLCHILDREN

Mr. Chairman and members of the committee, the subject of compulsory busing has aroused the emotions of the body politic, which in turn has created a plethora of comment by politicians. Those who are for compulsory busing often agree with Senator Mondale, who is reported to have said:

"Busing is the means—and at times the only means—by which segregation in public education can be reduced." [1]

Perhaps Rep. Paul N. McCloskey (R-Calif.) has stated succinctly the philosophy for compulsory busing in these words:

"The April 1971 Supreme Court decision in the Swann case laid down two clear rules with which I agree. The first rule recognized that busing was *an appropriate tool* to end deliberate segregation practices [emphasis added]." [2]

People who oppose compulsory busing do so primarily on the grounds that it takes the children away from the community—out of reach of parental help and control—with no *educational* objective. Perhaps Sen. Henry M. Jackson (D-Wash.) has expressed the thought best in these words:

"But forced busing based on race does not achieve this objective (equal education). On the contrary, it singles out a child because of the color of his skin and sends him off to school in a strange, sometimes distant neighborhood. And with all that, there is no guarantee of a better school at the end of the bus ride . . ." [3]

It is impossible, of course, to say that all proponents of using compulsion sing the same song. It is fair to say that the vast majority of people favoring a compulsory "tool" have as their goal integration. It is equally fair to say that responsible opponents of compulsion see the main issue as one of education. To the latter group good education is the true goal. Since each group talks about different goals, the opportunity for rational discussion is diminished.

But wait! Perhaps endless talk is not a true indication of what people are really "saying." Actions, we know, speak louder than words. Consider, for example, the fact that some leading proponents of civil rights causes have enrolled their children in private schools with a very low ratio (sometimes zero) of blacks. Congressman Derwinski entered the Chicago *Tribune* article by Nick Thimmesch in the *Congressional Record* on Dec. 8, 1971 (p. E13149). Mr. Thimmesch reported the story of a CBS program, Mike Wallace's Sixty Minutes, detailing how "an array of black and white liberals who managed to keep their own children out of Washington's heavily black schools by sending them to private or suburban schools." More quotes from Derwinski's insertion in the *Record* follow:

"As Mrs. Donald Fraser, whose husband is Minnesota's most liberal Congressman, put it to Wallace: 'Your children get educated only once.' That's why the Frasers took their daughter out of Washington public schools and placed her here in Georgetown Day School, a private school. She told Wallace that her daughter was used to having white people around in school, and while there were three or four black pupils with her in each class at Georgetown, "they're much nicer' than the blacks in the public school she attended.

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[1] "Busing Panel Studies Taxes, Poor Schools," by Carroll Kilpatrick and Eric Wentworth, Washington *Post*, Feb. 19, 1972.

[2] "Candidates Differ on Busing, Agree on Quality Schools," by David S. Broder, Washington *Post*, Feb. 15, 1972.

[3] *Ibid.*

"But he [Walter Fauntroy, Washington's black Congressman] isn't the only black notable whose children are used as 'tokens' in the private schools. Our mayor, Walter Washington, has his child driven by limousine to private school each day, as Wallace reported. Liberal columnist Carl Rowan has his children in private school. So does civil rights activist Clifford Alexander. Supreme Court Justice Thurgood Marshall's children attended private schools here.

* * * * * * *

"One sardonic columnist for the Washington *Post*, interviewed by Wallace, said, 'Nobody wants to make their children pay for their own social philosophy'."

The columnist's own son is in private school and he admits the rich can "buy out."

Then why do liberals support integration and busing if they really don't believe down deep? The Washington *Post* columnist told Wallace:

"The lines get drawn in such a way that you end up supporting something that you think is unwise, perhaps unworkable, simply because of its symbolic content, simply because you get a bunch of rabid mouth-foaming racists opposing it, so you're forced to support it."

Before leaving the Thimmesch article it should be pointed out that he names Senators McGovern, Kennedy, Bayh, Muskie, Eugene McCarthy, and Stevenson as sending (or having sent) their children to private schools. Thimmesch continues:

"When Senator Stevenson (D-Ill.) was questioned on Meet the Press as to how he could criticize White House leadership, and, as a resident of Washington, send his children to private, mostly white schools, he answered that he wanted to send them to public schools, 'but regrettably the ones available to us are not very good, and I just didn't want to sacrifice the education of my kids'."

On Feb. 23, 1972, Sen. Harry Byrd made the following statements on the Senate floor:

"Representing her husband at a political rally in Florida, Mrs. George McGovern angrily denounced another presidential candidate for charging that the McGoverns pay $1,400 a year to send their daughter to a school in Maryland so she does not have to go to an integrated school in District of Columbia.

"That was not our motive, Mrs. McGovern stated.

* * * * * * *

"Why then do they pay $1,400 to send their daughter to a particular school? Mrs. McGovern answered this from a mother's heart: "She wanted to be with friends."

* * * * * * *

"What mothers and fathers everywhere want for their children is what Senator and Mrs. McGovern want for their daughter; they want her to be with her friends."[4]

With new-found hypocrisy abounding in the mouthings of many proponents of compulsory busing, it may be wise for us to re-inspect some of the proponents' basic theories as to why they believe compulsory busing should occur.

Judge Robert R. Merhige, Jr., is the U.S. District Judge in Richmond who handed down the controversial 325-page opinion in the *Carolyn Bradley, et al. v. The School Board of the City of Richmond, Va., et al.*, Civil Action No. 3353. On p. 19 of that document, Judge Merhige said:

"The Court, bearing in mind the rationale that a segregated school is inherently unequal and recognizing further that those students who have been and are being subjected to segregated education in the public schools are, regardless of race, having thrust upon them educational infirmities which are constitutionally impermissible, is much disturbed about the racial composition anticipated under the school board's plan for the eight schools heretofore referred to."[5]

Later on (p. 286) Judge Merhige says:

"Generally speaking, black and white children enter school at about the same level, as measured by achievement tests. Thereafter, black academic achievement declines over time in segregated systems."[6]

There are other, very moderate, voices who perceive the entire matter differently, or at least bring different facts into juxtaposition to those relied upon by Judge Merhige.

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[4] *Congressional Record*, Feb. 23, 1972, p. S2380.

[5] *Carolyn Bradley, et al. v. The School of the City of Richmond, et al.*, Civil Action No. 3353, p. 19.

[6] *Ibid.*, p. 286.

Joseph Alsop, the columnist, has written several articles on this subject. In one article he refutes much of Judge Merhige's logic. Alsop says:

"In most favorable conditions, two major efforts have been made to prove the truth of the liberal educationists' theory. In White Plains, N.Y., and in Berkeley, Calif., the school systems have long been racially homogenized in just the way demanded by Judge Robert R. Merhige in his famous Richmond, Va., decision.

"In this series of reports attempting to get at the hard facts of the busing problem, the results in White Plains and Berkeley have already been set forth in some detail. It is enough, therefore, to say that the basic results have been bitterly disappointing, despite undoubted moral fringe benefits.

"There have been modest educational gains; but the black retardation is still grave. Black third graders in Berkeley, for instance, though marginally better than before homogenization, are still reading an average level 13 months behind the white children in the same classes and the same schools.

"In short, the results predicted by the liberal educationists have not been attained, even in these two school populations of easily manageable size, with strong goodwill to help. The results are obviously bound to be fare less good, moreover, where the attempt is made to homogenize school populations of many tens of thousands in an atmosphere of extreme ill will.

"In these unfavorable conditions, there are also bound to be heavy countervailing costs to set against the gains, if any." [7]

Another columnist, William Raspberry, had a great deal to say about busing in his column entitled "Massive Busing: A Waste." For example, Mr. Raspberry said:

"I agree with him [Agnew] that mass busing solely for purposes of racial integration is a waste.

* * * * * * *

"But to send black children chasing to hell and gone behind white children is also wrong and psychologically destructive. It reinforces in white children whatever racial superiority feelings they may harbor, and it says to black children that they are somehow improved by the presence of white schoolmates.

* * * * * * *

"This is no brief for a return to the lie of separate but equal. It is an appeal for rational priorities, a plea that we make the test of a school whether it does what schools are supposed to do—educate our children." [8]

Another person who has spoken out in a manner contrary to the central feature of Judge Merhige's decision is Rabbi Jacob J. Hecht, executive vice president of the National Committee for Furtherance of Jewish Education, located at 824 Eastern Parkway, Brooklyn, N.Y. 11213. Senator Byrd of Virginia obtained a copy of news release from the Brooklyn organization and had it inserted in the *Congressional Record* on Feb. 23, 1972.[9] Here are some quotes from that news release:

In a special report prepared by the NCFJE's Education Committee, it was stated that the whole busing concept is based on "an educational fallacy," and that busing is not only a "waste of taxpayers' money but also a disruptive influence that succeeds only in disrupting the bused child, the school, the family, and the neighborhood."

"A good hard look at the history and the current situation in busing is all it takes to realize that this program has been a drastic mistake," said Rabbi Jacob J. Hecht, NCFJE executive vice president.

As Rabbi Hecht explained, the busing concept stemmed from research studies conducted a decade ago which indicated that Negro children attending schools in white neighborhoods did better educationally than Negro children who went to school in black neighborhoods. "These study results were seized upon as the basis for a massive busing movement that education and social leaders saw as a panacea that would help solve the nation's racial and poverty problems."

According to the NCFJE report, it is now thought that the Negro children in the original studies improved educationally because of other factors, and not the busing. "We are beginning to realize that these Negro children were not representative of all Negro children, but were from middle-class Negro families who were aggressively trying to upgrade their status. Thus, the group surveyed was atypical, and the results obtained with them do not apply to the majority of Negro youth, millions of whom are not middle-class.

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[7] "Real Busing Balance," by Joseph Alsop, *Washington Post*, Feb. 16, 1972.

[8] "Massive Busing: A Waste," by William Raspberry, Washington *Post*, Feb. 16, 1972.

[9] News release entitled "Busing Negro Children to Schools in White Neighborhoods Is Educational Dead End, Charges National Committee for Furtherance of Jewish Education," reprinted in *Congressional Record*, Feb. 23, 1972, p. S2380–81.

The NCFJE pointed out that for this reason, "it is not surprising that in those American cities where busing programs have been carried out, Negro children have not done better, and that indications are, busing rather than improving their educational levels, may have had adverse effects."

As Rabbi Hecht explained, the nationwide lack of success with busing programs could have easily been predicted since busing a child daily many miles to school could hardly be conducive to providing him with a favorable educational environmental. "Busing in reality creates new tensions and anxiety at a time when he is already beset with the multiplicity of problems coincident with growing up and adolescence.

"Busing removes from a child one of his most powerful sources of security—his neighborhood," said Rabbi Hecht. "It places him smack into an alien atmosphere he could only react to with anxiety."

Rabbi Hecht explained that even though a neighborhood may be depressed, with broken-down homes and dirty streets, it still provides to a child who grows up there a sense of security. "It is when we move this child into an unfamiliar locale with different types of children that his security turns to insecurity."

"Even the fact a child is being bused into a different neighborhood has a negative effect, because somewhere along the line, he cannot help but think there must be something wrong with his own neighborhood and people and thus he becomes more resentful and fearful."

The NCFJE report also stressed that busing runs counter to the entire Negro trend of taking pride in himself and black culture. "This is one of the healthiest sociological developments in years, and what does busing do but only try to ram down Negro throats the idea that his culture is inferior and that he should aspire to white culture."

Busing, Rabbi Hecht explained, forces the Negro away from his aspirations, and even more damaging, influences his children to think that the Negro way of life is second-rate. "So again we deflate the Negro image, and we detract from another major source of security for Negro children—their parents. By busing them outside their neighborhood, we are suggesting to them the fact their parents cannot provide the best environment, and thus we strike another low blow against both them and their parents."

Besides children and families, neighborhoods and communities also suffer when busing programs are instituted, according to the NCFJE report. "The entire community is disrupted because the normal pattern of integration has been turned topsy-turvy. When Negroes move into an area under normal conditions, a mutual respect and understanding eventually develops between whites and blacks. But when the balance is drastically changed over night by busing hundreds of Negro children into the area each day, the community pattern of growth becomes disjoined."

Busing also precipitates community conflict according to the NCFJE report. Cited as an example is the New York area of Brooklyn Heights where busing was introduced into the public school six years ago. This school became the center of a terrible controversy which has intensified through the years rather than abated. Community groups, pro and con busing, have fought so viciously through the entire six years that parents with school-age children have moved out of the area, neighbors once friendly have stopped speaking to each other, and the school itself has become such a wasteland that proper education is now impossible."

According to the NCFJE, it is important to take immediate steps (1) to stop busing where it already exists and (2) to adopt other programs to accomplish what the busing was intended to accomplish. "The first thing we must do is to turn educational authorities away from thinking in terms of busing," said Rabbi Hecht. "This can be accomplished only by making the public aware of the consequences of busing and then putting pressure on state legislatures and municipal administrations to outlaw this practice."

The next step is to take the millions of dollars saved by eliminating busing, and divert them into programs aimed at improving schools in the Negro areas so these schools will be indistinguishable in faculties and facilities from schools in white neighborhoods.

The third step is to coordinate this program with another massive program, aimed at building up the black neighborhoods that need to be improved. "A massive infusion of federal government funds is needed here to make up for the years of neglect and to create neighborhoods as desirable as those in the other areas of the cities where whites live."

"Like anything else worthwhile, the accomplishment of all this will not be easy," concluded Rabbi Hecht. "But once we bring the neighborhoods and the schools of all our cities to comparable levels, we will then have black and white co-existing peacefully and living in harmony. We will also have equality of education and opportunity, and the results will be of optimum benefit to not only Negroes, but to the entire nation.

I suggest, Mr. Chairman, that these three men (Alsop, Raspberry, and Hecht) are *not* radicals or far-out types who live in their own world of fear and hatred. These people, like all of us opposed to compulsory busing, are in the mainstream of American thinking on that subject.

How large is the mainstream? In a representative democracy it becomes necessary to know what the will of the people is on any given subject. In this regard, Mr. Chairman, we are fortunate to have so many opinion polls at our disposal. There are so many of them, in fact, that we shall list them with footnote references for further research. The following list is not considered in any way to be a complete one of all polls taken. Here they are: [10]

(a) The Texas poll—August, 1971 [11]

	Percent
Approve busing	17
Disapprove busing	78
Undecided	6

(b) Gallup poll appearing in the New York *Times* Sept. 12, 1971 (taken Aug. 20–23) [12]

	Percent
Approve	18
Disapprove	76
No opinion	6

(c) Sen. William Proxmire's survey—September, 1971 [13]

	Percent
Approve	12.9
Disapprove	87.1

(d) San Francisco poll by Multi-Media Research and Development Co.—reported in August, 1971 (disapproval only) [14]

	Percent
White	83
Negro	56
Latin American	59
Chinese	92

(e) Gallup poll appearing in the Washington *Post* Nov. 1, 1971 (taken Oct. 8–11) [15]

	Percent
Approve	18
Disapprove	76
No opinion	6

(f) Ballot in Orange County, Fla., Nov. 2, 1971 [16]

	Percent
Approve	11.43
Disapprove	88.57

(g) Market Opinion Research for New Detroit, Inc., of Detroit, Mich. [17]

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[10] The polls which follow were couched, for the most part, in different terminology. Questions are also different. But there is a thread of continuity which can be expressed in terms of approval or disapproval of compulsory busing. Each poll is separately footnoted so that the careful researcher can check and compare.

[11] Houston *Post* article inserted in *Congressional Record* by Rep. Bill Archer on Sept. 22, 1971, p. E9878.

[12] New York *Times* article of Sept. 12, 1971, as summarized by Sen. James Allen, p. S14872, *Congressional Record*, Sept. 23, 1971.

[13] Newsletter of Sen. William Proxmire, October 1971.

[14] San Francisco *Examiner and Chronicle*, Aug. 29, 1971, article, inserted in *Congressional Record* by Rep. John Rarick, Oct. 6, 1971, p. E10537.

[15] Washington *Post* article Nov. 1, 1971, by George Gallup, inserted in *Congressional Record* by Sen. John Tower, Nov. 5, 1971, p. S17665.

[16] Report by Rep. Louis Frey, Jr., *Congressional Record*, Dec. 16, 1971, p. E13645.

[17] Article from Grand Rapids, Mich., *Press*, Jan. 21, 1972, inserted in *Congressional Record*, Feb. 1, 1972, S937.

	Percent
Approve	29
Disapprove	62.9
No opinion	4.8
Already attend integrated school	3.2

No doubt there are many more polls which we have not uncovered. It is interesting to note, Mr. Chairman, that an overwhelming majority of Americans disapprove of compulsory busing. And it makes little, if any, significant difference whether the people are northerners or southerners, black, white, yellow, or Latin-American.

In view of the comments by the various persons noted above and the overwhelming opposition to compulsory busing shared by the American public, it appears that this body, the House of Representatives, has an opportunity to demonstrate that it is a representative body and reflects the will of the people. Since the Courts have created the furor, and because the President should execute the policies of the legislature within the framework of the law, it is quite certain that neither of these branches of the government can help the American public—the place from whence all political power comes. Therefore, the only logical question which should concern this body is how to solve the problem—by simple statute or by initiation of a constitutional amendment.

ACTION NOW supports the proposition that *only* a constitutional amendment will solve the problem in the long run and adoption of the amendment must be pursued doggedly, relentlessly, and firmly until it becomes a reality. Time spent on determining whether this or that legislative approach will work will only amount to frustration and anger on the part of the American public. Not often do we agree with Secretary of Health, Education, and Welfare Elliot Richardson, but in his characterization of the effect certain legislation (Whitten amendments) would have on the public, he said:

"... they would nevertheless, encourage some people to believe that there has been a change in basic law when there has not, and thus serve to confuse local authorities as to their constitutional responsibility." [18]

Current legislative proposals outside the constitutional amendment route have the effect of merely deceiving people into believing that busing will stop. Why are we so firm in our conviction?

For our purposes the beginning of the busing problem may be traced to the Supreme Court decisions of *Brown* v. *Board of Education*, 349 U.S. 483 (1954), when the Court put an end to dual school systems (separate but equal) and roundly condemned compelled (by a government) segregation, which has become known as *de jure* segregation. Another type of segregation has become identified as *de facto*, meaning that there is in fact segregation, but it did not originate because of some governmental action.

Perhaps the next most significant step in this chain is the enactment of the Civil Rights Act of 1964, which contained the following proviso:

". . . provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards." [19]

Those words were passed upon by the Supreme Court in *Swann* v. *Charlotte-Mecklenburg*, 402 U.S. 1, 17–18 (1971). In that case the Court said:

"The legislative history of Title IV indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called '*de facto* segregation,' where racial imbalance exists in the schools but with no showing that this was brought about by discriminatory action of state authorities. In short, there is nothing in the Act which provides us material assistance in answering the question of remedy for state-imposed segregation in violation of Brown I. The basis of our decision must be the prohibition of the Fourteenth Amendment that no State shall deny to any person within its jurisdiction the equal protection of the laws'."

In simple language, the court has held that busing may be required in *de jure* cases but has remained silent about busing in *de facto* ones.

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[18] Letter of Secretary Richardson to Sen. Hugh Scott, June 23, 1970, and inserted in *Congressional Record* that date, p. S9628.

[19] Civil Rights Act of 1964, Title IV, Sec. 407.

Without going into an exhaustive analysis, we find that the so-called Whitten amendments to various appropriation acts have been rendered useless because they have been considered as applicable to *de facto* cases only. Rep. Whitten appeared here earlier this week to air his frustration over the hopelessness of trying to solve this problem with only statutory law.

There is ample reason for this hopeless feeling. The Supreme Court itself has held in the Swann case that:

"Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis." [20]

Since the Supreme Court considers its power to order busing derived from the Constitution, such power can be limited only by the same Constitution; namely, through the medium of a constitutional amendment.

Nor should anyone be deceived that their community will be spared the wrath of court ordered busing simply because that community has *de facto* segregation. Much of the present turmoil has been caused by court-ordered busing in California, Colorado, and Michigan, where the courts have held the segregation to be *de jure!* Furthermore, Judge Merhige, quoted above, has analyzed Richmond segregation to be fostered by the acts of government when school sites are chosen and schools erected in *de facto* areas. Thus *de facto* segregation becomes *de jure*. The judge's scholarly, 325-page decision is so massive that it is difficult at the moment to tell whether that finding is such that it will be known as a *holding* in the case or merely *dictum*. From a practical point of view parents don't care what the legal reason is for taking their children out of the neighborhood school. Furthermore, the southern political leaders who have for years protested that the country has a double standard in ordering busing in the south (*de jure*, allegedly) and not in the north (*de facto*, allegedly) are correct. Our point here is, Mr. Chairman, that only a constitutional amendment will end this madness known as busing for racial balance, and it makes no difference to affected parents what legal mumbo jumbo is incantated when busing begins—or ends. Parents want it stopped!!

In pressing for a constitutional amendment, we are aware, Mr. Chairman, of the existence of various statutory attempts being made to resolve this outrage known as compulsory busing. On Nov. 4, 1971, the House of Representatives approved three amendments to the Higher Education bill. These amendments are known as the Broomfield, Ashbrook, and Green amendments. Last week in the Senate the so-called Mansfield-Scott and Griffin amendments were passed. All of these save the Griffin amendment will, in our opinion, fail to resolve the constitutional thrust of the Supreme Court's busing decisions, particularly in view of the court's interpretation of the Civil Rights Act of 1964 and the trend to make *de facto* into *de jure* cases (see analysis above). As you know, the Griffin amendment attempts to challenge the court by restricting its jurisdiction to decide cases of this nature. Senator Griffin said this about his amendment:

". . . I simply say that this particular issue has never been answered directly because Congress has never posed the question before." [21]

Whether Griffin's amendment, or one carrying the same thrust, becomes law in no way changes our recommendation to proceed at full throttle towards a constitutional amendment. Griffin's approach will certainly be well litigated, thus insuring several more years before anything positive will happen with compulsory busing.

In arriving at our conclusion, Mr. Chairman, we are not unmindful of the splendid work accomplished by you in having the handiwork of six prominent law professors inserted in the *Congressional Record* on Feb. 18, 1972 (p. E1301 and following). Professors Cox, Bickel, Black, Amsterdam, Horowitz, and VanAlstyne are to be complimented for their contribution to this important dialogue. Collectively they say, in essence, don't adopt a constitutional amendment as proposed because of various technical reasons. Their objections can be well taken care of by establishing a proper "legislative history" so that no future court can misunderstand what the Congressional intent was at the time of passage. They have provided a marvelous guideline, or check list, for the legislators to consult to make sure that all known objections have been overcome. One of their concepts has received attention in the press and deserves special treatment. It is alleged that the proposed constitutional amendment would *trivialize* the basic document of our federal republic. As translated, this means that the subject matter of the proposed amendment does not deal with some fundamental principle having an enduring generality. Since the issue is compulsory busing, and because *compulsory anything* (by government action) is lack of freedom, we find that the proposed constitutional amendment deals with the most basic principle—freedom.

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[20] *Swann* v. *Board of Education*, 402 U.S. 1, 28.

[21] Washington Post, Feb. 26, 1972, p. A-16.

Another approach used by the proponents of compulsory busing needs to be examined. As mentioned above, busing is considered a "tool" to end deliberate segregation practices. One such advocate of that theory is Florida Governor Askew, who is reported as saying:

". . . Busing is an artificial and inadequate instrument of change. It should be abandoned just as soon as we can afford to do so." [22]

Opponents to compulsory busing suggest that, in view of the comments of Messrs. Alsop, Raspberry, and Hecht, quoted above, it is not necessary to use the "artificial and inadequate instrument of change." Let the children go to school in their neighborhoods, where the overwhelming bulk of American parents want their children to be located. If busing to achieve segregation was wrong, then busing to achieve integration is equally wrong. Let's face the facts: busing out of the neighborhood is wrong *per se*.

Near the beginning of this statement is a quotation from a Chicago *Tribune* article entered into the *Congressional Record* by Rep. Derwinski. Among other things the article tells about the Washington *Post* columnist who sends his son to a private school. The article then goes on to quote that columnist as follows:

". . . simply because you get a bunch of rabid mouth-foaming racists opposing it, so you're forced to support it."

In today's atmosphere of charge and counter-charge, it appears to be the "in" thing to heap abuse upon your opponent. It is obvious that the press considers anyone opposed to busing as "racist." These poor souls are to be pitied, Mr. Chairman, for their lack of understanding the issue and their inability to control their ill-bred manners. Congressman Mizell, in his testimony before this committee on Monday, has identified such people as the Washington *Post* columnist for what they really are. Mr. Mizell said:

"But to say that a black child cannot learn unless he is in the company of a white child, or to say that a white teacher is automatically better qualified than a black teacher is the most profound kind of racism there is, and it is the kind the courts are perpetuating today." [23]

CONCLUSION

1. In view of the Alsop, Raspberry, and Hecht thesis, the question of sending "black children chasing to hell and gone behind white children" needs further study.
2. Compulsory busing to achieve racial balance is opposed by the vast majority of all Americans, regardless of race, color, or national origin.
3. It is the duty of the Congress, as the representative body, to initiate action to stop that which is clearly opposed by the vast majority of the people.
4. The only sure way to stop the compulsory busing is by use of a constitutional amendment.

RECOMMENDATION

Report out the bill, H.J. Res. 620, and support its passage in the Congress and its ratification throughout the several states of the Union.

Chairman Celler. Did you submit what you are reading now?

Reverend Andrews. Unfortunately this was not prepared until the action of the Senate yesterday. I will continue, if I may.

Yet, the Congress by legislative action such as yesterday's vote in the Senate and Federal court orders in Richmond, Denver, Detroit, and other communities, flout the wishes of concerned parents.

Busing continues to provide for many people a traumatic experience as they are alienated from their parents, their neighborhoods and friends by these arbitrary dictations of ultra-liberal Federal judges.

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[22] Speech of Governor Askew inserted into the *Congressional Record* by Senator Mansfield, Feb. 25, 1972, p. S2585. Quotation is on p. S2586.

[23] Testimony of Hon. Wilmer D. Mizell before the House Judiciary Committee, Subcommittee No. 5, Feb. 28, 1972, p. 3.

It is evident that the various legislative panaceas being offered in the higher education act will disappear in the smoke of the Senate-House conference.

For these reasons and our lack of faith in the present legislative smoke-screen, we take the position that only a constitutional amendment would guarantee to the parents of America the freedom to control where their children go to school without having to accept the racial policies of some Federal court or Government agency.

Frankly, if the constitutional amendment House Joint Resolution 620, or something similar, is not put out to vote in the House and Senate within a reasonable time, many of us believe that a national public school boycott will be forced by aroused parents and our entire public school establishment will be compelled to bear the consequences of the failure of the courts and Congress to recognize the demonstrated will of the people.

Our Nation was founded when its citizens recognized that the established Government was disregarding the safety and welfare of the citizens, and the legislative acts of the Government were not representative of the will of those being governed.

Many of us feel that the present status of the busing issue is not representative of the majority will of the people and that there must be a revolt at the ballot box to insure that the majority will of the citizens will be heard and respected.

Busing is divisive, inefficient, costly and endangers health and safety of many children. Busing is poisoning the relationships between the races which had been established in recent years and threatens continued support of public education by the parents and taxpayers who believe that busing is a dead-end street.

Let us get back to the neighborhood school concept. Poverty is colorblind. Let us provide modern and adequate public school facilities in every corner of these United States. There are already too many poor white and poor black schools. Let us make the neighborhood school in the poor area, black or white or mixed, better than the neighborhood area. Then the parents and children will see that the public school is a hope for the future.

Unless we recognize this concept of the neighborhood school and act on it quickly to give it new life, many will be compelled to reject the public school establishment.

This uncertainty as to the present mission of the public school system is the reason that school bond issues are being voted down in many communities and this taxpayers' and voters' revolt will expand.

Referring now to our position paper, you will note pages 1 and 2 point out the hypocrisy of prominent exponents of busing who send their children to private schools, yet publicly support busing. This is material taken from the Congressional Record, placed in the record by Congressman Derwinski.

You will also see that we quote Joseph Alsop, William Raspberry, a very fine Negro columnist, and Rabbi Jacob J. Hecht, executive vice president of the National Committee of Jewish Education.

We find these men of various ethnic backgrounds, certainly not radicals, not far-out types pointing out the fallacies of forced busing.

I would like to quote from my position paper first a statement made by Senator Henry M. Jackson, which is on page 1.

> Forced busing based on race doesn't achieve this objective of equal education. On the contrary, it singles out the child because of the color of his skin and sends him over to school in a strange, sometime distanct neighborhood. With all of that, there is no guarantee of a better school at the end of the bus ride.

Then that page goes on to quote the Washington Post writer, and then on the next page we find some other quotes by some of our statesmen, and then at the bottom of that page you will see Judge Merhige, who is the Federal judge in Richmond, who states:

> Generally speaking, black and white children enter school at about the same level as measured by achievement tests. Thereafter academic achievement declines over time in segregated systems.

And yet this is refuted first by Mr. Alsop, who states on page 3:

> In most favorable conditions two major efforts have been made to prove the truth of the liberal educationists theory. In White Plains, New York, and Berkeley, California, the school systems have long been racially homogenized in just the way demanded by Judge Robert R. Merhige in his famous Richmond decision.
>
> In this series of reports attempting to get at the hard facts of the busing problem, the results in White Plains and Berkeley have already been set forth in some detail. It is enough, therefore, to say that the basic results have been bitterly disappointing, despite undoubted moral fringe benefits.
>
> There have been modest educational gains; but the black retardation is still grave. Black third graders in Berkeley, for instance, though marginally better than before homogenization, are still reading an average level 13 months behind the white children in the same classes and the same schools.
>
> In short, the results predicted by the liberal educationists have not been attained, even in these two school populations of easily manageable size, with strong goodwill to help. The results are obviously bound to be far less good, moreover, where the attempt is made to homogenize school populations of many tens of thousands in an atmosphere of extreme ill will.
>
> In these unfavorable conditions, there are also bound to be heavy countervailing costs to set against the gains, if any.

Then there is William Raspberry, who, as I noted, is a well-known Negro writer here; he states:

> I agree with him (Agnew) that mass busing solely for the purpose of racial integration is a waste.
>
> But to send black children chasing to hell and gone behind white children is also wrong and psychologically destructive. It reinforces in white children whatever racial superiority feelings they may harbor, and it says to black children that they are somehow improved by the presence of white schoolmates.

We quote again at length from the Congressional Record an article placed there by Senator Byrd of Virginia made by Rabbi Jacob J. Hecht, executive vice president of the National Committee for Furtherance of Jewish Education.

I would read from that in the second column:

> The group pointed out that for this reason it is not surprising that in those American cities where busing programs have been carried out, Negro children have not done better and that indications are that busing rather than improving their educational levels may have had adverse effects.

As Rabbi Hecht explained, the nationwide lack of success with busing programs could have easily been predicted since busing a child daily many miles to school could hardly be conducive to providing him with a favorable educational environment. Busing in reality creates new tensions at a time when he is already beset with multiplicity of problems coincident with growing up and adolescence. Busing removes from a child one of his most powerful sources of security, his neighborhood. It places him smack in an alien atmosphere he could only react to with anxiety.

In the next column:

> The report also stressed that busing runs counter to the entire Negro trend of taking pride in himself and black culture. This is one of the healthiest sociological developments in years, and what does busing do but only try to ram down Negro throats the idea that his culture is inferior to white culture.

I suggest, Mr. Chairman, page 4, that these three men, Alsop, Raspberry, and Hecht are not radicals who live in their own world of fear and hatred. These men, like all of us opposed to compulsory busing, are in the mainstream of America on that subject.

How large is a mainstream? In a representative democracy it becomes necessary to know what the will of the people are on any subject. In this regard we are fortunate to have so many opinion polls at our disposal, and you will see a list of a number of these polls. You will see in the Texas poll 78 percent disapprove busing. In the Gallup poll taken December 12 appearing in New York Times 76 percent disapprove of busing.

Senator Proxmire's survey showed that 87 percent disapproved. San Francisco poll showed that all of the ethnic groups, white, Negro, black American, Chinese, all of these are over 50 percent in disapproval of busing.

In the Gallup poll which appeared in the Post in November, 76 percent opposed. Orange County, Fla., 88 percent opposed. And the Detroit, Mich., test showed that 62 percent disapproved.

Mr. ZELENKO. Excuse me. Were those polls taken after the court decided there was desegregation in the Detroit public schools?

Reverend ANDREWS. I believe it was. If you will check the footnote, I think it is stated there. Yes.

No doubt, there are many more polls which we have not uncovered. It is interesting to note, Mr. Chairman, that in an overwhelming majority, Americans disapprove of compulsory busing and makes little, if any, significant difference whether the people are northerners, southerners, black, white, yellow, or Latin Americans.

Since the courts have created the furor and because the President should execute the policies of the legislative within the framework of the law, it is quite certain that neither of these branches of the public can help the American public, the place from whence all political power should come.

Therefore, the only logical question which should concern this body is how to solve the problem by simple statute or by initiation of a constitutional amendment.

Action Now supports the proposition that only a constitutional amendment will solve the problem in the long run and adoption of the amendment must be pursued doggedly, relentlessly, and firmly until it becomes a reality. That is why we are still pressing for signatures on the No. 9 discharge petition and we will continue to do so.

Time spent on determining whether this or that legislative approach will work will only amount to frustration and anger on the part of the American people. Not often do we agree with Secretary of Health, Education, and Welfare Elliot Richardson, but in his characterization of the effect the Whitten amendments would have on the public, he said:

> They would nevertheless encourage some people to believe that there has been a change in basic law when there has not, and thus serve to confuse local authorities as to their constitutional responsibility.

Current legislative proposals outside the constitutional amendment route have the effect of merely deceiving people into believing that busing will stop.

I believe this is true of the Higher Education Act amendments that your body adopted recently with much publicity. I believe (and I have been in the political world for a number of years) that you are aware that when you have your Senate-House conference, that those amendments will all disappear and yet people will be deceived.

For our purposes, the beginning of the busing problem may be traced to the Supreme Court decision of *Brown* v. *Board of Education* when the Court put an end to dual school systems, separate by equal. And roundly condemned compelled (by a Government) segregation, which has become known as de jure segregation.

Another type of segregation has become identified as de facto, meaning that there is in fact segregation, but it did not originate because of some governmental action.

Perhaps the most significant step in this change is the enactment of the Civil Rights Act of 1954 which contained the following proviso:

> * * * provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

These words were passed upon by the Supreme Court in *Swann* v. *Charlotte-Mecklenburg*, of which you had much discussion yesterday. In that case the Court said:

> The legislative history of Title IV indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called de facto segregation where racial imbalance exists in the school but with no showing that this was brought about by action of State authorities. In short, there is nothing in the Act which provides us material assistance in answering the question of remedy for state-imposed segregation in violation of Brown I. The basis of our decision must be the prohibition of the Fourteenth Amendment, that no State shall "deny to any person within its jurisdiction the equal protection of the laws.

Chairman CELLER. Dr. Andrews, it is customary for the members to have copies of statements read by our witnesses. We have no copies of that which you are reading. May I ask how long you intend to take before you conclude?

Reverend ANDREWS. First of all, copies were provided to the committee, Mr. Chairman, and I would suspect that I can wind it up in the next 5 or 10 minutes at the most.

Chairman CELLER. Please continue.

Reverend ANDREWS. You should all have copies. They were given to you a few days ago.

Chairman CELLER. You are reading your statement now?

Reverend ANDREWS. Yes, I have been on the statement.

In simple language the Court has held that busing may be required in de jure cases but has remained silent about busing in de facto.

Without going into an exhaustive analysis, we find that so-called Whitten amendments to various appropriation acts have been rendered useless because they have been considered as applicable to de facto cases only.

Representative Whitten appeared here earlier this week to air his frustration over the hopelessness of trying to solve this problem with only statutory law. There is ample reason for this hopeless feeling.

The Supreme Court, itself, has held in the *Swann* case:

> Absent constitutional violation, there would be no basis for judicially ordering assignment of pupils on racial basis.

Since the Supreme Court considered its power to order busing derived from the Constitution, such power can be limited only by the same Constitution, namely, through medium of constitutional amendment.

Nor should anyone be deceived that their community will be spared the wrath of court-ordered busing simply because that community has de facto segregation. Much of the present turmoil has been caused by court-ordered busing in California, Colorado, and Michigan, where the courts have held segregation to be de jure.

Furthermore, Judge Merhige has analyzed Richmond's segregation to be fostered by the acts of government when school sites are chosen and schools are erected in de facto areas. Thus de facto segregation becomes de jure.

The judge's scholarly 325-page decision is so massive, it is difficult to tell whether that finding is such that it would be known as a holding in the case. From a practical point of view, parents don't know what the legal reason is for taking their children out of the neighborhood school.

Furthermore, southern political leaders who for years have protested that the country has a double standard in ordering busing in the South and not in the North are correct.

Our point here, Mr. Chairman, is that only a constitutional amendment will end this madness known as busing for racial balance and it makes no difference to affected parents what legal mumbo-jumbo is intended when busing begins and ends. Parents want it stopped.

In arriving at our conclusion, Mr. Chairman, we are not unmindful of the splendid work accomplished by you in having the work of six prominent law professors inserted in the Congressional Record on February 18. The professors certainly are to be complimented for their contribution to this important dialogue.

Collectively they say in essence, don't adopt a constitutional amendment as proposed because of various technical reasons. Their objections can be well taken care of by establishing a pro legislative history so that no future court can misunderstand what the congressional intent was at the time of passage. They had provided a marvelous guideline, a checklist for the legislators to consult to make sure that all known objections have been overcome. One of their concepts have received attention in the press and deserves special treatment.

It is alleged that the proposed constitutional amendment would trivialize the basic document of our Federal Republic. As translated, this means that the subject matter of the proposed amendment does not deal with some fundamental principle having an enduring generality.

Since the issue is compulsory busing and since compulsory anything by Government action is lack of freedom, we find that the proposed constitutional amendment deals with the most basic principle, freedom.

Another approach used by compulsory, they talk about busing being a tool to end segregation practices and yet even Governor Askew of Florida was recorded as saying:

> Busing is an artificial and inadequate instrument of change. It should be abandoned just as soon as we can afford to do so.

I would say to you in conclusion this morning, in view of the Alsop, Raspberry, and Hecht thesis, the question of sending these children, black and white, needs further study.

Second, that compulsory busing to achieve racial balance is opposed by the vast majority of all Americans, regardless of race, color or national origin.

Third, it is the duty of the Congress as a representative body to initiate action to stop that which is clearly opposed by the vast majority of the people.

And, finally, the only sure way to stop the compulsory busing is by use of a constitutional amendment.

Therefore, Mr. Chairman, and members of the committee, Action Now recommends to you that you report out the bill House Joint Resolution 620 and support its passage in the Congress and its ratification through the several States of the Union.

I thank you for this opportunity.

Chairman CELLER. You have some data that you wish to place before the committee, too, do you not?

Reverend ANDREWS. Yes.

(The information referred to is retained in the committee files.)

Chairman CELLER. Thank you, sir.

We appreciate your coming and your contribution.

Our next witness is Mrs. Bruce B. Benson, president, the League of Women Voters of the United States.

STATEMENT OF MRS. BRUCE B. BENSON, PRESIDENT, THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

Mrs. BENSON. Mr. Chairman, members of the committee: My remarks will be brief as I have filed full testimony with your committee which you have copies of.

I am Lucy Wilson Benson, president of the League of Women Voters of the United States, an organization with members in over 1,300 communities in all 50 States. I appreciate the opportunity to appear before you today in their behalf.

I speak in opposition to all proposed constitutional amendments which would either prohibit outright the use of busing as a tool for school desegregation or would in other ways effectively limit the various means to achieve the goal we seek: Integrated, quality education for all children.

The League's commitment to equal educational opportunity runs deep. Our principles state explicity:

The League of Women Voters believes that every citizen should have access to free public education which provides equal opportunity for all . . .

From these principles stems our position in favor of integrated, quality education. And we affirm that integration is an integral part of educational excellence. Furthermore, we support any reasonable method for reaching this goal. Leagues do more than examine issues and take positions. They are working hard and effectively, in all parts of the country, with every tool available to citizens, to bring this desegregated, quality education into being.

For example, in the metropolitan areas of Boston, Mass., and Hartford, Conn., local leagues have supported METCO and Project Concern, programs to transport children from the inner city to suburban schools to correct racial imbalance and improve the children's educational opportunity. State leagues in California, Florida, New York, and Pennsylvania have urged their States to play more constructive roles in providing solutions to school segregation and to show more leadership to local communities.

The work of the leagues of Charlotte-Mecklenburg (N.C.) and of North Carolina is especially apropos. These league members are not militants, but they do believe in children's right to equal educational opportunity.

Firm in this belief, they have been in the vanguard of those building community support and understanding for desegregation of the school system in Charlotte-Mecklenburg.

After their school board had failed to draw up desegregation plans, the North Carolina league and Charlotte-Mecklenburg league were joined by League of Women Voters of the United States as amicus curiae in a case which was later upheld in the Supreme Court which lead to a court acceptance of a plan involving two-way busing.

Again the league went to work in the community to encourage positive response among other local organizations and community leaders. League members talked to school board members, city and county officials, and the chamber of commerce. They held open meetings daily during the summer of 1969 to keep citizens informed and provide all kinds of information for them.

They actively encouraged the positive responses of other organizations such as the Jaycees, the ministerial association and the PTA council and involved themselves in paving the way for orderly desegregation of their schools.

Excellence in public education is a widely accepted national goal, and long has been. What keeps growing and changing is our understanding of what it takes to provide that national goal for everyone.

We keep learning which past customs have been depriving children of a good education and depriving the Nation of the fruits of that education. The Nation has just been through an 18-year learning process to grasp a single fact: Separate cannot be equal.

The League of Women Voters stands firmly with arguments set forth by the Court in *Brown* v. *Board of Education*.

In the *Green* case, the Court ruled that freedom of choice which produces continued or extended segregation based on existing residential patterns is not true freedom. That kind of freedom cannot pass the constitutional test. Another lesson in Americanism learned.

Still newer understandings have led to recent court cases challenging the property tax as the base for public school support.

Plainly a basic injustice has surfaced to worry the public conscience. As long as schools are mainly financed by property taxes, poor neighborhoods, black and white, will generally have worse schools than well-to-do or wealthy communities.

For years we thought this was just the way it had to be. Now we do not. Still another lesson * * * though not all of the homework is yet done.

The league maintains that busing is a tool that must be held available to remedy serious inequities in education. Perhaps it is not the best tool. Certainly it is not the only tool.

Emphatically it is not a new tool.

As you have heard before, busing has been used for years and years to get children out of their rural neighborhoods with their one-room schools and into consolidated schools where presumably they could have better facilities, more varied educational programs, better qualified teachers, and less isolated school experience.

Even now in suburbia the high school where no bus pulls up to the door is a rarity. From personal experience I might add, when I was in the early grades of school, as a second-grader in Dallas, Tex., I was bused clear cross the town, and no one was ever disturbed about whether this was too much for me to endure.

Furthermore, neither my parents nor I had any say whatsoever about the decision, and nobody had ever heard of freedom of choice. Busing can't be all bad. Of course, we have not yet mentioned the long years that black children, north as well as south, were bused past one public school to a more distant and often inferior one.

Where were the outcries then?

The constitutional amendments?

The tender sensibilities about parental rights?

I fear we are not only entering into an hysterical era, but into a hypocritical one.

The league contends that the proposed constitutional amendments offer only a nonsolution to a very real educational problem: that we as a nation have failed to provide quality education to all children regardless of residence, race, class, creed, sex, or national origin.

Nor do the Green, Broomfield, and Ashbrook amendments attached to the House-passed Higher Education and Quality Integration Act address themselves to the problems of providing quality education or equal access to it. These are called antibusing amendments, but in reality they are anti-civil-rights amendments. Not only do they not address the problem; they propose to roadblock possible attempts to solve it.

A closer look at House Joint Resolution 620 makes this fatal flaw readily apparent. This proposal couched in pseudo-civil-rights rhetoric, provides that no public school student shall, because of race, creed, or color, be assigned to or required to attend a particular school, but as we have already pointed out, it is not enough to create a unitary system in which no one is excluded because of color.

This type of freedom of choice results in most instances in school segregation which parallels existing residential segregation.

Besides opposing House Joint Resolution 620 for its substance and intent, we oppose it and others like it because we share the alarm of leaders like Governor Askew who warns:

It is very dangerous under emotional circumstances to tamper with the U.S. Constitution.

The durability of our Constitution stems in part from the fact that it has eschewed detail, especially detail born of contemporary controversy. To be sure, busing as a means to correct racial imbalance is late to the scene, but in evaluating its use it is well to remember, as more years go by without effective school desegregation, the need for shortcuts increases.

What might have satisfied in 1955 cannot satisfy now.

The accent has had to shift from deliberate to immediate speed, particularly in those places where an entire generation has been born and has finished high school with pretty much the same segregated and inferior schooling that was imposed on their elders. Besides which, over the years our perceptions grow keener, not dimmer, in these matters.

We discern the inferior and the subtle segregationist and racist now, where we may not have perceived it 15 or even 10 years ago.

We are more sensitive to these matters.

Residential integration would, of course, obviate this kind of busing, but a whole generation or more cannot wait. The 6-year-old child starting first grade in a poor or minority neighborhood has only that 1 year to be in the first grade, only one childhood in which to claim his birthright to a good public education. While the struggle to open the gates of suburbia goes on, today's poor children must go to good schools. Busing offers one immediate access to a better education. Unpopular though it may be, busing is the only alternative within the means of some communities to achieve a measure of integration for this generation.

The question is: Will we become mired in the busing issue or do we turn our energies toward raising the level of public education offered to every child in America?

Leadership must be exercised by our public officials to guide the present discussion along rational lines. To act favorably on House Joint Resolution 620 could only imply withdrawal of congressional support, under emotional pressure, for efforts already undertaken to integrate our schools.

The League of Women Voters, therefore, urges members of this committee and of the entire Congress not to be a party to such a disaster.

Mr. Chairman, in conclusion I would like to read a letter I received just the other day from the president of the League of Women Voters of Detroit. She says:

> The Detroit school system has been found guilty of de jure segregation by Judge Stephen J. Roth and that it has the affirmative duty by law to desegregate. In 1971 *Detroit Facts* quotes the following statistics for the schools: Instructional staff, 58 percent white; 41 percent black; 0.8 percent other. Students 63, almost 64, percent black; 34 percent white; 1.4 percent other.
>
> It is a reality that black youths are confined to segregated and inferior schools.
>
> The racial imbalance in Detroit schools is closely related to residential segregation patterns. Judge Roth is now studyinig desegregation plans submitted to him by the Detroit Board of Education and the State Board of Education. He is considering a plan for cross-district busing along with a plan for metropolitan busing.
>
> Judge Roth has not ordered busing or any other plan to rectify Detroit school segregation, but his findings of de jure segregation and his request for plans to be submitted to him for desegregation has met with hysteria.
>
> The public has had a negative reaction to the court's decision. It has focused on the issue of busing and not on court findings that equal educational opportunity required by law does not exist in Detroit.

Any constitutional amendment to prohibit busing or assignment of pupils should be abandoned now and for all time. It should not even be voted out of committee. This is denial of equal rights and equal protection of the law for all people.

The League of Women Voters does not endorse busing per se, but if this is the answer or part of the answer, it should not be denied.

Desegregation of schools will vary according to local conditions. It is not the bus ride that is important but the kind of education that awaits our children at the end of the ride.

Ruth Patterson, President, League of Women Voters of Detroit.

Thank you, Mr. Chairman.

(Mrs. Benson's prepared statement follows:)

STATEMENT OF MRS. BRUCE B. BENSON, PRESIDENT OF LEAGUE OF WOMEN VOTERS OF THE UNITED STATES

I am Lucy Wilson Benson, President of the League of Women Voters of the United States, an organization with members in over 1,300 communities in all 50 states, and I appreciate the opportunity to appear before you today in their behalf. I speak in opposition to all proposed constitutional amendments which *either* would prohibit out-right the use of busing as a tool for school desegregation *or* would in other ways effectively limit the various means to achieve the goal we seek: integrated, quality education for all children.

The League's commitment to equal educational opportunity runs deep. Our principles state explicitly: "The League of Women Voters believes that . . . every citizen should . . .have access to free public education which provides equal opportunity for all. . . ." From these principles stems our position in favor of integrated, quality education. And we affirm that integration is an integral part of educational excellence. Furthermore, we support any reasonable method for reaching this goal.

Leagues do more than examine issues and take positions. They are working hard and effectively, in all parts of the country, with every tool available to citizens, to bring this desegregated, quality education into being.

For example, in the metropolitan areas of Boston, Massachusetts and Hartford, Connecticut, local Leagues have supported METCO and PROJECT CONCERN, programs to transport children from the inner city to suburban schools, to correct racial imbalance and improve the children's educational opportunity. In California, Florida, New York and Pennsylvania, state Leagues have urged their states to play more constructive roles in providing solutions to school segregation and to show more leadership to local communities.

Grassroots operations of our local Leagues have a tremendous impact on their respective communities. League members of Charlotte-Mecklenburg are not militants; nevertheless, they were vehement in their fight to see that their own and other children received better quality education.

The League of Charlotte-Mecklenburg was not alone in its efforts. The entire League has, after intensive study and evaluation, committed itself to *pursue actively* those means which would guarantee quality education. With this common obligation in mind, the League of Charlotte-Mecklenburg, the LWVUS, and the LWV of North Carolina joined the *James E. Swann v. Charlotte-Mecklenburg* case as *amici* in June 1970.

Their decision to submit *amicus curiae* briefs in this case came only after the Charlotte school board failure to draw up desegregation plans in compliance with a court order of April 1969. League members of Charlotte sent a statement to the school board in May encouraging them to formulate a workable plan for desegregation. The school board still did not formulate a plan for the Charlotte area, so the judge secured outside help to do so. Two plans were eventually drawn up. The Court approved a plan involving two-way busing to be effective April 1, 1970, and the school board immediately appealed the decision.

In their efforts to curtail opposition to busing, League members talked to school board members, city and county officials, the Chamber of Commerce and the Superintendent of schools. They also held open meetings daily during the summer of 1969 to keep citizens informed.

Guided by the belief that education must be improved in the Charlotte area, the League compiled yet another report in January 1970 in which they found "that segregated schools lead to cultural deprivation of all children." Furthermore they said that "it was not enough to have a good educational opportunity for a portion of our children. . . . Charlotte-Mecklenburg County [must] make excellence in education her prime goal."

League members saw themselves as an effective information center to help dispel fears harbored by parents in opposition to busing. They actively encouraged the positive responses of other organizations such as the Jaycees, the Ministerial Association and the PTA Council. League members also sponsored a candidates' meeting on educational television, and in numerous ways involved themselves in paving the way for orderly desegregation of their schools.

Prior to and after its decision to join as *amicus curiae* in the *Swann* case, the League stressed the positive aspect of bettering education for all children, with desegregation being only a part of the total program. Following the Supreme Court's ruling upholding the District Court decision for busing, the League issued a statement in support of public education saying that "the agonies of adjustment are behind us and now is the time for Charlotte-Mecklenburg to make excellence in education her goal."

At bottom, it is quality education for all that is the *real* national issue—not busing.

Excellence in public education is a widely shared American goal, and has been for a long time. What keeps growing and changing is our understanding of what it takes to provide it—*for everyone.* We keep learning *which* past customs have been depriving children of a good education—and depriving the nation of the fruits of that education.

The nation has just been through an 18-year learning process to grasp a single fact: Separate *can't* be equal. And the League of Women Voters stands firmly with the arguments set forth by the Court in *Brown v. the Board of Education.*

Our courts have continually reiterated the Brown decision of 1954 in which it was declared that separate school systems are inherently unequal. This decision was of historic significance in that it declared illegal a nationwide attempt to segregate black and white public school children because of race.

It knocked down the notion that segregation by race in public schools was desirable or even beneficial to black or white youth.

Its application meant that each child should have equal access to the education resources of the school system in which he resided, regardless of his racial or socio-economic background.

In giving life to the Fourteenth Amendment as it pertains to school desegregation, the *Brown* decision reinforced Thomas Wolfe's statement that the right "to become whatever [one's ability] and vision can combine to make . . . is the promise of America."

But the courts have continually had to reaffirm the original principle spelled out in *Brown.* They have also had to deal with sophisticated and invidious artificial barriers to school desegregation—gerrymandered school attendance zones, discriminatory zoning practices in housing, tracking and ability grouping of students, and assignments of faculty and staff on a racial basis.

In *Brown* II (1955) the Court addressed itself to the question of implementing that principles outlined in *Brown* I. Essentially the Court said that school systems should work out local problems created by deeply entrenched dual school systems with "all deliberate speed."

Thirteen years later in *Green v. County School Board of Kent County, Va.* the Supreme Court ruled that the "freedom of choice" method of desegregation was no true freedom. The Court ordered the school board to devise a plan that would promise to convert promptly to a system without a "white" school and a "negro" (sic) school. *Green* added another important ingredient in that the Court not only sought a desegregation plan that would work, but one that would work without further delay. Another lesson in Americanism learned.

In *Alexander v. Holmes County Board of Education* (1969) the Court ruled that it was the "obligation of every school district . . . to terminate dual school systems at once and operate now and hereafter only unitary schools." One more lesson.

Recent court cases—and one decision—are now challenging the property tax as the base for public school support. Plainly, a basic injustice has surfaced to worry the public conscience: as long as schools are mainly financed by property taxes, poor neighborhoods (minority and white) will generally have worse schools than wealthy neighborhoods. For years we thought that was just the way it had to be. Now we don't. Still another lesson—though not all the homework is done.

Let us return now to the historic *Swann* decision. *Swann* challenged the nation to go beyond a narrow position of self-interest in considering, once and for all, whether we really want quality education for *all* our children.

The 1971 *Swann* decision went further than any other previous decision in laying out instructions for dealing with the realities of implementation. Speaking to the issue of attendance zones and the issue of residence and "neighborhood schools" the Court said: "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The awkwardness of the remedy cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems." The Court spoke directly to the issue which ostensibly provoked these hearings: busing. In its unanimous decision, the Court found "no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of desegregation."

This lesson, it appears, some would have us unlearn. Since 1954, the Court has been our chief teacher—a classic role. It has consistently maintained that dual but separate schools are inherently unequal. The principle of equal access to quality education for all children stems from that initial decision, refined by later decisions about mechanisms. Clearly the court decisions have not been capricious in nature; they have declared unalterably and without doubt that not only must children be afforded every means to obtain equal educational opportunities, but that blocking this effort is illegal.

We find it sad to be here today recapitulating the Court history. Yet, the need to do so points up one very obvious fact. Those who want to see the law on school desegregation upheld have consistently had to go to the courts, even though administrative enforcement powers exist under Title VI of the Civil Rights Act of 1964 and have proven to be effective when exercised.

But the Administration, federal agencies and legislators have been reluctant to use these enforcement powers and to set forth positive legislation which transcends partisan politics and parochial emotionalism. As a result, the decisions made by the Supreme Court and District Courts stand as the most binding national policy this Nation has regarding school integration. And it is to the courts we have had to turn for reason and guidance. The League affirms the *Swann* decision in maintaining that busing is a tool that must be held available to remedy serious inequities in education. We hold, with *Swann*, that it is a *permissible*, though not a required tool, in dismantling a dual educational system.

Perhaps it is not the best tool. It certainly is not the only tool—and emphatically, it is not a new tool.

The proposed amendments appear to speak to the desires of many parents, both white and black, who argue that busing destroys the right to neighborhood schools and denies freedom of choice. Admittedly, there are arguments in favor of neighborhood schools. Children can easily participate in after-school activities. Parents can readily attend PTA. Inclement weather becomes less of a problem. The position of the school as an integral part of the community is established. Parents feel more comfortable, less fearful, knowing their children are in a school close to home.

Yet at the same time we all know that busing has been the tool of choice for many years, to get rural children *out of their neighborhoods* with their one-room schools and into consolidated schools where, presumably, they could have better facilities, a more varied program, better qualified teachers, and a less isolated school experience. Even now in suburbia, the high school where no bus pulls up to the door is a rarity. From personal experience, I might add, as a second-grader in Dallas, Texas I was bused clear across town and no one was disturbed about whether or not this was too much for me to endure. Furthermore, neither my parents nor I had any say whatsoever about the decision. So busing can't be all bad.

Total miles traveled have not increased as a *result of desegregation*, even though, as is to be expected, the number of children traveling has grown both as a result of a larger school population and greater consolidation of school districts.

In the 1960–61 school year 13,106,779 public school children out of a total public school population of 36,281,000 rode a total of 1½ billion miles on buses. Some 186,000 vehicles were used at a total public expense of $505,754,515. Ten years later, in the 1970–71 school year, some 19,617,600 public school children out of a total public school population of 45,905,000 rode a total of 2.2 billion miles. Some 256,000 vehicles were used at a total public expense of $950,000,000.*

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*Figures obtained from Vance Grant, HEW, and David Soule, Pupil Transportation, Department of Transportation.

Last year the national picture showed 40% of our public shcool children—65% when you include those using public transportation—rode to school each day for *reasons that have nothing to do with* school desegregation.

We can only conclude that the neighborhood school, though desirable as an aid to quality education, is not a precondition for it. Nor do we discover much of a history of freedom-of-choice attendance on the American public education scene.

And in all this we have not yet mentioned the long years that black children, North as well as South, were bused past one public school to a more distant and often inferior one. Where were the outcries then, the constitutional amendments, the tender sensibilities about neighborhood schools and parental rights and freedom of choice?

The members of the League of Women Voters are deeply concerned over the hysteria developing around the question of busing school children. Studied reason appears to have been lost to the pressure of emotional reaction sweeping the country. Both the Administration and Congress have responded to this hysteria with an equivalent emotion rather than with the responsible leadership one would hope for in view of the desperate need to heal the divisions among Americans rather than to exacerbate them. Parents' fears are real that their children will receive an inferior education or suffer violence at the end of the bus line. The level heads among us share a responsibility for calming those fears by encouraging every citizen to play a role in his community to carry out our constitutional goals.

There is so much that can be done to reduce these fears, and many school districts have handled it very well. If two-way busing requires temporary use of an older building, there is no reason for the quality of the curriculum or the teaching to be inferior if the local school board insists upon uniformly high standards. The problem of confrontation and violence also can be reduced to a low minimum if there is careful preparation, good leadership, and good will in the community. And let us remind ourselves that there is virtually no problem of racial violence among young school children. The deep-seated anxieties of many Americans concerning busing and racial integration can best be reduced by a new dedication to quality education and not by setting the clock back.

And setting the clock back is exactly what these constitutional amendments do. They aren't just about busing. Some require courts and agencies to accept "freedom of choice" which was rejected by the Supreme Court and Title VI of the 1964 Civil Rights Act. These amendments would effectively repeal Title VI. Other amendments attempt to preserve the "neighborhood school" principle, thereby legalizing segregation (and dual school systems) which occurs as a result of residence patterns. Others prohibit requiring transportation to achieve integration or the use of public funds for this purpose. These amendments, as they apply to federal agencies, would effectively repeal Title IV and Title VI of the Civil Rights Act by prohibiting the Departments of HEW and Justice from applying current constitutional standards.

The League contends that the proposed constitutional amendments offer only a nonsolution to a very real educational problem: that we as a Nation have failed to provide quality education to all children regardless of residence, race, class, creed, sex, or national origin. Nor do the Green, Broomfleld and Ashbrook amendments attached to the House-passed Higher Education and Quality Integration Act address themselves to the problems of providing quality education or equal access to it. These are called anti-busing amendments but in reality they are anti-civil-rights amendments. Not only do they not address the problem; they propose to roadblock possible attempts to solve it.

A closer look at H.J. Res. 620 makes this readily apparent. This proposal, couched in pseudo-civil-rights rhetoric, provides that no public school student shall, because of his race, creed or color, be assigned to or required to attend a particular school. This proposal runs directly counter to the whole thrust of law developing since 1954. Especially is it contrary to *Green* in that it seeks to resurrect a false freedom of choice that perpetuates old wrongs that spring from segregated residential patterns. For it is *not* enough to create a unitary school system in which no person is to be effectively excluded from any school because of his race or color.

Besides opposing H.J. Res. 620 for its substance and intent, we oppose it and others like it because we share the alarm of leaders like Governor Reubin Askew of Florida, who warns: "It is very dangerous under emotional circumstances to tamper with the U.S. Constitution."

The members of this Committee do not have to be given a lesson in constitutional theory. We all know that a constitution is designed as a statement of broad principles omitting details, especially those born of particular controversies. The U.S. Constitution has worked well for nearly 200 years with few alterations because it does *not* contain provisions which become outdated.

To be sure, busing as a means to *correct* racial imbalance is late to the scene. But in evaluating its use, it is well to remember that as more years go by without effective school desegregation, the need for shortcuts increases. What might have satisfied in 1955 cannot satisfy now. The accent has had to shift from deliberate to immediate speed, particularly in those places where an entire generation has been born and has finished high school with pretty much the same segregated and inferior schooling that was imposed on their elders.

Besides which, over the years our perceptions grow keener, not dimmer, in these matters. We discern the inferior and the subtly segregationist and racist where we may not have perceived it fifteen or even ten years ago.

Residential integration would, of course, obviate this kind of busing. But a whole generation or more cannot wait. The six-year-old child starting first grade in a poor neighborhood, a minority neighborhood, has only that one year to be in first grade, only one childhood in which to claim his birthright to a good public education. While the struggle to open the gates of suburbia with its invisible but sturdy walls of class and race exclusivism goes on, today's poor children must go to good schools. Busing offers one immediate access to better education.

Unpopular though busing may be, it is the only alternative within the means of some communities to achieve a measure of integration for this generation. The question is: Will we become mired in the busing issue or do we turn our energies toward raising the level of public education offered to every child in America?

Leadership must be exercised by our elected public officials to guide the present discussion along rational lines. To act favorably on H.J. Res. 620 or similar amendments could only imply withdrawal of congressional support, under emotional pressure, for efforts undertaken already to integrate our schools. The League of Women Voters therefore urges the members of this Committee and of the entire Congress not to be party to such a disaster.

Chairman Celler. Mrs. Benson, your organization operates in 1,300 communities in various parts of the country?

Mrs. Benson. Yes, and in all of the States and in the Virgin Islands and Puerto Rico.

Chairman Celler. Is your statement made on behalf of all of these communities?

Mrs. Benson. Yes, Mr. Chairman, it is.

Chairman Celler. Was there a convention at which the views here expressed were adopted?

Mrs. Benson. Yes. There have been three conventions which have repeatedly adopted these views. 1966 was the first one, 1968, 1970. And we are about to have another convention in May 1972, this year, where it is clear from the reports and recommendations coming in from our local leagues all over the country that they continue to support these views that I have expressed in their behalf.

Chairman Celler. How many members does your organization have?

Mrs. Benson. About 160,000.

Chairman Celler. I take it that you all believe in the *Brown* decision?

Mrs. Benson. I won't say that every single one of the 160,000 members of the league does, but I don't know of any who do not.

Chairman Celler. And you believe in integration?

Mrs. Benson. Yes, Mr. Chairman.

Chairman Celler. I take it you feel that busing is essential?

Mrs. Benson. We feel that busing is an essential tool to be used by communities, either by itself or along with other methods of bringing about integrated schools. There are many other methods in addition to busing. Sometimes busing is used by itself. Sometimes in combination with other methods such as center schools, and this sort of thing, or changing school district lines, which is done all of the time for other reasons as well.

Busing is a method, one of the methods of integrating schools.

Chairman Celler. Would you say it is an important method?

Mrs. Benson. Yes, sir; we would say it is very important, and in some communities the only way in which they can manage to bring about integrated schools depending on the geography of the school.

Chairman Celler. If that fundamental and important tool is removed, would you not have a rollback to the period before the *Brown* decision?

Mrs. Benson. We believe so, Mr. Chairman, and furthermore, not only would we roll backwards, but we would undo so much of the progress that has taken place successfully in this country, frequently by the method of busing, to bring about desegregated and integrated schools.

Chairman Celler. Do you feel that many of the objections offered to busing are really objections to integration?

Mrs. Benson. Yes, Mr. Chairman, we do feel that. We have had reports of this and the letter from the Detroit League points this out clearly, and we are hearing this from our members all over the country.

Chairman Celler. You feel that the real objection is not busing, but what happens at the end of the ride?

Mrs. Benson. Yes.

Chairman Celler. You mentioned the *Swann* case, which I take it you have examined, where the evidence indicated there were schools which were a hundred percent white, and schools which are a hundred percent black.

But for the *Swann* decision, there would be a continuation of what is known as separate but equal schools? Is that correct?

Mrs. Benson. Yes, but they would not be equal.

Chairman Celler. They would not be equal. But there would have been a continuation of the so-called dual system?

Mrs. Benson. Yes, sir.

Chairman Celler. Which is something which the League of Women Voters is against?

Mrs. Benson. Yes, that is correct.

Chairman Celler. And the objective of the League of Women Voters is to prevent that?

Mrs. Benson. Yes.

Chairman Celler. Do I state the philosophy of your organization correctly?

Mrs. Benson. Yes, you do.

Chairman Celler. Are there any other questions?

Mr. McCulloch. I would like to ask this question. What is your legal residence?

Mrs. Benson. Amherst, Mass., where, it may interest you to know, we have, relatively speaking, few black minority members or any minority group. We have some, and we have many ethnic groups as well, but they are not a majority of either the town or school system, and yet we have busing in our town all over the place every single day to the high schools, to the elementary schools, even to kindergarten and first grade, and nobody ever raised a single question about it.

Mr. McCulloch. Young lady, that was not intended to be a critical question.

Mrs. Benson. No, but I wanted to add that statement.

Mr. McCulloch. One's birthplace and residence are a part of one's experience and affect one's opinion, and I was interested in that.

Mrs. Benson. I was born in New York City and grew up in part of New York City and in Dallas, Tex., and in various other places of the country, including Chicago and Detroit, and my parents come from the Oregon territory. It is true, one's residence makes a big difference. However, I am not really expressing my views. I am expressing the views of our league members from all over the country, some of whom even live in Alaska where they have entirely different kinds of problems.

Mr. McCulloch. I thank you.

Mr. McClory. Could I ask a question?

Chairman Celler. Yes.

Mr. McClory. In one of the schools that I am familiar with in my congressional district, they follow the policy of bringing a few black children there from the inner city to give them the advantages of good educational opportunities. But I don't believe there has been a converse opportunity provided for young white children to obtain the educational advantages of the inner city schools.

In your statement and in other statements we have heard here, there has been support for busing to provide children a chance to be in better schools—generally suburban and white.

What about the problem we have here, though? The reason that we have so much activity on the part of the parents is that they have built their homes or settled in areas largely because of the opportunities for a good school in the neighborhood. Now they are required under some kind of court order to give up those advantages. The boards of education are sympathetic, but generally the courts have overruled the school boards, the elected officials, and ordered busing from the good nearby schools to inferior distant schools.

Do you favor that kind of busing?

Mrs. Benson. Mr. McClory, nobody in his or her right mind would ever say, "Yes, I favor busing children to bad schools." But at the same time, I don't favor bad schools for anybody.

Mr. McClory. No.

Mrs. Benson. Black, white, or any other, but it is a problem, and I am not, and speaking for the league, we are not unsympathetic with the problem.

I know all too well the tremendous effort many parents have made to move to an area where the schools are good, sometimes at tremendous financial sacrifice or getting themselves into debt for years to come in order to give their child this opportunity.

Suddenly, along comes the court decision, as you point out, and the whole face of the world is changed, and "Why did this have to happen to me?", they say.

Mr. McClory. We probably could resolve this problem through legislation, couldn't we?

Mrs. BENSON. We could help resolve it by providing more funds for all schools so that no school in this country would be a bad school.

There is no excuse for any school in our country not to be a good school. Even if the building isn't good, the books and teachers can be good.

Mr. MCCLORY. The argument for rejecting the constitutional amendment is a little more persuasive than for rejecting legislation, isn't it?

Mrs. BENSON. It is more persuasive.

I think adopting the constitutional amendment is not only not the answer, but it is a copout to facing the problems we have in this country to provide equal educational opportunities.

Mr. MCCLORY. Thank you very much.

Chairman CELLER. Thank you very much, Mrs. Benson. You have made a very fine presentation.

Mrs. BENSON. Thank you, Mr. Chairman.

Chairman CELLER. Our next witness is Dr. Mitchell Young, national president, Unified Concerned Citizens of America.

Dr. Young.

STATEMENT OF DR. MITCHELL YOUNG, NATIONAL PRESIDENT, UNIFIED CONCERNED CITIZENS OF AMERICA, ACCOMPANIED BY MRS. EDNA WADE, PRESIDENT, UNIFIED CONCERNED CITIZENS OF ALABAMA; MRS. LEE MILLER, ATTORNEY, CITIZENS AGAINST FORCED BUSING, COLUMBUS, GA.; AND CLAY SMOTHERS, CITIZENS FOR NEIGHBORHOOD SCHOOLS, DALLAS, TEX.

Dr. YOUNG. Mr. Chairman.

Chairman CELLER. Please identify those with you. I understand they have written to us and asked permission to testify. We cannot hear everybody so I am going to ask that you express the views of those seated with you.

Dr. YOUNG. That is what I intend to do, Mr. Chairman. I would like to introduce the people that are with me. First, Mrs. Edna Wade, president of Unified Concerned Citizens of Alabama, and is on the executive board of Unified Concerned Citizens of America.

Mrs. Lee Miller, attorney from Columbus, Ga., who is with Citizens Against Forced Busing and is also with Unified Concerned Citizens of America.

Mr. Clay Smothers, who is a columnist, is with the Concerned Citizens of America.

I am Dr. Mitchell Young. I am national president of Unified Concerned Citizens of America, and I am pleased to have the opportunity to appear before this committee.

UCCA is a national coalition of many local, State, and National organizations that support the neighborhood school concept and who oppose forced busing and the assignment of pupils for racial balance. Basically, we believe our schools should be controlled by locally elected school boards. We strongly oppose Federal intervention and Federal control of education, our children, and our teachers. We believe equality education is far more important than social experimentation.

My wife and I have 10 children and seven children in school, so I am very aware of school problems.

We feel that no child should be barred from a school he wishes to attend on the basis of his color, and no child should be forced to attend a school not of his choice solely on the basis of color. This organization, Unified Concerned Citizens of America, was formed from the many groups from across America because of the threat to our very freedom caused by Federal tyranny in our public schools. If our country is to remain free, the educational system must be free of Federal control.

This organization has membership in some 35 States from California to Florida and Chicago to Texas. It is a national organization. UCCA was chartered in Charlotte, N.C., in 1970. Our organization includes such organizations as:

1. Freedom Incorporated of Texas, Arkansas, Louisiana, and other States.
2. Concerned Parents Association of Charlotte, N.C., and other cities in North Carolina and surrounding States.
3. Hands Across Georgia, a State organization in Georgia with chapters in Atlanta and other cities.
4. Unified Concerned Citizens of Alabama, in Mobile and other cities.
5. Neighborhood Schools, Inc., of South Holland, Ill., and two other groups in Chicago.
6. Silent Majority of Winston-Salem, N.C., and the surrounding country.
7. Freedom of Choice in the United States (FOCUS) of Mississippi with chapters in Jackson and other cities.
8. Concerned Citizens of Oxnard, Calif., and other California cities.
9. The Constitutionalists and Grass Roots of United Parents in Oklahoma City, Okla.
10. Concerned Citizens of Harrisburg, Pa.
11. Concerned Citizens of Norfolk, Richmond, and Lynchburg.
12. Concerned Neighbors of Jacksonville and United Citizens of Fort Lauderdale, Fla., and many others.

These are a cross section of our membership. This gives you an idea of the diversity of our chapters and membership. We have members from all ethnic groups and all economic levels.

We have each fought to preserve freedom in our individual communities and States before combining into one strong national organization, Unified Concerned Citizens of America.

We had a national convention here in Washington on October 26, 27, 28, 1971. At that time, we met with approximately 40 Members of Congress in the Cannon Building on October 27 and asked that a constitutional amendment be passed to end Federal tyranny in the field of education.

At that time, since many constitutional amendments had been introduced, a congressional delegation decided to support one constitutional amendment, the Lent amendment, which simply states, "No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school."

UCCA has been working very closely with this congressional delegation headed by Congressman Downing, and with Senate leaders headed by Senator Tower and others, to get this amendment passed. We have been actively working to get 218 necessary signatures on Steed Discharge Petition No. 9 to get this bill on the floor of the House.

The problems caused by forcibly moving our children about to achieve numerical ratios, using forced busing, pairing, closing some schools, clustering, et cetera, is causing chaos in all parts of our great Nation. We have a national crisis in education that must be solved before the entire public school system is destroyed.

How has all this conflict and chaos developed? In 1954, the *Brown* decision said race could not be a factor in public assignment. De jure segregation in the 17 Southern and border States was ended. Most school assignments were by geographic zoning or freedom of choice. Desegregation was being accomplished by freedom of choice in a peaceful manner and was accepted by the majority of our citizens. And it has been succeeding at a progressive rate.

In 1965, Health, Education, and Welfare authorities became more militant and drew up illegal guidelines for Southern desegregation and instructed some 4,400 school districts in the Southern and border States that they were to have unitary school districts with no semblance of white or black schools or geographic zoning. In 1968, 300 HEW officials of the Office of Civil Rights were sent into the South to threaten and to coerce school boards to comply with plans that included closing black schools, clustering, pairing, building large new complexes, massive busing, et cetera, to achieve racial balance in all schools. If you refused, HEW would threaten to and would cut off Federal funds because school districts were in noncompliance. The caliber of these HEW employees was and is disgraceful. They have been rude, vicious, dictatorial, illiterate, and completely unaware of the problems caused by destroying neighborhood schools and forcibly mixing students of different races to fit numerical ratios.

This is not just black and white. We are talking about Mexican Americans, Chinese, and Indians also.

In 1968, 1969, and 1970, the unjust, unworkable edicts of HEW, the Justice Department, the Supreme Court, and the Federal judiciary were felt by the 4,400 school districts in the 17 Southern and border States, and were ignored by most citizens in the other 33 States who were not affected.

One isolated school district—District 151 in South Holland, Ill.—was destroyed by the Justice Department in July 1968 with massive busing between the cities of Harvey, Phoenix, and South Holland to achieve racial balance.

We have an organization there, and a number of whites and blacks have moved out because of the problems in that school system. It has failed. The South had been discriminated against since 1954.

The Civil Rights Act of 1964 guaranteed freedom of choice and said desegregation shall not mean the assignment of pupils to overcome racial imbalance. The Civil Rights Act had not specified "de jure" and "de facto" segregation. All "de jure" segregation ended in 1954. All 50 States then had "de facto" segregation or segregation by housing patterns. HEW agents continued to harass school boards. One agent in Beaumont told a school board member, "We want to look at these schools and see salt and pepper, we want integration, we're not interested in education." Most HEW agents were unqualified. Some were sociologists and misfits.

HEW investigated all 4,400 school districts in the South, cut off funds to hundreds, and created many financial problems. They would not meet with citizens of communities and usually held secret meetings with school boards, and would not allow citizens to attend these private meetings. When citizens asked to be allowed to meet with HEW face to face, HEW refused to do so.

HEW now has a civil rights budget of $2.5 billion, I am told. They threatened only a few Northern school districts such as Ferndale, Mich., and Wichita, Kans., and cut off funds to none. That means funds had been cut off in the 11 Southern border States, and no funds had been cut off in other States.

Mr. ZELENKO. Are you charging that funds have been cut off by HEW in some school districts?

Dr. YOUNG. Yes, sir; I am very definitely saying that. There is no way the citizens of America can get fair treatment from the civil rights section of HEW and the Justice Department because they are made up of minority groups almost entirely.

HEW attorneys and Justice Department attorneys have conspired with Federal judges in desegregation cases. HEW set up 10 regional agencies on university campuses throughout America to draw up desegregation plans, usually with massive busing, and put on sensitivity training seminars to change attitudes toward forced integration. In Texas, it was called TEDTAC. This is in violation of the Civil Rights Act of 1964, as well as the Whitten amendment, what HEW has been doing.

Federal bureaucrats and some Members of Congress have set themselves up as a superintelligentsia that should have the right to control the lives, the attitudes, and behavior of our children so that all citizens fit a Federal norm in a new socialistic utopia. This is true Fabian socialism and will not be accepted by the people. We will not let it happen in America.

HEW and related agencies have let some 80,000 contracts spending millions of taxpayers' dollars to behavioral scientists to learn more about controlling attitudes and behavior.

Federal judges have assumed the roles of dictators in making law, not interpreting it.

Chairman CELLER. On page 5 of your statement, you say, "We will not let it happen in America." What do you mean by that, sir?

Dr. YOUNG. What I mean is that the citizens will not let their children fit one Federal norm set by Federal bureaucrats. They will stand up so that local school boards run the local school district.

Chairman CELLER. Is that threatening violence?

Dr. YOUNG. No, sir. We believe in the law. We believe in working with the law. We do not believe in violence. We believe in the Constitution, and we will support the Constitution.

Mr. ZELENKO. Have your members abided by court orders in your locality, or have they violated court orders?

Dr. YOUNG. Our people have not violated court orders. There have been individual groups in different areas that have had marches, that have had rallies, and done things of this nature, but our people have not violated the Constitution of the United States.

Mr. ZELENKO. They haven't stood in the schoolhouse door, Dr. Young?

Dr. YOUNG. Not to my knowledge. Federal judges have violated the U.S. Constitution repeatedly, and we accept no document as equal to or superior to the U.S. Constitution. Their viciousness is beyond belief.

Judge Woodrow Seals of Corpus Christi approved a HEW plan calling for massive busing to cost an additional $2 million annually in a school district that was 48-percent Mexican American, 47 percent white, and 5 percent black. Ninety percent of the citizens disapproved it.

Chairman CELLER. On page 5 of your statement, you assert that: "HEW attorneys and Justice Department attorneys have conspired with Federal judges in these desegregation cases." Would you explain what you mean by that?

Dr. YOUNG. Yes, sir. We can present some evidence to you using individual names of the individual attorneys and the individual cases across the United States.

Chairman CELLER. And the individual judges?

Dr. YOUNG. And the individual judges; yes, sir.

Chairman CELLER. Will you supply that for the record?

Dr. YOUNG. I will supply that for the record.

Chairman CELLER. We will be interested to obtain those names.

Dr. YOUNG. I will be happy to have this committee have these statements, because this is the committee that we as citizens come to bring you information to take action on injustices.

(The information to be supplied is found at pp. 344, et seq.)

Dr. YOUNG. Judge Justice of Tyler, Tex., instructed the Texas Education Agency to not approve State funds if schools had not taken affirmative action to comply with Federal guidelines.

Judge Oren Harris of Arkansas accepted a HEW plan for massive busing in Watson Chapel School District. The school district has no funds for the additional buses.

Mr. HUNGATE. Pardon me, Doctor. You referred to Judge Harris and HEW guidelines.

Dr. YOUNG. HEW attorney Mr. A. T. Miller officially presented an HEW plan to Judge Harris that he told the school board to implement.

Mr. HUNGATE. Is that what they call the HEW guidelines for schools? Wasn't that the plan?

Dr. YOUNG. Mr. A. T. Miller works out of the Dallas office, and I would say it is guidelines, but he came into Watson Chapel for 4 hours and drew it up for the school board, Mr. Hungate.

Mr. HUNGATE. Would someone have a copy of that plan?

Dr. YOUNG. I could get it.

Mr. HUNGATE. If there is no objection, Mr. Chairman, I would ask that the gentlemen file the plan as part of our record.

Dr. YOUNG. I will be happy to do so, Mr. Hungate.

Judge Harris denied the school board attorney and school board members freedom of speech and freedom of assembly, and threatened them with heavy fines and imprisonment. He then had the school board attorney and two school board members arrested by Federal marshals, charged with civil contempt, held them incommunicado, put them through a trial without jury, fined the attorney, and again denied him freedom of speech and freedom of assembly.

Mr. Chairman, I would like to ask for your indulgence. I am giving you information, I do not have it written in here, but I would like to have it included as part of the record.

The school board stepped aside. The school board did not sign compliance with Judge Harris' ruling, and Judge Harris assumed control of that school district in Watson Chapel, Ark.

Title I money—the school board was told this—title I money was moved into a miscellaneous fund and they were told to use this money to purchase schoolbuses. The school board had been denied freedom of speech and freedom of assembly. They attended a public meeting 2 days after this. The school board members were arrested by Federal marshals. The school board attorney was trying a case in Eldorado, Ark., and he was arrested in the middle of this case by two Federal marshals and taken to Little Rock.

The two school board members were at individual businesses in Pine Bluff. One runs a grocery store. They came in and told him they were taking him in. He had to lock up his store. He didn't have time to call anybody or tell anyone. The other man was arrested at Arkansas Power & Light, Mr. Harris Mitchell, school board president, and the attorney was John Norman Warnock. They were taken to Little Rock and charged with civil contempt. They were denied time to meet with a lawyer to prepare their case. They were put through a 9-hour trial by ordeal. They were permitted one 5-minute break. The evidence was presented by the U.S. attorney against the two school board members. There was inadequate evidence so nothing was done to them, but Attorney Warnock was fined $500 and was threatened with imprisonment in 3 days if he would not sign a statement he would make no further comments and again was denied freedom of speech and freedom of assembly: $350 a day is a pretty stiff fine and he didn't want to go to prison so 3 days later he signed the statement told to him by Judge Harris. He appealed his case to the Eighth Circuit in St. Louis and asked the Supreme Court to hear it and it was placed on the docket and then the Supreme Court refused to hear it.

That particular school district started out with 2,100 whites and 1,700 blacks. It started busing. There are 800 less whites in that school district. A number of teachers have resigned and the things are going very badly there and there has been much difficulty in the Pine Bluff-Watson Chapel area since that time.

Judge Robert Merhige—January 10—combined Richmond and Henrico and Chesterfield Counties into one school district crossing local boundaries and calling for busing 78,000 or 110,000 daily between city and suburbs to achieve racial balance. He also will decide on the school board and denied this school board freedom of speech and assembly.

Judge Elliott in Muskogee County, Ga., enjoined the citizens of the entire county from doing anything in any way to demonstrate against the desegregation plan drawn up there. They were denied freedom of speech and freedom of assembly.

People were served with writs in this county, Muskogee, Ga., Columbus, Ga. The same was done in Augusta, or course, the same type of thing that called for massive busing.

Judge McMillen reviews statistics each month in Charlotte, N.C. He reviews them each month to make sure you have exactly 70–30 ratio in each school in the city and the county.

Federal judges have assumed the roles of dictators or gods in making law and not interpreting it. They have violated the U.S. Constitution repeatedly and we accept no document as equal or superior to the U.S. Constitution. We didn't believe this would happen in America: what the Federal judiciary has done and their viciousness is beyond belief.

The Justice Department has participated in many suits in the South. They have brought only a few suits in the other 33 States, Pasadena, Calif.; Tulsa, Oklahoma City, Indianapolis, I believe, South Holland, Ill.

The Supreme Court has participated in this Federal tyranny in the *Green* case in 1968, *Alexander* 1969, *Swann* 1971.

In 1954 they said race could not be a factor, that you had to have colorblind assignments and that prior to 1954 segregation by law was wrong. But in 1971 the *Swann* case said essentially race must be a factor and gives Federal judges the authority to do whatever they want.

The Supreme Court has interpreted desegregation to mean racial balance and that is not what desegregation means.

Mr. ZELENKO. Excuse me, let me read a brief passage from the *Swann* decision because that is what we are discussing now. Your statement is that the Supreme Court interprets desegregation to mean racial balance.

> If we were to read the holding of the District Court to require, as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole.

Doesn't that belie your statement that the Supreme Court has interpreted desegregation to mean racial balance?

Dr. YOUNG. As I said, in Judge McMillen's statement he is requiring the exact 70–30 ratio in the *Swann* case; that is, the *Swann* decision. Other judges are doing exactly the same thing. The Supreme Court, Mr. Zelenko, did not say in their *Swann* finding, and I am not an attorney, I am a physician, but the Supreme Court did not say that desegregation was a racial balance. That is the way it is being handled. That is the way the *Swann* case in Charlotte-Mecklenburg is being handled. And "desegregation" as it has been interpreted in the past just means that race is not a factor in assignment.

Mr. ZELENKO. You disagree with Justice Burger's statement in the *Swann* decision, that no particular degree of racial balance or mixing is required as a matter of substantive constitutional right?

Dr. YOUNG. I don't disagree with that statement; no. I wish the Supreme Court would be more considerate in studying these cases before making decisions when it affects every one of our children.

There is no massive busing between the suburbs of Virginia, Maryland, and the city of Washington which actually has 95.4 percent black enrollment. Perhaps if this is done, we would already have had this constitutional amendment in.

As you know, only a very few Congressmen, Senators, bureaucrats send their children to public schools. Most attend private schools in a safe, clean environment. Why do they do that? Because they love their children and don't approve of forced integration and the consequences of same. Everyone is interested in quality education, and we are asking

Congress to stop this ridiculous social experiment now and clean out the nonelected socialistic bureaucrats that have come up with these schemes in HEW and these other agencies.

What are the results of forced integration? The level of education has been lowered. There are frequent racial disturbances. There is great fear in pupils and teachers. The teachers of Dallas, Tex., say their safety is No. 1 concern and they are making this a big issue in the school board election this year. Black and white teachers have been attacked, not just white teachers. No school bond issues are passing. Pupils are migrating rapidly to private schools. People are moving out of communities. Resegregation is occurring. Instead of helping integration, what is being done is causing resegregation and is causing more animosity and problems between not white and black but white and black and Mexican Americans and Chinese and all other groups.

There are different levels of ability in the same classroom which creates an almost impossible task for the teacher and in some places they are having to teach there are 90 pages' difference where they have to teach some on third-grade level and some on sixth-grade level. There are great discipline problems. The cost of massive busing is fantastic and there is more risk of accidents to schoolchildren because more people are being bused. Good teachers with years of experience are quitting. Preference is given to minority groups in many areas. For example, a lot of times cheerleaders and drum majorettes are placed in a position because of race such as Mexican Americans and blacks and the majority of them don't like this but this is being done. There is discrimination because Brigham Young and Oregon University have been getting out to seek minority group enrollment, but no one has told Southern University to get out to seek other ethnic groups. Teachers in St. Louis and New York carry guns to protect themselves. One teacher in San Francisco was stabbed to death by an irate mother in a classroom.

People throughout America are demonstrating they will accept Federal tyranny no longer. People have had boycotts and all types of peaceful resistance within the law. Many of us have come to Washington for 4 years, appeared before Appropriations Committees, HEW Appropriations Committee for the Whitten amendments, met with officials and Congressmen and so far legislation passed by Congress has been ineffective. The Whitten and Stennis amendments were nullified. The Scott-Mansfield amendment is a hoax. The President has not taken affirmative action to correct this. What can be done to correct this situation?

A constitutional amendment such as the Lent amendment must be passed to guarantee that our children can be educated in a free society without Federal interference or Federal control. This constitutional amendment does far more than stop forced busing, which is just a part of the problem. This constitutional amendment:

1. Preserves neighborhood-school concept.
2. Stops forced busing.
3. Stops assignment of pupils for racial balance.
4. Preserves local control of schools.
5. Stops Federal control of education.
6. Provides maximum freedom for each citizen.

7. Provides equal rights for each citizen regardless of race, creed, or color.

8. It will stop ruthless Federal judges, the Supreme Court, HEW, and Justice Department from trying to achieve numerical ratios in schools.

Other action that can and should be taken by Congress, and I want you to know that we the people feel that only Congress is the legislative body of this country.

None of us receives any pay for what we are doing. We are working because we are interested in freedom in America and we feel freedom in America depends on whether the educational system will remain free.

Secondly, we ask that Congress pass legislation, a statute as to article III, section 2 of the Constitution to eliminate jurisdiction of Federal judges in school desegregation cases.

No. 3, to get Justice Department to participate in suits where Federal judges have gone far beyond the Constitution.

Fourth, to censure Federal judges such as Judges Merhige, Elliott, Harris, McMillen, who have violated the constitutional rights of the citizens.

Five, limit the terms of Federal judges to 6 or 8 years.

Sixth, we would like to ask Congress to investigate the illegal actions of HEW in school desegregation matters. We feel the civil service tenure of HEW needs to be ended and we feel like Congress ought to clean out this Department completely and start over so that you have a cross-section of America in these organizations.

We ask that it be broken up into three different divisions: Health, Education, and Welfare. Their budget is $77 billion annually and they have too much control over the lives of all of our citizens, particularly in the field of education.

We ask that desegregation guidelines be applied equally in all 50 States simultaneously, not in one section of the country and then in another.

Forced busing and assignment of pupils have infuriated our citizens as nothing else has. We feel this is a violation of our constitutional rights and we ask that this Congress do something about individual freedom and liberty as envisioned by our forefathers that founded the United States and we have to preserve that freedom in this Republic.

Chairman Celler, we want the Lent amendment House Joint Resolution 620 reported out of this committee. You as chairman of the Judiciary Committee of the House have responsibility to all citizens of America to report this bill out and let it be voted on. You are respected by people throughout this Nation for your legal knowledge and you know the majority of the people in America are concerned about this problem, and want something done. We have great respect for you and this committee, or we would not be here. We are not interested in what constitutional scholars say as far as technical points. Their kids are not being used as guinea pigs in a social experiment.

The uproar is never going to subside. We ask this bill be reported out immediately after these hearings cease. The decisions by California State Court and Texas State Court are other methods we feel to stop local control of schools and that is our opinion why Mr. Richardson, Secretary of HEW, is favoring a value added tax and the administration is discussing Federal financing of schools.

The No. 1 domestic issue in America is Federal tyranny of education and Federal control of education.

I have given you a summary here which I won't go through completely. We feel that forced integration has been a tragic failure for all citizens. We feel Congress has to do something about it before the public school system is destroyed. We ask Congress to take affirmative action and support the Lent amendment as well as statute and we ask you not to compromise antibusing measures that have passed the House when you meet in Senate-House Conference Committee.

I would like to thank you for Unified Concerned Citizens of America. I would be glad to answer any other questions you might have.

Chairman Celler. We are interested, of course, in your recital of alleged arbitrary conduct of some of the judges, and would be interested to receive any data you have concerning such conduct. Please let us have that information as soon as possible.

Dr. Young. All right, sir. I certainly will do so.

This Lent constitutional amendment is not for one race, it is for all races. I will get this data for you. We feel that the answer to this problem is with neighborhood schools, freedom of choice, equal facilities and equal educational facilities in all schools.

Understanding of all people working together in a free country, that is the only way we are going to solve this problem. We can't do it with Government control. There are a couple of other points I would like to make.

If we don't stop this, instead of busing, soon you are going to have airplaning. HUD is already in the model city programs. They are already establishing Federal guidelines to racially balance 147 model cities to establish socioeconomic and ethnic ratios in each neighborhood and it is not so far afield to assume that eventually they would try to racially balance American communities throughout these United States.

They already have new community programs in Reston, Va., Columbia, Md., and this program is one where to get Federal funds under model cities under section 103, you have to agree to all criteria set up by the Secretary of HUD.

Under section 109 of the Demonstration Cities Act the Secretary of HUD confers with all other agencies in this program and this needs to be brought to your attention because school boards are being coerced by Federal guidelines. In the model cities program to get Federal funds you have to be in compliance with all Federal guidelines and this is not the way I think Congress meant this to be administered. It is being administered differently than Congress legislated.

I wanted to bring this to your attention. Any one of the four of us will be glad to answer any questions you have. I want you to know that I, as father of 10 children, and our ladies, Mrs. Wade here has been here 3 weeks working to get Members of Congress to do something about this: Mr. Smothers has traveled over the United States talking to groups: Mrs. Miller is the attorney for the group in Muskogee County, Ga., and she is vitally concerned about education—that we are as concerned as the other people that present the other sides are sincere. We feel that you as the Judiciary Committee and all 535 Members of Congress need to listen to all sides and then take action that you think is best in the interest of our people of all races.

Chairman **CELLER**. We are doing exactly that. Thank you very much.

Mrs. **MILLER**. Mr. Celler, may I insert one sentence in the record?

Chairman **CELLER**. Yes.

Mrs. **MILLER**. I wish to state why I sit here. Dr. Young invited me to sit here and to assist in answering any questions about Columbus, Ga., and Muskogee County, if any arose from the committee. I have made a separate request for discussing our situation in Muskogee County and I would like to state this presentation does not in any way, I hope, preclude my request for presentation.

Chairman **CELLER**. Thank you very much.

Dr. **YOUNG**. Thank you, Mr. Chairman.

(Subsequently, the following information was submitted:)

UNIFIED CONCERNED CITIZENS OF AMERICA,
Texarkana, Ark.-Tex., March 28, 1972.

Mr. BENJAMIN L. ZELENKO,
General Counsel, U.S. House of Representatives,
Committee on the Judiciary, Washington, D.C.

DEAR MR. ZELENKO: I am enclosing several affidavits regarding improper actions of federal judges and HEW officials. More will be sent. I am also enclosing a copy of the HEW Guidelines for School Desegregation written in 1965 and applied in a discriminatory manner. These guidelines are illegal and the Judiciary Committee needs to be made aware of this.

Sincerely,

MITCHELL YOUNG, M.D.,
National President.

AFFIDAVIT OF JOHN NORMAN WARNOCK

Know all men by these benefits:

That I, John Norman Warnock, Rt#2, Box 178, Camden, Arkansas after having been duly sworn do depose and state:

That I am the attorney for the Watson Chapel School, Pine Bluff, Arkansas, and served in such capacity during the year 1971.

That at the conclusion of a contempt hearing against the school board on the 5th of February, 1971 Judge Oren Harris, the presiding judge gave me the following order from the bench:

"So, Mr. Warnock, as an officer of this court, you will make no further public statements or co-operate in arranging mass meetings, but you will represent your clients in every possible way that your duty and responsibility calls for."

After this order I felt constrained to give the press and public only my name, rank and serial number for certainly I was a prisoner of the court.

As the weeks passed by I was encouraged by the press to make a statement. On the 28th of March, 1971 I made a public statement in Hesten Stadium to the effect that in the end we will win as right was on our side.

Two days later I was arrested while pleading a civil case in a State Court of general jurisdiction in El Dorado, Arkansas and transported by two armed US Marshals to Little Rock, some 120 miles away. There I was tried for nine hours for having made the statement in defiance of the Court's order. I was not permitted food, nor time to prepare my defense, no chance to call witnesses in my behalf, and would not have had an attorney if I had not previously arranged that my attorney be on the alert for just such a proceeding.

The Court called the charge one for civil contempt. This was done so that I would not be entitled to trial before a jury. I found out through an investigating service that the judge had brought the charges against. There were no complainants who had been damaged, nor were any present to testify against me.

Despite all illegalities, I was found guilty and fined $500 and ordered if I did not sign a certificate within three days to the effect that I would continue to obey the court's order I would have to go to jail and pay $350 per day.

On the third day I went to the District Attorney's office and offered to pay the $500 fine, but first I demanded to know to whom my money would be paid as damages. I reminded them that this was supposed to be civil contempt which meant that I must have damaged some one. After this challenge, they decided not to take my $500, just required that I sign the certificate.

I signed the certificate under protest.

The conviction was appealed to the 8th Circuit Court of Appeals which ruled in August that since the Judge had relieved me from any restrictions on my 1st Amendment rights in June, that it was a moot question.

On January the 24th, 1972 the US Supreme Court refused to consider my Writ of Certiorari.

At the time the appeal was heard before the 8th US Circuit Court of Appeals I was under orders from the court not to make a public statement. It became a moot question apparently after instructions from the appellant court that I be relieved of the restriction.

For over four months I lost my First Amendment rights and neither the 8th U.S. Circuit Court of Appeals nor the U.S. Supreme Court considered this important. Apparently personal liberties must give way to so-called Civil Rights.

This is my statement typed during flight.

JOHN NORMAN WARNOCK.

Subscribed and sworn to before me this 22d day of March 1972.

JEANETTE PATTERSON, *Notary Public.*

My commission expires: July 1, 1973.

AFFIDAVIT OF HARRIS F. MITCHELL, C. E. GARMAN, JR.

Know all men by these presents:

That we, Harris F. Mitchell and C. E. Garman, Jr., after having been duly sworn to do depose and say:

That on or about the 30th of March, 1971 we were duly elected members of the school board of Watson Chapel School, Pine Bluff, Arkansas.

That at about 10:00 a.m. on the same date we were arrested by armed U.S. Marshals and taken to the confinement facilities of the U.S. Court House in Little Rock, and held in the cell area until about three o'clock that afternoon when we were tried by Judge Oren Harris for allegedly failing to carry out his "busing for racial balance order." We were not given the chance to obtain an attorney, to get witnesses in our behalf, or really know what we were charged with before the trial started.

The Court called it a Civil Contempt proceedings so that we would not be able to have a constitutional trial by jury.

As there was no evidence that either of us had defied the court's order to totally integrate, the Court did not find us guilty of Civil Contempt.

At the hearing the court ordered us to buy buses under Title I funds for the purpose of mixing the races in the schools to a balance determined by the Court.

In a letter to the Superintendent of the school on the 14th of April, 1971 the judge wrote as follows:

"One of the matters specifically referred to by the Court had to do with the obtaining of federal funds under Title I for the purchase of needed and necessary buses. The Court directed you to proceed with obtaining these funds and for the school board to co-operate."

At the next or subsequent school board meeting the board had $11,000 Title I Funds transferred into the General Fund for the purpose of buying the buses ordered by the Court. Two buses were purchased, and are now in use.

HARRIS F. MITCHELL,
C. E. GARMAN, Jr.

Subscribed and sworn to before me this 21st day of March 1972.

MARIE BROWNING, *Notary Public.*

My commission expires June 21, 1973.

GUIDELINES FOR SOUTHERN SCHOOL DESEGREGATION

NOTE.—I cannot speak for the Department of Health, Education, and Welfare. I am a professor of law at the University of Wisconsin, presently serving on a part-time basis as a consultant to the policy laid down in Title VI of the Civil Rights Act of 1964. Nevertheless, I am aware in a general way of the policy considerations which are being taken into account in reviewing desegregation plans submitted pursuant to requirements of Title VI. Thus, while I can provide some general guidelines, I can give no assurance they will suffice. Obviously the more nearly any district moves toward a total removal of discrimination the more certain it can be of compliance with Title VI.

G. W. FOSTER, Jr.,
Professor of Law and Consultant to U.S. Office of Education,
University of Wisconsin.

INTRODUCTION

Title VI of the Civil Rights Act of 1964 calls for an end to racial discrimination in programs which receive Federal financial assistance. Or, as a Florida news headline put it, "INTEGRATE OR LOSE FEDERAL $$."

For public schools of the South the point is perhaps more accurately put another way. The issue is really whether Southern schools are going to desegregate with-or-without continuing to receive Federal financial assistance. Even if Federal aids are discontinued, segregated school districts will face the prospect of private litigation brought on behalf of Negro pupils in the community. And the 1964 Civil Rights Act increased the inevitability of desegregation by authorizing the Attorney General to bring a suit in the name of the United States.

According to Regulation promulgated by the Department of Health, Education, and Welfare to implement the nondiscrimination policy of Title VI, school districts which seek to qualify for future Federal aids must select among three courses of action:

1. *"Form 441" Assurance of Compliance.*—This is an unqualified assurance that no discrimination whatever is practiced within the district. The 441 assurance is largely inapplicable to districts in the 17 States which in 1954 maintained legally separated Negro and white schools since in only a very few Southern school districts have the last vestiges of the dual school system been eradicated. The Office of Education is returning for further information all 441 Assurances it receives from districts not fully desegregated, and presumably a plan of desegregation rather than a 441 Assurance will be required of these in order to comply with requirements of Title VI.

2. *Plan for the Desegregation of the School System.*—The Regulation implementing Title VI will allow future approvals of Federal aids for a district which submits to the Commissioner of Education a suitable plan for removing whatever discrimination remains in the school system. For the bulk of the biracial school districts of the South the only effective way to continue receiving Federal aids lies in submitting a plan of desegregation.

3. *Court Order for Desegregation of the School System.*—The Regulation also authorizes continuation of aids to districts which are operating under a final order of a court of the United States for the desegregation of the school system. It is crucial to note that the order must be one directing desegregation of the school system; an order merely directing admission of a few named individuals, for example, without otherwise providing for desegregation of the system, will not suffice. Despite more than a decade of litigation only a small fraction of the South's biracial districts were acting under court-ordered desegregation plans when the Regulation implementing Title VI was promulgated.

The balance of this memorandum is designed to furnish some guidelines to school authorities seeking compliance with Title VI. It stresses the points with which a desegregation plan must deal, illustrates ways in which particular procedures must be described, and suggests something of the range of choice open to a school district.

What the memorandum cannot do is guarantee approval by the Commissioner of Education. It seems clear that no tersely stated or vague plan will be approved. What must be done in any plan is to spell out enough detail that there can be general understanding of the situation and problems in the district, of the policies and procedures designed to deal with the problems, and of the district's intentions to carry out the plan in good faith.

On all these points the burden of persuasion is on local school authorities. Their plan must sell itself.

I. SUMMARY STATEMENT OF PRESENT RACIAL SITUATION IN DISTRICT SCHOOLS

All plans for desegregation or final court orders submitted to the U.S. Office of Education for compliance with the Civil Rights Act of 1964 should be accompanied by a summary statement describing the racial picture in the district schools at the time the plan is submitted. Or, as an alternative, the questionnaire at the end of this memorandum may be used, with the district adding to the questionnaire whatever further information it believes appropriate.

The reason is that rational appraisal of any desegregation plan is impossible without a general picture of the circumstances in the district when the plan is submitted. The questionnaire covers the points needed at a minimum to tell the story. But if the district intends to make use of geographic attendance zones or if busing is to be employed, maps and statistics sufficient to show the general racial characteristics of the proposed arrangement are essential.

Lest there be undue concern that too great a burden is imposed by having to supply this much information, it should be understood that precise, up-to-the minute statistics are not required. The information needed is the kind that knowledgeable school authorities are aware of in general terms. It is enough that what is supplied is what fair-minded school officials believe to be true and what reasonable men would think necessary to know in order to judge a desegregation plan rationally.

II. TYPES OF DESEGREGATION PLANS: GENERAL CHARACTERISTICS

Most school desegregation plans evolved since 1954 are based either on geographic attendance zoning or fredom of choice. Some plans combine features of geography and choice and occasionally it has been suggested that pupils should be assigned to schools according to achievement or ability test scores. While in many districts pupils are separated according to achievement, ability or vocational interests for some purposes no widespread use has been made of these characteristics as the basis of plans for desegregation, though presumably they would suffice if operated in good faith without discrimination based on race.

Because geographic zoning and freedom of choice provide the usual basis for desegregation plans this memorandum concentrates on the features of these two types.

A. Assignment by geographic zoning

Throughout the country geographic zoning is the prevalent means for assignment of pupils to schools. In the dual systems of the South prior to 1954 separate (and of ten overlapping) geographic zones were widely used to assign Negro pupils to Negro schools and white pupils to white schools.

Since desegregation involves doing away with these separate sets of Negro and white schools, the use of geographic zoning to accomplish this result requires the establishment of a unitary rather than dual system of attendance zones. Or put in the form of an example, all elementary schools of the district, whether formerly Negro or white, would have to be zoned on a single map without any overlapping of attendance zones.

Plans approved by courts in earlier years introduced unitary zoning on a grade-a-year or other stairstep basis. The questionable status of grade-a-year plans at present should give pause to any serious thought about using them and any district must weigh carefully the factors discussed in Section VI of this memorandum as to any discriminatory practices preserved after fall 1965.

For many administrative purposes the relative simplicity of geographic zoning gives it evident advantages over assignment based on freedom of choice.

It provides a relatively accurate way of forecasting future enrollments and is a direct method for shifting pupil populations to adjust for overcrowding.

Across the South the courts have uniformly held that assignment by attendance zones satisfies constitutional requirements for doing away with dual systems of schools provided it is not used with the motive of producing racially invidious results. The fact that school authorities have the burden of explaining away circumstantial evidence of discrimination means that care should be taken to zone schools in ways which minimize instances in which suspicions of racial discrimination are likely to be aroused. And this is not an easy task.

The following examples illustrate situations likely to cause trouble. Oddly formed zones raise doubts, particularly where they coincide with racial boundaries between neighborhoods; indeed any zone lines coinciding with racial boundaries call for some explanation. Trouble comes also from creating optional attendance zones in racially mixed neighborhoods; certainly some special explanation is called for as to any rule which permits out-of-zone attendance for residents of some but not all school zones.

Plans using geographic zoning should initially assign all pupils to the school in their zone of residence. Whatever transfer policies are available for attending outside the zone of residence should be open to Negroes and whites alike on the same terms and by the same means. The provision, sustained for a time in the courts, for permitting transfers to children who would be in a racial minority within their attendance zone school or classroom has been struck down as a device to preserve segregtaion and will not do.

B. Assignment Based on Freedom of Choice

Desegregation plans based on freedom of choice are perhaps no more than transitional devices that ultimately will give way to unitary zoning. In theory, freedom of choice is unobjectionable. The practical difficulty is that the choice open to many may not in fact be free and school authorities who are considering freedom-of-choice plans have a special responsibility to assure themselves before they adopt them that the plans can be carried out in good faith. Particularly is this true where ingrained community custom is likely to result in economic reprisals or threats to parents and children.

In recent times Federal courts have directed some districts to install unitary geographic zoning where it was shown that freedom-of-choice plans adopted earlier failed to affect the dual school pattern. But at present plans based on freedom of choice appear sufficient to meet the requirements of Title VI, provided pupils are afforded a choice which is free and unfettered by past or present practices.

Thus a choice of schools is not free where a pupil is initially assigned to a school on the basis of race and then is provided only a limited right to transfer to another school. For this reason Pupil Assignment Laws alone do not constitute acceptable plans of desegregation.

Again, a choice is not free where administrative practices within the school system make the exercise of choice burdensome by requiring parents either to go through the ordeal of complex forms or discomfitting interviews. It would also be an improper burden to require a pupil to register at a place reserved for his race even though he was subsequently permitted to enroll at a school of his choice; the answer here is that the pupil should be permitted to apply directly to the school he desires to attend.

Somewhat different problems are presented in handling tranfsers and reassignments of children already enrolled in school. One reasonable way to handle the matter is to have the necessary forms and instructions distributed by the classroom teachers in the schools the pupils presently attend—provided that neither the teachers nor other school authorities attempt to influence or pressure in the exercise of choices to be made.

School districts which attempt to combine freedom of choice with geographic zoning face special problems. Where freedom of choice furnishes the theoretical basis for assignment, every pupil in the district should be provided with a right to choose either a formerly white or formerly Negro school. If over-crowding results from the choices made, racial considerations cannot be employed to reject those who initially select the school threatened with over-crowding; geographic proximity to the school should then be employed in determining which choices to reject. Where such choices are thus rejected, further opportunity should be provided each parent and child to make another choice which can effectively be carried out. In other words, if freedom of choice is to be adopted, geographic zoning cannot be employed to prevent an effective choice of either a formerly white or formerly Negro school.

In light of the ease and convenience of administering geographic attendance zoning it may be realistic for many districts to employ a combination which gradually adds unitary zoning to a desegregation plan which initially relied principally on freedom of choice. For example, unitary geographic zoning could be employed for initial assignment and re-assignment commencing with the lower elementary grades, while a policy of freedom of choice was applied to the remaining grades of the system. Over a fairly short period of time the unitary system of zoning would be moved upward through the other grades, supplanting freedom-of-choice.

In short, freedom-of-choice plans are probably no more than a transitional device. Districts, in view of this, should give serious thought either to going directly to unitary systems of zoning or introducing unitary zoning at lower grade levels from the beginning, expecting to move the unitary zoning upward to replace the freedom of choice policy first installed at higher grade levels.

III. DETAILED STATEMENT OF ADMINISTRATIVE PRACTICES: NOTICE

Rational appraisal of a desegregation plan (or a court order for desegregation) is likewise impossible unless the plan itself sets forth enough detail to dispel doubts about the manner in which nondiscriminatory policies will be administered

The written Instructions to School Districts furnished by the Department of Health, Education and Welfare make two points clear. First, there can be no discrimination practiced in desegregated grades as to questions of initial assignment, reassignment or transfer. Second, sufficient advance notice must be given so that parents can understand how the assignment and transfer rules work and can take advantage of them effectively.

It is a common reaction among school officials and other local authorities facing their first school desegregation that disaster will follow if public announcement is made of rules and procedures for making initial assignments and transfers. The answer to this is that the courts have consistently required clear and ample notice to be given—and the consequences have not been disastrous for communities which have made plain their intention to brook no disorder and to see to it that the rules are given firm and faithful implementation.

A frequent shortcoming of the desegregation plans initially forwarded to the Office of Education has been the failure to set out in any detail either the administrative specifics or the content, timing and manner of providing notice of assignment and transfer rights. Below, for illustrative purposes are model forms of notice which set out the administrative details for handling four problems common to every system of schools. The models in question were designed for desegregation plans based on freedom of choice and would have to be adapted to fit the particular policy variations within any particular district. Too, the models would have to be altered to be made applicable to desegregation plans grounded on unitary geographic zoning.

The point to be stressed here is that every desegregation plan must deal specifically with providing notice of administrative details respecting initial assignment, reassignment and lateral transfer. Plans which fail to spell out the procedures and forms of notice for these four situations simply cannot be judged and thus no favorable action can be taken on them.

The following examples illustrate one way in which matters of notice, initial assignment, reassignment and transfer may be handled:

A. Pre-Registration of Pupils Planning to enroll in Lowest Elementary Grades

(1) Beginning ——— 1965 (a date at least four weeks before pre-registration is to commence) and once a week for three successive weeks the announcement below shall be conspicuously published in two newspapers having general circulation in the district:

PRE-REGISTRATION OF KINDERGARTEN/FIRST GRADE PUPILS FOR FALL 1965

Pre-registration of pupils planning to enroll in kindergarten/first grade (as appropriate for schools in the district) for the fall 1965 semester will take place for a period of —— days, from ——— 1965 through ——— 1965. Under policies adopted by the Board of Education, parents or guardians may register pupils during this period at the school of their choice. At the time of pre-registration a choice may be expressed for either the nearest formerly Negro school or the nearest formerly white school. In the event of overcrowding, preference will be given without regard to race to those choosing the school who reside closest to it. Those whose choices are rejected because of overcrowding will be notified and permitted to make an effective choice of a formerly Negro or formerly white school.

The choice is granted to the parent or guardian and the child. Teachers, principals and other school personnel are not permitted to advise, recommend or otherwise influence the decision. Nor will school personnel either favor or penalize children because of the choice made.

Children not pre-registered in spring may be registered at the school of their choice on ————, immediately prior to the opening of schools for the fall 1965 semester, but first preference in choice of schools will be given to those who pre-register in the spring period.

(2) Annually after 1965, similar practices will be followed with respect to registering and enrolling pupils for the first time in the lowest elementary grades.

B. All other pupils newly enrolling in district schools

The Office of the Superintendent will furnish at such times as are appropriate to the parents or guardians of all other pupils newly enrolling in the schools of the district the forms and instructions necessary to complete registration and enrollment at the school of their choice. These instructions for registration and enrollment of new pupils shall be in writing and shall set forth in detail the Board of Education policies and procedures for registering and enrolling in the school of their choice (see form of published notice under Part A above).

C. Pupils graduating from elementary and junior high schools

The initial assignment of pupils graduating either from elementary or junior high schools and planning to enroll for the first time in a school at the next higher level will be handled in the following manner:

All such pupils will be furnished by their classroom teachers on a date fixed by the Superintendent prior to their graduation the appropriate instructions and forms on which their parents or guardians may exercise their choice of the school next to be attended by the pupils. A reasonable time will be provided for returning the form after it has been distributed and the written instructions accompanying the form shall set forth in detail the Board of Education policies permitting a free choice of the school next to be attended (see form of published notice under Part A above). Where no choice is exercised by the parents or guardians within the time fixed, the pupil will be assigned without regard to race to the next higher school, and the instructions furnished parents and guardians shall so state.

D. *Lateral Transfers By Pupils To Continue in a School Where Currently Enrolled*

Prior to the end of classes for each school year pupils eligible to continue in the same school will be assigned for the forthcoming year. At a date fixed by the Superintendent and appropriately in advance of the time that reassignment for the forthcoming year is made, all pupils will be furnished by their classroom teachers with appropriate forms and instructions for use by their parents in exercising their right to apply for a transfer of their child to a school of their choice for the forthcoming year. Such instructions will set forth in detail the Board of Education policies respecting transfers without regard to race for the forthcoming year (see form of published notice under Part A above) and will state that each child will be reassigned to the school currently attended in the event the right of lateral transfer is not exercised within the time fixed in the instructions. The instructions may also provide for lateral transfer at other times of the year under special circumstances as may be fixed by the Superintendent under the Board's direction.

IV. BUSES AND BUS ROUTES

Districts which provide busing must make special provision in their plans to make clear that discriminatory practices are removed. In dual school systems it has been customary in many instances for separate buses to travel the same roads, one to pick up Negroes for the Negro school and the other to take whites to a different school. Again, separate bus routes for Negro and white schools have operated in some instances to place individual children of either or both races under the burden of going to a distant pickup point for their own race when a pick-up point for the opposite race was much more convenient.

Such policies and practices, supported with public funds, result in manifest racial discrimination and if continued can seriously impair the right freely to choose a school without regard to race. Desegregation plans must accordingly spell out in detail the present racial character of busing practices, indicate the steps which will be taken to create unitary systems of busing available to all pupils without regard to race, and describe the manner in which parents or guardians and pupils will be given notice of the right to ride buses without regard to race.

V. TEACHER AND STAFF DESEGREGATION

Desegregation of teachers and professional staffs is ultimately in the picture. It was characteristic of the legally separated schools that Negro teachers were assigned to Negro schools, white teachers to white schools. In general the courts have permitted desegregation of pupils to take precedence over desegregation of teachers and staff personnel in the schools. More recently, however, courts have been ordering districts to undertake teacher integration as part of the total job of desegregating.

As the court cases are dealing with the problem, pupils have been permitted to challenge faculty desegregation on several grounds. First, pupils cannot be discriminated against on the basis of their race and hence pupils have a right to insist that a teacher not be assigned them on the basis that the teachers race corresponds to their own. Second, it has been objected that the existence of all Negro and all white faculties restrains freedom of choice, given traditional community patterns. Finally, it is objected that segregated faculties and teaching staffs are evident vestiges of the dual schools and that a district cannot be said to have a unitary character until patterns of teaching and staff desegregation are broken up.

The problem is one which every district must face and start working on. Every desegregation plan should reveal awareness of the problem and provide assurance that steps will be taken to remove racial discrimination in assignment of teaching personnel.

VI. RATE OF DESEGREGATION: HOW MANY GRADES TO DESEGREGATE?

It is difficult to advise with certainty concerning the rate at which desegregation must be completed. For one thing, the courts have ordered a speeding up in districts which first began at slow year-to-year paces. At the same time the courts have allowed some districts to break the ice by starting with a shorter step the first year than will be required thereafter.

Whatever the rate of completion, any plan of desegregation must sketch out the steps needed to finish the job. For purposes of funds for the coming year, however, what happens in fall 1965 is perhaps the most critical single point in the plan. The HEW Regulation makes it clear that any plan accepted may be reviewed in later years.

Some general guidelines may be helpful, however.

Neither Title VI nor the Regulation adopt court rulings as the standard to be followed by the Commissioner of Education. But under the Regulation the Commissioner must accept court ordered plans of desegregation, and it would appear unlikely that he will accept less than required by judicial standards in passing on voluntary plans.

The U.S. Courts of Appeal have played a major role in rationalizing the differences among lower court reactions to desegregation plans. In the absence of more precise indication from the Office of Education the rulings of the Courts of Appeal probably furnish the best approximate guides at hand. But in looking to court decisions several things must be borne constantly in mind. First, what the courts ordered for fall 1964 is not likely to be the same they will order for fall 1965; there has been a marked judicial trend toward accepting less delay as the years pass. Second, since the Commissioner of Education is free to reach an independent judgment, he is certainly not bound to follow lower court rulings which call for the most minimal amounts of desegregation.

Last year, for the opening of schools in 1964, the Court of Appeals for the Fifth Circuit laid down a general formula for newly desegregating districts which suggested (a) that desegregation had to take place both from the bottom up and the top down simultaneously; and (b) that a total of four desegregated grades for fall 1964 was expected. In the Fourth Circuit on the other hand some Federal courts have insisted upon applying a freedom-of-choice program throughout every grade level in the first year of desegregation; an illustration of this policy is found in the case of Stanley v. Darlington County School District, reported in 9 Race Relations Law Reporter 1293 (E. District of South Carolina, 1964.)

It can be said with certainty that no plan will be approved which works exclusively from the top down. It will be essential for approval that there be in all instances desegregation which begins without restriction in the lowest grade levels of the school system. To avoid misunderstanding, any district which has a desegregation program which works from the first grade up must either apply the policy to pre-school clinics and kindergartens or state that classes at these levels are not held.

Each district must carry the burden of justifying any delay beyond fall 1965 in completing its desegregation plan. This is true of districts which have yet to take the first step.

Clearly, the surest course is to make the desegregation program available generally to all grades for fall 1965. If less than this is done, desegregation should be installed both from the bottom of the system upward and from the top down. The real question for any district is the extent to which it wishes to risk disapproval of its plan.

VII. CONSULTANTS AND TECHNICAL ASSISTANCE

Other provisions of the Civil Rights Act of 1964 make available funds to assist school districts in designing and carrying out plans of desegregation. The U.S. Office of Education currently retains a group of legal consultants who can be called on by school districts who request such assistance. State Departments of Education, in complying with Title VI, agree to provide advice and assistance to local school authorities in working out desegregation problems and the State Departments may arrange ways for providing further guidance through the use of consultants and others. Questions concerning such help should be addressed to the State Departments of Education or to the Office of Education.

Chairman CELLER. Our next and final witness this morning is Prof. Alexander M. Bickel, of the Yale School of Law.

STATEMENT OF ALEXANDER M. BICKEL, YALE UNIVERSITY LAW SCHOOL

Mr. BICKEL. I am sorry I got delayed trying to get out of New Haven, Mr. Chairman. We were fogged in up there, but I finally made it.

I have a statement which I am prepared to read since it is not too long.

I appear at the invitation of the committee, and I am grateful for this opportunity to express my views, as I consider the issues the committee has before it to be of the gravest consequence.

In my opinion, the issue raised by House Joint Resolution 620 and by most of the related measures that the committee has before it is not busing. The issues, in my judgment, are constitutionalism, and the very survival of the basic rule in *Brown* v. *Board of Education*.

If, as House Joint Resolution 620 would seem to me to require, race may not be taken into account in assigning students to particular public schools, then the administration of the rule in the *Brown* case would be rolled back to the stage before tokenism. It is possible formally to abolish a system of segregation by simply wiping the laws that enforced it off the books. But if that had been all that the *Brown* decision demanded, it would have been a rule of constitutional law that made nothing happen, and that ended by mocking itself. For it is not possible to uproot the settled practices of a century, or to counteract the attitudes these practices bespoke, which are still widely held, without undertaking some reassignment of pupils to particular schools with a view to the racial composition of the school population.

Moreover, and perhaps most astonishingly, having regard to principles of federalism, House Joint Resolution 620 would invoke the Federal Constitution to forbid voluntary action by local school boards aimed at alleviating conditions of racial concentration in the public schools. What business is it of the Federal Government so to limit the authority of local officials?

Of the other measures before the committee that have come to my attention, eight, if I read them correctly, are essentially indistinguishable from House Joint Resolution 620. These eight are House Joint Resolutions 79, 94, 561, 587, 628, 636, 855, and 983. Four others, two resolutions proposing constitutional amendments, House Joint Resolutions 179 and 607 and two bills, H.R. 159 and 5670, are "freedom-of-choice" proposals. Five other suggested constitutional amendments would, as I read them, constitutionalize the neighborhood school. These are House Joint Resolutions 30, 43, 600, 854, and 1035.

Now, I think the history of *Brown* v. *Board of Education* demonstrates that freedom of choice as the exclusive principle for implementing the *Brown* rule will, with rare exceptions, achieve only token desegregation, if that, and in many places none at all. As for the concept of the neighborhood, I for one strongly favor it. But I have always recognized, and again I think the history of the past 17 years demonstrates, that while in many places, after a certain stage has been reached, the principle of the neighborhood school provides a satisfactory ultimate form of organization for a desegregated school district, it cannot be the sole principle for the implementation of the rule in the *Brown* case at all times and in all places.

The committee also has before it a miscellany of other proposals, and I will touch lightly on a few. House Joint Resolution 150, purporting to make the establishment and supervision of schools an exclusive State function, if it means anything, means the reversal of the *Brown* decision. The same, as I read it, may be said of House Joint Resolution 1039. House Joint Resolution 75 makes a commendable attempt at careful drafting, so as to direct itself, not to desegregation, but only to attempts to enforce racial balance, by busing or otherwise. It would be found, however, I think, to be pretty nearly meaningless, since it would allow busing where it was determined that schools were established to perpetuate segregation. Busing orders are, of course, normally based on such a finding. House Joint Resolution 75 is therefore symptomatic, it seems to me, of the insuperable difficulties of drafting in this area, to which I shall recur.

House Joint Resolution 1043 tries to deal exclusively with busing. If I read it correctly, it would either forbid Federal courts to order any at all, which would be wrong, since in some areas busing has alway been employed, and is indispensable if any desegregation is to be achieved; or else House Joint Resolution 1043 would be construed not to apply to decrees implementing *Brown* v. *Board of Education*, and would be meaningless. House Joint Resolution 579 attempts to constitutionalize title IV of the Civil Rights Act of 1964, and would have no greater effect than that statute has had.

I am no partisan of busing for racial balance. I take the Court in the *Brown* case to have held that it is unconstitutional, as it is assuredly wrong and ultimately evil, to force the separation of children in the schools along racial lines. The question before the country now is, to my mind, rather a different one. It is whether we think it wise or necessary to force the mingling of children in the schools in proportions that reflect approximately the ratio of blacks to whites in the total population of an area.

Busing is inconvenient. What is more important, it runs counter to a widespread parental desire, which cannot fairly be brushed aside as mere racism, for a sense of community in the schools. The feeling, shared I believe by many blacks as well as whites, is that the population of a school, while not necessarily homogeneous, should have a sufficiently cohesive majority, to whose aspirations and needs the school can be responsive. A geographic element enters in since parents rightly feel that it is physically difficult if not impossible to maintain a connection with a school, and make their needs and wishes felt in it, if the school is 15 miles away.

There is evidence that under certain conditions the education of black children is improved when they are sent from a segregated school situation into one with white children. But it is highly doubtful that the attainment of racial balance by busing is the only or always necessarily the most effective way to improve the education of black children. Considering the disadvantages that admittedly attend it, busing is often, therefore, not the wisest measure to adopt. However, since we are not prepared to close private schools or to incorporate them into the public system, or prepared to restrict the freedom of residential choice which the middle class enjoys, busing, after all its disadvantages have been incurred, not infrequently fails to achieve its end of maintaining racially balanced schools.

So a great deal of the unpopularity of busing seems to me justified. But in some areas busing is essential if any desegregation at all is to be achieved, and in many areas segregation itself was, of course, maintained by busing. I would think it wrong, therefore, for Congress by constitutional amendment to forbid all busing, and thus to hamper the continuing work of desegregation, just as it nears completion. And quite aside from recent busing orders, I would think it disastrous to roll back the desegregation that has been achieved, to undo the great work of 17 years, which would be the effect of the bulk of the proposals now before this committee. Nearly all of them would provide in effect, as I have indicated, that the decision in *Brown* v. *Board of Education*, while not necessarily to be reversed, is not to be enforced.

I think, moreover, that it is almost certainly beyond the wit of the cleverest draftsman to write, in the two or three sentences which are all the Constitution can possibly be burdened with, an amendment that would fail to throw the baby out with the bathwater, in the fashion I have indicated: an amendment that would not, that is to say, reach the catastrophic result of the radical rollback. For the busing problem varies in myriad ways from one community to another among the thousands of school districts in the country. A constitutional generalization that treats it with the necessary discrimination seems to me beyond the possibilities of drafting.

But even the most carefully drafted constitutional amendment would constitute the wrong, the very wrong way to deal with busing. Precisely because it varies so from place to place and is so local and time-bound nature, the busing problem is not a suitable subject for Constitution writing. Our Constitution is not the Internal Revenue Code, or the Primary and Secondary Education Act of 1972. It is the place for fundamental substantive, procedural, and structural provisions, suited as John Marshall said for ages to come.

The reply may fairly be made that the courts are dealing with busing now, and in the name of the Constitution. But that is an exercise of the equity power, for the time being, to implement the constitutional rule of *Brown* v. *Board of Education*. The courts—and they have, in my judgment, often acted unwisely in doing so—issue specific decrees conditioned by the variables of one or another situation. What the Constitution itself contains is only the majestic guarantee of equal protection, on which the gloss of the *Brown* decision has in my opinion very properly been placed. Implementation of that guarantee and that decision by specific decrees from place to place and from time to time, wise or unwise, is a very different matter than attempting to govern the problem of busing by a clause in the Constitution itself. Courts exercise their equity powers on numerous matters of detail. Their decrees take account of variables, and they come and go. The permanent Constitution is something else.

Nothing more preposterously out of place than busing has to my knowledge been proposed for treatment in the Constitution since prohibition and its repeal. We must not set our foot on the road to trivializing the American Constitution by converting it into a code of detailed regulation, dealing with the grievances of each passing day, after the fashion of so many State constitutions, which are then amended semiannually and replaced in their entirety every other decade.

But there's yet another reason, as important as any, why an antibusing amendment would constitute a grave error. No matter how carefully drafted, and no matter that antibusing sentiment may come increasingly to be shared by blacks, an antibusing amendment, precisely because it deals with busing as a subject of constitutional dimension, will inevitably be read as a repudiation of *Brown* v. *Board of Education* itself. The symbolic significance of the *Brown* decision cannot be overestimated, and the same is true of the symbolic significance of any attempt to deal with the consequences of that decision by constitutional amendment. It would not matter what the precise language of the amendment says to the legally trained mind. Courts that order busing purport to be implementing the *Brown* case. A constitutional amendment that forbade busing would be viewed as a renunciation of *Brown*.

We live by symbols, said Justice Holmes, and the symbol that Congress would be communicating to the country would be the end of the second reconstruction, a reprise of the Compromise of 1877. The action would be inescapably symbolic, and no amount of analysis or resort to facts could dispel its shock. In my judgment, so to dash the just expectations, previously raised by the Federal Government, of millions of people would be an inexpiable act.

Thank you, Mr. Chairman.

Chairman CELLER. Professor Bickel, in your opinion, what effect would the provisions of House Joint Resolution 620 have on school districts which are desegrating pursuant to court order or on a voluntary basis?

Mr. BICKEL. Mr. Chairman, you will know better than I that there are ways to attempt to construe out of it. I have seen some papers that others have written that attempt various constructions of it. As I read it, plainly on its face, with due notice of its intent, and I think I am in good faith forced to read it that way, it says: Whatever you are doing as of this moment on the basis of race, voluntarily or pursuant to court order, stop. So that a school district in Riverdale, Calif., that may be busing its children under a voluntary plan, I am thinking of Tom Wicker's column in the Times this morning, a voluntary plan, a modest one that is working well, under this amendment it would have to stop, because it is clearly assigning children to school on the basis of race.

I know of no desegregation plan anywhere, voluntary or by court order, which has gone beyond—tokenism is too mild a word—which has gone beyond just tearing some page out of a statute book, which does not assign children to school by race or which doesn't at the very least draw district lines with regard to the racial composition of the student body. So I would think desegregation enforcement would simply stop dead in its tracks.

Chairman CELLER. Not only would it stop desegregation in its tracks but you might even have the effect of going further—rolling back desegregation to where it was before the *Brown* decision.

Mr. BICKEL. Certainly. It would be a radical rollback.

Chairman CELLER. So for these 17 years, we would have labored for nothing.

Mr. BICKEL. That is the way it seems, Mr. Chairman. I don't speak for the point of view that thinks busing is the be-all and the end-all and we ought to take the schools and mix them up. I am not of that view and I think my public record shows it, but I think this amendment in particular goes well beyond any busing problem that would bother me. It goes back to *Brown* versus *Board of Education* and without reversing it, makes it unenforceable.

Chairman CELLER. You think in some cases busing is not in the best interest of the community?

Mr. BICKEL. Yes, sir.

Chairman CELLER. Do you think there might be some guidelines that might be developed by HEW to relieve that?

Mr. BICKEL. Mr. Chairman, I mentioned in my prepared remarks the myriad variables that obtain in this field and the enormous difficulty of drafting. You have thousands of school districts across the country. You have 101 ways of busing to different ends over different distances from different schools to different schools. One-way busing; part-way busing. I don't see how anyone in Washington could sit down and write a code that would regulate that. I think what one can do is what Congress in my judgment ought to do, which is to use the Federal purse and Federal influence and the sense of Congress to tell all of these thousands of school districts that busing isn't the be-all and end-all, that they will be supported by the Federal Government in alternate measures they might take to improve the education of children, which presumably is the end result that everybody wants; that in areas where busing can work well, as in Riverside, Calif., we are told, that is fine, that is one technique to be used; that in other areas school decentralization may be the technique to be used; that in yet other areas something quite novel ought to be tried even to the extent of tuition voucher plans; that programs should be tried for bringing children of different races together so many times a week for special kinds of instruction and for special programs, leaving them for the remainder of their school experience in their neighborhood school.

I think Congress can enlarge the shopping list beyond what the courts with their limited resources have been shopping from and put Federal money and Federal influence behind this variegated, enlarged shopping list. But in the end you are going to have to let people at the local level decide what is best for them.

Chairman CELLER. If we address ourselves logically to these varied proposals and difficulties, do you feel the excitement and the emotion and hysteria would die down as a result?

Mr. **Bickel**. Mr. Chairman, I am no judge of that. In my experience with this problem there seem to be cyclical waves of excitement. I would think the only wise approach is to address the reality of the school situation over the country, which is not an encouraging one—it is a highly depressing one—and try to affect it, try to do something about it, try to improve it. When that is done, I think you will find fewer busing orders issuing from Federal courts because Federal courts I think act, wisely or not, very often with a sense of despair. A lawsuit comes to them out of a district which is a shambles. Children from poor families and black children are simply not being educated and the remedy that is proposed is integration and busing. There is some evidence that in some measure integration, in just the right percentages, will improve the education of black children. As the court looks at it, a busing order is the only thing that can issue, because that is the only thing a court can do to improve a situation. It can't appropriate money or order anybody to try new plans. It can't decree that people be ingenious and inventive in attacking the school problem. So it orders busing. If Congress tries to alter that situation so that when a school district is brought before a district judge, it isn't just a wasteland where nobody is doing anything, but it has half a dozen programs of one sort or another going all aimed at its poorer and black children and all aimed at improving their education, including where possible, without hurting anybody or hurting the educational process, some integration.

If a school district comes before a district court in that shape, I don't think a district judge will say you have to dismantle all of that, nothing else allowed, and bus. They won't say that. They say bus now because nothing else is happening.

Chairman **Celler**. Can we draw on your acumen and knowledge and expertise to give us some suggestion as to how we could meet the situation you have just described?

Mr. **Bickel**. It is very gratifying that you should say so. You may draw on it. I am afraid if I had a panacea I would be enthroned some place, in some glorious place. I don't have a panacea.

Chairman **Celler**. The job is thrown in our lap and we need help, all the help we can get. We think you might be able to help us.

Mr. **Bickel**. I would do anything I could, Mr. Chairman.

Chairman **Celler**. Will you give some thought to this subject and let us hear from you?

Mr. **Bickel**. I would be delighted to.

Chairman **Celler**. We are happy to hear from you today. Are there any questions?

Mr. **Hungate**. Thank you, Mr. Chairman.

Let's see if I understand. Is it correct to say that the courts are finding power in the Constitution to order busing in situations in which it has been ordered?

Mr. **Bickel**. Yes; there can be some question whether the busing decree is a matter of remedy or how far it is a matter of substantive constitutional law, and that might be worth exploring, but essentially they are.

Mr. **Hungate**. You think it is inappropriate to place in the Constitution a provision forbidding ordering of such busing?

Mr. **Bickel**. Yes, sir.

Mr. Hungate. Would you think that some of these problems might be reached short of a constitutional amendment, by statute? For example, by statute amend the law regarding HEW guidelines and authority; perhaps regulate the sort of guidelines that could be issued. Would you think that possible by statute?

Mr. Bickel. Yes, indeed.

But my impression, Mr. Hungate, is that as of this moment or in the immediate past, it isn't HEW that has drafted or invented the heavy busing orders. They come from the court. For example, in the *Richmond* case the court rejected a HEW plan and adopted a consolidated busing plan of its own. I have no doubt of the authority of Congress to tell HEW: So far as you are concerned we don't want you to order or induce or encourage this or that kind of busing.

May I just add what I think would be unwise for Congress to do, because it seems to me a sort of perverse position to put districts in, is to say to a district, if a court has ordered you to bus and we know of no way to get you out from under that order, we will cut off Federal money. You can't have Federal money in order to comply with a court order. That seems to me a sort of perverse kind of conflicting direction coming at a school district from the Government in Washington.

If a court orders them to bus, I don't see why they should not have Federal money to bus with. They are going to have to bus anyway.

Mr. Hungate. That brings us to another phase of the current problem—the court's lack of authority to appropriate money. Do we get close to that, however, in cases such as *Serrano* v. *Priest* in California and Federal cases in Minnesota and Texas where the courts have set aside public school financing systems which make expenditure per pupil depend on a school district's wealth? What would your comment be on a court's authority to designate what would be an appropriate form of taxation?

Mr. Bickel. I tend not to read those cases for all they are possibly worth. That is, I try to read them, because I think that is as far as the authority of the court ought to be allowed to go, and as far as they ought to be willing to go, I tend to read them as saying: You now have on your books a tax system which is inequitable and which violates the equal protection clause of the Constitution.

Federal courts say as much to State taxation schemes under the commerce clause. I don't read the school tax cases as saying it has got to be equal in some sense that the court can prescribe. I think all it amounts to is telling the States: You have to have a method of raising money for schools which puts a floor under all school financing.

Mr. Hungate. Frequently we see in the courts' opinions references to title VI, and title IV, and other authority in the Civil Rights Act of 1964. Would you think it would be possible, again by statute, if you were seeking to reach this problem, to amend title VI or title IV, of that act, rather than seek a constitutional amendment?

Mr. Bickel. Yes; I have to, in candor, tell you that I think the possibilities of drafting a statutory provision—of course, it is easier in a statute than in the Constitution—that will cover the busing problem as such in all of its varied aspects, that those possibilities are rather slight. I think it is simply too varied and complex a problem for anybody to be able to draft a provision that deals with all of its aspects; that says it is all right in Riverdale but it is not all right in the circumstances of Richmond, yet it may or may not be all right in Charlotte-Mecklenburg. You are likely to wind up with trying for a criterion by distance, or how much more busing than in the past, or something of that sort. And that is apt to be a bad fit in a lot of places. Or else you are going to go for a standard like health, and other ill effects. That throws it back to the court. No court has ordered busing yet that says we are ordering it despite ill effects on the children. They say they are ordering it because it will improve education. If you draft a statute that says you can't order busing when it has ill effects, the court will say, that is fine, and will make the finding that it does not.

Mr. HUNGATE. Thank you.

Chairman CELLER. Mr. Poff.

Mr. POFF. Thank you, Mr. Chairman.

Professor, I hear you missed your airplane, and the second bell having rung on the quorum call, I am in jeopardy of missing a quorum call, and it is painful because I would like to have an exchange of views with the distinguished witness. But time simply won't permit. I have other commitments this afternoon that I must make. I say that by way of explanation and not as excuse to the chairman or to the witness. It is just a part of life which we must endure, I suppose.

But in the short time that is available, may I ask briefly: In your view, is the Preyer bill, with respect to which you have some personal knowledge, constitutional, now that the *Swann* case has been decided?

Mr. BICKEL. No, sir; in my view the bulk of it is not.

Mr. POFF. In your view is the successor to the original Preyer bill which I understand is on the threshold of making its debut later today constitutional under the *Swann* cases?

Mr. BICKEL. Yes, sir; it is.

Mr. POFF. I wish I could pursue that. Thank you.

Mr. ZELENKO. At this point I think it would be appropriate to insert in the record H.R. 16484, 91st Congress, and H.R. 13552, 92d Congress, the bills first referred to.

Mr. CELLER. The bills will be printed at this point.

[H.R. 16484, 91st Cong., second sess.]

A BILL To enforce the guarantees of the fourteenth amendment with respect to the desegregation of public elementary and secondary schools

Whereas the fourteenth amendment forbids the segregation of children in the public schools solely on the basis of race; and

Whereas the Congress has the authority and the duty to enforce the fourteenth amendment by appropriate legislation; and

Whereas section 5 of that amendment is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the fourteenth amendment: Now, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National School Desegregation Act of 1970".

SECTION 1. (a) The definitions of the terms "public school" and "school board" contained in section 401, subsections (c) and (d) of the Civil Rights Act of 1964, shall be applicable to this Act.

(b) Segregation is the separation of children of different races in the public schools pursuant to provisions of applicable law, or by action of persons exercising administrative authority over the public schools, where such action is intended to achieve the separation of children solely on the basis of race, and has that effect.

SEC. 2. (a) Any student in any public school shall have the right at the beginning of any school year to transfer from a school to which he has been assigned or would in the regular course be assigned, in which his race is in a majority, to a school in which his race is in a minority: *Provided*, That the exercise of such right may be postponed for a reasonable period of time while the most rapid feasible effective measures are taken to alleviate conditions of overcrowding in the school to which transfer is requested: *And provided further*, That the school to which transfer is requested offers education in the grade equivalent to that from which the student transfers.

(b) Transportation which may be required to effectuate the right of transfer under this section shall be provided at public expense.

(c) Any person or persons alleging that the right established in subsections (a) and (b) of this section has been denied to him or her individually or to a class of which he or she is a member, or the Attorney General, if he has reasonable cause to believe that any person or class of persons have been denied such right, may bring a civil action in the appropriate district court of the United States for equitable relief, including an application for a permanent or temporary injunction, or other order.

(d) In any action commenced under this section, the court shall allow the moving party or parties, other than the United States, a reasonable attorney's fee as part of the costs, if such party or parties prevail in the action.

SEC. 3. Where there are students of a particular race, color, or national origin concentrated in certain schools or classes, school boards shall insure that these students are not denied equal educational opportunities by practices which are less favorable for educational advancement than the practices at schools or classes attended primarily by students of any other race, color, or national origin. Examples of disparities between such schools and classes which may constitute a denial of equal educational opportunities include—

(A) comparative overcrowding of classes, facilities, and activities;

(B) assignment of fewer or less qualified teachers and other professional staff;

(C) provision of less adequate curriculums and extracurricular activities or less adequate opportunities to take advantage of the available activities and services;

(D) provision of less adequate student services (guidance and counseling, job placement, vocational training, medical services, remedial work);

(E) assigning heavier teaching and other professional assignments to school staff;

(F) maintenance of higher pupil-teacher ratios or lower per pupil expenditures;

(G) provision of facilities (classrooms, libraries, laboratories, cafeterias, athletic, and extracurricular facilities), instructional equipment and supplies, and textbooks in a comparatively insufficient quantity;

(H) provision of buildings, facilities, instructional equipment and supplies, and textbooks which, comparatively, are poorly maintained, outdated, temporary, or otherwise inadequate.

SEC. 4. (a) All persons exercising administrative authority under the laws of a State or of the United States over public schools have the affirmative duty to eliminate segregation or any other discrimination based solely on race in public schools subject to their authority, and to correct the present effects of past segregation or other discrimination based solely on race.

(b) A public school is organized and administered in compliance with the Constitution and laws of the United States when all persons exercising administrative authority over it—

(1) have in good faith discharged their affirmative duty under subsection (a), provided that the question of good faith shall be treated as a question of fact by courts of the United States adjudicating suits brought under the Constitution or laws of the United States, and by duly authorized officers of the United States implementing title VI of the Civil Rights Act of 1964, and shall be decided by them, having regard to the criteria set forth in this Act; and

(2) have insured that the school system or systems subject to their authority are unitary school systems, as defined in section 5 of this Act.

SEC. 5. For the purposes of this Act—

(a) The term "unitary school system" means one in which—

(1) the requirements of section 2, subsections (a) and (b), and of section 3 of this Act have been met;

(2) school activities are open to all pupils and faculty and staff, without segregation or any other discrimination based solely on race;

(3) subject to the provisions of section 2 of this Act, each child attends the school nearest its place of residence, or the ratio of racial minority to racial majority pupil population in each school is within 50 per centum to 150 per centum of the percentage representing the proportion which the number of students of a minority race bears to the entire pupil enrollment in a system administered by a school board, where the geographical boundaries of the system are themselves not determined on the basis of racial considerations of any sort;

Provided, however, That variances from a policy of assigning each child to the school nearest to his place of residence may be made—

(A) to the extent necessitated by variations in the availability of programs suited to the needs of the child, school capacity, traffic conditions, and other considerations of ease of access;

(B) pursuant to measures put into effect by a school board or other persons exercising authority over public schools under the laws of a State, the District of Columbia, or a territory of the United States, where such measures are intended to achieve better racial balance in the school population, and have that effect; and

(C) pursuant to measures put into effect by a school board or other persons exercising authority over public schools under the laws of a State or of the United States, where such measures are intended to prevent the resegregation of a school, and have that effect.

(b) Variances provided for in paragraph (3)(A) of this section shall be lawful only if they result in the assignment of children to public schools or within such schools without regard to their race. Variances provided for in paragraphs (3)(B) and (3)(C) shall be lawful only if they form part of policies pursued in good faith to achieve better racial balance or to prevent resegregation. The question of good faith shall be treated as a question of fact by courts of the United States in the course of adjudicating suits brought under the Constitution or laws of the United States, and by duly authorized officers of the United States implementing title VI of the Civil Rights Act of 1964: *Provided, however*, That school boards or other persons exercising authority over public schools who shall put into effect variances intended to prevent resegregation shall have the burden of proof in showing their good faith intention to do so.

SEC. 6. (a) Any person or persons alleging, or the Attorney General if he has reasonable cause to believe, that any policy or measure, adopted by a school board or other person or persons exercising administrative authority over a school or schools in a system which is otherwise a unitary one, was intended to achieve the separation of children solely on the basis of race, and has had that effect, may bring a civil action in the appropriate United States district court for equitable relief, including an application for a permanent or temporary injunction, or other order. The court shall rescind such policy or measure, and shall order affirmative action to be taken to cure present effects still directly attributable as having been caused by such policy or measure.

(b) In any action commenced under this section, the court shall allow the moving party, other than the United States, a reasonable attorney's fee as part of the costs, if such party or parties prevail in the action.

(c) Any policy or measure found by an officer of the United States duly authorized to implement title VI of the Civil Rights Act of 1964, to give rise to a cause of action under this section, shall be found by him to be a violation of said title VI, even though suit has not been brought in a court of the United States under this section. The violation shall be deemed to have terminated upon application by the school board, or other person responsible, of the remedy that a court would apply under subsection (a) of this section.

[H.R. 13552, 92d Cong., second sess.]

A BILL To provide for affording equal educational opportunities for students in the Nation's elementary and secondary schools

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Educational Opportunities Act".

STATEMENT OF FINDINGS

SEC. 2. The Congress finds that—

(a) The time is at hand when substantially all school systems administered or directed by local educational agencies will, in compliance with the Constitution, have become unitary.

(b) As the demography of the Nation continues to change, local educational agencies are not required by the Constitution to make year-by-year adjustments of the racial composition of student bodies, once the affirmative duty to desegregate has been fulfilled and racial discrimination through official action in public schools has been eliminated. In the absence of a showing that either a local educational agency or another agency of a State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools, further Federal intervention to secure performance of the affirmative constitutional duty to desegregate is not called for.

(c) Throughout the Nation inequality in education opportunity persists for children from minority groups and from low-income families, and the educational results achieved with such children are often below the results achieved with children from other racial and socioeconomic backgrounds.

(d) Throughout the Nation minority group children and children from low-income families are often concentrated in schools in which they form a majority of the student population.

PURPOSE

SEC. 3. It is the purpose of this Act:

(a) To improve and to equalize the results achieved by elementary and secondary education throughout the Nation.

(b) To encourage, where possible consistently with the objectives stated in subsection (a) of this section, the elimination of the concentration of children from minority groups and low-income families in certain schools.

(c) To prevent, when possible consistently with the objectives stated in subsection (a) of this section, the resegregation of schools after desegregation has been achieved.

(d) To eliminate any educational ill effects resulting from the concentration of children from minority groups and from low-income families in schools where such concentration persists.

TITLE I—LOCAL RIGHTS AND RESPONSIBILITIES

RIGHT TO TRANSFER

SEC. 101. (a)(1) Subject to paragraph (2), any student in any public school shall have the right, at the beginning of any school year, to transfer from a school to which he has been assigned or would in the regular course be assigned and in which his race is in a majority to a school in which his race is a minority, if the school to which transfer is requested offers education in the grade equivalent to that from which the student transfers.

(2) A local educational agency may postpone a student's privilege to exercise the right granted by subsection (a) for a reasonable period of time while the most rapid feasible effective measures are taken to alleviate conditions of overcrowding in the school to which transfer is requested.

(b) Transportation which may be required to effectuate the right of transfer under this section shall be provided by the local educational agency.

(c) Any person or persons alleging that the right established in subsections (a) and (b) of this section has been denied to him or her individually or to a class of which he or she is a member, or the Attorney General, if he has reasonable cause to believe that any person or class of persons have been denied such right, may bring a civil action in the appropriate district court of the United States for equitable relief, including an application for a permanent or temporary injunction, or other order.

(d) In any action commenced under this section, the court may allow the moving party or parties, other than the United States, a reasonable attorney's fee as part of the costs, if such party or parties previal in the action. Where the prevailing party is the defendant, the court may allow such prevailing party a reasonable attorney's fee as part of the cost upon a finding that the proceedings were unnecesssary to bring about compliance.

EQUAL EDUCATIONAL OPPORTUNITIES

SEC. 102. (a) Where children from minority groups are concentrated in certain schools, local educational agencies shall insure that these students are not denied equal educational opportunities by practices which are less favorable for educational advancement than the practices at schools attended primarily by students of any other race, color, or national origin. Examples of disparities between such schools which may constitute a denial of equal educational opportunities include—

(1) comparative overcrowding of classes, facilties, and activities;

(2) assignment of fewer or less qualified teachers and other professional staff;

(3) provision of less adequate curriculums and extracurricular activities or less adequate opportunities to take advantage of the available activities and services;

(4) provision of less adequate student services such as guidance and counseling, job placement, vocational training, medical services, remedial work;

(5) assigning heavier teaching and other professional assignment to school staff;

(6) maintenance of higher pupil-teacher ratios;

(7) provision of facilities (classrooms, libraries, laboratories, cafeterias, athletic, and extracurricular facilities), instructional equipment and supplies, and textbooks in a comparatively insufficient quantity; and

(8) provision of building, facilities, instructional equipment and supplies, and textbooks which, comparatively, are poorly maintained, outdated, temporary, or otherwise inadequate.

(b) No local educational agency shall adopt any policy or measure which is intended to achieve the separation of children on the basis of race, and has that effect.

(c) The Secretary shall issue regulations further setting forth measures to be taken by local educational agencies to come into compliance with this section.

LAWSUITS

SEC. 103. (a) Any person or persons alleging, or the Attorney General if he has reasonable cause to believe, that any policy or measure of a local educational agency violates section 102 of this Act, may bring a civil action in the appropriate United States district court for equitable relief, including an application for a permanent or temporary injunction, or other order. If the court finds that such policy or measure exists, it shall order the rescinding of such policy or measure, and shall order affirmative action to be taken to cure present effects caused by such policy or measure.

(b) In any action commenced under this section, the court may allow the moving party, other than the United States, a reasonable attorney's fee as part of the costs. If such party or parties prevail in the action. Where the prevailing party is the defendant, the court may allow such prevailing party a reasonable attorney's fee as part of the cost upon a finding that the proceedings were unnecessary to bring about compliance.

(c) Any policy or measure which violates section 102 shall also be deemed to constitute a violation of section 601 of the Civil Rights Act of 1964, whether or not a civil action with respect to such violation has been brought under this section.

TITLE II—STATE RESPONSIBILITIES

STATE PLAN

SEC. 201. (a) Each State shall prepare and submit to the Secretary for his approval, in accordance with regulations issued by him a plan to carry out the purpose of this Act as stated in section 3.

(b) The plans of Virginia and Maryland shall take account of the areas of the District of Columbia nearest to each and shall be worked out in consultation with the local educational agency of the District of Columbia.

ADVISORY COUNCILS AND COMMITTEES

SEC. 202. The plan submitted by each State shall provide for—

(a) the establishment of a State advisory council which shall be appointed by the Governor and which shall—

(1) include as members businessmen, educators, parents, and representatives of the general public, and shall be so constituted that parents of children attending public schools constitute at least a majority of such membership, and that parents of children from minority groups are represented in an approximately proportionate number to the number of minority group children in the school age population of the State;

(2) advise the State educational agency on the development of and policy matters arising in the administration of the State plan submitted pursuant to this title; and

(3) prepare and submit through the State educational agency to the Secretary an annual evaluation report accompanied by such additional comments of the State agency as it deems appropriate, which evaluates the progress made in that year by the State in achieving the purpose of this Act; and

(b) the establishment of local advisory committees which shall—

(1) include as members parents of children attending public schools, and shall be so constituted that parents of children from minority groups are represented in an approximately proportionate number to the number of minority group children in the school age population of the local educational agency; and

(2) advise the local educational agency on its participation in the State plan.

PROVISIONS OF THE PLAN

SEC. 203. The plan submitted by each State shall—

(a) be submitted to the Secretary by June 30, 1973;

(b) be developed in consultation with local educational agencies and the State advisory council;

(c)(1) define goals consistent with the purpose of this Act as set forth in section 3 and provide for attaining such goals by a date approved by the Secretary, but in no event later than August 30, 1983;

(2) include specific means for attaining such goals, which means may include such features as:

(A) drawing children from the core city into outlying, suburban schools;

(B) redrawing zone boundaries, pairing and clustering schools, establishing educational parks and magnet schools;

(C) providing professional and paraprofessional staff for guidance, counseling, and special services to minority group children in new environments to which they may be assigned, or may have transferred;

(D) expanding or altering facilities to accommodate students transferred to new schools;

(E) public education efforts and other community activities in support of new plans, programs, or projects;

(F) work study programs for junior high school children in need of financial assistance to complete their education;

(G) developing and implementing interracial education programs and projects involving the joint participation of minority group and nonminority group children attending different schools, public or private, including extracurricular activities and cooperative exchange or other arrangements between schools within the same or different school districts;

(H) remedial and other services to meet the special needs of underachieving children, including development and employment of new instructional techniques and materials;

(I) decentralization and diversification of clusters of public schools under community control, but only upon decision by majority vote in the community, and only if the principle of voluntarism is observed so that communities are self-defining, and families that do not wish to form part of community control system are supported in transferring their children out;

(J) tuition voucher projects for use in public and private nonprofit schools;

(d) assure that in each year of operation of the plan substantial progress will be made toward meeting the purpose of the Act;

(e) specify how additional State financial assistance will be made available to local educational agencies undergoing desegregation pursuant to a court order, a plan approved in accordance with title VI of the Civil Rights Act of 1964, or an order issued by a State agency or official of competent jurisdiction;

(f) specify how programs now funded under the Elementary and Secondary Education Act of 1965, or any other federally funded program for educational enrichment or desegregation assistance, are fitted into and coordinated with operation of the plan;

(g) specify the procedures to be used by the State educational agency in coordinating the efforts of the local educational agencies desegregating (as specified in subsection (e) or voluntarily integrating);

(h) specify what procedures will be used by the State educational agency to assume control (after proper notice and an administrative hearing) of local educational agencies where the State agency finds a clear and systematic pattern of the downgrading of public education by the local educational agency;

(i) specify what procedures will be used by the State educational agency for involving on an equitable basis children enrolled in private nonprofit schools in the programs funded under this Act to the extent that their participation will assist in achieving the purpose of the Act; and

(j) assure that the State educational agency will require each local educational agency to report to it annually on its implementation of the State plan, and that the State agency will report annually to the Secretary on the States overall implementation of its plan.

GRANTS

SEC. 204. (a) (1) There are authorized to be appropriated for carrying out this title not in excess of $100,000,000 for fiscal year 1973, and not in excess of $500,000,000 for fiscal year 1974, and each fiscal year thereafter.

(2) The Secretary shall allot 80 per centum of the sums appropriated under paragraph (1) for a fiscal year among the States so that the amount allotted to each State bears the same ratio to such 80 per centum of such sums as the aggregate number of minority group children aged five to seventeen, inclusive, in such State bears to the aggregate number of such children in all the States.

(b) From the sum allotted to each State for fiscal year 1973, the Secretary may make a planning grant to the State educational agency and supplementary planning grants to other public and private agencies assisting the State agency, to enable such State to prepare, and prepare for carrying out, its State plan.

(c) From the sum allotted to each State for fiscal year 1974, and each succeeding fiscal year, the Secretary may make grants to the State educational agency for programs to implement the approved State plan.

(d) All sums appropriated under the Elementary and Secondary Education Act of 1965, and all other Federal funds appropriated under programs for educational enrichment or for desegregation assistance shall be allotted to implement the approved plan.

(e) From the 20 per centum of the appropriations under subsection (a) (1) not allotted among the States pursuant to subsection (a) (2) for a fiscal year, the Secretary may make grants to, or contracts with, any public or private agencies which may assist in achieving the purpose of this Act.

(f) No funds granted under this title may be used to supplant State or local educational funds being expended, or that would have been expended, absent the grant, in or for public schools or to assist any private school directly.

ADMINISTRATION OF GRANTS

SEC. 205. (a) The Secretary shall approve any State plan which meets the requirements of section 203, and shall not finally disapprove any such plan without first affording the agency administering the plan reasonable notice and an opportunity for a hearing.

(b) Whenever the Secretary, after reasonable notice and opportunity for a hearing—

(1) disapproves a plan pursuant to subsection (a), or

(2) finds:

(i) that no plan has been submitted by a State,

(ii) that a State plan approved under subsection (a) has been so changed that it no longer complies with the requirements of section 203,

(iii) that in the administration of such a plan there is a failure to comply substantially with any such provisions, or

(iv) that a grantee is in violation of section 204(f),

the Secretary shall notify the grantee that further payments will not be made to the grantee under this title, under title I of the Elementary and Secondary Education Act of 1965, or under title III of the Elementary and Secondary Education Act of 1965 or any other educational enrichment or desegregation assistance program (or, in his discretion, that further payments will be limited to grantees or programs not affected by the failure) until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, the Secretary shall make no further payments under such titles (or shall limit payments to grantees or programs not affected by the failure).

JUDICIAL REVIEW

SEC. 206. (a) If any State is dissatisfied with the Secretary's final action with respect to the approval of its State plan under section 205(a) or with his final action under section 205(b), such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(b) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) The term "local educational agency" means a public board of education or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

TITLE III—GENERAL PROVISIONS

DEFINITIONS

SEC. 301. For purposes of this Act—

(a) The term "minority group" means Negroes, American Indians, Spanish-surnamed Americans, and Orientals.

(b) The term "low-income family" means a family with an annual income of less than $3,000.

(c) The term "local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control, or direction, of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, or a combination of local educational agencies.

(d) The term "nonprofit" as applied to an agency, organization, or institution means an agency, organization, or institution owned or operated by one or more nonprofit corporations or associations contributions to which are deductible under section 170(b)(1)(A)(ii) of the Internal Revenue Code and no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) The term "school" means a school which provides elementary or secondary education, as determined under State law, except that it does not include any education provided beyond grade 12.

(f) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(g) The term "State educational agency" means the State board of education or other agency of officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law for this purpose.

(h) The term "State" means one of the fifty States or the District of Columbia.

EVALUATION

SEC. 302. Such portion as the Secretary may determine but not more than 1 per centum, of any appropriation under this Act for any fiscal year shall be available to him under section 204(e) for evaluation (directly or by grant or contract) of the programs, activities, and projects authorized by this Act.

NATIONAL ADVISORY COUNCIL

SEC. 303. (a) There is hereby established a National Advisory Council on Educational Opportunities, consisting of fifteen members appointed by the President, which shall—

(1) advise the Secretary with respect to the operation of the plans authorized and required by this title, including the preparation of regulations and the development of criteria for the approval of applications; and

(2) review the operation of the plans.

(b) The Secretary shall submit an estimate under the authority of section 401(c) and part C of the General Education Provisions Act to the Congress for the appropriations necessary for the Council created by subsection (a) to carry out its functions.

Mr. ZELENKO. Professor, there have been some proposals to strip Federal courts of the power to issue remedial orders where Constitutional violations are found. I know you haven't examined those in detail, but would you comment on either the wisdom or validity of an effort, by statute, to strip a Federal court of its equity power to remedy constitutional deprivations?

Mr. BICKEL. Certainly. I have seen the text as reported in the newspaper, of the Griffin amendment that failed in the Senate. That is a proposal of that sort and seems to be the clearest and plainest.

As you know, that is a sort of challenge to the Court that it has not had thrown at it since Reconstruction. At that time, the Court suffered the challenge, suffered this kind of toying with its jurisdiction. At that time also, the Court was at the lowest point of its prestige and power in its entire history. I think most people who have thought about this problem. I think particularly the late Prof. Henry Hart, who wrote perhaps the best article there is on the problem, came to the conclusion that the constitutional provision in article III, which allows Congress to regulate the jurisdiction of the Federal courts, could not be read to mean that Congress can go and pick and choose as in this proposal, as in the Butler bill a decade ago, pick and choose one or another doctrine that the Court has handed down which Congress may not like and reverse it in effect by regulating the jurisdiction.

And the reason I come to that conclusion is that we would be left with an insoluble logical contradiction in the Constitution. *Marbury* v. *Madison*, the case that established judicial review, would no longer make any sense. You would take all of the arguments Marshall makes there for establishing judicial review and turn them around.

Marshall says you have to have judicial review because otherwise the Constitution would have created legislative supremacy. It would have given to Congress power which is unlimited. If Congress can by jurisdictional statute reverse judicial judgments anytime it wants to, then the power of Congress is unlimited, and then *Marbury* v. *Madison*, doesn't mean anything.

So the conclusion students of this subject have reached is that the provision in article III must be read to mean that Congress, without reference to a particular decision that may have been made yesterday or the day before, regulates the jurisdiction of Federal courts by large subject matter grants, as of course Congress has done, and if that is the meaning of that provision in the article, anything beyond that is an unconstitutional incursion by Congress, contrary to *Marbury* v. *Madison*, in to the authority of the Court. That is the view I hold, and I think that is the best or weight of opinion, as we used to say in law school, and that would mean that the Griffin amendment would be declared unconstitutional.

Mr. ZELENKO. Thank you. Professor, the courts have also reviewed simple antibusing statutes. Last year, the Supreme Court, in two opinions, specifically held that racially conscious assignment of pupils is an essential tool to desegregate schools. For nonlawyers, and perhaps many lawyers as well, it is difficult to grasp or agree with the notion that in order to overcome segregation, it is necessary to make racial assignments. The way it is put sometimes is, if it was wrong to assign pupils on a racial basis for the purposes of segregation, it is also wrong to assign pupils on the basis of race for the purpose of desegregation.

Would you comment about this apparent paradox in the law today?

Mr. BICKEL. Well, you may recall the first lower court ruling after *Brown* v. *Board of Education*, by Judge Parker in North Carolina, in which he said the Supreme Court has ordered desegregation and has not ordered integration, and that means we can no longer use the law to separate children, and that is that. Since what you are dealing with is not only law, but here, as so often, law which expresses the custom and longstanding judgment and desire of the community, you take the law away and the situation has not altered a bit. That is what we very soon perceived in the administration of the *Brown* rule. No equity court need ever sit around and see the law mocked in that fashion. An equity court has power to enforce its decrees and to use whatever remedies are necessary for the enforcement of its decrees. It soon became evident that the only possible way in which you could counteract what was beneath the law and what the law presupposed—namely, the custom of that community—was to actually take children and by decree require their being put together in classrooms. I think that is self-evident as an experiential judgment, and the view that it is wrong to use race either way is what Justice Cardozo would have called an idea carried to a dryly logical extreme, which makes no sense in practice.

That is not to say that you may not, that a court should not indeed, after it has dismantled—physically dismantled—a segregated system sufficiently by bringing black and white children together in a number of situations, that it should not at that point say, fine, this is an unitary system. It seems to me the next step, which is requiring every classroom to reflect the proportions of the races and populations at large, is a next step. That is a separate proposition. One may believe in that or one may not. That is no longer enforcing the *Brown* case.

Chairman CELLER. In antitrust law, you have an analogy. In breaking up a conglomerate corporation, a court could allow the corporation to keep one entity and require it to spin off another entity. That is done through the court's broad equity power.

Mr. BICKEL. Certainly. You could have held the American Tobacco Co. in violation of the Sherman Act and said, separate out the four companies, and the same people would have kept owning the same companies, and you would have made nothing happen. So despite the fact that the Sherman Act says nothing of shares of stock, what the court did was to tell them to divest themselves of shares of stock.

Mr. ZELENKO. I gather you read House Joint Resolution 620 as prohibiting not merely racially motivated transportation of pupils but any racially conscious technique—assignment of pupils to schools, pairing of schools, selection of school sites—any of these methods?

Mr. BICKEL. It doesn't say transportation, it doesn't say only assignment. It says no schoolchild shall be assigned or required to attend a particular school by zoning, by pairing, by rezoning, by consolidating a district by private action. If the school board——

Mr. ZELENKO. Professor, House Joint Resolution 620 doesn't refer specifically to State action. It says that "no student shall be assigned on account of race." Would a freedom-of-choice plan be permissible under House Joint Resolution 620? Could the language of that amendment be read to prohibit so-called de facto segregation?

Mr. BICKEL. I think one can, I nearly said play, with the language in that way, I don't mean that, but I think one can do that possibly with the language. I try to read it straight, you might say. And I read it instinctively, as one familiar with the Constitution into which it would come. The Constitution in which it could come contains a due process clause and contains elsewhere the idea of State action. I would think the instinct of a court would be to say anything that a school board does may not depend on race. So far as some private school is concerned there, since you face a due process question the minute you approach that, we would construe the amendment as not applying. If it is a freedom-of-choice option where the school board accepts the choice of the individual, I would think that could very well be assimilated to State action because it is the school board which makes the final assignment.

Mr. ZELENKO. It conceivably could be prohibited if the choice was made on the basis of race.

Mr. BICKEL. Yes.

Mr. ZELENKO. In other words, a reasonable construction of House Joint Resolution 620 is that parental choices made to keep children in their own neighborhood if motivated by racial considerations, could well be struck down under the terms of House Joint Resolution 620.

Mr. BICKEL. Yes; I think that is not at all impossible.

Mr. ZELENKO. In that sense, the amendment would be self-defeating.

Mr. BICKEL. If I read it that way, it certainly would.

Mr. POLK. Mr. Chairman, I would like to ask a few questions of the witness.

Professor, where does Judge Parker's distinction between integration and desegregation stand in the law today?

Mr. BICKEL. As made by him, and for purposes made by him, it no longer obtains. As made by him, it said this: It said if you stop using the force of law to keep children separate, you have satisfied *Brown*. And, of course, that has not been the law for 10 or 15 years. If you take and read other things into the words, so that you read his proposition to mean the Constitution does not require integration in the sense of racial balance, then as I read it, it stands this way. Under *Swann*, you don't have to achieve racial balance, but you have in a previously segregated district to achieve as much integration—that is, as many situations of children of different races mixed together—as possible. And what is possible is left to the district judge, but he is clearly told that he has to push pretty hard. The court chose not to call that integration. It calls that still desegregation.

I suppose the reason for that is that it has clearly not applied it yet, the Supreme Court has not, in situations where you did not have segregation by law previously.

Mr. POLK. Professor, the 1964 Civil Rights Act made a distinction between desegregation and overcoming racial imbalance. Using that vocabulary, do you know of any Federal court cases where the court has ordered busing merely to overcome racial imbalance?

Mr. BICKEL. That is a difficult question. I know of cases where a court has found—the Richmond case meets that description in some measure and other cases do—where a court has enabled itself to find de jure segregation by pointing to the racial imbalance resulting from factors other than the action of the school board. The upshot is a finding of de jure segregation and then a desegregation order, so that formally you don't have the court saying, I am ordering you to bus because it is your constitutional duty to overcome racial imbalance. But, in fact, the court is saying, I am ordering you to bus because the racial imbalance I found you to be in is unconstitutional. The difference is paper thin.

Mr. POLK. In the Richmond case, did the court also find that racial imbalance was intentionally contrived by governmental action?

Mr. BICKEL. But not by action of the school board. The Richmond opinion is a conglomerate of a lot of things, and it is difficult to read it and separate out the strands. But to the extent that he relies on racial imbalance as a factor, he is quite clear in saying that it is the result of housing policies, of the policies of real estate boards and of realtors, a mixture of private and public, semipublic, quasi-public initiatives, most of them not attributable to the school board.

If that is so, there is unconstitutional racial imbalance in, I daresay, every community in this country.

Mr. POLK. Of course, the 14th amendment did not prohibit racial discrimination solely by school boards. It takes into account all State agencies.

Mr. BICKEL. Yes, but on the other hand, the 14th amendment does not tell you that if you find discrimination in housing, you have to integrate the schools. There is a problem. I am not saying it is a conceptually untenable proposition by any means, or that the 14th amendment would not bear the construction that because you had what FHA used to do within the memory of men now sitting around the table, and that you had various State practices and so forth, which resulted in housing segregation, and you superimposed upon that a neighborhood school policy and the result is schools out of balance, I don't think it a conceptually untenable proposition under the 14th amendment to say you are required to integrate the schools. I don't think the amendment would bear that construction. But I think there is choice, and along the way you face a major policy issue; namely, whether you want to start unraveling this tangled skein at the school end rather than at the other end, or whether it is really worth the social costs immediately of unraveling it while class differences still exist, while cities are what they are, and so forth. These are large policy issues for statesmen, it seems to me, more than for judges.

Mr. POLK. Professor, I would like to ask one final question: Yesterday Congressman Lent testified on the meaning of House Joint Resolution 620, and he indicated that if a school board under the Lent amendment were to make racial assignments, a Federal court would have the power to unassign those racial assignments. I am wondering whether that really is a paraphrase of what the courts say or think they are doing today. Is that your opinion?

Mr. BICKEL. Again it can be read that way. The court could say this. The court in the *Richmond* case could take this and say I find that the children in the schools in Richmond today are racially assigned. Therefore, I have to undo that. I am an equity court and I will have to find the best means of undoing it, so I undo it by busing. At that point, if I were standing before the court arguing the case from the school board side, I would say, yes, but the Constitution with this article in it forecloses one means otherwise possibly available to you, but now foreclosed of undoing it; namely, a different kind of racial assignment. You have to undo it without now engaging in racial assignments, to which the court might conceivably answer: No, no, that is not the way I read the amendment at all. I am an equity court. There is nothing in here to suggest that you want to change the nature of the courts.

You can get into all kinds of construction. Some more and some less disengenuous. It is nothing startling to any of us.

Mr. POLK. Thank you, professor.

Chairman CELLER. That concludes the hearing this morning. We are grateful for your presentation, Professor Bickel. You have been very helpful to us.

Mr. BICKEL. Thank you, Mr. Chairman.

Chairman CELLER. The Chair wishes to place in the record the following statements:

A statement by Representative Robert L. F. Sikes of Florida.

A statement by Representative Seymour Halpern of New York.

A statement by Charles R. Smith, president of Parent-Teachers Coordinating Council, New York City.

A statement of Sam McNinch, member of the Charlotte-Mecklenburg Board of Education.

An article from the Washington Post by Rogers Wilkins.

This concludes the hearing this morning.

(The documents referred to follow:)

STATEMENT OF HON. ROBERT L. F. SIKES, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I wish to go on record in support of H.J. Res. 620, a proposed constitutional amendment which provides that "no public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school." This is similar to several bills which I have co-sponsored in the past but the need now is for a strong, concerted, bipartisan effort to once and for all clearly establish as the law of the land the principle of freedom for which this country stands.

A constitutional amendment is a serious matter and not to be undertaken lightly. But Congress has expressed the will of the people over and over again in legislation such as the Civil Rights Act, the Health, Education and Welfare and Office of Education Appropriations Act, and the Elementary and Secondary Education Act of 1970 and it has been ineffective. Title IV of the Civil Rights

Act clearly states that "nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards." But the courts have interpreted that as only applying to de facto segregation.

The Supreme Court in the Swann case says, "The language and the history of Title IV shows that it was not enacted to limit but to define the role of the Federal Government in the implementation of the Brown I decision. . . . The legislative history of Title IV indicates that Congress was concerned that the Act might be read as creating a right of action under the Fourteenth Amendment in the situation of so-called 'de facto segregation', where racial imbalance exists in the schools but with no showing that this was brought about by discriminatory action of state authorities." But there seems to be less and less segregation which is de facto. More and more any segregation is judged to be de jure. The Appropriations Acts prohibited spending any Federal funds to force busing of students to overcome racial imbalance. Again this was interpreted by HEW as not applying when dismantling dual school systems. And more and more school systems seem to be judged dual school systems.

Judicial interpretations of our laws and the Constitution have resulted in chaos in our educational system. We are faced with ever more frequent court decisions requiring ever more extensive busing when we should be extending every effort to attain and increase *quality* in our educational system. As the numbers of busing plans and orders expand and proliferate so does the resentment and rejection of busing. Black or white, rich or poor, northerner or southerner, no one likes to be pushed around, no one wants their children arbitrarily moved about like pawns on a chess board.

Parents are losing interest and confidence in their public schools. They are no longer supporting the schools as in the past and more and more bond issues are being voted down. This loss of support together with the higher costs of education today has produced a financial crisis in our school system. Add to this, the violence which busing has produced—bombings and burning of buses, picket lines, and fires and disturbances in the schools, and, understandably, parents fear for their children's safety. Where possible they move their children to a more peaceful and desirable situation. Where impossible there is tension and growth of hatred instead of any promised equality of opportunity. This busing is accomplishing nothing more than the destruction of our system of education and the polarization of our peoples. It must be stopped and a constitutional amendment is apparently the only way. I urge that we join in saving the schools for our children.

Thank you.

STATEMENT OF HON. SEYMOUR HALPERN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, this is a time when it is most important for us to keep our perspective, a time for us to identify our aims and our beliefs and ensure that our actions are leading in the desired direction. It could be all too easy to become enmeshed and confused by the pressures and rhetoric of emotions and politics to the detriment of our best intentions. This is not a time for hasty or ill-considered actions.

What are our beliefs and aims in regard to education of our young people? We want to give to each young person in this Nation an equal opportunity to a fine education so that they can learn and develop to the best of their native abilities. No one should have a lesser chance to make the most of his talents because he is poor or because of his race, color or creed. Part of accomplishing this aim includes eliminating dual school systems which, our highest court has decreed, do not give an equal opportunity to all to learn. But that is only a part of it, probably a small part of it. Most important of all is the quality of education which our schools provide. For some years now book after book has been produced about "why Johnny can't read" or generally criticizing the failure of the educational system to get results.

Various innovative projects and compensatory programs have been tried but we really still do not know how or why children learn and how to deliver this intended equal opportunity for all. Busing to achieve racial balance is not going to solve the problem of educational deficiencies. In fact it may further complicate the problem. We need to work toward more and, even more important, better qualified teachers so that we can have small classes and give students a better chance to find their potential. We need to insure that poor facilities are not the cause of poor learning. We need to discover and put into practice new methods of instruction. This is where to start on equal opportunity—in a search for equal quality. To achieve this our schools will need financial help. Federal and State funds must be increased. But probably most important of all, community support must be increased. Monetarily, community support has gone as far as it can go. But community support in the form of interest and pride and cooperation can and must be expanded. We are a Nation of neighborhoods and our schools have been a focal point in our neighborhoods, the source of community interest. When people choose a neighborhood they choose it because they like the look of the area and they like the school.

Equal opportunity may be the purported aim of recent court decisions ordering massive busing but in actual fact it is producing negative results. Rather than have their children moved to an unknown and possibly alien school and neighborhood, parents are deserting the public school system in large numbers. Those who cannot afford other arrangements are submitting fearfully and unwillingly. Hardly the atmosphere for good learning. Time and again we find the process of resegregation has developed. Instead of insuring the dissolution of a dual school system, forced busing is producing a new dual system. It is contributing to the further deterioration of the inner cities by accelerating the flight to the suburbs, by destroying our neighborhoods. And, of course, the expense of all this unnecessary busing is tremendous. We really should be using such funds to increase the quality of all schools so that there are no good or bad schools, so that all schools are equally fine, so that people choose a neighborhood just because they like the look of it. They know the school will be good when all schools are good.

This serious and disturbing situation in which we find ourselves apparently has come about with misinterpretations of our laws and our Constitution. Certainly, Congress stated quite baldly and plainly in the Civil Rights Act that desegregation did not mean assignment of students to overcome racial imbalance. And Chief Justice Burger made a statement suggesting that some judges might be misreading the Supreme Court's April busing decision in the Swann vs. Charlotte-Mecklenburg Board of Education case. The decision did not require a fixed racial balance according to the Chief Justice. Since confusion exists and clarification is necessary, it is time that we lawmakers produced a law that would truly and unequivocally reflect the will of the people. A constitutional amendment should be a last resort not undertaken to correct every controversial little item, but if that is what is necessary for a clear understanding of the law, then I am for it.

STATEMENT BY CHARLES R. SMITH, PRESIDENT, PARENTS AND TAXPAYERS COORDINATING COUNCIL OF NEW YORK CITY

Hon. Congressman Celler, Honorable members of the Committee, it is ironic that the May 17th, 1954 decision of the Supreme Court, that racial discrimination in public education is unconstitutional, should have as one of its origins the suit of Oliver Brown Vs. the Board of Education of Topeka, Kansas. Mr. Brown wanted his daughter Linda Carol, eight years old, to attend a school five blocks from her home, rather than walk across dangerous railroad tracks and ride a bus 21 blocks to an all black school.

Here, today, almost eighteen years later, we are still asking that our children attend their neighborhood school for their elementary and intermediate education.

We do not argue with the decision of 1954. All we ask is that you do not discriminate against the parents of children who are forcibly bused, for racial purposes, and thus become the victims of discrimination. Since 1954, millions of children have found themselves bused to strange surroundings, miles from the security of loved ones, and a neighborhood in which they are known, and which they know.

Gentlemen, I need not go into detail. Simply go to a locally forcibly integrated school and see the results. The bused-in children are clustered in a corner of the schoolyard before classes, during recess and during lunch. When extra-curricular activities would present a climate for association and a gleaning of insight into the lives of others, the children must rush for a bus to return them to their neighborhoods. In many cases, two, or more, hours per day are wasted on that bus. What happens on the bus? Girls are stripped, seats ripped, windows broken. But, far more serious, is that the desire to learn, to go to school, and achieve, is often lost.

Have you considered the effect on the child's health? Of necessity, the child will have to rise earlier, sometimes by as much as 1½ hours. What of the effect of fumes in traffic that is now stifling the cities? Does anyone have the right to deprive them of the time that should be spent in play during daylight hours? Or is this part of a plan to reduce everyone to the least common denominator? What of the children bused to a school, where instead of English lessons, they are instructed in the dialect and slang of the community as in Districts in New York City?

Since 1954 elementary and secondary education has declined in quality. This is due to many factors. The belief that white schools are better than black schools can be put down by looking at the reading levels in the schools, and the clamor for remedial work in reading and math at the college level.

Let us assume, however, that there are two schools, one good, one not good. You force bus the students between the two schools. How do you justify the poor quality education forced upon the students from the good school, now forced to go to the not good school? Would it not be more equitable to improve the quality of education in the not good school?

Gentlemen, I am not a sociologist, nor a psychologist, but I have seen a polarization of the races since the 1954 decision. The extreme left and the extreme right have used every incident to gain support and membership. Every school with bused-in students in New York City has had hard-core agitators on both sides.

With community control becoming more prevalent and demands for all-black Districts, as in New York City, how will you convince these people that forced busing is the answer to the educational problems besetting them? After working all day, and in many cases, caring alone for a family, can a parent be expected to travel miles to an unknown neighborhood, and be active in a parent organization?

Rather than use the committee's time to read two articles from the New Republic, a Journal of Politics and the Arts, which outlines my views far better than I could, I have included copies of these articles with this brief.

You cannot legislate love or hate or understanding, but you can create fear and misunderstanding.

Gentlemen, let us practice democracy as we preach it. I would ask that the Constitutional Amendment be released by the Committee for full discussion on the floor of Congress, where I hope to have it passed with the addition of four words: . . . "no child shall be assigned to or required to attend a particular school because of his race, creed or color" . . . Without individual parental consent!

[From the New Republic, Nov. 20, 1971]

BUS STOP AT THE HOUSE

Sitting in a remarkably well-attended night session, the House on November 5 voted con brio against busing public school children, for which it was congratulated by President Nixon. The legislators thereby demonstrated their responsiveness to the wishes of great majorities of their constituents. To be sure, many consolidated school districts covering large suburban or rural areas bus and always have, and nobody minds much. The busing that is unpopular is the transportation of black inner-city children to outlying, formerly all-white schools, and of white children from the outlying schools into the inner city. In obedience to court order, there has been more and more busing of this sort in the South during the last couple of years, and a great deal this year following the Supreme Court's decision last spring which sanctioned it. The Supreme Court did not require busing, but it left few alternative means open for achieving what it did require, namely maximum possible racial balance in the schools of districts that were once segregated by law.

Busing of this unpopular variety has also begun to be required in the north and west by federal courts which have found the line between southern-style *de jure* segregation and urban-style *de facto* racial isolation to be quite blurred. So far, the Supreme Court has declined to involve itself in the *de facto*, residential situation, simply refusing to review lower court cases that have dealt with it. Lower courts, however, ordered busing in Pontiac, Michigan and in San Francisco this year, and in Pasadena, California the year before. Most, if not all urban districts are vulnerable to decisions such as these—unless the Supreme Court, or perhaps Congress, should seize itself of the problem and arrest the present trend of lower court adjudication. The Supreme Court has not lacked opportunity, but there is no indication that it means to intervene, which explains the large number of northern congressmen who, to the glee of their southern colleagues, voted against busing.

What the House actually did—and it must be approved in the Senate before it can take effect—is in some parts futile and in all parts unwise. It stampeded. It tried to forbid the use of federal funds for busing, thereby inviting accounting subterfuges and similar evasions by school districts which are under court order to bus, and which wil lnaturally exercise ingenuity in shifting their own and federal funds around so that they can both abide by the court decrees and lose no federal money. The HEW bureaucracy, which makes the federal grants, is likely to sympathize with them. A school district that fails to find an adequate subterfuge will be put in the perversely unfair position of being denied federal dollars because it is obeying federal law. The House also provided that lower court decrees in school cases not be put into effect until all opportunities for appeal have been exhausted. This runs counter to a decision of the Supreme Court a couple of years ago requiring the precise opposite: that decrees of lower courts be honored while appeals are pending. It may be that Congress has power to make this change in the judicial handling of school cases, since the change may be viewed as procedural. But the change would be deplorable. The opportunities for delay that are opened up would be considerable—always amounting to crucial months and thus often to at least one and sometimes more than one school year. These opportunities would be available not only in cases involving massive busing, but also with respect to more elemental decisions seeking, 16 years after *Brown* v. *Board of Education*, to enforce the mandate of that case.

The gross and sloppy way in which the House expressed its displeasure with busing is regrettable; so was Mr. Nixon's premature expression of appreciation. (The White House had not even examined the House amendments.) Nevertheless busing is a problem. When it is long distance and is imposed on elementary school as well as older children, it carries real costs, and they are not only financial. The view that its adverse effects on the education and well-being of the children, black and white, are greater than any possible educational or social benefits that may be derived from it, will in many instances be justified. In addition, there is a desire on the part of a great many parents, which cannot be brushed aside as racism, for a sense of community in the schools to which they send their children. Salient expressions of this desire came from San Francisco's Chinese this fall when a federal court busing order took their children from public schools which the Chinese had considered their own and dispersed them throughout the city. The same desire for closeness—not only geographic but communal—has found expression in the community control movement among blacks, particularly in New York and more recently in Detroit. Parents rightly feel that it is physically difficult, if not impossible, to maintain a connection with a school and make their needs and wishes felt in it, if the school is 15 miles away.

Whether or not infected in some degree with the virus of racism, opposition to busing is at any rate deepseated and widespread, finding outlets beyond the political. The short of it is that numerous whites who can, leave the public school system when confronted with busing. A general flight outwards from the city has long been in progress, of course, and factors other than busing account for part of it. Yet it is striking that the Pasadena school district lost 12.4 percent of its white pupils in the first year of busing, and another 11.5 percent in the second. Berkeley, California, which adopted a busing plan voluntarily a few years back, has maintained relative stability of its school population. But even if not universal, the adverse effect of busing on the white school population is frequent. The poorest and least mobile of the whites are forced into busing, their resentment rising steadily as they watch the well-to-do leave, and many supposedly integrated schools soon return to a state of racial isolation.

Busing, then, is not only disruptive and fraught with costs that are not always offset by the benefits it brings, but often fails to achieve the benefit it promises. It is therefore foolhardy to concentrate on massive school integration, and the promise that busing can produce it, as the chief objective in public education. The time is fast approaching when the condition of legally induced school segregation with which the court dealt in *Brown v. Board of Education* will have been eliminated. At that point, as Charles Hamilton, a black political scientist, recently told the Senate Committee on Equal Educational Opportunity, ". . . we should be concerned essentially with quality education, and not with the superficial bringing together of black and white students. The results we apparently want—a viable pluralistic society—are probably better achieved in the long run through other developments in the society."

The public schools are beset by two major problems. They do not educate as well as we would like, and more particularly, the results they achieve with their black and poor children are below the levels common in the higher socioeconomic classes. Most of us care less about how children get to school than what they have when they get there. That is one problem. Another is that black and poor children are often concentrated—some say isolated—in certain schools. Neither of these problems is susceptible to resolution by a single act of Congress or by court decrees or by any categorical national policy. Congress can, however, improve and equalize the results of primary and secondary education; encourage but not require the elimination of racial isolation in the schools; and minimize the educational bad effects of racial concentration in schools and communities where it persists.

[From the New Republic, Dec. 18, 1971]

BACK TO BUSING

Our correspondence (see page 26) attests to the intensity of feeling on the subject of busing. What is the nature of the controversy? Hard-core racist politicians to the side, very few people any longer favor the maintenance of segregated schools, and it is plain that in many places some busing is an indispensable device for dismantling a previously segregated school system. The archetypical case would be one where segregation was itself maintained by busing. But what is meant by segregated schools, and why is it imperative that school segregation be abolished? The kind of segregation to which the 1954 Supreme Court decision in *Brown v. Board of Education* was addressed had been imposed by law. Such segregation was found mainly in the South, but has existed in less pervasive fashion elsewhere, being enforced there not by formal law, but by more or less covert official connivance. It is nonetheless offensive for that. Segregation of this sort must be uprooted, for moral reasons if no other. It is intolerably wrong for governments to enforce in any fashion the separation of the races, and thus inevitably to proclaim that one race is superior to the other. In addition, evidence gathered since the decision in *Brown* suggests that under certain conditions the education of black children is improved when they are moved from a segregated school situation into one with white children. That is the finding of the Coleman Report.

Two further questions arise, however, which are frequently begged, though they are distinct and must be faced. One is whether racial concentration in the schools that results from housing patterns and other factors, is no less morally intolerable than segregation enforced by official action. The other is whether racial balance in schools is a necessary, or necessarily the best, means of giving black children a better education.

The condition of racial imbalance that arises out of residential patterns and other such factors is called *de facto*. Legally enforced segregation is called *de jure*. A distinction between the two has been assumed to exist ever since *Brown* v. *Board of Eduction*, and the Supreme Court reiterated this assumption in its decision of last spring which sanctioned busing. The Court has declined all opportunities to reexamine or blur the distinction. Some lower federal courts have done so, but not the Supreme Court. Nor has the Supreme Court ever said that when one or another instance of officially induced segregation is found in northern school districts that are otherwise not segregated by law, the remedy must be the institution of racial balance, chiefly through busing in the entire school district. That is our understanding of the matter. In these northern cases the issue is thus not obedience to the Constitution as defined by the Court, but rather, what ought national policy to be, and ought it to be made by the courts or the legislature?

If it is not equally a moral imperative to abolish *de facto* racial concentration in the public schools as it is to disestablish legally enforced segregation, then rational policymakers must consider costs and benefits. The most sanguine reading of the Coleman Report and other available data does not lead us to believe that the attainment of racial balance in the schools is the only, or always the most effective, way to improve the education of black children. The demography of many areas is such that the conditions of balance in which the Coleman Report found educational improvement, are unobtainable. Moreover, racial balance can often be achieved only by sacrificing other social and educational values, chiefly a sense of community. Not universally, but often, busing aimed at assuring racial balance carries very high costs, entails not only the expenditure of funds which are in short supply and could be put to other uses, but of political and administrative resources which are also not in unlimited supply and for which other fruitful employment could be found. Finally, since the country is not prepared to pay the additional costs of closing private schools or incorporating them into the public system, or of restricting the freedom of residential choice which the upper and middle class enjoy, busing not infrequently fails to achieve its goal of racial balance, even after all its other costs have been borne.

Opponents of racial imbalance are concerned, no less than we, with the shortchanging of black children. But they are persuaded that only efforts to achieve racial balance, at whatever cost, will yield the desired educational returns. For our part, we would not cut off efforts in that direction: racial balance is an achievable, and for the moment, sufficient objective in many places. In many others, however, we are not so confident that it can be achieved. Nor are we sure what an "ideal" balance is in each instance. Despite the conclusions of the Coleman Report, we suspect that when a court or legislative body assumes it knows the precise, ideal, black-white ratio, experience will often upset that judgment. There are a great many districts where "balance" can be imposed only by somehow breaking up established communities or breaking up established neighborhood schools. We have seen both these things happen. But how much that breakup contributes to better education for black and white is an open question. Because it is, we would like to see far more resources and energy allocated to alternative approaches. That, we take is, is what Charles Hamilton, the black political scientist at Harvard, has in mind when he says, ". . . we should be concerned essentially with quality education, and not with the superficial bringing together of black and white students. . . . The bringing together of black and white students has been primary in our thinking as a result of the pre-1954 mentality. I think that those who do not focus on something else are failing to adapt to the times."

This position is no sort of retreat from the fight against segregation in the South or North. It does rest on the proposition that conditions of racial, ethnic and class residential separation exist and are reflected in the schools, and they are not morally objectionable to the same degree as legally enforced segregation and possibly not morally objectionable at all. This position does reject as inherently implausible and inadmissibly invidious, the notion that the only way black children can be better educated is to place them next to white children. Finally the position rests on what we consider to be the realistic conclusion that unless quite radical measures are taken to restrict middle-class mobility, there are many places in the country—and they are the places where better than half the blacks live—in which for the foreseeable future the model of racial balance subsumed by the Coleman Report is beyond our reach. Something more productive than banging one's head against the stone wall of this reality should, we believe, be attempted. Neither Congress nor anyone else knows exactly how to improve the education of black children. But we ought to try to find ways.

The busing issue has been exploited cynically by people who don't give a hang whether black kids get a good education or not, and who camouflage their racism or indifference in high-blown rhetoric about neighborhood schools or "freedom of choice" or what have you. But that does not excuse others from their responsibility to distinguish when, where and how busing does or does not contribute to improving and equalizing educational opportunities. In some places it is a convenience, in some a necessity, in others an incubus.

STATEMENT OF SAM S. MCNINCH, MEMBER, CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, CHARLOTTE, N.C.

To: Chairman Emanuel Celler, members of the subcommittee.

From: Sam S. McNinch III, member, Charlotte-Mecklenburg Board of Education.

Subject: Amendments to the Constitution relating to the transportation and assignment of public school pupils.

Without a doubt, you are as aware of as many, if not more, complaints about the effects of Federally controlled desegregation than I, as an elected member of the Charlotte-Mecklenburg Board of Education better known in busing circles as Swann vs Charlotte-Mecklenburg Board of Education, Charlotte, North Carolina. Therefore, I do not intend to insult your intelligence by itemizing these same grievances.

Quite the converse is my objective in pointing out a small but far reaching eccentricity of our district court order upheld by the Fourth Circuit Court and the United States Supreme Court.

The Courts in attempting to render an interpretation of the constitutionality of various charges in Swann vs Charlotte-Mecklenburg Board of Education have through acquiescence penalized the student needing as much protection as any other student, if not more. These students I speak of are those whose capacity to cope with the academic process is little or none and/or some who for one reason or another do not develop an academic interest.

To retain the interest of these students, and to prevent a mass drop-out problem affecting both the individual student and society, and to create an on-going learning atmosphere for the academically inclined student, and to render a genuine service to each student, we desperately want to build a Career Development Center whereby any student wishing to pursue a career offered by our facility can graduate from high school with training adapting him for employment rather than in some cases, a social diploma. Students may be interested in such a program as an extension of their academic pursuits or in lieu of academic pursuits.

The nine members of our Board of Education have recently voted unanimously to proceed in the direction of building such a school encompassing classes in the Performing Arts, Business and Management Technology, Computer Technology, Horticulture, World Languages, Metal Technology, Construction, Climate Control Technology, Aeronautics, Transportation, Photography, Radio and Television, Beauty Culture, Para-Medical and Professional Life-Saving Techniques, Office Machine Use and Repair, etc.

Our business community is as excited as we are for we have an opportunity to do something positive. Dallas, Texas, has recently completed a similar type school costing $21,000,000. With the academic program in conjunction with a Career Development Center, we will be in a much better position to educate each child to the fullest extent he or she is capable of receiving it.

However, our district court order very clearly states that we cannot build this school or any other school unless we first prove to the court that desegregation will prevail.

This order completely ignores the entire purpose of our intentions. We, too, can acquiesce and make sure only a certain number of each color be admitted to such a specialty school disregarding the individual student needs; thus we by law, would be guilty of discrimination.

I make this one point, not by any stretch of the imagination conclusive, in describing my utter frustration with Federal intervention in public school matters. It is an attempt to show how far off-center this entire desegregation by Federal force has become.

Try punching an off-center hole in a phonograph record. Then try playing it and what you hear will most probably resemble the progress we are making in our public schools toward quality control of our learning process.

How does it feel to be in a position to control the future of all school age children in the United States? That, I agree, is a moot question intended to point up the fact that we Board of Education members are fast being replaced because of questions answered by the Courts, yet vague Court edicts prevail.

I urge you to take the proper steps toward an amendment of the Constitution so we can tend to our students needs.

[From the Washington Post, Mar. 1, 1972]

A BLACK PARENT LOOKS IN TWO DIRECTIONS AT BUSING—UNHAPPY MEMORY AND A HOPEFUL PRESENT

(By Roger Wilkins)

Blacks who can remember being bused for the maintenance of segregation find the current heated debate over busing both bemusing and infuriating. We feel the same way about politicians and pundits who seem sure they know that black parents don't want busing any more than white parents do. It puts one in mind of the old white Southerners who used to assure Northerners that "our darkies are happy down here," and would then trot one out to prove it.

Well, this one's not very happy about the whole busing debate. My first educational experience was in a one room segregated school in Kansas City, Mo., where I was allowed to come and sit in the back of the room at the age of four because all my older friends were there. The next year, that school was closed and my friends and I were bused many miles to a black school in a blacker part of town. Apart from a keen daily sense that the whites were terribly selfish for hogging the newer and prettier school near our homes, I remember the bus rides as generally convivial and sometimes pretty hilarious. My next stop was Harlem where you learned a lot if you were in an upper track and paid for it with lumps dealt out in the school yard or in the street by resentful lower trackers.

And then on to high school in a midwestern city. If I wasn't the first black in the school, I was the only "one" there then and my family and I were the only "ones" in the neighborhood. In the classroom it was fine with the algebra and the English, but on the street it was tougher than Harlem. Somebody always seemed to have had to clear a clogged throat right on the furry cover of my bicycle seat. Rather than face the humiliation of cleaning it off in view of the passing crowds thronging out of the school, I would often ride home standing up and sometimes through a gantlet of stones, apple cores and teen-age racial epithets.

But it turned out all right. I learned enough in that school to get into college. And I learned some other things too. Things I couldn't have learned in my Kansas City schools nor in my Harlem schools. They were things about white people and things about myself. I learned that whites are not the superior people they were made out to be. Some of them were smarter than I and some not as smart. Some could pump in baskets from the corner better than I and some couldn't make the team at all. And eventually, over time, I came to learn that they and I could deal in human terms across racial lines. And they learned things from me too, about blacks that they could never have learned in an all white school. Yesterday's coon turned out to be a contemporary kid and tomorrow's man. Though it hurt me a lot in the beginning, it was worth it—for all of us. People don't learn to function very well in multiracial societies when they do all their learning in uniracial schools.

My mother's judgments about my education were based partially on the circumstances of her life and partially on her desire that her child receive the best education her resources could provide. She did not seek an all white high school for me, but she was certainly not displeased that the one I attended was the best school in town. She knew to a moral certainty that she didn't want her son to be an illiterate or an emotional cripple hobbling through the last five or six decades of his life. She figured that knowing how to read was essential, but that learning something about white people was useful too. Inadvertently, I suspect, her decision helped a lot of white kids too.

The choice, then, is not to bus or not to bus, but to teach children to read and to live among the wide variety of people with whom they will spend their lives. We can either integrate—sometimes using buses as a tool—or we can choose to create a future generation of cripples, savages and bigots.

Years after my mother had made her choices for me, I had to begin thinking about the same kind of choices for my own children. When it became clear by my daughter's fourth year in a largely black school that she was reading at least two years below grade level, my wife and I took her out of her neighborhood school, and put her on a bus headed for a much better school ten miles from home, which also happened to be integrated. When my son became five, he joined his sister on that same bus headed for the same integrated school where they could learn in a gentler way than I had two decades earlier how to live in an integrated world. They both began to read. And that was the essential point.

(Whereupon, at 12:05 p.m., the committee was recessed, to reconvene at 10 a.m., March 3, 1972.)

SCHOOL BUSING

FRIDAY, MARCH 3, 1972

House of Representatives,
Subcommittee No. 5, of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. William L. Hungate presiding.

Present. Representatives Hungate, acting chairman, Jacobs, McCulloch, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Mr. Hungate. The committee will be in order. This morning we resume hearings on House Joint Resolution 620 and related measures, proposing an amendment to the U.S. Constitution relative to the assignment and transportation of public school pupils.

The first witness we have this morning is Mr. William T. Coleman, Jr., chairman of the board, NAACP Legal Defense and Educational Fund. We are pleased to have you with us, Mr. Coleman. Please come to the table and proceed.

STATEMENT OF WILLIAM T. COLEMAN, JR., PRESIDENT, NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

Mr. Coleman. Good morning. I appear here in my capacity as lay president of the NAACP Legal Defense and Educational Fund, Inc. As you know, the Legal Defense Fund is a nonprofit corporation which was formed in 1939 and at least since 1950 has been an organization separate and distinct from the NAACP.

It is the organization which has provided the lawyers for most of the litigation in the United States dealing with attempts to eliminate racial segregation in all phases of American life.

Mr. Chairman, and members of the committee, I appreciate the opportunity to appear here as this committee considers the wisdom or lack thereof, of House Joint Resolution 620, 92d Congress, first session, which proposes to amend the Constitution of the United States as follows:

> Section 1. No public school student shall, because of his race, creed or color, be assigned to or required to attend a particular school.
>
> Section 2. Congress shall have the power to enforce this article by appropriate legislation.

The above proposal is useless, innocuous, and unnecessary if its purpose is to eliminate public schools where pupils are assigned solely based upon their race, creed or color; it is pernicious, harmful, repressive, and would turn the clock back 18 years if such proposal directly or indirectly overrules in whole or in part *Brown* v. *Board of Education*, 347 U.S. 483 (1954), or last year's unanimous affirmance in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). For these two decisions, as well as other decisions of the Supreme Court of the United States, correctly interpret the 14th amendment to the Constitution of the United States as (1) prohibiting "State-imposed segregation by race in public schools," and (2) placing an affirmative duty on each State to "take whatever steps may be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."

I should like to point out that a difficulty in testifying with respect to House Joint Resolution 620 is that it contains an inference that the Supreme Court of the United States and the various Federal district courts and courts of appeals of the United States have been assigning pupils based upon their race, color, and creed.

Such an assumption completely misinterprets what the courts have actually been doing, to wit, attempting to end the separate and unequal schooling of children based upon race and to require that school systems be operated on a unitary basis. And in *Swann* v. *Charlotte-Mecklenburg Board of Education*, supra, at page 26, the Court said:

> The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation and will thus necessarily be concerned with the elimination of one-race schools.
>
> No *per se* rule can adequately embrace all the difficulties of reconciling the competing interests involved; but in a system with a history of segregation the need for remedial criteria of sufficient specificity to assure a school authority's compliance with its constitutional duty warrants a presumption against schools that are substantially disproportionate in their racial composition.
>
> Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are generally nondiscriminatory.
>
> The court should scrutinize such schools, and the burden upon the school authorities will be to satisfy the court that their racial composition is not the result of present or past discriminatory action on their part.

As you know, that decision was written by a unanimous Court and indeed was written by Mr. Chief Justice Burger who was appointed to the Court by President Nixon.

While there are bound to be some difficulties in ascertaining the precise meaning of the proposed amendment as it has been drafted by Representative Lent, to which I shall refer briefly, I should first like to address myself to the effect such an amendment would have if it is construed in accord with what I understand to be the intentions of some of its sponsors.

Mr. POLK. Mr. Chairman. If I may interrupt your testimony, Mr. Coleman, you have a footnote relating to Professor Van Alstyne's comment that the amendment may be interpreted as tracking the decisions in *Brown* and *Swann* and thus duplicating what Federal courts are already doing. In that case there is no need for the amendment.

However, House Joint Resolution 620 does not, in tracking *Brown* and *Swann*, have any requirement that there be State action. Could you comment on the significance of that omission?

Mr. COLEMAN. I think what you pointed out makes the proposed amendment even worse because there is serious doubt whether under this amendment, even by private action, persons who decided that they want to have truly desegregated schools could do it.

As I understand it, other than the 13th amendment, which is the amendment which freed the slaves, there is no present amendment to the Constitution of the United States which does not talk in terms of State action; thus, the 13th amendment has been interpreted as providing that if two people, strictly private, decided to hold somebody in slavery, that would violate the 13th amendment.

So you would have the same effect here which would make it even worse. I think in addition, and this goes to the footnote, it is quite significant that to the best of my knowledge, the proposers of the amendment do not say what provisions in the Constitution, as now presently amended, the new amendment would delete, alter or change, or what Supreme Court decision it would overrule. I think it is quite significant that most of the amendments after the 10th amendment, were directed to changing specifically a decision of the Court with which the people disagreed. For example, the 11th amendment was adopted because the Court had held that a private person could sue a State and it was felt that would create great political problems. Another example is the 16th amendment, the income tax amendment, which specifically overrules the *Pollack* case decided during the Civil War which had held that the Federal Government did not have the power to enact a graduated income tax.

I think it is quite significant that here we do not know exactly what the proposers are trying to do. I thing they ought to say which provision of the Constitution that now exists, they are attempting to change, or which decision or decisions of the Supreme Court they are trying to overrule by a constitutional amendment.

Mr. POLK. Mr. Coleman, if a proponent said he wished to overrule the *Swann* case but not the *Brown* case, would you consider that possible?

Mr. COLEMAN. I would say that would be extremely hard to do. I think the *Swann* case strictly follows the *Brown* case and is in keeping with the thrust of the *Brown* case. I don't think you can cut the apple that thin. It is like the saying it is easier for a camel to pass through the eye of a needle than for the rich man to enter the Kingdom of Heaven. I do not think you can do it that way.

Mr. POLK. Thank you.

Mr. COLEMAN. This legislation, if passed by the requisite two-thirds majority of each House of Congress and thence by three-quarters of the State legislatures, will nullify the beneficial provisions of the 14th amendment to our Constitution, not only as to public education but also with untoward effect in other fields.

If interpreted to bar consideration of race by courts and State agencies in the process of framing remedies to undo prior illegal and unconstitutional conditions of race by State agencies which have brought about considerable harm to blacks and other minority groups because of their race, and, incidentally, to the white population of this country—I think others will agree with me that whites also are harmed by racial segregation—then this Congress may well bear witness to the turning point in establishing apartheid in America.

I hope the committee will remain aware during its consideration of this resolution, first of all, that it would prevent meaningful desegregation of the public schools not just by Federal court order, but also where such meaningful desegregation had been overwhelmingly sanctioned by patrons of a school district.

While the genesis of the legislation is undoubtedly related to current controversies in the political arena concerning the busing of schoolchildren to achieve desegregation in conformity with orders issued by Federal courts, this resolution purports to limit not only the authority of the courts in the matter, but also to prohibit voluntary steps toward desegregation.

Mr. Zelenko. Mr. Lent, the sponsor of House Joint Resolution 620, has testified that it is his intent that Congress could enact enabling legislation to allow voluntary desegregation by school districts and school boards and that the language of section 1 of the amendment would not prohibit such actions.

Is that how you read section 1 of the proposed amendment?

Mr. Coleman. I do not read section 1 in that manner, sir. As you know, in all of the cases that the Court has decided under the 14th amendment, the amendment itself, even without legislation, has significance. And thus as I read the cases, what section 2 will do is to grant Congress authority to increase, not decrease, the scope of section 1. In every constitutional case I have read, Congress, under section 5 of the 14th amendment, has done one of two things.

One, in addition to prohibiting the action by injunction, the Court, if Congress so provided, could not only issue the injunction because the State is violating the amendment but it could hold that the violator could go to jail or have to pay a monetary penalty. Second, and this is the *Katzenbach* and other cases, there are instances that once Congress acts, the Court will permit the courts to go even further in outlawing conduct than you could in the absence of congressional action.

And I would find great difficulty with trying to defend the proposition that if section 1 is enacted into law, that Congress by a statute could say that the people could disobey section 1 and we are going to permit voluntary plans although we will not permit court-ordered plans.

As I read the Constitution and the cases, every amendment to the Constitution has force in and of itself and the courts will interpret such language and will apply it. In addition, the Congress under the authority of section 2 to restrict the actions of the majority or of Government could go even further and place additional restrictions on the majority or on Government but such further has to be in pursuance of section 1.

In other words, section 2 can't be used to cut back on the rights granted by section 1. I don't think Congress could say once *Brown* was decided that, based upon the provisions of section 5 of the 14th amendment, in our judgment now we think there should be voluntary racially segregated schools. I don't think they could say that. On the other hand, they could say that since, under the 14th amendment, there can be no segregation in public schools and because private schools have reached the point now where they all depend upon public money, at least in the Commonwealth of Pennsylvania that is so, we think we have power to say that you can't segregate in private schools.

Do I make my point clear? I think you can go one way. I don't think you can go the other way.

I do not believe it stretches principles of constitutional interpretation to say that, just as the courts have held that an individual child has a present and personal right to attend a public school system which in its entirety is operated upon a unitary basis, so a single individual objecting parent could, under this amendment, thwart the implementation of the most modest steps toward desegregation on a voluntary basis.

Furthermore, I seriously doubt that the body of law and of sociological knowledge which we have heretofore developed can be ignored simply because of the passage of this proposed amendment.

We know, for example, that a great many criteria for school assignment or other purposes, are simply surrogates for consideration of race. In *Gaston County* v. *United States*, 395 U.S. 285 (1969), the Supreme Court so held with respect to literacy tests for voting in North Carolina where blacks had historically been given inadequate educations because of their race.

In *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), the same reasoning was applied to employment aptitude tests unrelated to the performance of job tasks. Other courts have reached analagous results regarding tests used to group students within buildings or classrooms, e.g., *Hobson* v. *Hansen*, 269 F. Supp. 401 (D.D.C. 1968), *affirmed sub nom. Smuck* v. *Hobson*, 408 F. 2d 175 (D.C. Cir. 1969); *Moses* v. *Washington Parish School Board*, 330 F. Supp. 1340 (E.D. La. 1971); or to select teachers for employment or dismissal, for instance, *Baker* v. *Columbus Municipal Separate School District*, 329 F. Supp. 706 (N.D. Miss. 1971).

The lower Federal courts have held that "neighborhood school" or other geographic zoning methods of pupil assignment may not be used by the school authorities where neighborhood residential patterns are established by governmentally sanctioned or induced racial discrimination, for instance, *Brewer* v. *School Board of Norfolk*, 397 F. 2d 37 (4th Cir. 1968); *Henry* v. *Clarkesdale Municipal Separate School District*, 409 F. 2d 682 (5th Cir.), *certiorari denied*, 396 U.S. 940 (1969); *Bradley* v. *Milliken*, Civ. No. 35257 (E.D. Mich., Sept. 27, 1971).

The Supreme Court of the United States recognized in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 20–21 (1971) the strong relationship between school segregation and housing segregation.

In these circumstances, if I were a school system administrator, I should be seriously worried about what kinds of assignment plans would be permissible under the proposed amendment. Even free choice plans can be viewed as inextricably linked to previous patterns of segregation by race; perhaps only the random assignment of students to schools could withstand constitutional attack under the proposed amendment.

I doubt whether such a result is within the intendment of the sponsors, but it is a clearly conceivable and logical application of the language. Certainly such a result would not achieve one of the professed goals of the sponsors: to reduce or eliminate the transportation of pupils to public schools.

Apart from such untoward results which may be achieved by amendment such as that which has been proposed if interpreted to bar assignment according to race surrogates as well as race itself, the whole notion as it has been developed in the courts over the past decade indicates conclusively the vain hope voiced by some supporters of this resolution that it may be possible to remedy past constitutional violations without considering that seemingly neutral requirements have been affected by race.

To undo this they disparagingly refer to it as "reverse discrimination." If we could deal with the public school in a vacuum, unrelated to the rest of society; if black people were not denied jobs and housing, or restricted to well-defined living areas; in short, if there were no race surrogates—then we might successfully treat the "illness" of racial segregation in the public schools by using nonracial remedies.

But as the Supreme Court appropriately put it in *Swann*, the courts and agencies which have sought to devise remedies for past discrimination in education have been presented with a "loaded game board" which necessarily requires racial assignments to overcome the present effects of past segregation.

It is for this reason that the job cannot be accomplished without consideration whether the criteria used in making assignments are not actually grounded in race to the detriment of those already segregated. It is for this reason that the ultimate goal of treating all as individuals without notice of race, creed, or color, cannot be approached without careful attention to such attributes in the here and now.

And it is for this reason that passage of the proposed amendment will mean, in effect, repeal of the 14th amendment and the overruling of *Brown* v. *Board of Education.*

Let me speak to the issue which concerns so many: the busing of pupils to their assigned schools pursuant to a general plan of desegregation adopted either voluntarily or under the compulsion of a Federal court order.

I suppose it would be within the power of a State, just as it has enacted mandatory attendance statutes, to require that all public schoolchildren ride the bus to school. Certainly there is some rational justification for such a law, since it has been empirically demonstrated that schoolchildren are several times safer on a school bus than getting to their classes by walking, bicycling, or being stationed-wagoned by mother, or by a brother or sister just old enough to drive.

Our eductional systems have not developed in this fashion, however, and the issue has arisen where students not previously bused have been assigned to new schools to which they need transportation as part of a desegregation plan.

In assessing the need for constitutional amendment covering such situations, I think the following should be kept in mind.

1. Wholly apart from its use in school desegregation plans, busing is and has been a major educational tool. Although some 18 million students were bused to school, at public expense, in 1969–70, accidents were proportionately and, indeed, considerably fewer than those associated with any other form of home-to-school transportation, including walking. And I would urge members of this Committee and sponsors of this legislation to go to any suburban community, either at 8:10 in the morning or at 3:30 in the afternoon, and I think you will be impressed by the number of schoolbuses that go back and forth carrying children to school and nobody makes any objection whatsoever.

2. Historically, busing—or the assignment of students to other than the closest neighborhood school—was an important strategic device in maintaining racial discrimination and segregation in the public schools.

Examples of this phenomenon are legion: many were before the Supreme Court when it decided the *Charlotte* and *Mobile* cases. Among the most egregious are those instances in which North Carolina and Virginia authorities, for example, transported black students 60 or 80 miles each way—sometimes across State lines—to get them to a segregated school, or even boarded them for that purpose.

But the phenomenon was and is nationwide, as a 1967 pamphlet prepared for HEW details: It is called "Race and Place: a Legal History of the Neighborhood School" (Supt. Doc. Cat. No. FS 5.238:38005).

3. Even today, there is little objection to the busing of regular or preschool students except to assist in achieving desegregation. Experience in local communities teaches that whenever distance or hazardous walking conditions prevail, parents may be heard demanding some form of publicly provided transportation for their children.

And witness the recurrent controversies about publicly paid busing for parochial school students. Buses carrying athletic teams, extracurricular clubs, or simply classes of children on field trips ply the highways of this National daily in the name of expanding educational experiences and opportunties, with virutally no objection from parents or politicians.

In addition, in many parts of the country the consolidation of the one-room schools into country or regional school districts and the use of massive busing served the useful purpose of eliminating the one-room schools.

4. The school systems of this country unfortunately have helped to create the necessity for busing as a desegregation tool by maintaining rigidly segregated attendance patterns with their inevitable effect upon housing development.

As a district court in Memphis recently put it—referring to the influence of the school board's dual overlapping zone policy upon racial residential patterns:

> The predecessors of the incumbent Board have accommodated the white housing discrimination in many ways, such as drawing the black Dunbar Elementary zone, during the last elementary school dual system year, 1961-62, as a zone approximately five miles wide with the black school in the westernmost area. [Record citations omitted.]
>
> While it is true that the blacks at that time lived in the immediate area of the Dunbar School, the location of the school in the western area of the zone designed by the Board would certainly deter a black from moving into the eastern area of the zone.

Northcross v. Board of Education of Memphis, Civ. No. 3931 (W.D. Tenn. Dec. 10, 1971) (slip opinion at p. 10). Thus the school system is not being asked to rectify the ills of society to which it did not contribute.

5. The courts have recognized valid educational needs and have not required busing of such distances or for such time periods as would interfere with the educational process. In fact in the *Charlotte-Mecklenburg* case, supra, the busing required to desegregate the school system was less—I repeat, less—both in distance and in numbers of pupils involved than had been used to maintain the segregated system.

(See p. 29–31 of the opinion.) I won't read it but I would ask permission to have the court stenographer copy in the record at this point what Chief Justice Burger said in the *Charlotte-Mecklenburg* case under the heading "Transportation of Students."

Mr. Hungate. Without objection, the statement will be placed in the record at this point.

(The statement referred to follows:)

> The scope of permissible transportation of students as an implement of a remedial decree has never been defined by this Court and by the very nature of the problem it cannot be defined with precision. No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations. Bus transportation has been an integral part of the public education system for years, and was perhaps the most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the Nation's public school children, approximately 39%, were transported to their schools by bus in 1969–1970 in all parts of the country.
>
> The importance of bus transportation as a normal and excepted tool of educational policy is readily discernible in this and the companion case, *Davis, supra*. The Charlotte school authorities did not purport to assign students on the basis of geographically drawn zones until 1965 and then they allowed almost unlimited transfer privileges. The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system is supported by the record.
>
> Thus the remedial techniques used in the District Court's order were within that court's power to provide equitable relief; implementation of the decree is well within the capacity of the school authority.
>
> The decree provided that the buses used to implement the plan would operate on direct routes. Students would be picked up at schools near their homes and transported to the schools they were to attend. The trips for elementary school pupils average about seven miles and the District Court found that they would take "not over 35 minutes at the most." This system compares favorably with the transportation plan previously operated in Charlotte under which each day 23,600 students on all grade levels were transported an average of 15 miles one way for an average trip requiring over an hour. In these circumstances, we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school.
>
> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process. District courts must weigh the soundness of any transportation plan in light of what is said in subdivisions (1), (2), and (3) above. It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed.

Mr. Coleman. It is important, as the Chief Justice points out, that 18 million of the Nation's public school children, or approximately 31 percent, were transported to their school by bus in 1969–70 in all parts of the country. In addition, on page 30 he said that as a result of the court decree, it would mean a trip for the elementary school children which averaged about 7 miles and it would not take over 35 minutes at most.

And then he said this system compares favorably with the transportation plan previously adopted in Charlotte under which each day 23,500 students on all grade levels were transported an average of 15 miles one way and the trip required over 1 hour.

I really do think that the sponsors of this legislation are doing a great disservice to the great Federal courts of this country because the Federal courts have met a terrific problem and they have done it quite responsibly. The Legal Defense Fund has not won every case, we have not gotten every decree we asked for, but the fact is that in every instance in which the court has ordered that there be busing, there was first the finding of fact and a conclusion of law that the system as it existed was by law maintained in a racially segregated fashion, and that second, in every case, the busing was necessary to eliminate that condition.

And you will also find in these cases that in almost every case, the busing which took place as a result of the court decree was much less than existed when the school district maintained segregated schools.

I had hoped to have prepared for you a document which would take every Federal case in which busing of any type had ever been ordered and indicate to you the finding of fact of the court, why it did what it did, how many miles were involved in busing before the court decree, and what was the result afterwards.

Mr. HUNGATE. You are offering that as an exhibit?

Mr. COLEMAN. I don't have it ready because at the Legal Defense Fund, we have only 24 lawyers, sir; they told me when I called over to ask them to get this ready that they are trying so many cases and have so many problems they could not get it done by today. But I would like to be able to file that with the record.

Mr. HUNGATE. What would you consider a reasonable time? Would 2 weeks be plenty of time?

Mr. COLEMAN. Two weeks, I think, would be plenty of time. One time, long ago, I would have said "with all deliberate speed," but since desegregation has taken 19 years after the Supreme Court in 1955 used that phrase, I don't use that phrase any more.

Mr. HUNGATE. Thank you. That would be helpful to the committee.

(Subsequently the following letter was filed:)

DILWORTH, PAXSON, KALISH, LEVY & COLEMAN,
Philadelphia, Pa., March 27, 1972.

BENJAMIN L. ZELENKO, Esq.,
General Counsel,
House Committee on the Judiciary,
Washington, D.C.

DEAR MR. ZELENKO: I am enclosing herewith the transcript of my testimony before the Subcommittee of the House Judiciary Committee on March 3, 1972. The memorandum which I promised on page 512 has not been completed and I will send it on to the Committee if and when it is completed.

I appreciate the courtesies and consideration shown me.

Sincerely,

(s) Bill
WILLIAM T. COLEMAN, Jr.

Mr. COLEMAN. Mr. Chairman, I think one of the unforunate things in public life—I don't know how we can get away from it and I am constantly shocked by it—is that we try to deal with the tough problems by putting them in capsule form and finding a convenient catchword to describe them.

As we move to a country of 210 million people with all of the myriad problems, social and economic, I know this a tough job for politicians, but one just cannot solve complicated legal and social problems by a catchword. The rallying cry at first was "segregation always." It then moved to "free choice." It is now "busing" or "neighborhood schools."

Believe me, as you study these cases as I am pretty sure you will, and the record, you will find those things—free choice, antibusing, or neighborhood schools—have never existed in this country as absolutes in the public school system and that such expressions are only another short way of saying "overrule Brown." I compliment the people that run for public office, something I have never had the guts to do, that you have always had the foresight to recognize that you not only have to serve your constituency but you have to educate them. I think that is one of the functions of the Congress, and I admire the Congress to the extent to which you have not necessarily bowed to the vocal popular will.

And I think you ought to give this society a chance to really look at this problem, and I think they will find that antibusing is just another name for segregation.

Mr. POLK. Mr. Chairman?

Mr. HUNGATE. Yes.

Mr. POLK. Speaking of slogans and catchwords, it has been charged that Federal courts are trying to create racial balance. I take it from your statement in your experience you have found that not to be the case.

Mr. COLEMAN. No, sir. Once again, Chief Justice Burger in the *Charlotte-Mecklenburg* case said that the court is not after a "quota system." The Legal Defense Fund has never gone into court and said we want a "quota system." The only thing we say is if you are going to eliminate segregation, and you say you have, and you have done everything required, and then we look at 300 schools in Charlotte-Mecklenburg or in Richmond, Va., and we find that there are a great percentage of the schools that are all black and another percentage of schools that are all white, and yet we know that the pupil population is 50–50, one does not have to be a man from Mars to say, "Well, the school board did not do the job of eliminating assignment based upon race."

It is just as though the President would say, "I am going to invite the most responsible people over to discuss a matter" and he keeps on inviting them and you find at the end of the year that there has never been a Member from a House of Congress there.

At that point you probably could say he is somehow in his plan, excluding Members of Congress. That is all the Chief Justice said and that is what the issue is about. The Legal Defense Fund is trying to say there must be a "quota system." What we are trying to say is when you review what the school board has done and you look at the racial pattern and you look at the schools, if so many of them end up all black and all white and there are no schools which generally reflect the population, then obviously that school has not been converted from a dual system to a unitary system.

Mr. POLK. Mr. Coleman, do you know if any Federal court order operating today at district court order is seeking to create a racial balance?

Mr. COLEMAN. I do not think so. But I must be frank and candid. I have always felt that when I ask a witness in a trial if he knows something and he says, "I don't," that maybe he said that because he is ignorant rather than because he knows or remembers all of the facts. I do, however, look at what is going on at Legal Defense Fund and I do follow the cases, even though I am the lay president—Jack

Greenberg is the one serving in Thurgood Marshall's former position as director counsel—but I think he would say and I will say that no Federal court has ordered a racial balance and LDF has never urged that. HEW has never urged it. I don't think that is what the game is all about.

What LDF is trying to do is have a unitary school system. We are not trying to establish a "quota system." If we went into any Federal court in the country and argued for such quota system, whether North or South, I think we probably would lose the case.

Mr. Hungate. Mr. McClory.

Mr. McClory. I want to commend the gentleman on a very impressive statement and also to recognize his special talents on behalf of minority rights. I wanted to make one further observation. The gentleman has complimented the Congress and made reference to the fact that he did not have the guts, as he said, to run for office. He complimented the Congress for refusing to bow to the popular will.

And yet he suggested that the purpose and the effect of the proposed constitutional amendment would be to send us back on the road toward segregation in schools. I just think that he is not accurately reading the popular will if he thinks that these polls and the opposition to busing are for that purpose. I think the popular expression against busing is primarily opposition to busing children from good white schools in white neighborhoods into the inner city where the schools are described generally as bad schools.

I do not believe that there is widespread opposition to black children going from the inner city to the suburban schools. That doesn't seem to bother people very much. It is the converse that seems to cause a problem. I think that is where the 80 percent opposition to busing comes from. It comes from someone who has established a home in a neighborhood where he feels the school is good and then sees his children bused to another neighborhood where the school is bad. Don't you think that is the real crux of the problem? Isn't that why many are seeking either a constitutional change or legislative remedy?

Mr. Coleman. You have asked a fair and frank question, and I would like to give you a fair and frank answer, Congressman McClory. In the first place, not bowing to popular will—by that, I meant those people that were making demands on you. I firmly believe that the overwhelming number of American people now are proud that this country did move and attempted to move from a segregated society to an integrated society.

Mr. McClory. I think that is absolutely true.

Mr. Coleman. If you ever go abroad and you talk to people and then you find out what the American from Texas or Philadelphia or any place talked about in terms of talking about the great things in this country, I think they soon will say that we had a tough racial problem and we attempted to solve it through law. So I think if you could dig down and take a poll, that Americans basically feel that way.

Mr. McClory. I think that is the popular will, and I think the Congress has endeavored to give expression to that popular will. The majority, the overwhelming majority.

Mr. Coleman. But I think you would recognize and be equally frank that when you gentlemen had the guts to pass some of the legislation you did, if you counted only your mail, you would have voted the other way. In the public accommodation law and every other law, I think if you voted based upon the number of letters you got, you would have gone the other way.

Now, to come to the problem. In the first place, I would say in a democratic society, it upsets me greatly that one would say, "Well, I want my child to go to this first-rate school even though I realize that almost every black child is going to a second-rate school."

Now, if the person would go on to say, "I am willing to pay enough taxes to make the black school as good as the white school;" then they would solve the problem, because, whether they went to the inner core school or the outer core school, it would not make any difference because both of them would be good.

I think on that they would lose the argument. Third, I would have to say that I have been at this since 1948, and with a lot of people, they still want segregation. I do not mean the majority, but there is a hard core that really wants segregation, and they use the neighborhood school or antibusing as the rallying cry.

I am not a Gallup polltaker, and in good conscience I could not tell you how the majority of people would vote. But it is my feeling that, based upon what I have seen, if you do not permit busing in the limited fashion done by Federal courts, then you are going to have segregated schools, and that you cannot desegregate these schools unless you do.

Mr. McClory. I am inclined to agree with you that the adoption of the constitutional amendment would further discourage desegregation.

Mr. Coleman. Yes. And I think this is very important. I love the law and I love this country. Under our political system, the Federal judges in these districts come from these districts. They are great Federal judges. But I think they are as conscious of the problems of the district as anybody else. For example, that great Judge Johnson in Alabama was born, educated, and practiced in the district in which he now sits as a Federal judge.

These people live in these districts. They know what is going on. They know the feeling of these districts. I am pretty sure that the judge in Richmond, Va., understood the feeling of his district. I would urge anybody to read the Richmond opinion, which happens to be 300 pages, and I think you will be convinced, and even the opponents of the opinion will be convinced, that that judge acted responsibly and he had the understanding of his people at heart.

I don't think a judge would willingly put people into an inferior situation. On the other hand, he will recognize if you are going to desegregate the school, you have to put people other than where they may go if they went to the school closest to their home.

Mr. McClory. Thank you. I have no further questions or comments and know we have a long program.

Mr. Coleman. Could I have another 10 minutes and I will be finished?

Mr. Hungate. Fine, then we will have further questions.

Mr. Coleman. In this context, to strip the courts of their power to utilize busing as part of a desegregation plan or to make assignments with knowledge of the race, creed, or color of students, where to do so without such knowledge will result in maintaining a racially dual school system, would be a tragic mistake which could in one fell swoop end the progress which has thus far been achieved toward equality of educational opportunity.

The anger of those parents whose children must, for the first time, be bused to school—which translates into the current political attractiveness of antibusing measures—is misdirected.

Its proper recipients are those school board members and school administrators who in the past assured them all of the students in their systems were receiving an equal educational chance, those elected officials who told them not that the postponement of the day of reckoning which they promised would make the ultimate reconciliation that much more difficult.

Members of this committee, there are many who affirm that they are not against integration, just against busing. Today in the United States, there will be no integration without busing. In the context of our history, adoption of the proposed amendment will enshrine racial separation as one of the guiding principles of our Nation. That is the question before the Congress.

I shall add only two more points. First, is to reiterate the point well made by Tom Wicker in his New York Times piece 2 weeks ago: the U.S. Constitution has never been amended to handle trivia or to change a condition which is temporary. I urge you to reread the 26 amendments already adopted to the Federal Constitution, as I think such exercise will convince you of the validity of Wicker's point.

Second, and then I will be finished. Black America with the help of white Americans has sought free citizenship and freedom from segregation in the appropriate manner, not basically in the streets or by riots, but by seeking redress by law and in the court.

The road has been long and difficult, and it is still far from complete. It really would be "dirty pool" for the white majority now to change the rules of the game in the middle of the stream and to permit by law the return to public schools which are racially segregated under the shibboleth of the "neighborhood school," a concept never before thought to be so significant.

When today the Catholic child often does not go to his neighborhood school because his parents prefer him to go to parochial school, when you have consolidated county schools, when you have in almost every city outstanding schools like Boys' Latin, Girls' Latin in Boston, pupils don't go to the neighborhood school for many nonracial reasons. In other words, I feel you cannot in good conscience enshrine racial seggregation under the guise of neighborhood schools or antibusing rhetoric. I really think that the parents, where they feel they get a better education by not going to the neighborhood school, certainly do not send their children to the neighborhood school. I thank you.

Mr. Hungate. Thank you very much for a very helpful and learned statement. We appreciate your contribution.

Mr. McCulloch.

Mr. McCulloch. Mr. Chairman, I should like to say to Mr. Coleman and to the people who are interested, I have been a Member of Congress and on this committee for just about 25 years, and I have seen witnesses come and go. I have heard witnesses whose parents took a certain view on these problems, and too many of the children, for a time at least, have been prejudiced by the teachers and by the home.

I think if every child in America could have the teaching set forth in your statement this morning, in due course, and probably in not too far a distant time, we would be really living in accordance with those written rules that were handed down to us well over 2,000 years ago.

I am glad you have been a witness before us this morning.

Mr. COLEMAN. That is very kind, sir. I guess I should say nothing, having remembered what happened when Mr. Nixon in China made a compliment to the Chinese interpreter. There was great confusion because at that point the interpreter was under the Chinese edict that you never respond when somebody compliments you. But if you will bear with me, I would like to say that people tend to perform upon the quality of the audience before which they are called upon to perform.

I have always felt that the House Judiciary Committee was one of those committees of this great Congress that performs in the highest traditions and quality, not only of the law but of the democratic society.

So I think I worked harder to get ready today than I normally do to get ready to come to Congress.

Mr. HUNGATE. Thank you very much. I could listen to this all day. Mr. McClory.

Mr. McCLORY. I have no further questions. Thank you very much.

Mr. HUNGATE. I would like to ask a few questions, if I may, Mr. Coleman. I think one of our colleagues in debate on the proposal indicated that the Bill of Rights and many of the amendments to the Constitution are really directed to protection of minorities, and in those cases the majority needs no protection. I wonder if that is in line with what you meant when you spoke of Congress, resistance to some emotional appeals?

Mr. COLEMAN. Yes. I think the Constitution, as I understand it, is really—and you know this better than I do because you live with it always in administering it every day—is really divided into three parts. One which determines what political body should do what as among the legislative, the executive, and the courts and the Federal Government or the States.

Second, it delineates the power which each governmental division has. And the third part, as I understand it, contains those provisions that provide that even when you are in a democratic society and even though the majority has 98 percent of the vote, that they cannot or ought not to take away certain rights or privileges from the minority.

I think that is the rule of law, and I believe from my experience, and I certainly have come a long way from going to segregated schools and living in black America, that I feel that most of the American people, white, feel that way. And if I could ever have a weekend free, I would love to write an article which would demonstrate the extent to which the rights vindicated by black Americans in the courts have helped white Americans even more.

As an example, I do not care how you face it, by 1954 we had a public school system which really wasn't that good. I think the reason why you get so much pressure in Congress now to get more money is that white America realized that when black America began to make its struggle for equality, that that plus Sputnik were the two reasons why white America became much more concerned with the public school systems.

I think the *Brown* case contributed as much if not more to white America than it did to us. Another example, I think the entire criminal law which has resulted in a more civilized system in this country beginning with *Brown* v. *Mississippi* in 1937 which says that the Government cannot force a man to make a confession, and you go right down the line, and all of those cases involved blacks, but you start pulling the reports of cases in the Commonwealth of Pennsylvania or any other place, and you will find more white people who get the benefit of those decisions than black people.

We are trying to make this democracy work. We think it is the greatest country in the world, and we are thrilled to watch how through reason you can get the society, even when you are in the minority, do what is right, and as my former boss, Felix Frankfurter, used to say, "Refrain from doing what is wrong."

Mr. **Hungate**. Thank you very much. Any further questions?

You have been a helpful witness, and we thank you.

The next witness is Mr. Donald Baldwin, executive director, National Council Against Forced Busing. Mr. Baldwin?

STATEMENT OF DONALD BALDWIN, EXECUTIVE DIRECTOR AND VICE PRESIDENT, NATIONAL COUNCIL AGAINST FORCED BUSING

Mr. **Baldwin**. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today.

My name is Donald Baldwin. I am executive director and vice president of the National Council Against Forced Busing. The council was organized just last weekend, February 26–27, at a meeting in Pontiac, Mich., of over 200 delegates representing local, State, and National antibusing organizations from 36 States. I am also chairman of the Alexandria (Va.) Committee for Quality Education, one of the many organizations represented at the Pontiac strategy conference.

Our membership, through the various local, State, and national organizations, is a microcosm of the Nation in that it is made up of people from all walks of life. Also, while we have not attempted to bring about a "racial balance" in our membership, we are pleased to count in our numbers members of the black, white, yellow, and red races.

Despite the many differences in background, education, ethnic origin, and geographical location represented by our membership, we are all of one mind on the issue of forced busing. We are against it.

Speaking as a national council, we are not segregationists; we are not antiminority; and we do not seek to have the clock turned back to the situation in our country before the historic 1954 *Brown I* decision.

A decision, by the way, which essentially said that schoolchildren could not be assigned to schools on the basis of race. We agree with that. But what is being done today? Just the opposite. Children are being assigned—and usually bused—from one school to another because of their race.

That the courts have gone berserk in their orders is no longer a matter of debate. But the fact that they will destroy this Nation's public school system is a matter of deep concern to all.

And, if the decision of U.S. District Judge Robert R. Merhige, Jr., of Richmond, is not overturned by the Supreme Court, we will see the beginning of the elimination of local government in this country.

We would remind you of what the situation was in many areas of the country when the schools opened last fall.

In Detroit, Mich., the Federal district court had ruled that there must be busing to achieve racial balance. There were many protests and, on some days, absenteeism ran as high as 80 percent in Detroit elementary schools.

In Pontiac, Mich., empty schoolbuses were bombed on August 30 and a citizens group asked for a court delay of a busing order. School attendance the first day was 60 percent in elementary schools; 65 percent in a junior high school.

Fighting between black and white students occurred at a junior high school; picketing closed two General Motors plants; and in the first 3 days of school, 48 people were arrested in antibusing violence and schoolyard violence.

Mr. ZELENKO. Mr. Baldwin, do you know what the situation is in Pontiac, Mich., today—the degree of absenteeism; what violence there is?

Mr. BALDWIN. It has considerably subsided now.

Mr. ZELENKO. To what do you attribute that subsiding of violence and absenteeism?

Mr. BALDWIN. I would say concern of the citizens for protection of their schools. They have very much concern about the quality of education there but I think that many of them are making efforts to adjust to the court orders. I think this is one of the concessions that have been made. The feeling is still there. The concern for the lowering of the quality of education is still there. There is a strong feeling there but they are making efforts, I think, to live within the orders of the court.

Mr. ZELENKO. Thus, the absenteeism and violence that you speak of on page 3 of your statement are no longer present, correct?

Mr. BALDWIN. Not to the extent that it was.

Mr. ZELENKO. To what extent do they persist?

Mr. BALDWIN. It has been decreased. The report given to us over the weekend was that they still have disruptions and absenteeism and they still have violence.

Mr. ZELENKO. Does your information come from the school authorities?

Mr. BALDWIN. This is from parents of the children who attend schools there.

Mr. ZELENKO. Thank you.

Mr. HUNGATE. You may proceed.

Mr. BALDWIN. In San Francisco, only the school superintendent and the NAACP openly supported court-ordered busing. School teachers demanded that the superintendent resign; Chinese and white parents held protest meetings.

A local newspaper poll showed that those opposed to busing included 96 percent of the Orientals, 88 percent of the whites, 73 percent of the Spanish-speaking people, and 60 percent of the blacks. As school opened, elementary school absenteeism was 41 percent. Chinatown boycotted schools.

The situation in Denver, Las Vegas, and Los Angeles could also be discussed—not to mention Boston, Minneapolis, and Indianapolis. But the cases I have cited are enough to indicate the spread of tensions across the North and West from California to the Middle West to New England.

The South was still having its problems, too—Savannah, Ga.; Austin, Tex.; Winston-Salem, N.C.; and nearby Alexandria, Va.—again, to mention only a few.

Mr. JACOBS. Would the gentleman respond to a question. You mentioned my town of Indianapolis. Was that supposed to be a reference to civil disobedience or other disturbance?

Mr. BALDWIN. Our delegates to the conference over the weekend reported that there were disruptions in the schools and that there was violence and absenteeism on opening day of the schools. This was the report of the delegation to the conference.

Mr. JACOBS. I might say that is contrary to any information I have. I know of no incidents. I know of very few people who support mass busing certainly, and I know of many expressions in opposition to it. But I know of no incident of any citizen of my hometown who violated the law or threatened violence, or any kind of demonstration.

As far as their conduct is concerned, it has been exemplary.

Mr. BALDWIN. I only had the report of the delegates there and I think probably it is a question of semantics as to what we would call violence. I suspect you are quite correct that they did not violate any laws, as such. I think their demonstrations were directly within the confines of the law.

Mr. JACOBS. I just think as a matter of semantics we ought to understand that other than police action, I know of no violence by private citizens, other than perhaps self-defense of home or property, that is not against the law.

Mr. BALDWIN. As I cite these different examples around the country, I don't have to recite them and repeat them to you because you have read them all in the newspapers. I was a witness to some of them in nearby Alexandria, Va., and I know from personal experience that there was much more that was not reported in the newspapers.

Mr. HUNGATE. Should one believe all he reads in the newspapers?

Mr. BALDWIN. No, I would think not, because if he did he would not get the complete story. Much of it is kept out.

Mr. HUNGATE. Go ahead. I apologize for the interruption.

Mr. BALDWIN. These problems—caused mainly by the usurpation of power by courts all over the Nation—have ultimately led to the only logical solution—a constitutional amendment prohibiting busing away from neighborhood schools against the wishes of a child or his parents.

In fairness, I personally feel that the Congress has tried to deal with the problem of massive forced busing to achieve racial balance. But your efforts have produced no relief.

Much better than I ever could, many of your fellow Congressmen, appearing before you earlier this week, reminded you of the laws already on the statute books—for instance, the so-called Whitten amendments, sections 309 and 310 of Public Law 92–48, making appropriations for the Office of Education within HEW for the current fiscal year.

And these same witnesses also reminded you that the 1964 Civil Rights Act itself, Public Law 88–352, provides, in title IV, section 401(b), that:

"(b) 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance. * * *"

Mr. ZELENKO. Many people who refer to the definition of "desegregation" in title IV of the 1964 act leave out, as you did, a phrase that precedes subsection (b). It reads: "For the purposes of this title, 'desegregation' shall mean"—for the purposes of title IV. I take it you are complaining about decisions of the Federal courts that interpreted and applied the equal protection clause of the 14th amendment finding there was segregation in certain schools and ordering various remedies, including pupil transportation to desegregate those schools. And you cite this particular definition of "desegregation" as some kind of argument that the courts have exceeded their constitutional authority failing to refer to the words which limit the definition to the purposes of title IV of the 1964 Civil Rights Act.

Mr. BALDWIN. I think that is quite clear. While it does refer to title IV, I think it is clear that this definition indicates that the courts have exceeded the intent of the law.

I would go further to say that this is the whole problem with the judges. I happen to be a very great admirer of the legal profession. My father-in-law was one of the finest lawyers in his area of the country, a great constitutional lawyer. He made the statement many, many times—and I think really that is what we are talking about—that today many of the lawyers that come to take the bar examinations have majored in sociology first and law as a minor course. I think that it is a reverse situation—sociology before law—and this is, of course, the heart of the debate about what the judges will do. This is what I am speaking to, and this is why I am wondering if the judges themselves are interpreting the law.

As I say here, the law says one thing and the judges interpret it another way. I would just say, to repeat this——

Mr. POLK. Mr. Chairman, I would like to pursue that. Mr. Baldwin, are you saying in your opinion the equal protection clause of the Constitution does not forbid segregation? Is that the thrust of your statement?

Mr. BALDWIN. No, but as this law says in the Civil Rights Act of 1964, desegregation shall not mean assignment of students to public schools in order to overcome racial imbalance.

Mr. **Polk.** But the court orders you are referring to make no reference to this provision.

Mr. **Baldwin.** No, they don't.

Mr. **Polk.** Why should they? Is there anything in title IV that requires a Federal court to consider it?

Mr. **Baldwin.** Well, if you are going to take the position that the courts should ignore the laws, then I would agree with you. But if we take the position that you, as Members of Congress, pass laws and expect the courts to adhere to the law as you make it here, as it is set forth in our Constitution—that the Congress shall make the laws and judiciary shall carry out the laws——

Mr. **Polk.** But title IV, by its own terms, tells the court that it need not refer to it because it is not a source of authority.

Mr. **Baldwin.** Yes, and it also says they shall not mean an assignment of pupils to public schools in order to overcome racial imbalance, too.

Mr. **Polk.** That is correct. One of the foremost scholars of the country has testified that no Federal court is doing such. I would like to refer to section 407.

Mr. **Baldwin.** I would disagree that the courts are not assigning because of racial balance. I think that this has been the concern of many of the citizens and the communities, that the courts have been doing this. This is the reason that Chief Justice Burger, in his famous *Swann* case, stated very clearly that you did not have to assign pupils on the basis of race, creed, or color; you did not have to bus to achieve a racial balance.

But the judges, on the other hand, have been interpreting the decision another way. The Supreme Court Justice had to again restate his position to make it clear. So I think that——

Mr. **Polk.** Then are you suggesting we need only to wait for these cases to come up to the Supreme Court and that the Supreme Court will reverse, and that we don't need a constitutional amendment?

Mr. **Baldwin.** I think we do need a constitutional amendment, because we have the *Swann* case, which very clearly says they don't have to do what the judges say we do have to do. So I think we need a constitutional amendment to clear these up.

These provisions have simply been ignored by the Federal judges and, under these circumstances, I cannot see how Congress could write more specific law on the subject than this. The Senate earlier this week struggled in vain with this matter. The Congress will simply be deluding itself and misleading the public if it attempts to deal with this busing issue through legislation. Such attempts have not worked in the past, and wiser men than I are convinced that they will not work in the future.

It is time that we call into use the checks and balances of our tripartite system of government. It is time that the legislative branch check the powers being assumed by the judicial branch—powers which are, in effect, making the judicial branch the Nation's public school administrators and, in the process, destroying quality public school education within our country.

It is time we stopped spending millions of unnecessary taxpayer dollars—better spent on education itself—to bus our children out of their neighborhoods and away from their local schools.

Mr. POLK. Mr. Baldwin, do you have statistics indicating that there has been an increase in busing in the aggregate? The reason I ask that question——

Mr. BALDWIN. Do you mean "that there has been an increase in busing"?

Mr. POLK. Yes; you referred to "this massive increase in the use of buses."

Mr. BALDWIN. I would say the cases reported in the paper state that there is an increase in busing but, as Mr. Hungate said, maybe we can't believe what we read in the paper. But, they have indicated in the paper that there has been massive busing.

Mr. POLK. The reason I ask that, Mr. Baldwin, is that we had testimony yesterday from the National Education Association as follows: "There is no statistical proof that desegregation has substantially increased pupil busing either nationally or regionally."

We also had testimony from the League of Women Voters yesterday, who said: "Total miles traveled have not increased as a result of desegregation."

I was wondering if you had statistical proof to contradict those statements.

Mr. BALDWIN. I have in my own community, and I know that it is true in areas of the country where they have ordered buses. It is true they have added many miles, and in my city of Alexandria alone, it is costing somewhere in the neighborhood of $400,000 extra a year for busing, adding pollution to the air, which I gather, no one is interested insofar as it is for busing. In some cities we are talking of banning automobiles during certain times of the day because of the pollution. But, on the other hand, we must add buses that do add to the pollution.

But I think that it is rather silly to say that we haven't added any additional mileage because of busing when the newspapers have been full of articles that have indicated that they have.

Mr. JACOBS. Mr. Chairman, one question about the reference to pollution. If we are going to be precise, we really have to say that in the cities where they are banning use of automobiles, they are increasing the use of public buses. That is the whole idea. I don't think that point applies with reference to this proposed constitutional amendment, so we don't get too far with the analogy.

Mr. BALDWIN. I think the idea is putting one bus on to get rid of 60 cars, which is a pretty good exchange. I won't argue with that.

Mr. JACOBS. I am simply saying sometimes we reach pretty far for analogies and tip over. This has nothing to do with busing of schoolchildren. That is my point. It really doesn't apply here, does it?

Mr. HUNGATE. Thank you, gentlemen. I would like to comment on the witness' testimony. We have had testimony before the committee as I understood it, that there were several hundred thousand dollars or a million dollars worth of buses required to be purchased because of changing busing policies. I think that would be relevant to the statement you make regardless of the mileage problem. Would you proceed, please?

Mr. BALDWIN. Yes, I would only add this point: In the city of Richmond, when they ordered busing there, my information from the city attorney—and probably there are some people from Richmond here who could correct me—was that the order required that they buy buses which cost them $1,200,000 of money they did not have in the school board budget, to say nothing of the operating cost and additional employees and so forth.

This massive increase in the use of buses also undoubtedly adds unnecessary pollution to our atmosphere from the exhaust fumes.

The means available to the Congress to check the usurped power of the judiciary is through a constitutional amendment dealing with the issue. There seems to be little doubt that such an amendment would be speedily ratified by the required number of State legislatures.

I therefore urge this subcommittee to report out House Joint Resolution 620, sponsored by Congressman Norman Lent, of New York, or one of the other similar amendments also pending before you.

By so doing, you will be helping to resolve also the following questions: Whether or not we can maintain our public school system: whether or not we can provide the best quality education for all of our public school students; and whether or not the parents of our public school students still have the right to make the decision as to what schools their children will attend.

Thank you for your attention.

Mr. HUNGATE. Thank you very much, Mr. Baldwin. I apologize for the numerous interruptions, but that shows we were following your testimony rather closely. I hope we did not destroy your train of thought.

Mr. BALDWIN. I appreciated the questions, sir.

Mr. HUNGATE. We thank you for your comments about the Judiciary Committee and lawyers; we have received a good bit of that kind of testimony heretofore.

I trust we won't forget when the American public had a choice of electing either Mr. Adlai Stevenson, who was a lawyer, or Mr. Eisenhower, who was not a lawyer, they elected Mr. Eisenhower; and elected Mr. Truman, who was not a lawyer, over Mr. Thomas Dewey, who was a lawyer.

Are you an attorney, Mr. Baldwin?

Mr. BALDWIN. No, I am not, Mr. Hungate. I am often accused by lawyers of practicing without a license, but I must admit I am not a lawyer.

Mr. HUNGATE. What I wanted to get to was, in dealing with a constitutional amendment, we are dealing, of course, with the law. We are dealing with the highest element of the law, with legal matters and legal questions which can be highly technical. To analogize, I don't suppose any group would consider conducting a poll or calling a family conference to read a cardiogram or any of the doctors' charts or records in the technical field of medicine. I suppose we lawyers have responsibilities that I am sure you appreciate in dealing with technical legal matters.

We thank you for your testimony very much.

Mr. MCCLORY. Could I ask one question?

Mr. HUNGATE. Yes.

Mr. MCCLORY. I want to thank the gentleman for his testimony and also for his concern on this subject which he has expressed in behalf of several organizations. I was impressed by his comments on the subject of the requirement of buying more buses. I judge that one reason why more buses are needed and more busing is carried on is because of the time that is devoted to conveying and transporting children the distance they have to travel.

I note in the *Swann* case that the Court indicates that it is perfectly valid for a court or a school board to take into consideration the subject of time and distance. Do you think that if there was some legislation passed—which, of course, Congress, I judge from the *Swann* case, could enact—setting limitations with regards to time and distance, that kind of a legislative remedy might not be virtually a complete answer which would obviate the need for so many buses and also would satisfy the desegregation requirements which are set forth in the *Swann* case, without having to amend the Constitution?

Mr. **Baldwin.** I doubt that would help the case, Mr. McClory. In the situation that I was involved in, in nearby Alexandria, we brought our case against the school board to stop busing of our secondary schools on the basis of endangering health and safety to the child by having to transport them a distance which they would normally walk. This has been proven in incidents since then, and we have had many people hospitalized because of incidents happening on buses.

But to say that the Congress could draft such a law, putting limitations on how far a child could be bused, would again put us in the same position of the title IV of the 1964 Civil Rights Act. You would have it on the books, but the judges would not be compelled to follow that necessarily. This is my whole concern—that bright, well-learned constitutional lawyers who have visited with me on this subject over the months when we were involved with our case——

Mr. **McClory.** You are not suggesting that we forbid all busing, are you? Wouldn't we forbid all busing under the constitutional limit?

Mr. **Baldwin.** I am suggesting that we limit it.

Mr. **McClory.** What I am suggesting is that possibly we could limit busing by establishing some guidelines. Wouldn't that solve it?

Mr. **Baldwin.** If you had legislation that said busing a child from one school district to another on the basis of race, creed, or color shall be unconstitutional, you cover that point. I am not sure that legislation——

Mr. **McClory.** Are you suggesting that we should forbid busing because there happen to be particular races or colors involved in the busing?

Mr. **Baldwin.** I am saying that racial balance should not be a basis for a decision.

Mr. **McClory.** We could legislate with regard to distance and time and possibly health. And would you support that? It seems to me that would be an answer.

Mr. **Baldwin.** This would be a distinct possibility, but it comes right back to my original premise. I must admit to you very honestly and to members of the committee that I personally arrived at this decision in support of the constitutional amendment after much analysis of it and after discussing it with many attorneys whom I think are great lawyers. I am sure members of the committee would recognize many of the names. I don't believe that the judges are going to pay any attention to the law you legislate here. It has been proven already that they have not. That is my point, and that is why I believe that the constitutional amendment is the answer.

Mr. McClory. But you do feel they would pay attention to the Constitution?

Mr. Baldwin. I believe they would. I hate the idea of messing up the Constitution and a document that I respect and admire very much, and I tell you publicly I would die for the defense of it. I feel that strongly about it.

Mr. McClory. Well, all that has happened so far is that courts are interpreting article 14 of the Constitution. Some people disagree with their interpretation. I understand it is the document that you would die for. I will yield.

Mr. Hungate. The gentleman from Indiana, Mr. Jacobs.

Mr. Jacobs. Mr. Baldwin, I thank you for coming and for the statement you have made. I would assume that you are not opposed to desegregation itself.

Mr. Baldwin. No, definitely not. I think that it is a fact of life today and we all accept it and I think we respect it. Cases have proven that it has helped society.

Mr. Jacobs. The essence of what you object to is the transportation of children of any race far away from their neighborhoods, or in the traditional situation, past a school that is convenient to them to a school which is geographically inconvenient to them and takes a long time to get to? That is what you are really opposed to?

Mr. Baldwin. Yes, that is the strong concern that I have. I can cite many examples of this.

Mr. Jacobs. I understand. Now suppose as a member of a school board you were faced with a choice of drawing school neighborhood boundary lines and you had two options. Both would involve areas that were reasonably compact and did not involve greater distances from the extremities of the school. One map would maintain separate schools for whites and blacks; an alternate map would straddle areas predominantly black and predominantly white.

Mind you now, neither blacks nor whites would have any further to walk to school with that alternate map than with the map that was reasonably compact and included only whites in one school zone and only blacks in the next school zone. Would you object to drawing the line in such a way that the black and white children could walk to the school nearest to their home?

Mr. Baldwin. I think this is the whole point—that we want them to go to the schools nearest to their own homes——

Mr. Jacobs. Excuse me. For clarification, it would work either way.

Mr. Baldwin. Yes.

Mr. Jacobs. It would be the closest one. Would you object to the school board's taking into account the pattern of historic segregation in the community which resulted in those neighborhood patterns but simply drew the lines—no busing involved at all—so that black and white children would walk to schools that were really nearest to their homes? Would you have objection?

Mr. Baldwin. No. I don't think that would be against the principle we believe in.

Mr. Jacobs. That is my understanding of your position. I understand it perfectly, and I don't think that it is illogical. The problem

I have with it is that if we write the constitutional amendment into the Constitution, saying no child shall be assigned to any school on account of his race, the second alternative would be unconstitutional by the terms of the amendment.

Drawing a map is what you really do—when you notify the people in a district you are assigned to a school. Even though they can still walk to the school nearest to their home, they could not be assigned to it by the language of these proposed amendments. That is where I have a lot of trouble.

In other words, I wonder if the inconvenience of long-distance busing, busing away from the most convenient school, can't be eliminated without going so far as to eliminate the power of the local school boards to make assignments to achieve some desegregation.

What do you think about this language, the overkill of it, the ambiguity, beyond the logical pattern for which you appear here today?

Mr. BALDWIN. I don't think—if I understand you correctly—I don't think that there is any difference of opinion on our objectives to provide language for a constitutional amendment which would say to a school board and the judges passing on the legality of the school board decisions that you may draw any kind of lines that you wish but you may not use race as a basis for your decision, and I think that is——

Mr. JACOBS. Sir, that is the issue I put to you a minute ago—that you have a clear choice. My question is whether you want to prohibit a school board from having that choice even if that choice involved specifically having black children and white children go to school together but who do live within walking distance of a given school. That is my question. Would you want to outlaw that?

Mr. BALDWIN. I would not want to outlaw their right to draw the boundaries as they saw fit so long as they were not motivated by their interpretation of the law or by the courts' interpretation of the law that they had to do it on the basis of race, creed, or color. Just as, on the other hand, when we are talking of congressional redistricting, I am sure the State legislatures have the right to redistrict any way they want to. But we would not feel it was constitutionally right for them to use politics as a means for redistricting—as I suspect sometimes happens—draw a district that is predominantly Democratic or Republican.

Mr. HUNGATE. Thank you. Any further questions?

Mr. MCCLORY. Mr. Chairman, I have to leave the meeting at this time. I do want to say, for the benefit of the following witnesses, that I have read the statements and will consider those equally with the others. I am sorry I have to leave.

Mr. BALDWIN. Mr. Chairman, you were very tolerant. I am getting over a case of laryngitis, and I don't normally talk like this, and you have been very tolerant. I appreciate your attention, interest, and consideration.

Mr. HUNGATE. Thank you for your contribution.

The next witness is Deputy Dean Burke Marshall, Yale Law School, on behalf of Common Cause. Dean Marshall, we are happy to have you here.

STATEMENT OF BURKE MARSHALL, DEPUTY DEAN, YALE UNIVERSITY SCHOOL OF LAW, ON BEHALF OF COMMON CAUSE

Mr. MARSHALL. Mr. Chairman, I am appearing here today on behalf of Common Cause, a citizens' lobby of more than 230,000 members, which lists among its priorities the need for equal opportunity in all aspects of American life and the importance of increased educational quality at all levels.

It is only 18 years since the Supreme Court ruled, in *Brown* v. *Topeka Board of Education*, that separate-but-equal schools were inherently unequal; 10 years since riots welcomed James Meredith to the University of Mississippi; 9 years since the Governor of Alabama stood in the door of his State university to try to keep two black students from enrolling.

We have made great progress since then, and the pace of desegregation has accelerated in the years since the passage of the 1964 Civil Rights Act. An indication of sorts of our progress, I suppose, is the fact that even those who have proposed legislative and constitutional amendments such as the one before this committee have hastened to add that they, too, are in favor of equal opportunity in education and that they welcome additional Federal funding for supposedly poorer schools.

There are two basic points I wish to make to the committee.

The first, which has been made over and over again by others, is that the proposed amendments before the committee are by no means limited to busing—that is, to the transportation of students for purposes of achieving desegregation in a school district. Indeed, as my colleague, Alexander Bickel, has pointed out, it is beyond the competence of constitutional draftsmen to write an amendment limited to dealing with such a narrow and temporary phenomenon.

The second is that even if some magic of language manipulation made that possible, there is no factual showing of a need to interfere with the orderly process of litigation in the matter, even by legislation, much less by such a drastic step as tampering with the Constitution. There is no evidence that the Federal judiciary has suddenly, in recent years, become peopled with wild men, arbitrarily ordering indiscriminate and massive busing of children.

This is an issue grown out of political rhetoric, out of inflamed fear of steps that have not been taken and never will as far as the cases now on the books are concerned, out of imagined rather than real threats to family life and family ties to communities. This is therefore the worst possible of atmospheres in which serious men should seriously consider changing the Constitution.

As to the first of these points, it seems plain that whatever the intent of the sponsors of the Lent and similar amendments and however mild-sounding the language—"no public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school"—their net effect would be to destroy court implementation of the Brown rule. The amendment on its face does not deal only with the transportation of students—that is, busing; it is nothing less than a resegregation amendment.

Thus, the amendment would not merely end the use of busing as a means to eliminate dual, unequal systems of public schools and halt deliberate school segregation, although it would do that. It would also foreclose the use of a variety of techniques brought into use by skilled educators throughout the country aimed at equalizing educational opportunity, providing better use of school resources, and enhancing educational quality for all students in their communities—voluntary transfers, rezoning, the pairing of schools, magnet schools, educational parks, and the like.

And it would force the dismantling of all those systems of school busing—and there are a great many of them—where the educational climate has improved substantially as a result of school integration and student performance has been heightened for black and white students alike.

Dozens of school systems all over the country have integrated their schools thoroughly and successfully. In Berkeley, Calif., the largest city in the Nation to integrate its entire school system voluntarily, average achievement of black students has increased by 60 percent, and white student achievement is still greater. Harrisburg, Pa., has instituted a voluntary desegregation program, and its superintendent describes the results as "dramatic." Parents in Tulsa, Okla., have taken the lead in instituting desegregation programs involving transportation of their children.

Similar progress has been made in Riverside and Sacramento, Calif.; Dayton, Ohio; Baldwin, Mich.; and in Project Concern in Connecticut. Even school districts in Pontiac, Mich., and San Francisco, the scene of protests and even violence over the initiation of busing plans a few months ago, are now proceeding well enough that the officials in HEW and the U.S. Civil Rights Commission consider the programs in those districts successful.

But by far the greatest progress has been made in the South. It is noteworthy that President Nixon's decision last August to seek a ban on the use of Federal funds for busing was protested by school superintendents throughout the South—in Winston-Salem and Greenville, N.C., in Columbia, S.C., in Nashville, Tenn., in Birmingham, Ala., and in Jackson, Miss.—superintendents who, in effect, told the President that they were making the experience work and he should leave them alone.

The white business leaders of Jackson, once a citadel of segregationism, have been running full-page newspaper ads urging the community to back the local school program—ads which read "We are sticking with our public schools to help make them the best in the Nation."

If the Lent amendment were to be adopted, all of this would end—all of it. And worse than that, it would compel a retreat from what the courts are concerned with under *Brown*—the development of unitary school systems out of the structure of dual schools—a structure which has served through so much of this country's history not merely to deprive and even destroy black children but to isolate white children and dull their experiences as well.

That brings me to my second basic point: Whether there is really any demonstrated need for all the emotional and political attention being given this matter. In my view, the amendment we are discussing is a product of nothing less than a misreading and misunderstanding of the court decisions which have required busing and the rationale behind those decisions.

I have no doubt that the courts have acted properly to enforce the law and have not gone beyond it to do their own legislating, and so I would like to say a word in their defense.

On March 24, 1970, President Nixon made a statement on elementary and secondary school desegregation in which he said, in part:

> Deliberate racial segregation of pupils by official action is unlawful, wherever it exists. It must be eliminated "root and branch"—and it must be eliminated at once.

This is precisely what the courts have done. They have determined, in innumerable cases, that the circumstances by which most minority group children attend school in isolation from children of the majority group are not accidental or purely de facto, not merely the result of housing patterns, but are the result, in whole or substantial part, from an accumulation of actions by school, local, and State authorities aimed at deliberately maintaining segregation.

The courts have found cases where school boundary lines have been redrawn with the intent of keeping schools segregated, even to the extent of school boards working overtime to gerrymander districts to preserve segregation; where schools have been closed in racially mixed areas rather than permit integration; where optional school zones have been created to encourage white students to attend all-white schools; where sites for new schools have been strategically chosen with an eye toward keeping them all-white or all-black; where the size of schools has been purposely limited so that they might serve only a limited geographical area and hence only one race; where, in case after case, pupil assignment was organized so that black students were often bused, not to predominantly white schools near their homes, but to predominantly black schools further away.

The neighborhood school system, so often invoked by foes of busing, has not been so sacrosanct when transportation of pupils is used to keep schools racially separate.

The Supreme Court found in the *Swann* case that the Charlotte-Mecklenburg, N.C., school district had, among other things, expressly encouraged segregation by building schools in the center of neighborhoods rather than between two neighborhoods to encourage integration and also found cases where busing had been used to further segregate the schools.

It then stated in its decision, in part:

> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems.

The court then ordered that a plan proposed by an education expert be put into effect.

Two recent controversial court decisions in Detroit and Richmond have stemmed directly from this ruling. Judge Stephen Roth found that Detroit had encouraged segregated schools by drawing its school boundaries north-south rather than east-west, by the small size of some of its new schools, and by the use of transportation for purposes of segregation.

Judge Robert Merhige determined, for his part, that the State of Virginia has never hesitated to use its powers to perpetuate a dual, unequal system; that the city, county, and State had jointly built schools for white students as far as possible from black neighborhoods; that the State had sponsored white student transfers and private school tuition grants to evade desegregation; and that, most remarkable of all, the State's central planning department for educational transportation had performed surveys and formulated the most efficient means by which separate school systems could be maintained.

Other courts have made similar findings, and it is on this basis that they have acted to break down the dual systems.

Those who oppose the use of busing in these cases have made it appear as if the courts and the Department of Health, Education, and Welfare have ordered New York City students to attend school in North Dakota. Certainly they have spread the myth that court-ordered busing plans have caused students to ride buses two or three times as far as they did previously.

But an examination of pupil transportation in school districts before and after the court order shows that in many cases the opposite has been the case. As Mr. Coleman has pointed out to you, in the Charlotte-Mecklenburg District, for instance, students prior to the *Swann* case rode buses for an average ride of more than an hour; now the trip takes 35 minutes.

Hoke County, N.C., reports that its students travel for 15 minutes less since the court-ordered program went into effect. Between 1965 and 1969, the State of Georgia, with its enrollment up 92,000 and the number bused up 14,000, had a decrease of 473,000 miles in its busing program under court desegregation orders.

And the chairman of the Richmond school board has pointed out that Judge Merhige's consolidation decision did not mean more busing. One effect of the plan, she said, would be for the district to cut back on busing, because many black students lived closer to suburban schools than to the city schools to which they were being transported. "It will save a great deal of time for the children and a great deal of money for us in busing costs," she said.

What else can we conclude from this evidence other than that segregation in these and other school districts had been deliberate, that thousands of pupils had been bused out of their neighborhoods to maintain segregation, and that courts acted properly in identifying the complicity of school and governmental authorities in maintaining the dual systems and in ordering their elimination?

This is what is so disappointing about President Nixon's retreat on school integration last August, when he repudiated a plan for busing in Austin, Tex., approved by both HEW and the Justice Department, with the comment that he was against "busing for busing's sake."

He must have known better; that was not what was involved then, nor has it ever been. The court's orders have involved the transportation of children only in response to deliberate segregation—that is, deliberate violation of the equal protection clause of the 14th amendment of the Constitution.

And never, to our knowledge, has any court or school board violated the judicial dictum of the *Swann* case by ordering busing where "the time or distance of travel is so great as to risk either the health of the children or significantly impinge on the educational process."

In short, the essence of what the courts have been about is devising temporary means of making what were formerly dual school systems into unitary systems. It remains to be said only that we believe that this work of the courts is not only required by the equal protection clause of the Constitution, as *Brown* held, but is also the only course consistent with the evidence of what constitutes wise educational policy.

Thus President Nixon might have done better to recall another portion of his March 24, 1970, statement on school desegregation. At that time, he said:

> It is clear that racial isolation ordinarily has an adverse effect on education. We also know that desegregation is vital to quality education—not only from the standpoint of raising the achievement levels of the disadvantaged but also from the standpoint of helping all children achieve a broad-based human understanding that increasingly is essential in today's world.

This is the educational issue before us. For all the talk about "compensatory education" and "prize schools" and additional funds for minority students runs directly up against the national experience. Nothing we have learned in the last 18 years does anything to contradict the decision of the Warren Court in *Brown* that no amount of resources can combat the deprivation which occurs in a deliberately racially isolated school.

We believe this to be true—although I stress that this is not what the courts are about in the desegregation cases—also when the racial isolation is inadvertent or contrary to Government policy. This is the testimony of the Coleman report and the study on racial isolation in New York; it is also the experience of segregated schools in New York City and Washington, D.C., which showed no improvement despite additional Federal funds per child.

Four years ago this month, the report of the National Advisory Commission on Civil Disorders stated, in part:

> We support integration as the priority education strategy because it is essential to the future of American society. It is indispensable that opportunities for interaction between the races be expanded. The problems of this society will not be solved unless and until our children are brought into a common endeavor and encouraged to forge a new and more viable design of life.

This is also Common Cause's judgment; educational opportunity will not be equal and the education of both white and black children will not be complete until we end segregation in our schools.

The debates over the issue have already seen too much irrationality and violence: school buses overturned in South Carolina and firebombed in Michigan; Ku Klux Klanners and American Nazis seizing the opportunity to crawl out and spread their racist poison; even an intemperate Richmond city councilman suggesting "euthanasia" for the Governor of Virginia because Linwood Holton dares support school integration and hence the law.

We repudiate all such extremism; it adds nothing to the national dialogue and does not promote the national good.

We are aware that a great many citizens who oppose school busing are neither racist nor extremist but are merely concerned about their children's education and about their children's safety. We also recognize that some of their fears may be legitimate. But the proposal before this committee is no answer. Our system of government can adjust and can solve the problems which exist.

The public should understand, for its part, that busing is a temporary and transitional measure. As the court has said, it may be awkward and inconvenient but it is necessary if we are ever to approach educational equality. It is imperative that all citizens not only obey the law but act positively to help make busing work.

There are imperatives for our national leaders as well. "Busing has not been an issue here," a Jackson businessman has been quoted as saying, "but it will become one if it is stirred up by our national leaders." Too much stirring up has occurred already.

We call upon the Congress and the President and other national candidates to forego the pursuit of a few votes which might win the next election—and lose the next generation of young people.

Restraint and genuine leadership such as that demonstrated by Governor Askew of Florida is of the essence. All government officials should follow his example, by counseling respect for the law, lending their support to school superintendents and others who have the responsibility for educating our children, and otherwise acting to encourage a new national climate of tolerance and reconciliation. We must all work together under the law if we are, in our time, truly to fulfill the Nation's promise and bring all its people together.

Mr. HUNGATE. Thank you for your statement, Dean Marshall. We recognize you are one of the outstanding legal scholars of our Nation. We appreciate your coming here to give us your counsel.

Mr. McCulloch.

Mr. MCCULLOCH. Mr. Chairman, I am glad to have Dean Marshall back here to help the committee with this very important problem. Your strength was a material strength in the years gone by. We appreciate your statement very, very much.

Mr. HUNGATE. Mr. Jacobs.

Mr. JACOBS. No questions.

Mr. HUNGATE. On page 7 of your statement, Dean, the second paragraph, fourth line from the bottom, you say: "... the city, county and State had conspired to purposely build schools . . ."

Mr. MARSHALL. I changed that statement, Mr. Chairman, when I read it.

Mr. HUNGATE. That was intentional?

Mr. MARSHALL. Yes, sir.

Mr. HUNGATE. And on page 8, the second paragraph, the line discussing: Those opposed to busing "made it appear as if the courts * * * have ordered New York City students to attend school in North Dakota"—would you consider courts might have power to order students in Kansas City, Mo., to attend school in Kansas City, Kans., and vice versa?

Mr. MARSHALL. No, I think not, Mr. Chairman.

Mr. HUNGATE. But look at the Richmond, Va., case. Who were the parties in that case, Dean?

Mr. MARSHALL. The parties were the Richmond school board.

Mr. HUNGATE. Were they the plaintiffs?

Mr. MARSHALL. They supported the order that Judge Merhige gave. They were not the plaintiffs. The plaintiffs went back many years, I believe. It was a case that started shortly after *Brown*. It has a long history, and this was part of the remedial proceedings. But the school board of the city of Richmond endorsed and supported Judge Merhige's opinion and urged that solution on the court.

Mr. HUNGATE. On page 9, you are discussing "President Nixon's retreat on school integration" in the Austin, Tex., situation. Is that related to the requirement under title VI of the 1964 act that the President approve regulations promulgated by Federal agencies to enforce nondiscrimination?

Mr. MARSHALL. Yes, Mr. Chairman. There was a court case in Austin. The participation of HEW in that case—and in other cases—is in connection with its duties under title VI of the Civil Rights Act of 1964. The President was involved in it, I suppose, because both HEW and the Justice Department reported to him and he disagreed with their positions on the matter.

Mr. HUNGATE. And the President does have discretion, is that correct, under title VI, over the issuance of guidelines and regulations?

Mr. MARSHALL. I suppose, Mr. Chairman, that the President has some discretion consistently with what Congress has told him to do with respect to any matter that is the business of the executive department. Title VI makes it the business of the executive department to withhold funds when the funds are going to be used discriminatively, and HEW acted under that provision.

I suppose that the President is the Chief Executive and that he has discretion in any case to disagree with one of the departments reporting to him. I do not believe he has any explicit discretion under title IV as the President.

Mr. HUNGATE. On page 10 of your statement you assert—"It is clear that racial isolation ordinarily has an adverse effect on education." Continuing down, referring to "deliberately racially isolated school," would not the deprivation be the same whether isolation was deliberate or accidental?

Mr. MARSHALL. Yes, Mr. Chairman. My point there is that the courts, the Federal courts, and most of the rhetoric about busing involves Federal court decisions, that the Federal courts are not involved with inadvertent segregation and racial isolation; they are involved with segregation and racial isolation which has been determined by Government policy, in effect by a dual system—one for white and one for black or partially that.

There is no case that I know of, and I do not know that the Legal Defense Fund, which brings most of these cases, has ever understood that racial isolation which is inadvertent, which is true in some parts of big cities, or racial isolation which is contrary to Government policy, which is true in some cities, even when the government of the city and the government of the State—as I think is true of New York City—is opposed to racial isolation, violates the 14th amendment or is therefore the subject of any Federal court order. That was my point.

Mr. HUNGATE. Dean, would you distinguish between de facto and de jure situations?

Mr. MARSHALL. Yes; that is essentially what I was doing. I defined "de facto" as being racial isolation which was inadvertent or contrary to Government policy.

Mr. HUNGATE. Are you aware of any court orders applicable to that type of situation?

Mr. MARSHALL. I think there are none, Mr. Chairman. I will have to qualify that the way Mr. Coleman did, but I think there are none, and I do not know what basis there would be for any.

Mr. HUNGATE. In reference to testimony we have had earlier, I would like to ask one more question along this line. Consider a situation where you had de jure segregation originally and the de jure segregation was outlawed either by *Brown* or subsequent State actions and de facto segregation continued. Are you aware of any court decisions that reached such a situation?

Mr. MARSHALL. Mr. Chairman, the Supreme Court has said that where there has been de jure segregation, the States or the local school districts have an affirmative obligation to do away with it and its effects; so that if, by that, you mean that there was simply a repeal of the segregation laws, I think that would not be sufficient under the *Brown* case and it would not be sufficient under the *Swann* case.

Mr. HUNGATE. Thank you very much.

Mr. ZELENKO. One question, Mr. Chairman. Mr. Marshall, you were the Assistant Attorney General in charge of the Civil Rights Division in the Department of Justice when the 1964 act was enacted. In this hearing, you heard proponents of the constitutional amendment argue that Federal courts have not obeyed the 1964 Civil Rights Act, in particular, two provisions of that act were cited.

One of them is a provision in title IV, I know you are familiar with—the definition of "desegregation." It is in the record. I won't read it again. The other provision, section 407 of the 1964 act, dealing with suits by the Attorney General to desegregate public schools reads as follows:

"* * * nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring transportation of pupils or students from one school to another or from one school district to another in order to achieve such racial balance * * *."

Mr. Marshall, it would be helpful to have your comments on the charge that the Federal courts have not obeyed these two provisions in the 1964 Civil Rights Act.

Mr. MARSHALL. The thrust of my testimony, Mr. Zelenko, is that I do not agree with that. I think that the opinions of the courts and the opinions of the Supreme Court are very, very explicit, that what the courts are about is the elimination of dual school systems. They are not trying to achieve racial balance as such. They are trying to eliminate dual school systems and form them into unitary school systems.

That is a very complicated piece of business, and the bigger the district and the more children that are involved, the more complicated piece of business it becomes. We must remember that the dual school systems existed throughout the South and in the District of Columbia universally until 1954, and many of them until very, very recently, and that had been so for at least a hundred years and, in some cases, maybe even longer than a hundred years.

So I do not think that the courts are disobeying or ignoring that provision of the law.

Mr. HUNGATE. Thank you. Any further questions?

Thank you very much, Mr. Marshall.

We would now like to recognize our colleague, Mr. Bob Stephens of Georgia, to introduce a group with him. We appreciate your patience in waiting, Bob. You are certainly one of the most distinguished and effective Members of the Congress, respected for your courage and independence. We are pleased to have you with us.

STATEMENT OF ROBERT G. STEPHENS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Stephens. Mr. Chairman and members of the committee, I appreciate your letting me come here with my friend and constituent, Mr. John Fleming from Augusta, Ga., and to have this opportunity of presenting him.

I would like to make one comment before I introduce him, in respect to semantics that have come forward in the discussions this morning. I suppose that you could say, from the standpoint of semantics, after hearing read what Mr. Zelenko just read—the last article that he just read, that everybody who voted for the Civil Rights Act of 1964 was against busing because the provision against busing is in there. Also, everybody that voted against the Civil Rights Act of 1964 must have been for busing because prohibition of busing is in there.

One other comment I would appreciate having the opportunity to make is this; that the courts have ignored the clear intent of Congress in that Civil Rights Act which Mr. McCulloch and Mr. Celler engineered through the Congress with the language against busing in it. The clear intent of Congress was that we not have the busing that has now been brought forward.

The courts, as I understand it, are saying they are not interpreting that in light of the intent of Congress. They are interpreting that in the light of the 14th amendment and not in the light of the intent of Congress.

Without any further ado, I would like to present Mr. John Fleming. Mr. Fleming is an attorney of Augusta, Ga., in Richmond County.

There has been some confusion in the minds of some people when we talk about Richmond County, Ga., where we have had a busing order, and Richmond, Va., that has had similar experiences. And so I wanted to make that clear to you.

Also, I would like to point out to you that the board of education in Richmond County, Ga., is a board that is elected by the people in the community. It is not an appointive board. Mr. Fleming runs for office, and my understanding is that the president of the board is selected by the board. He doesn't run for the job of president of the board, but he is chosen president of the board.

The other thing that I would like to mention in the introduction of Mr. Fleming is this: In Richmond County, Ga., the county and the city school systems were one of the first school systems in America that was made into a consolidated system, the county and city. It was done so in 1881. My uncle, Lawton B. Evans, was the first superintendent of the consolidated school system at the age of 21. He was the superintendent of the Richmond County school system for 52 years. He was elected every year by the board.

He established a quality school system in Richmond County. I can give you that evaluation not based upon my kinship with him but because after he had been for 50 years a superintendent of the Richmond County school system, he was given a gold medal presented in Augusta, Ga., by President Nicholas Murray Butler on behalf of Columbia University in New York because of his contribution to education in America. And it was the first time that Columbia University had ever given an award to anybody who was not an alumnus of that school.

We have had a quality education system in Richmond County, and that is what Mr. Fleming and I both have advocated and will continue to advocate, and that the artificial guidelines, artificial interpretation on busing, that have been made will destroy that quality education system.

Without further taking of Mr. Fleming's time, I present Mr. John Fleming of Augusta, Ga.

Mr. HUNGATE. The committee thanks you, Congressman, for your statement. And we appreciate having you with us.

Mr. Fleming, will you please proceed.

STATEMENT OF JOHN FLEMING, PRESIDENT, BOARD OF EDUCATION OF RICHMOND COUNTY, GA.

Mr. FLEMING. Mr. Chairman, I would like to thank Mr. Bob Stephens for the introduction, and other members of the committee and counsel. On behalf of the concerned parents of Richmond County, Ga., I would first of all like to extend our gratitude to this committee for according me the privilege of submitting testimony in relation to what, in my judgment, is the most critical domestic issue that has concerned the legislative branch of our Government in many years.

I might say at this point, Mr. Chairman, that I am not going to follow my prepared statement verbatim, that I will digress in the interest of time, and some of the things have been covered heretofore and I know you have heard part of this testimony. I will inject, with the permission of the chairman, certain things to support the contentions of my prepared statement if that would be permissible.

Mr. HUNGATE. Mr. Fleming, if I understand you correctly, you request permission that your prepared statement be made a part of the record at this point?

Mr. FLEMING. Yes, sir.

Mr. HUNGATE. Without objection, that will be done. You may comment on your statement or summarize it, please.

(The statement referred to follows:)

STATEMENT OF MR. JOHN FLEMING, PRESIDENT, BOARD OF EDUCATION OF RICHMOND COUNTY, GA.

Mr. Chairman, distinguished committee members, by way of introduction, my name is John Fleming. I am an attorney by profession, and I am the current president of the Richmond County Board of Education in Richmond County, Ga.

On behalf of the concerned parents of Richmond County, Georgia, I would first of all like to extend our gratitude to this committee for according me the privilege of submitting testimony in relation to what in my judgment is the most critical domestic issue that has confronted the legislative branch of our Government in many years.

Realizing that you Gentlemen are confronted with a most difficult task, I intend to confine the bulk of my testimony to facts and law so that I might make some contribution toward documenting the ultimate conclusions of this committee with evidentiary data.

I am assuming that I need not remind this committee that the Judicial Branch of our Government has long since abandoned the duties imposed upon it by the United States Constitution, has ceased to guarantee equal protection of the laws to all of our citizens, and has during the last decade charted itself on an inevitable collision course with the legislative branch of our Government.

Clearly defined, the busing of children is not the issue here; however, *the forced school busing of children to acquire a mathematical racial balance in each and every school is the issue.*

The Federal Judiciary has interjected into a vital artery of this Nation a *forced* busing plague. This plague has spread like a cancer to the extent that it has created educational and disciplinary chaos in our schools. It has made a mockery of public education! It has reduced our children to the status of property and herded them like animals over distances much too long.

It is my judgment that the Federal Courts should not share the single blame for this plague for it has come about largely because of total confusion in the check and balances system of our Government. It has resulted from a lack of direction from the Executive Branch. It has come about because of the inactivity of our Congress which has seemingly allowed itself to be divorced from the desires of its constituents. Hopefully, all three branches of our Government are interested in quality education; but I fail to see how the best interest of any child can be served by transporting him about on a bus to an unfamiliar and sometimes frightening environment. This plague cannot be in the best interest of black children! It cannot be in the best interest of any white children! This plague is not in the best interest of any children!

I respectfully submit to you that the vital ingredients that have steadfastly throughout the years molded America into what it is and which have placed America into a dominant role of world leadership are God, competition, education, the American neighborhood, and the American family, all of which have been abandoned and discarded by the Judicial Branch of our Government.

I shall now commence to offer this committee unrebuttable evidence that the Judicial Branch of our Government has started itself on a course which, if not checked, will eventually reduce the Congress and our Constitution to a status of insignificance. I need not remind you Gentlemen, that any democracy is in reality a state of voluntariness and I personally fear that if the vast majority of the people of this Country are not afforded some relief in the near future, our democratic form of Government might possibly be placed in jeopardy. The complete disregarding of elementary law and logic by the Supreme Court in this area has caused great concern throughout the Nation; furthermore, I have received many letters from veterans and from those presently serving in Viet Nam who have informed me that while they have in the past and are now defending the Constitution on the battleground, they believe it is being literally torn to shreads by Federal Judges who have engaged themselves in a socialistic and human area which they should not have entered.

Thus, this committee finds itself in the precarious position of trying to restore a balance to our checks and balances system of Government by deciding upon the most appropriate and feasible method by which to prohibit the Judicial Branch of our Government from further disregarding not only our Constitution, but the Congress and the people of America. Few would disagree that the past and present attitude of the Supreme Court makes the task more difficult. And those who proposed to solve the problem by the passage of a *law* not only add little comfort to the situation but in my judgment are discrediting the public trust that has been placed in them.

Senator Mansfield and Senator Scott and others who apparently support the passage of a law in lieu of a Constitutional Amendment as a corrective measure are apparently not aware of the fact that the Supreme Court heretofore in the now famous Swann v. Charlotte-Mecklenburg case, evidenced its intention toward simple laws by disregarding Section 401(b) and Section 407(a)(2) of the 1964 Civil Rights Act?

Section 401(b) reads as follows: "Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Section 407(a)(2) reads in part: "Nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards."

And, are these same Gentlemen not aware that this identical Court, along with the lower Federal Courts, has completely ignored that portion of the Swann case which provides a school board and its population with the inalienable right to examine the breadth and scope of a desegregation plan calling for transportation of students to determine if:

A. The time or distance or travel would be so great to risk either the health of the children involved; or if

B. The transportation of the students would significantly impinge on the educational process? (9 S. Ct. 1267)

And what would be the response of these Gentlemen if I were to disclose to them that the HONORABLE ALEXANDER A. LAWRENCE, the Federal District Court Judge who on January 13, 1972, issued a Desegregation Order in my County, wrote, to-wit: "The Fourteenth Amendment is not to apply to those who find it not to their liking."

We have received hundreds of inquiries from law professors, politicians and others who found it hard to believe that a Federal Judge had written such a statement; however, they seemed to uniformly agree that the statement itself depicts the general attitude of the Federal Courts in his area.

It is of paramount importance to also point out that this same District Court Judge directed the implementation of only a partial plan covering a few elementary schools and directed the implementation of a desegregation plan on the secondary level which was not in existence on the date the Order was issued nor has it been drafted as of the writing of this text. For the convenience of this committee, I will set forth paragraph five of Judge Lawrence's Order exactly as it appears, to-wit:

"(5) Meanwhile, the court will continue to consider and to endeavor to formulate and develop a feasible and sound plan of desegregation for the secondary schools in the system. At the earliest practicable time an Order in that respect will be entered. The secondary school plan approved and ordered by the Court will be implemented by defendants on September 1, 1972."

And would these same Gentlemen believe that this same District Court Judge would not provide our Board of Education with an evidentiary hearing to examine any of the plan and, totally rejected the following argument which our Attorneys raised in non-successful Motions to Stay filed with him, the Fifth Circuit Court of Appeals, and the United States Supreme Court, to-wit:

"In the Swann-Mecklenburg case, Chief Justice Warren Burger envisioned the adverse effects that desegregation plans might produce and wrote into law certain protections for the school district population by granting to them the inalienable right to examine the breadth and scope of a desegregation plan calling for transportation to determine if the time or distance would be so great as to risk either the health of the children involved . . . or if the transportation of the students would significantly impinge on the education process.

"When these constitutional protectives are considered along with the fact that a 'nonexistent secondary level plan has been ordered implemented by Sept. 1, 1972, it becomes inescapably clear that (the school board) has been denied the rights Chief Justic Burger intended for it therefore since at no stage of the proceedings thus far has it been possible for the Board to determine what effect the presently non-existing secondary level plan will have on the health and academic achievement of its school children, not to mention the disturbance it might bring to that segment of the plan already in existence' . . ."

And I need not remind this committee that it has been the Federal Courts who have steadfastly throughout the years guarded and protected the constitutional rights of persons charged or convicted of criminal offenses . . . and even if a segment of our population has heretofore expressed disenchantment with this whole tragic affair, we respectfully submit that such conduct does not reduce them or the remainder of our citizenry to a status below that of one who has violated a criminal statute.

And would not the members of this distinguished committee think that I have lost control of my faculties if I should disclose that on February 2, 1972, this same District Court Judge issued a Preliminary Restraining Order as to obstructing his Desegregation Order of January 13, 1972, the language completely deprived every person in our County of his First Amendment rights. The first paragraph of that Order reads as follows, to-wit:

"The Court of its own motion on the basis of the attached affidavit and under its powers of preserving the integrity of its orders and decrees hereby temporarily restrains all persons, regardless of race or age, from interfering with, obstructing or attempting to obstruct, impede or in any way frustrating the Order and plan of desegregation of certain elementary schools in the Richmond County School System dated January 13, 1972."

I simply hope that as a representative of the truly fine people of Richmond County, Georgia, have been of some service to this distinguished committee and I again thank you for allowing me to offer testimony.

Respectfully submitted, this the 29th day of February, 1972.

JOHN FLEMING, *President.*

Mr. FLEMING. Clearly defined, the busing of children is not the issue here. However, the forced school busing of children to acquire mathematical racial balance in each and every school is the issue. The Federal judiciary has interjected into a vital artery of this Nation a forced busing plague. This plague has spread like cancer to the extent it has created educational and disciplinary chaos in our schools. It has made a mockery of public education. It has kidnapped children from their neighborhoods. It has reduced children to the status of property and herded and transported them long distances like cattle.

This plague is not in the best interest of black children, it is not in the best interest of white children, yellow children, or red children. It is not in the best interest of anyone, parent or child, regardless of race, creed, color, or religion.

I respectfully submit to you that the vital ingredients that have steadfastly throughout the years molded and placed America into world leadership are God, competition, education, the American neighborhood, and American family, all of which have been invaded by the judicial branch of our Government.

I would like to now offer this committee unrebuttable evidence that the judicial branch of our Government has charted its own course, which, if not checked, will eventually reduce the Congress and the Constitution to a status of insignificance.

To diverge a little bit, I would like to bring to the attention of the committee—and I am sure you are aware of this—that most of the proponents of busing and those who support the position of the Federal courts generally contend that this is a matter of desegregation and that busing is the only true means to bring about desegregation and that busing is the only way to guarantee quality education to all children.

Now, to bring factual information to the committee, I think it is necessary, then, that we review just briefly the law, and I am sure learned counsel of the committee is aware of and the committee also, the matter of de facto segregation, de jure segregation, and dual school systems and unitary school systems.

I would like to call to the attention of the committee that in all of these decisions that I have read on school matters, the court has always maintained that there might always be all-black and all-white schools due to housing patterns. And this, I think, we have got to keep in mind when you go about talking about busing of children.

If the court said, then, that you might always have all-black and white schools, then they must at this point consider de facto segregation constitutional. So, therefore, you could never accomplish equality of racially balanced children unless you did get beyond the Constitution in de facto situations up to this point.

Now, I think one of the agencies that has been charged with the responsibilities of eliminating dual school systems—and now I am going to refer to our school system in Richmond County, Ga.—was the HEW or Office of Education. We have recently been confronted with, and we are in the process of implementing, a so-called busing plan imposed by us and drawn by Judge Alexander A. Lawrence, who is the U.S. district judge for the Southern District of Georgia.

Mr. ZELENKO. Excuse me, Mr. Fleming. Did the school board submit a plan to the court or did the court prepare its own plan?

Mr. FLEMING. We submitted a plan, sir, that in our opinion complied with the law and in light of the *Swann* case, but the judge did not agree with our plan and I will give you the reasons why we submitted the plan and the factual basis for it and the reasons we submitted it in the way we did.

Mr. POLK. Mr. Fleming, was that a freedom of choice plan?

Mr. FLEMING. Basically it was. It was a zoning type plan and freedom of choice plan, that is correct.

We had HEW in our area. We have been in court for many years and in 1969, HEW drew our plan and in 1970 HEW drew our plan or the Office of Education drew our plan and you would assume that they knew what they were doing, that they knew the law, that they have counsel, that they knew how to eradicate an existing dual school system, and you would assume, since the law did not change in the *Swann* case, it was in existence prior to the *Swann* case the matter of eliminating an existing dual school system.

You must assume they knew the law and that they to, could draw a plan that would eliminate a dual school system. They drew our plan in 1969 and 1970 but in 1970 they also had the help of the judge in our district and he helped them draw the plan and the plan was adopted by the board of education. We thought surely they together would be able to draw a unitary plan.

But when the *Charlotte* case decision was handed down in April, the Fifth Circuit at that point remanded the case back at Judge Lawrence but didn't say what was wrong with the plan. They just said that it did not meet the requirements and to draw another plan.

Judge Lawrence passed the order on to us, leaving to us the task of interpreting what the *Swann* case said. We went about that with the help of our attorney and we drew a plan and submitted it to the court and he scoffed at it and didn't pay much attention to it.

So he decided he was going to get HEW to draw a plan. He got HEW in the matter and they came to our county on two occasions over a period of 2 months and they threw up their hands and they came to Washington, which was told to me by HEW, and presented the plan to them and said, "We can't do anything about it. What are we going to do?"

The plan was to be submitted August 26 of this past summer. Mr. Jesse J. Jordan, Deputy Director of the Office of Education in Washington, called us on the phone and asked us what he could do to help us.

We said, "We have been put on the sideline and it is your duty now to draw the plan." He said, "We can't draw a plan." So he came to our city and we reviewed it with him. We said, "You can't leave us. It is your duty." So we had a hearing and they didn't have a plan either and they couldn't add to it.

Then the judge didn't like that so much. He got mad with HEW but the Justice Department would not get involved at that time so they left it to the judge and he hired some alleged experts from Rhode Island.

These experts came into our town with the sole purpose of drawing a plan. I would like to call to the committee's attention at this point the factual information that we were operating an educationally sound system and through connotation you might apply to this, a unitary plan also.

This is a copy of the telegram we received from Mr. Jordan, Deputy Director of HEW or Office of Education. This was to Mr. Rollins, superintendent of county board of education and to the board of education:

> You asked our judgment on educational aspects of your plan. As you know your 1969 plan was viewed by us as educationally sound. Without expressing any views on other aspects of your July 1971 plan, it is our opinion that this plan too is an educationally sound plan.

So you see, gentlemen, it is not a matter of education or quality of education if we are going to take this as factual information and it being the truth by the agency that has never been friendly to school systems who have had this problem, but to the contrary have done everything they could do to do what the courts required them to do.

If our plan then was a unitary one and also was offering quality education, then these arguments by proponents that this is the only issue and the only means is not a valid one especially in our practical situation.

At this point also, I would like to call to the committee's attention as I heard this morning there has never been an order where balance was required. I can show you one dated January 13, 1972, that deals with nothing except racial balance.

Mr. **Hungate.** Do you have that order with you?

Mr. **Fleming.** Yes, sir.

Mr. **Hungate.** How lengthy is it?

Mr. **Fleming.** It is a very lenghty order, 17 pages long.

Mr. **Hungate.** I will ask that the gentleman submit that for the record at this point. And without objection it will be made a part of the record at this point.

(The order referred to follows:)

Exhibit "A-1"

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

CIVIL ACTION NO. 1179

ROBERT L. ACREE, et al., PLAINTIFFS

v.

ANN GUNTER DRUMMOND, MASON CARTER CLEMENTS, S. LEE WALLACE, NADINE ESTROFF, DOUGLAS D. BARNARD, JR., ROBERT BEATTIE, BILL PERRY, DR. JAMES B. HATTAWAY, WILLIAM J. SALLEY, PATRICK G. SMITH, C. DAN COOK, EARL H. HENSLEY, WILLIAM B. KUHLKE, JR., GEORGE H. STREETER, GEORGE W. FISHER, FREDDIE CHILDRESS, LEONA NORTON, H. WELDON HAIR, HOWARD W. POTEET, PLAINTIFFS IN INTERVENTION

v.

COUNTY BOARD OF EDUCATION OF RICHMOND COUNTY, GEORGIA ET AL., DEFENDANTS

ORDER

This case has been around since 1964. I came into it in the Fall of 1968. At that time a freedom of choice plan in effect in Richmond County schools. The total enrollment of white and black children in 1967–1968 was approximately 35,750 students. Of 12,250 Negro students in the school population 5.5 percent chose to attend previously all-white schools. With one exception no white student has exercised freedom of choice to attend a previously all-black school.

Judge Scarlett held hearings in the Spring of 1968 on a motion by plaintiffs to adjuge the School Board in contempt and for summary judgment. He denied such relief. On appeal the Fifth Circuit reversed that ruling. See 399, F. 2d 151. The appellate court said:

"... we think it quite appropriate to point to the fact on the undisputed statistics presented to us it is clear that, with respect to the Richmond County Board of Education, a plan of desegregating the schools, generally known as 'the freedom of choice' plan has not worked. It has not produced a unitary school system in which there are no longer Negro schools and white schools, generally known and recognized by all of such. Under these circumstances, it becomes the duty of the respondent Board, not only under the Supreme court decisions above referred to, but under our Jefferson decree, to take additional important and effective steps."

After the ruling was handed down the Fifth Circuit Court of Appeals assigned the case to me. A hearing was held at Augusta in December, 1968. I said that freedom of choice was impermissible. It had not worked. The Supreme Court had made this clear in *Green v. County School Board of New Kent County*, 391 U. S. 430; 88 S.Ct. 1689, 20 L.Ed.2d 716 where the highest Court ruled that freedom of choice must be an effective device promising "meaningful and immediate progress toward disestablishing state-imposed segregation." The Court said that "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*."

I did not rule out freedom of choice altogether but stated that I would "give consideration to a plan formulated by the Board which combines automatic assignment of pupils within designated geographical zones and a limited freedom of choice of schools." See *Acree v. County Board of Education of Richmond County*, Georgia, 294 F. Supp. 1034. I directed that a zone or attendance area system be put into effect for the 1969–1970 school year.

On June 16, 1969, a hearing on the Board's plan was held at Augusta. Plaintiffs objected to it *in toto*. On July 14, 1969, I approved the plan presented as a temporary expedient. See 301 F. Supp. 1285. I pointed out:

"The decisions of the Court of Appeals for the Fifth Circuit say that geographic zones are acceptable only if they tend to disestablish rather than reinforce the dual system of segregated schools. *Davis v. Board of School Commissioners of Mobile County*, 393 F.2d 690; *United States of America v. Greenwood Municipal Separate School District*, 406 F.2d 1086 (Feb. 4, 1969); *Henry v. Clarksdale Municipal Separate School District*, 409 F.2d 682. A school board must strive for promotion of desegregation and 'conscious effort should be made to move boundary lines and change feeder patterns which tend to preserve segregation.' See 393 F.2d at 694."

I further stated: "I think the wisest thing to do at this time, certainly the most expedient, is to approve temporarily the Board's new zone system and permit same to go into effect at the beginning of the coming (1969–70) school year. We will soon thereafter be able to judge its effects. Because of possible constitutional infirmities of the zoning plan it will not be permanent and this is not a final order."

My Order of July 16, 1969, directed the School Board and Superintendent to apply immediately to the Office of Education, H.E.W., for professional counselling and assistance looking to development of a satisfactory and legal plan at an early date.

Before such a plan could be developed and presented the plaintiffs filed an appeal to the Court of Appeals for the Fifth Circuit. This was in March, 1970. On July 1st of that year that Court remanded the case. See 443 F.2d 1360. The higher Court said:

"Having examined the record and the briefs of counsel in the above styled and numbered cases, this Court is left with a very definite and indelible impression—the Richmond County, Georgia public schools are racially identifiable, both as to the faculty and the composition of the respective student bodies. If there is any hope remaining for the Richmond County public schools to operate as a unitary system by the commencement of the new school year—prompt and immediate action is required."

In compliance with the Order by the Fifth Circuit a hearing was held and evidence introduced on July 30, 1970. On August 3rd I approved a plan recommended by Health, Education and Welfare which I modified to include additional pairing. It was essentially a neighborhood plan. The Fifth Circuit had gone along with something similar in the case of *Ellis v. Board of Public Instruction of Orange County, Florida*, 423 F.2d 203. I took that route. The plan in question was to be implemented at the 1970–1971 school year.

My Order of August 3, 1970, in the *Acree* case was appealed to the Fifth Circuit. Meanwhile, the "busing" and racial ratio cases, including *Swann v. Charlotte-Mecklenburg Board of Education* had reached the Supreme Court of the United States. The Court of Appeals held its ruling in abeyance pending a decision in *Swann* and the other cases. It was handed down by the Supreme Court on April 20, 1971. See 402 U.S. 1–48. That decision made it clear (I quote the syllabus in *Swann*) that:

(a) While the existence of a small number of one-race, or virtually one-race, schools does not in itself denote a system that still practices segregation by law, the court should scrutinize such schools and require the school authorities to satisfy the court that the racial composition does not result from present or past discriminatory action on their part.[1]

(b) A student assignment plan is not acceptable merely because it appears to be neutral, for such a plan may fail to counteract the continuing effects of past school segregation. The pairing and grouping of noncontiguous zones is a permissible tool.

(c) The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not effectively dismantle the dual school system is supported by the record, and the remedial technique of requiring bus transportation as a tool of school desegregation was within that court's power to provide equitable relief.

On July 1, 1971, the Court of Appeals for this Circuit disapproved the plan which this Court had approved in July, 1970, to be put into effect during the current school year. It remanded the case, stating:

"The judgment of the district court as it relates to student and faculty assignment is vacated and the case is remanded with direction that the district court require the school board forthwith to constitute and implement a student and faculty assignment plan that complies with the principles established in *Swann v. Charlotte-Mecklenburg Board of Education*, 1971, —— U.S. ——, —— S. Ct. —— —— L. Ed. 2d ——, 39 Law Week 4437; *Carter v. West Feliciana Parish School Board*, 5 Cir., 1970, 432 F. 2d 875, and *Singleton v. Jackson Municipal Separate School District*, 5 Cir., 1970, 419 F. 2d 1211, insofar as they relate to the issues presented in this case."

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[1] **The Fifth Circuit has been telling us for years that "If in a school district there are still all-Negro schools or only a small fraction of Negroes enrolled in white schools . . . then as a matter of law the existing plan fails to meet constitutional standards established in *Green.*" *Adams* v. *Mathews*, 403 F.2d 181.**

The Court of Appeals has said that the prevailing system is a dual and an unconstitutional one. The racial statistics bear this out beyond all doubt. They reveal that in the elementary schools during the 1970–1971 year seventeen were predominantly white and nine predominantly black.[2] There were four all-black elementary schools and one all-white. In eleven elementary schools the minority attendance was 5% or less of the whole and in three other schools the minority ratio was 10% or less of the entire school population.[3] On the secondary school level in 1970–1971, out of seventeen schools there was one all-black and two 99% black schools. There were six predominantly white schools in which the Negro ratio was less than 10% and two predominantly black schools with an attendance by white students of 6% or less. Two other secondary schools had a white ratio of 88% of the school population.

The current school year has produced inevitably (since the same plan is in effect) the same segregated picture. The projected attendance indicated that there are forty-one schools in which white students predominate. They have a total enrollment of 24,721 of whom 20,648 are white and 4,073 are black. In eighteen black schools in the system which have a total enrollment of 12,941 there are 360 white students (2.8%).

Following the decision of the Circuit Court of Appeals on July 1, 1971, I promptly ordered the Board to present a student and faculty assignment plan to this Court not later than July 21, 1971. I assigned a hearing on it for July 28th. Subsequently, upon oral request I extended to August 26th the time for presentation of such a plan. A hearing was held on that date.

To my amazement, the H.E.W. officials did not show up at the August 26, 1971, hearing. Without notice or excuse and at whose behest I do not know they did a disappearing act. The Board's behavior was no less contemptible. They passed the buck to the Superintendent of Schools, who, no doubt under instructions, presented a "plan" to the Court on behalf of the Board. What that individual did recommend does not surprise me in the light of his statement to this Court at the hearing held in Augusta on December 16, 1971. I inquired of him what plan he would suggest to the Court for the integration of the school system and his reply was, "Freedom of Choice." The plan presented by the School Superintendent at the "hearing" on August 26th last was to keep the school zones as they were except for two or three minor changes as to boundaries. One of them would have transferred about 100 white students to an all-black high school. This plan, so learned counsel for the Board informed me, made the system a unitary one, if it was not already such.

In *Acree v. County Board of Education of Richmond County*, 399 F. 2d 151, the Court of Appeals said: "We think it not necesary to do more than call the attention of the respondent here to the extremely important obligation which is once more placed on the Board to assume its full responsibility to do all that is reasonably feasible, and *now*, to bring an end to the dual system of white and Negro schools in Richmond County." The Richmond County Board and its Superintendent have abdicated their responsibility. They have been contemptuous and intransigent. They have chosen to ignore the Constitution and the courts. Apparently, they, together with a segment of the population of Richmond County, deem themselves above and beyond the law. The Fourteenth Amendment is not to apply to those who find it not to their liking.

At the conclusion of the August hearing I stated that this Court would employ its own experts at the Board's expense to do what it and the school officials refused to do in the way of devising a plan of desegregation. Five days later the Court obtained the services of two well-known educators, experienced in desegregation planning, Dr. J. Howard Munzer and Myrl G. Herman of the faculty of Rhode Island College.

Alternative plans were presented in the Munzer-Herman suggestions which were filed in this Court on September 27, 1971. The several Plans do not set out to establish any set numerical ratio of blacks to whites. However, through clustering and pairing it achieves a not dissimilar result.

Four elementary school plans are proposed. Plan I involves an unacceptable minimum amount of integration. Plan II involves more desegregation and Plan III (which I am adopting) even more. Plan IV would provide for maximum desegregation embraced and involved all but two elementary schools.

Two plans were presented for desegregation of the secondary schools. The plan is the same for the following schools: Josey, Murphey, Butler, Tutt, Langford, Richmond Academy and Laney. Under both Plan I and Plan II at the secondary level the schools mentioned would house the following grades. Josey—Grades 8–9; Murphey—Grade 10; Butler—Grades 11–12; Tutt—Grades 8–9; Langford—Grades 8–9; Richmond Academy—Grades 11–12; and Laney—Grade 10.

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[2] I have used an 85% ratio as illustrating a predominantly white or predominantly black school.

[3] For example, at Southside this year there are 680 students of whom eight are black.

In both Plan I and Plan II Tubman will house grade 8 and Johnson grade 9. However, under Plan I Tubman would have 511 students, 50% black, and Johnson would have 492 students, 45% black, whereas under Plan II Tubman has 461 students, 45% black, and Johnson has 442 students, 39% black. The basic difference in the two secondary school Plans is that Plan I does not involve Sandbar Ferry or Sego whereas under Plan II these two schools are paired in such as way that Sandbar Ferry is grade 8 and Sego is grade 9.

After the plans were filed, I asked the parties for their analysis, comments and criticisms. The plaintiffs complained, among other things, that presently all-black Laney and Josey were reduced in status from graduating high schools and that this was not done in the case of any predominantly white senior high school.

The Board's response was of expected quality and content. It raises every carping, contumacious objection conceivable. It is a mishmash and embranglement of letters from individual members of the Board, the Superintendent and principals opposing desegregation of the system. There are resolutions, letters, speeches, newspaper clippings, et cetera. The response contributes less than nothing to the difficult problem the Board faced but fled.

Meanwhile, in October, 1971, I permitted a group of white parents to intervene who are opposed to busing though they say they are not opposed to integration *per se*. I will add that if there is any way to dismantle a dual school system, and the Richmond County Board perpetuated one long after the 1954 decision in *Brown* v. *Board of Education*, 347 U.S. 483, I am not aware how the constitutional imperative can ever be achieved without substantially increasing the transportation of students.

At my suggestion, the Intervenors presented a plan for consideration. It is entitled "Quality Education Plan for the People of Richmond County, Georgia." The plan is nothing more than Freedom of Choice both for students and faculty. Since the Intervenors have a right of appeal from this Order the high court can enlighten us as to my evaluation of the "plan" proposed. Anyone who has even casually examined the decisions of the United States Supreme Court and of the Court of Appeals for this Circuit must know that choice plans are not constitutionally acceptable in a case such as this. In fact, the latter Court said exactly as much concerning the Richmond County system. See 399 F.2d 152.

On October 8, 1971, Dr. Munzer and Mr. Herman returned to Augusta to confer with the Court concerning the proposed desegregation plans. On the same day, with counsel and the Superintendent of Schools present, the plans were explained and discussed by the experts in the courtroom.

A full evidentiary hearing was held on December 16–17, 1971, for the purpose of considering a plan and for hearing evidence which the Intervenors desired to offer in opposition thereto. Witnesses for the Intervenors testified as to the effect of the Munzer-Herman plans on the R.O.T.C. program and on the exceptional children and model reading programs. The Director of Transportation stated that the Richmond County school system has 97 buses, including four assigned to special education. Eighty-three operate daily and there are 10 spare buses. In the last school year more than 12,000 students of a total of 34,619 were bused. It was estimated that under the proposed plan 27 new buses would be required at a cost of $12,400 each with an annual operational cost of $5,000 per bus.[4] Under Plan III, 5,681 additional elementary students would be transported. On the secondary level, Plan I contemplates bussing of 1,664 additional high school and junior high students. Plan II (secondary) calls for the transportation of 2,150 more students than are now being bussed. The estimates of increased transportation needs are possibly over-estimated by Dr. Munzer and Mr. Herman.

Counsel requested the Court to delay implementation of any plan pending discussions among the parties as to devising one (particularly on the secondary school level) which would be satisfactory. I granted a twenty-day extension for that purpose. That period has passed without any agreement being reached. Of course, in any event, the parties would not be permitted to stipulate away the mandate of the Constitution as to establishment of a unitary school system—one in which there are neither white nor black schools, just schools.

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[4] The same objection as to cost of increased transportation was made in the Savannah case. With staggered bus schedules, the increased needs have been handled (though with difficulty) by the existing equipment. The Chatham County system has approximately the same number of buses as Richmond County and about the same enrollment.

On July 1, 1971, the Fifth Circuit ordered that this Court require the Richmond County School Board "forthwith" to constitute and implement a constitutional student assignment plan. That means now, at once, without delay or interval. Because of the Board's willful failure to carry out its constitutional duty the mandate of the higher Court could not be complied with. To obviate the system being closed down indefinitely I permitted the carrying on of a dual system at the beginning of the year. It is still in effect.

Last June I handed down an Order which fully integrated the secondary school in the Chatham County system (with one necessary exception). I delayed action on the elementary level as the Board wished more time and had not been able to agree on a plan. My decision was appealed and the ruling reversed. This Court was instructed to "forthwith" desegregate the elementary as well as the secondary schools. This was done by the Court early in September, 1971. The situation in the Chatham County school case differs only from the Richmond County case in that the former involved the beginning of a school year and the latter the middle of such a year.

I realize that February is a poor time to revolutionize a school system. Significant educational problems are especially involved in massive changes in student populations of senior high schools during the academic year. Student schedules have already been planned for the year. Athletic programs have been developed and implemented. Seniors have spent one half of the year in present locations and have planned senior year activities, including ordering rings and yearbooks.

But a start must be and will be made. It will commence with certain elementary schools and will be effectuated in three phases. Phase One of Plan III proposed by the Court's experts will be implemented not later than February 15, 1972. The initial implementation will apply to two clusters of elementary schools represented by Zone A (Telfair, Evans, Milledge and Houghton) and by Zone D (White, Wilkerson Gardens and Bungalow Road elementary schools). I will comment subsequently on the closing of Houghton elementary.

Phase Two will be implemented on or before March 15, 1972. This Phase involves Zones E and I under Plan III. The elementary schools affected are Jenkins and Fleming which will be paired and Griggs and Southside which will likewise be paired on or before March 15th next.

Plan III as related to other elementary schools in the system will be implemented on September 1, 1972.

Below is reviewed the effect of Plan III on the elementary schools with special relation to pupil population and available classroom space.

PHASE ONE, PLAN III

ELEMENTARY SCHOOLS

Zone A

At the evidentiary hearing on December 16, 1971, objections were raised by the Intervenors to the closing of Houghton elementary as proposed in each of the four elementary plans involving Zone A. Opponents thereof did not believe that the three other elementary schools in the Zone (Evans, Telfair and Milledge) would be capable of housing both regular classes and the special education classes, particularly the special education pupils at Evans.

An analysis of pupil population and available space in Zone A is set out below. It indicates that there is adequate space at Telfair, Evans and Milledge for all pupils, including special education children.

	Pupils per plan	Grade	Classroom needs	Special education for 1971	Rooms needed plan and special education 1971	Rooms available	Rooms (plus or minus)
Telfair	431	6–7	17	31–2	19	19	0
Evans	433	4–5	17	72–11	28	23	–5
Milledge	658	1–3	26	0–0	26	31	+5
Total					73	73	

As appears in the above table, there is a shortage of classrooms at Evans Elementary should no special education children be moved from that school. There are at least two solutions to this problem. Solution one would require the movement of five special education classes from Evans to Milledge. Solution two would call for movement of the fourth grade from Evans to Milledge, that is to say, the fourth grade as presented in the Munzer-Herman Plan III.

With respect to solution one, no change from Plan III as originally presented is required other than the movement of the special education children as referred to above.

Under the second solution, the following attendance results would obtain:

Grades	White	Black
Telfair: Same as in original plan.		
Milledge:		
1	153	91
2	154	91
3	102	67
4	121	100
Subtotal	530	349
Total	879	
Percentage of blacks		38.5
Evans:		
Grade 5	126	86
Total	212	
Percentage of blacks		40.6

The Court leaves to the Board of Education (or Superintendent) the matter of determining whether Houghton Elementary should or should not be closed. If it is closed (and the evidence satisfies the Court that it is substandard) solution one which involves no change from the Plan as originally presented as related to standard classrooms and grades seems preferable. If it should be determined not to close Houghton and if it should be included in Zone A along with Telfair, Evans and Milledge, the following distribution of pupils is indicated by the Plan:

	Grade—										
	Milledge			Evans		Houghton			Telfair		
	1	2	Total	3	Total	4	5	Total	6	7	Total
White	153	154	307	102	102	121	126	247	124	121	245
Black	91	91	182	67	67	100	86	186	99	87	186
Total			489		169			433			431
Percentage of blacks		37.2		39.5			43.0			43.1	

	Telfair		Evans		Houghton		Milledge	
	Teachers	Children	Teachers	Children	Teachers	Children	Teachers	Children
Special education	2	14	6	6	0	0	0	0
Rooms available	19		23		22		31	
Rooms needed	19		18		17		20	

Note: Zone A presents no serious transportation problem. The distances are not great between the clustered schools.

Zone D

Under Plan III, Zone D, White, Wilkinson Gardens and Bungalow Road elementary schools are clustered. The Zone embraces a rather small geographical area and transportation distances are relatively short. There is no indication of space problems resulting from special education pupils.

The plan proposed for clustering of these three elementary schools in Zone D is adopted and will be implemented at the same time as Zone A, that is, on or before February 14, 1972. The pupil population in the four schools in Zone D as related to available space will be approximately as is shown in the original plan. It is illustrated in the table below:

	Pupils per plan	Grades	Class-room needs	Special education 1971: children/teachers	Rooms needed: plan and special education 1971	Rooms available	Rooms[1] (plus or minus)
White	785	5-6	31	0-1	[2] 31	31	0
Wilkinson Gardens	576	1-2	23	0-1	[2] 23	24	+1
Bungalow Road	579	3-4	23	16-1	24	29	+5
Total					78	84	

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[1] The last column shows the number of rooms in excess (+) if plan III is implemented and if the special education population as of the fall of 1971 does not move. The minus sign indicates room shortage.

[2] I assume that no classroom is needed since no grouping of special education children is indicated for these schools.

PHASE TWO, ELEMENTARY

Zone E

Phase Two of the implementation of Plan III is approved and adopted and will be implemented not later than March 15, 1972. This Phase relates to Zone E and Zone I.

Zone E is made up of Jenkins and Fleming elementary which will be paired. No problem exists in respect to special education pupils.

An analysis of pupil population and available pupil space in the pairing of Jenkins and Fleming appears below:

	Pupils per plan	Grade	Class-room needs	Special education for 1971 children/teachers	Rooms needed plan and special education 1971	Rooms available	Rooms (plus or minus)
Jenkins	332	1-3	13	15-2	15	15	0
Fleming	320	4-7	13	22-2	15	32	+17

Zone I

Zone I involves the pairing of Griggs and Southside elementary schools. The transportation problem presents greater distances than Zone A, D or E. Griggs and Southside are located approximately 4.2 miles straight line distance from each other. The analysis of pupil population and available space indicates the following with respect to this Zone:

	Pupils per plan	Grade	Class-room needs	Special education for 1971 children/teachers	Rooms needed plan and special education 1971	Rooms available	Rooms (plus or minus)
Griggs	463	5-6	18	17-2	20	21	−1
Southside	650	1-4	26	0-0	26	15	−11

As indicated by the above table, there is a shortage of eleven rooms at Southside. The school district data furnished by the Superintendent's office shows that Southside has fifteen rooms. This would give it a capacity of 375 pupils on the basis of 25 pupils per classroom. However, it is noted that at the present time the school has an enrollment of 675. It follows that there must be more than fifteen classrooms at Southside elementary. Plan III, Zone I, indicates a school population of 650 at Southside which is smaller than the present enrollment figure.

PHASE THREE, ELEMENTARY

The third and final phase of desegregation of the elementary schools in Richmond County involves Zones B, C, F, G, H and the Alternative Zone outlined on page 45 of the original plan of desegregation. Phase Three will be fully implemented on September 1, 1972. I have deferred the desegregation of the schools in these zones until the beginning of the next school year and in doing so have taken into consideration the fact that the transportation from a dual system to a unitary system will involve adjustments of a major character and that it is impractical and unwise to convert the system overnight at mid-year.

Zones B, C and F in Plan Three present no space or special education problems. An analysis of pupil population and space availability in regard to the four Zones in question shows as follows:

ZONE B

	Pupils per plan	Grade	Class-room needs	Special education 1971 children/teachers	Rooms needed: plan and special education 1971	Rooms available	Rooms (plus or minus)
Walker	932	5-7	38	43-3	41	43	+2
Lamar	411	1-3	16	10-1	17	23	+3
Monte Sano	544	3-4	22	0-0	22	23	+1
Lake F. Dr	267	1-2	11	0-0	11	13	+2
ZONE C							
Collins	951	5-7	38	19-2	40	41	+1
Bavvale	634	1-3	27	0-0	27	29	+2
Copeland	554	3-4	22	0-0	22	23	+1
ZONE F							
Craig	506	1-3	20	0-0	20	20	0
Hains	692	4-7	28	0-0	28	30	+2

Zone G

Zone G, Plan III, clusters Weed, Robinson and Merry elementary schools. An analysis of pupil population and available space in Zone G shows:

	Pupils per plan	Grade	Class-room needs	Special education 1971: children/teachers	Rooms needed: plan and special education 1971	Rooms available	Rooms (plus or minus)
Weed	143	5	6	0-0	6	12	+6
Robinson	294	6-7	18	40-4	22	16	−6
Merry	523	1-4	21	0-0	21	22	+1

No space or special education problems are involved in Zone G. A problem does exist which grows out of the need of six additional classrooms for special education pupils at Robinson. Acceptable solutions include the following: (1) Move 6 classes for special education to Weed Elementary School or (2) Move Grade 6 to Weed Elementary School. The Board of Education may adopt one or the other of these solutions.

Zone H

Zone H clusters Floyd, Garrett and National Hills elementary schools. Pupil population and available space analysis indicates the following as to Zone H:

	Pupils per plan	Grade	Class-room needs	Special education 1971: children/teachers	Rooms needed: plan and special education 1971	Rooms available	Rooms (plus or minus)
Floyd	309	6-7	12	0-0	12	23	+11
Garrett	466	3-5	19	20-3	22	20	−2
National Hills	305	1-2	12	0-0	12	14	+2

There is an indicated shortage of two classrooms at Garrett. Solutions for this problem include:

(1) The shifting of two special education classes to Floyd Elementary School or to National Hills.

(2) The shifting of Grade 5 from Garrett to Floyd Elementary School.

The Board of Education may adopt one or the other or these possible solutions.

ALTERNATIVE PLAN

(See pages 45 and 46 of original Munzer-Herman Plan)

The Alternative Plan includes Glenn Hills, Terrace Manor and Wheeless Road schools. The percentages of black pupils in Glenn Hills and Terrace Manor are high, averaging 48.1 per cent in the two schools. If these schools should be combined with Wheeless Road School which is predominantly white, the average percentage of black pupils would be 34.2. There is presently a total enrollment of 1,684 pupils in the three schools and a capacity of 1,650 according to school data. Consequently, there is a need for two additional classrooms which, logically, would accommodate a class at Glenn Hill school and a class at Wheeless Road school.

The result of combining Glenn Hills, Terrace Manor and Wheeless Road schools according to an analysis of pupil population and available space is shown below:

	Pupils per plan	Grade	Classroom needs	Special education 1971: children/teachers	Rooms needed: plan and special education 1971	Rooms available	Rooms (plus or minus)
Terrace Manor	508	1–2	20	0-1	20	21	+1
Glenn Hills	340	3-4	13	0-0	14	13	−1
Wheeless Road	836	4-7	33	0-1	33	32	−1

SECONDARY SCHOOLS

The desegregation of the secondary school system in Richmond County presents the same difficulties that is experienced in any large urban school district. The problems stem not only from vestiges of State-imposed segregation but from the practice since 1954 of school boards perpetuating dual systems by building schools designed to draw either from the white or the black school population, not from both. New schools have been erected with resulting preservation of a segregated system. By and large, the Negro schools lie in the heart of a densely populated black area of Augusta. White schools follow residential patterns. Lack of new and more strategically located middle grade schools compound the problem.

Irrespective of obstacles, the Fourteenth Amendment, as construed by federal courts, demands that the dual system now in existence be "wiped out root and branch" and "not tomorrow but now." However, you cannot in one day chop down and dig up the stump of a tree which rooted two centuries ago. Desegregation will be delayed on the secondary level until September 1, 1972.[5] It must be fully accomplished by that date and will be. As I stated on another occasion, it is phantasy approaching autism to think that the Constitution of the United States treats Augusta differently from other places where a dual system is the result of *de jure* school segregation. Richmond County is no different from 42 other school districts in the Southern District of Georgia in which desegregation is now an accomplished fact; admittedly with travail in certain cases.

Earlier in this Order, I referred to some of the difficulties of mid-year desegregation, particularly high schools. At this time and during the current school year it would be chaotic, if not impossible, to implement any major plan in respect to desegregation of secondary schools in Richmond County. More than that, there is at present no plan before the Court upon which it can act. Dr. Munzer and Mr. Herman presented two alternative plans for desegregation of second schools but at the hearing on December 16th last the possibility was raised that there might be discrimination against the plaintiffs in that Josey and Laney High Schools, which are all-black or practically so, would no longer be graduating schools whereas none of the predominantly white senior high schools have been thus treated in the plans. I have asked that the experts suggest alternative plans as to the secondary schools in the Richmond County system dealing with that problem.

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[5] Of course, in event of appeal and reversal of this Order the Board must be prepared to desegregate *all* schools during this year.

ORDER

(1) It is ordered and decreed that the desegregation of the elementary schools in the Richmond County system shall be in accordance with this Order. Defendants are directed promptly to take all necessary steps to the end that Plan III shall be implemented in the three phases described in this Order. No stay will be granted pending any appeal by any party from this Order.

(2) Responsibility as to implementation will be and is imposed upon the Board and the Superintendent of Schools and they are ordered to fully and timely implement Plan III for the elementary schools. If the Board does not act promptly in any case in which any discretionary authority is conferred upon it by this Order, the discretion in that respect will be exercised by the Superintendent and he is directed in any such instance to act and full responsibility is imposed upon him.

(3) Minor adjustments in the Plan may be made by defendants as to alternate assignments in the instance of special education classes provided that the desegregation levels outlined in the plans are maintained.

(4) The Superintendent of Schools shall file a report in writing with this Court on January 19, 1972, detailing what he been done by him and by the defendant Board since this Order was signed in preparing, planning and carrying out the implementation of Phase One and Phase Two of Plan III. Similar written reports shall be filed by him at the end of each successive three-day period after date until further order of this Court.

(5) Meanwhile, the Court will continue to consider and to endeavor to formulate and develop a feasible and sound plan of desegregation for the secondary schools in the system. At the earliest practicable time an Order in that respect will be entered. The secondary school plan approved and ordered by the Court will be implemented by defendants on September 1, 1972.

(6) The defendant Board and the Superintendent will file in this Court within 15 days a report showing the total enrollment during the present school year in every school in the system and the number of blacks and whites in each such school. The report will also include information as to racial composition of faculty and staff in the schools.

(7) It is further ordered that the Board shall immediately review existing staff and faculty racial ratios and shall forthwith comply, on a system-wide basis, with the provisions for "Desegregation of Faculty and Other Staff" as set forth in *Singleton* v. *Jackson Municipal Separate School District*, et al., 419 F.2d 1211 (5 Cir.). The School Board is directed to file semi-annual reports during each school year similar to those required in *United States* v. *Hinds County School Board* (5 Cir.), 433 F.2d 611, 618.

(8) The pending motions filed by the plaintiffs for appointment of a receiver for the Richmond County system and for adjudging the defendants in contempt will be held in abeyance, at least for the present.

(9) The evidence at the hearing on December 16, 1971, indicates that there are numerous instances where pupils are attending schools in zones outside their actual residence. The Board, Superintendent and school officials are ordered promptly to undertake corrective measures in respect to boundary observance. A report in that respect shall be furnished not later than February 1, 1972.

(10) The motion for award of attorney's fees to plaintiffs' counsel is granted. The amount of the fee will be settled on affidavits or, if necessary, following a hearing on the subject.

(11) The defendant Board will, as a part of the costs in the case, pay the compensation and expenses of Messrs. Munzer and Herman for their services to this Court and same are assessed as costs against defendants.

This 13th day of January, 1972.

ALEXANDER A. LAWRENCE,
Chief Judge, U.S. District Court,
Southern District of Georgia.

Mr. FLEMING. Without going into the order, I could give you firsthand information that this is the sole criteria for compliance with the *Swann* case. That is the balancing of children by race and to do this, you must use transportation.

I have heard information also about miles and that it really does not add to cost and does not add to mileage and the committee says apparently you haven't heard any factual information on this matter.

I happen to have a little information about that, that I would like to give to the committee. To implement the phases, we are doing this in phases, phase 1, 2, and 3. Phase I added mileage 67,000 miles. Phase 2—38,000 miles. Phase 3—380,100.

At additional cost to us of $787,500.

That is projected cost. This is money to be paid by the people of our county since of course there are no Federal funds available.

Now, of course, our plan as I stated to you——

Mr. Hungate. Pardon me. Would you favor making Federal funds available for that purpose?

Mr. Fleming. Certainly. Everybody is in favor of getting Federal money if they can. I think it would help to lighten the load on the local taxpayers.

Now, to show that our plan was a fair one and that it did represent quality education, we used the zoning type plan with freedom of choice.

I am sure the committee is aware where the majority rule prevailed. Where a black child if they are minority race in that school or majority in that school could transfer to a school where the race was in minority.

Every black child in Richmond County had a chance to transfer if their race was in minority in that particular school, or vice versa. So if there was any inferiority in the school, they had an opportunity to eliminate that.

Mr. Hungate. I am not sure I understand that correctly. Would you restate that? If they were in——

Mr. Fleming. If they were in the majority, they could transfer to a school where the race was in the minority. If we had a black school and the parent thought the child would be better off in a predominately white school, they could transfer to that school through our plan which we had in existence at that time.

The position of the court has reduced itself to a numbers game and I think I supported my contention with the documentary evidence. Busing does not contribute to education but, to the contrary, is a deterrent to quality education and will, in my opinion, reduce public education to a system for poor whites and poor blacks.

I can substantiate this—our area alone put in one phase of the plan where we had seven elementary schools involved.

Mr. Zelenko. I would like to clear that up. You are now in the process of implementing this most recent court ordered plan with respect to seven elementary schools?

Mr. Fleming. That is correct.

Mr. Zelenko. How many elementary schools are in your school system?

Mr. Fleming. We have approximately 26.

Mr. Zelenko. Thank you.

Mr. Fleming. We are putting it in phases. We have phase 1, phase 2, and phase 3.

Phase 1 we are putting in now. Phase 2 which involves four more schools by the 15th of March, and the others by September 1.

Mr. Zelenko. In other words, you are now complying with the court order and implementing it with respect to seven elementary schools?

Mr. Fleming. That is correct. In this area alone just for these small number of children in seven elementary schools, which average 400 per school, our last count was 750 of these children have entered freedom schools or private schools and of course you know and you probably heard testimony that every area which has been confronted with a busing plan, private schools spring up like grass.

In Nashville, Tenn., they have private schools. So this is just one of the reasons I think busing is going to deter quality education and reduce the quality of the public education because private schools are going to spring up.

Mr. Zelenko. Mr. Chairman, I have a copy of a newspaper article from the Atlanta Journal and Constitution, Sunday, February 20. I ask that it be placed in the record at this point.

Mr. Hungate. Without objection it is so ordered.

(The article referred to follows:)

[From Atlanta Journal and Constitution, Feb. 20, 1972]

Richmond Board Near Showdown—Bluffing Game With Judge Fuels Flame

(By Junie Brown)

Some members of the Augusta-Richmond County Board of Education are playing a "bluffing game" with a federal judge.

School board members in Augusta refused to submit a busing plan to U.S. District Court Judge Alexander Lawrence under orders to do so, and they have yet to vote to implement the busing plan ordered by Judge Lawrence which went into effect Monday.

Further, in the face of an injunction prohibiting resistance to the busing, some board members have helped and encouraged parents to organize the boycott which kept 60 percent of the children of the county home Monday.

"When David Smith is held in contempt of Judge Lawrence's court it's a bad thing, but it's worse when Judge Lawrence's court is held in contempt of the people of Richmond County," says School Board Member David Smith, one of the most outspoken against busing.

"I am in contempt of him and his court," he adds.

"You know the restraining order says that you can't meet on or near the school property for the purpose of violating the court order, and we did meet on or near the school property for purposes of violating the court order," he said.

"Someone asked me if I was ready to go to jail and I pulled out my toothbrush and said I'm ready to go to jail. So I've got my toothbrush, anytime," Smith said. "The toothbrush is the symbol of the resistance."

"Sunday afternoon I was so mad I would have poked him (Judge Lawrence) in the nose. It would have been worth $1,000 to me for just one good lick. It's like shadowboxing. You know you're right but there is nothing you can do about it," Smith continued.

The Augusta busing fight last week was played against a backdrop of white parents' seething frustration, state politics and public officials' grandstanding for the homefolks.

Richmond County School Board Chairman John Fleming, brother of former Richmond County State Rep. Bill Fleming (now a superior court judge), is an avowed Wallace supporter who even sounds a little like Wallace as he talks.

Fleming, himself an attorney, got the school board to hire his law partner Bobby Beazley as an associate attorney, and he and Beazley have directed the course of the Richmond County school desegregation case.

"All the ideas originated with Mr. Beazley and me," Fleming says.

The strategy Fleming used was one of inaction and delay. Everything that was done had to be ordered directly and specifically. And then it was appealed, stays were requested and every avenue exhausted for more time.

"We made the judge draw the order and we didn't intend to participate in it or acquiesce," Fleming said. "He's the star and we're going to let him star."

As an example of his philosophy in action, students in the seven Richmond County elementary schools which were clustered under the court order are still segregated by race in the classrooms.

Black children eat lunch at one time, whites at another. Black children have recess at one time and whites at another.

"We gave each school the right ratio, but we picked up the classes and their teachers and just moved them to another classroom, intact. We've done everything the judge says do but he sure is going to have to tell us before we do it," said Smith, the most flamboyant of the school board members.

"If we acquiesce or approve the busing, we might be stuck with it from now on," Fleming said. He has appealed the case and fears the school boards, voting to implement the busing order could prejudice the case.

Fleming has filed motions for delay, knowing delays are unheard of in school desegregation cases which the U.S. Supreme Court has ordered implemented "immediately" and "At once."

He has asked to have the restraining order dissolved, and have even appealed to President Nixon and the new Supreme Court Justice Lewis Powell to have the case delayed.

Fleming's wife is an active member of the advisory committee of Citizens for Neighborhood Schools (CNS), the white antibusing group which organized the boycott last week in Augusta. Fleming says he has contributed money to the group and met with their steering committee.

"I support any resistance anybody wants to offer. I've encouraged them (the parents) in offering whatever resistance they felt was necessary," the school board chairman said.

The Flemings kept their own daughter out of school on Monday.

"I don't worry about this business of going to jail. The judge has got all he can worry about now without sending anybody to jail."

Smith, too, seems unconcerned over the possibility of jail.

"Yes, I've given money and signed one of their cards (CNS membership cards). The Steering Committee (madeup of about 10 CNS leaders) meets every Monday and I make most of the meetings.

"It was designed so me or John Fleming one would always be there. We didn't want us going one way and them going another," he explains.

Even the sheriff and chief of police are CNS members and observed the boycott, according to Smith, who said he authored a CNS resolution against busing which the Richmond County commission and Augusta city council both approved.

"All the board members and everybody who kept their children out of school violated the restraining order," Smith said. "That restraining order included everybody in the county. It completely wiped out the First Amendment.

"Who would he send to jail? Nineteen thousand two hundred and nine children is a lot of mamas and daddys. It'd keep his people busy just carrying us back and forth to jail.

"If I were sent to jail there are some women here who would tear that jail down. I'd be a martyr. A large manufacturing concern has already offered to pay the $1,000 fine if I'm arrested and individual people have volunteered money to help .

"I support CNS in assembling on school property in violation of the restraining order and I also kept my children out of school yesterday in violation, but thousands of others did too," Smith added.

"I wear two hats—one on the school board which says you've got to obey the court order and the other that of a parent who said there ain't no way you're going to move those desks," Smith concluded.

CNS is loaded with members from the school system, mostly principals and teachers. One principal announced over the school loud speaker that children should not come to school on the day of the boycott.

Most of the other school board members, though not so outspoken, echo the sentiments expressed by Smith and Chairman Fleming. Crucial board votes usually go 13–3 or 12–4 in Fleming's favor.

"If John (Fleming) could get arrested, he could get elected to Congress," opines one board member. Both Fleming and Smith deny any political motivation in their defiance.

Fleming adds that he has "never openly defied" the court order and that "we (the school board members) didn't organize or lead or discourage" the boycott.

"The people who have the least to lose are the ones who have had the most to say," said Travis Barnes, one of the schoolboard's dissenting minority.

"Some of the board members have publicly announced that they are in defiance of the court order and have called the judge certain names," Barnes said.

The school board has never voted to implement Judge Lawrence's busing plan, according to Smith because "if I voted I'd vote against it and then we'd really be in trouble. He'd put this system into receivership and turn it over to Jack Ruffin (plaintiff's attorney). That Judge Lawrence doesn't like us at all and in a second he'd turn this system over to Jack Ruffin to run.

"It would make me feel a whole lot better to vote 'no,' but I'd rather be around to make some decisions."

The school board's refusal to act has left the responsibility for implementing the order up to School Supt. Roy E. Rollings, who must, under the court order, act when the board fails to.

Supt. Rollins, an admitted segregationist, has taken most of the blame from both the liberals and the conservatives for the busing situation.

A black movement "Operation mountaintop" to have Rollins removed has been organized in Augusta and, a harassment campaign to call him regularly has been in effect.

"He was treated perfectly ridiculously by the federal judge," said CNS steering Committee member Mrs. Freddie Childress. "The judge turned his chair completely around rather than look at him."

Rollins, the 64-year-old former football coach who has been in charge of the Richmond County system for 21 years, is planning to retire next year.

"There will be no more education in Richmond County the rest of this year," he says.

The Augusta busing order, which came down from Judge Lawrence on Jan. 13, stated the "Richmond County Board of Education and its superintendent have abdicated their responsibility.

"They have been contemptuous and intransigent. They have chosen to ignore the Constitution and the courts. Apparently, they, together with a segment of the population of Richmond County, deem themselves above and beyond the law."

Under the court order, schools which are in the same general vicinity are coordinated so that each school receives certain grades. For example, White, Wilkinson Gardens and Bungalow Road schools—all in the same area—are clustered. Wilkinson Gardens took the first and second grades from all three schools. Bungalow Road got the third and fourth grades, and White (the formerly black school) got the fifth and sixth grades.

A total of 5,681 elementary children (out of a total school system of 36,000) must be bused under the elementary plan. The greatest distance any child must travel is about six miles.

There is no high school desegregation plan yet.

Richmond County has 97 buses, including four assigned to special education and 10 spare buses. More than 12,000 students ride these buses to school anyway.

The school system has estimated it would take 27 new buses at a cost of $12,400 each and with an annual operating cost of $5,000 per bus to implement busing plans for both groups.

Because some of the buses have to make double routes under the busing plan, school opening times in certain schools have been moved up.

Approximately 12,200 of the county's 36,000 school children are Negro.

Mr. Zelenko. The article has something to say about the plan of implementation to which you are referring. I am going to read a part and ask you to comment on it.

It says:

> As an example of his—

That is you, Mr. Fleming—

> philosophy in action, students in the seven Richmond County elementary schools which were clustered under the court order are still segregated by race in the classrooms. Black children eat lunch at one time, whites at another. Black children have recess at one time and whites at another.

Let me ask you, is that statement correct?

Mr. Fleming. That statement is incorrect, absolutely incorrect in part only. I would explain this and I think there is sound basis for it.

When we transferred students this late in the year, as you know, it would be impossible for every elementary schoolteacher to be at the same station in a program in all of the schools.

One teacher might be at one phase and another teacher at another, and some move more rapidly than others. It has nothing to do with race or with schools. It has more to do with teachers and we thought and felt like that in order to salvage this year without the child losing the entire year of being mixed completely at this point, it would be better to transfer teacher and grade into a school because it would only have 3 more months of school to go and that teacher could carry class for the remainder of the year.

Mr. ZELENKO. Excuse me. Are you saying you transferred classes intact?

Mr. FLEMING. That is correct. But the lunch business is incorrect and the other business, everything else stated there is inaccurate.

Mr. ZELENKO. Mr. Chairman, I think the subcommittee should know that there are a number of decisions rendered by Federal courts which hold that moving classes intact as a means of implementing a school desegregation order does not satisfy that order.

The most recent decision was an Arkansas decision rendered in *Cato* v. *Parham*, January 29, 1971. I ask permission to place a summary of that decision in the record.

Mr. HUNGATE. Without objection it is so ordered.

(The summary referred to follows:)

EXCERPT FROM RACE RELATIONS LAW SURVEY, VANDERBILT UNIVERSITY SCHOOL OF LAW—VOL. 3, NO. 1, MAY 1971, PAGE 18

After a federal district court had ordered, on Sept. 15, 1970, that the three elementary schools in the *Dollarway School District* must be "operating on an integrated basis" by October 5 (see 2 Race Rel. L. Survey 179), the school board restructured the schools by the pairing method; but since many of the classes were moved intact from one school to another, a number of classes remained all or nearly all Negro or white in their student composition. On plaintiffs' motion for further relief, the court, on Jan. 29, 1971, ordered that the system of segregated classes be abolished within ten days. In response to the board's request that reassignment of students not be required during the school term, Judge Henley stated: "It is impossible for this Court to escape the conclusion that the Board knew that its plan for the elementary students was unconstitutional when the plan was adopted. . . . And delay in enforcement [of court orders] cannot be justified on the basis of an immediate and temporary adverse effect of enforcement on the school program where that effect would have been avoided entirely had the affected school district obeyed the orders of the court in the first place." The new decree required that the classes be reorganized so that none will be identifiable as intended primarily for Negro or for white students. Defendants' request for a stay of enforcement pending appeal was denied. *Cato* v. *Parham*, —— F. Supp. —— (E.D. Ark., Jan. 29, 1971). On March 18, the school board announced that it had withdrawn its appeal of the district court's September, 1970, order, inasmuch as the purpose of the appeal had been to obtain a ruling by the appellate court on the validity of Judge Henley's order before it went into effect. That purpose had been frustrated when the Court of Appeals had rejected defendants' request for an expedited hearing of the appeal.

Mr. ZELENKO. There is one other case of which the subcommittee should take note. This is a decision which precedes the *Brown* decision, a decision of the Supreme Court in *MacLaurin* v. *Oklahoma State Regents*, a 1950 decision of the Supreme Court.

There a black student admitted to Oklahoma University was required to sit apart at a designated desk in the library, not permitted to use a desk in the regular reading room and to sit at a designated lunch table, and to eat at different times from other students.

Four years before *Brown* the Supreme Court held that this was in violation of the equal protection clause of the 14th amendment. I think that too should be kept in mind if "good-faith" implementation of the court order is believed to involve merely moving classes intact from one school to another.

Mr. **Fleming.** You have to understand, sir, this was a temporary measure but I would like to call attention, our primary duty as Board of Education members is to insure education. We are not in busing and racial balance business and we are not in the business of the court, and I don't think the courts have always considered this matter.

If they had, they would not require us to put the plan in this late in the year.

Mr. **Hungate.** What was the date of the order?

Mr. **Fleming.** January 13, to begin February 15 with phase 1.

Mr. **Hungate.** So your point would be the order was entered in the middle of the current school year?

Mr. **Fleming.** That is correct; and the courts have shown no regard when they wrote these decisions—and I am sure you would agree with that—so therefore we are in violation technically and perhaps there is some remedy to plaintiffs in that.

To get on as to why I support the amendment——

Mr. **Zelenko.** How many students are in the Richmond County school system?

Mr. **Fleming.** About 33,500.

Mr. **Zelenko.** What proportion of that enrollment is black?

Mr. **Fleming.** About 40 percent, the same as our population.

Now to give you further information as to why the only remedy is constitutional amendment remedy, I think we have to once again turn to the facts and see what courts have done to us.

They have not only violated all of the other matters I mentioned to you where you talk about the *Civil Rights* case and I would like to bring this to the committee's attention when you say the *Civil Rights* case didn't apply in this case, well, it didn't apply in the school cases. That isn't true because using a definition of desegregation and all of the other things you talked about this morning. You take one of these school cases, we read one the other day and they cited as authority for what they were doing the 1964 Civil Rights Act 22 times, and when they get to the point where they comply with the section about rules and definitions of desegregation and racial balance, they seem to disregard it.

Mr. **Hungate.** Do you have the citation of that case, sir?

Mr. **Fleming.** I do not, sir, but I will furnish that to you, sir. They use the Civil Rights Act as authority all the way through the school cases and when they get to the one section they don't want to have to deal with, they will bypass it and move on to something else.

Mr. **Hungate.** If you would, please furnish that to us within 2 weeks.

Mr. **Fleming.** I will be happy to do that. Also let's take the *Swann* case and let's see if they followed what they write.

I think we all have agreed this morning that the *Swann* case says in one area, and the President says this and you gentlemen have agreed that it says this, that a board of education should be afforded opportunity to review a plan to determine whether or not the transportation system required would compare favorably with the transportation system that we are being required to implement also whether or not transportation system would affect the health and welfare of the children and whether or not it would impinge on educational processes.

I call your attention to our judge in our district. He drew a plan for elementary schools alone. This secondary plan has not been presented. This is an incomplete plan. Therefore we don't have a plan to consider. So we have not been afforded an evidentiary hearing to present anything.

The judge hired the experts. The judge drew the plan, the judge put the plan into effect. And he is not going to complete the plan and he acknowledges that in his order that you will have as part of the evidence which—I said—was the order of January 13.

Therefore, they are not following what they said they were doing in the *Swann* case even.

And to further show you that they have no regard for our position in the case or the position of the defendants in the cases we filed a motion to stay—with him—and he denied it.

We filed a motion to stay with the Fifth Circuit and cited these matters to him but we have not been afforded an opportunity to review the case.

(Subsequently, the following information was filed:)

Board of Education,
Augusta, Ga., March 24, 1972.

Mr. Benjamin L. Zelenko,
General Counsel, U.S. House of Representatives, Committee on the Judiciary, Washington, D.C.

Dear Mr. Zelenko: I am returning herewith edited transcript of my testimony before the Sub-committee on March 3, 1972.

As per the request of Mr. Hungate relative to those cases which cite the Civil Rights Act as authority for their decisions, I submit the following cases:

> United States of America, Appellant v. Greenwood Municipal Separate School District, et al, Appellees v. United States of America, Appellee. Decided February 4, 1969.
> 406 F 2d 1086
>
> Swann v. Charlotte-Mecklenburg Board of Education, decided April 20, 971
> 01 S.Ct. 1267
>
> Rebecca E. Henry, et al., Appellants v. The Clarksdale Municipal Separate School District, et al., Appellees. United States Court of Appeals, Fifth Circuit. March 6, 1969
> 409 Fed 2nd Page 682

I was in error as to the number of times the Civil Rights Act was cited as a basis for authority in these cases in that I stated it was cited 22 times in one case, when I should have stated it was cited 22 times in two cases.

This is in support of my contention that the Federal Courts mold the laws to suit their own fancy, because they are totally disregarding the definition of desegregation as found in Section 401(B) and Section 407(A)(2) of the 1964 Civil Rights Act. I would, also, like to clear up the portion of my testimony which was apparently misunderstood by you and perhaps by the committee which appears on pages 584–585 of my testimony. If you will refer thereto, you were questioning our transferring classes as a body together with a particular instructor in that class, not for the purpose of perpetuating segregation, but for the purpose of preserving education.

What you fail to understand, and perhaps the committee also failed to understand, was that these classes which were transferred were already integrated classes; they were not completely segregated, but integrated as to both faculty and students. In fact, every school that is involved in the present plan of busing for the purpose of racial balance, with the exception of one school, are integrated schools. You and the Committee, also, may have misunderstood that this was strictly a temporary situation until the expiration of the current school year.

I would appreciate your calling these matters to the attention of the committee.

Thanking you, I am,
Yours very truly,

JOHN FLEMING.

Mr. HUNGATE. Mr. Fleming, you are an attorney and the committee members are attorneys. I suppose we have all had an experience where we thought a judge ordered what he shouldn't.

As an attorney, you certainly recognize the legal obligation to comply?

Mr. FLEMING. We recognize that obligation, yes, sir. We are doing that. We are not saying we shouldn't comply. We are simply saying we were not afforded the remedies available to us under the *Swann* case and therefore that is denial of equal protection for us. This equal protection is a two-way street. It isn't a one-way street at all.

I have listened this morning to one-way street. It is just as unfair to deny us equal protection as it is the defendants but unfortunately the courts don't do that. They don't even require them to file briefs. They sort of bypass it in various ways and I won't go into detail about that.

Mr. HUNGATE. Mr. Fleming, can you give me a citation where the court did not require the losing party to file briefs?

Mr. FLEMING. In our case, which is pending before Fifth Circuit Court of Appeals in New Orleans, they filed notice of appeal and did not file a brief to support their notice of appeal.

Mr. HUNGATE. Has the case been finally determined?

Mr. FLEMING. No, sir, it is pending now in New Orleans.

Mr. ZELENKO. When this district court order came down, did you make public statements to the community urging compliance with the order?

Mr. FLEMING. No, sir, I did not.

Mr. ZELENKO. Did you speak against the order?

Mr. FLEMING. I have verbally spoken against the basis of the order, not particularly against the order, but the concept of the order, yes, sir. I am not in favor of it.

Mr. ZELENKO. Did other members of the school board counsel compliance?

Mr. FLEMING. No, sir.

Mr. ZELENKO. They don't counsel obedience to the law?

Mr. FLEMING. We don't counsel disobedience either.

Mr. ZELENKO. Did they urge citizens to follow the order until the appeal was heard?

Mr. FLEMING. No, sir. We did not discourage it nor encourage it.

Mr. ZELENKO. Let me read a quote from the press report already placed in the record that attributes a quote to you, sir. I don't know whether it is accurate: "We made the judge draw the order and we didn't intend to participate in it or acquiesce. He's the star and we're going to let him star."

Mr. FLEMING. That is correct. That is absolutely correct.

Now to give you further information as to why I think this: Not only did the judge violate the equal-protection rights of the defendants in the case by not presenting a complete plan for us to review, but he went so far as to issue restraining order and his own motion denying the right of peaceable assembly, denying the right of protest, denying the right of interference of any kind at any time, and we said this was in violation of our right under the first amendment and we filed a motion to resolve this injunction with the Fifth Circuit and they sent it back and denied the motion, and the judge reviewed it at end of 10 days.

These are clear examples as to why you can't rely on the courts.

Mr. **Polk.** Mr. Fleming, did you say your statement contains a copy of this court order that you were referring to?

Mr. **Fleming.** No, sir.

Mr. **Polk.** It is a different court order?

Mr. **Fleming.** It is a separate order; yes, sir.

Mr. **Polk.** With respect to the court order that is contained in your statement, are you contending that the judge simply issued this out of thin air with no reason for issuing the antibusing order?

Mr. **Fleming.** I know the one you are referring to. Yes, I think it was out of thin air because we have always advocated nonviolence and peacefulness.

Mr. **Polk.** How would you classify advocating a school boycott?

Mr. **Fleming.** Who advocated that?

Mr. **Polk.** I didn't say anyone did. How would you classify that, as complying with the law or as protesting?

Mr. **Fleming.** I would say there is a right to protest. I think it is guaranteed under the first amendment.

Mr. **Polk.** Advocating a school boycott would be protected constitutionally. You don't feel it would be an act of civil disobedience?

Mr. **Fleming.** No, sir.

Mr. **Polk.** Thank you.

Mr. **Hungate.** Mr. Jacobs.

Mr. **Jacobs.** Mr. Fleming, first of all, I know you undoubtedly take pride as we do in our colleague, Mr. Stephens, whom so many people in Congress respect, even though they may disagree with him from time to time. I congratulate you on picking such a good representative; I am sure you agree with that.

Mr. **Fleming.** Yes, sir.

Mr. **Jacobs.** On this question of boycott, as a technical matter, does that involve truancy?

Mr. **Fleming.** Yes, sir, it would involve truancy. Unexcused absences would involve truancy.

Mr. **Jacobs.** I wonder if that is entirely a lawful thing or a first amendment protected expression?

Mr. **Fleming.** Well, maybe technically insofar as the truancy is concerned it probably would not be. I think it would be an unexcused absence if it was shown that the children stayed out of school as a matter of protest.

Mr. **Jacobs.** I understand. As a former police officer myself, I know sometimes, when you can't strike, you get a sore throat.

I don't think we are going to keep a free country if people don't have the right to express their ideas. But of course the old story about the fire in the theater or the riot is right at the tip of my nose. I was wondering whether it was entirely accurate to characterize this restraining order as a violation of First Amendment rights in view of the fact that, as you testified, you have spoken out freely against the order on numerous occasions. I take it that does not violate the restraining order.

Mr. Fleming. I have not, as I said, specifically spoken against the order. I have encouraged people to offer whatever resistance they felt was within keeping of their own consciousness and in the best interest of their children, and that is the extent of what I have advocated. I have advocated personally no boycott nor has the school board advocated the boycott.

Mr. Jacobs. I appreciate that. I was trying to get at the question whether the court restrained freedom of speech.

Mr. Fleming. They did. They not only restrained the board of education but everybody in the county from doing anything. You couldn't talk about it and you could not advocate any resistance of any kind. It was a blanket order, the most far-reaching thing you ever read. I have a copy of it here.

Mr. Jacobs. Did it restrain public speaking? If it did, that will——

Mr. Fleming. I don't recall exactly whether it restrained public speaking or not. It was a rather lengthy order. I have a copy of it which is about three pages long.

Mr. Jacobs. Who is a holy cow that can't be criticized? I am not talking about inciting riots but I am talking about issuing public statements. If it restrains that, then I will throw in with you and say it was in violation of the first amendment but I would like to know whether the court has issued orders saying that to speak about it and discuss it and criticize it has been restrained?

Mr. Fleming. Well, I don't recall about freedom of speech whether or not it was in the order. I would have to review it.

Mr. Jacobs. Will you check up on that and drop us a line?

One other question. Among these proposed constitutional amendments, some say that no student shall be assigned to a school on account of race. Others say that no student shall be compelled to attend a public school other than the one nearest his residence.

Which one would you consider the most precise in achieving the goal of preventing unnecessary transportation?

Mr. Fleming. I think the only one that you could rely on would be the so-called Lent amendment or the House Joint Resolution 620. The other one you mentioned would just be wiped out and would not serve any good purpose. It says you can't compel but at the same time you would not guarantee to all parties equal protection under that if you didn't compel them but you assigned them and they went.

So I can't make a legal distinction at this point between the two but I would have to go along with the House Joint Resolution 620.

Mr. Jacobs. Won't the difference be that you might have a little overlap into the question of drawing district lines into the question of compact district lines?

Mr. Fleming. I don't think so. I would like to comment on that. The basis for boards of education getting in this business is education. You will never draw an amendment—nor any other type of legislation—that would not in some way probably be litigated at one time or another. The remedy is under the 14th amendment; if some child was being denied quality education because some line was drawn by our school board, they would have a right under the 14th amendment because they would be denied due process or equal protection of the law.

But at the same time, if schools are providing quality education, I don't see there is any basis for any complaint.

Mr. JACOBS. If there is a conflict between two constitutional provisions, wouldn't it be more precise to follow precedent?

Mr. FLEMING. Yes, sir.

Mr. JACOBS. So that would take care of that, if the amendment stated specifically that school boundaries would be drawn in as compact a manner as practical and that no student shall against his will be assigned to any school outside of the school zone in which he resides on account of race, color, or creed; would that be the type you have in mind?

Mr. FLEMING. I would agree with that up to the point if the child was not being denied quality education, if he were denied quality education, you fall back in the 14th amendment situation and not in the busing or assignment situation.

Mr. JACOBS. But this would be more specific than provisions under 14th amendment.

Mr. FLEMING. It deals with assignment of pupils and not with education.

Mr. JACOBS. What I mean is that this is specific language—that is the name of the game.

Mr. FLEMING. It is specific about the assignment. It isn't specific about the education. It doesn't say anything about education as far as I can recall.

Mr. JACOBS. Nonetheless, it would be based on the Constitution if it were a provision of the Constitution.

Mr. FLEMING. No, sir, it could not be violated unless it were interfering with due process clause of the 14th amendment. I think you would still have remedy under the 14th amendment.

Mr. JACOBS. But is a more general rather than a specific provision desirable with respect to this subject?

Mr. FLEMING. There again you get back to legislation or amendments. I think you always have some form of litigation. You can't have any more than you have on 14th amendment.

Mr. JACOBS. On balance it strikes me there is more danger of ambiguity with using this word "assignment" right across the board, including the drawing of district lines, rather than coming down and honing it. As my father would say, sandpapering it down a little bit more and saying, "They shall not be taken far away from their neighborhood." "No one will be taken away from the neighborhood school."

Mr. FLEMING. I would simply suggest you do that through legislation and require the President to formulate himself a committee to be a watchdog like HEW to see that every child was afforded quality education. That would remedy what you are talking about.

As to the problem of constitutionality, the 14th amendment isn't specific. You can put anything under that.

Mr. JACOBS. I appreciate that, but if you are specific about taking pupils out of reasonably drawn school zones, you would do the job.

Mr. FLEMING. I would have to agree with that, yes, sir.

Mr. **Zelenko.** Mr. Fleming, you said in your testimony today that you have given up on Federal courts, at least in your area of the country. I don't know whether that conclusion applies to the fifth circuit or not, but you are frustrated and you haven't received what you believe to be justice.

Mr. Fleming. That is correct.

Mr. **Zelenko.** The constitutional amendment, if it became a part of the Constitution, would ultimately be involved in litigation, and the very same courts would have to pass on it. How can that consequence be avoided?

Mr. **Fleming.** It would be avoided because you as Congressmen, not you as an attorney but you as Congressmen and lawmakers of the country, stand up and let the Federal courts know that they aren't going to tolerate this type of situation any longer, that they are going to make the laws and courts are going to interpret the laws, the courts would proceed a little more cautiously. The courts have reduced the Congress to a matter of insignificance in the area of civil rights. They are making laws. You shouldn't kid yourselves about making the laws because you are not doing it any longer.

This is just part of the problem. Education is just one part of this problem. The problem is a Federal judicial system. If you don't have some reform in the Federal judicial system, you are going to always have this problem. If the Federal judges were made responsive to the people either through election or through review by the Senate or Congress in some way, then this would eliminate some of the things that you are talking about happening.

Mr. **Hungate.** Mr. Fleming, as an attorney, of course, you are acquainted with the fact that Federal judges are appointed for life and it is not possible to reduce their pensions or their salaries while in office? You know that?

Mr. **Fleming.** Yes, sir.

Mr. **Hungate.** Would it be fair to say what Mr. Dooley said once, that he didn't know whether the Constitution followed the flag but the Supreme Court followed election returns?

Do you feel part of the problem is that the Supreme Court doesn't follow the election returns any more?

Mr. **Fleming.** I don't think it follows anything, sir. It doesn't follow the law. We all agree on one thing: It doesn't follow the law.

Mr. **Hungate.** Any further questions? If not, I want to thank you gentlemen for your patience in waiting to be called for your contribution to this discussion.

We have some statements here to be inserted in the record.

The statement of Hon. Olin E. Teague, U.S. Representative in Con-Congress from Texas.

The statement of Hon. Dawson Mathis, Representative in Congress from the State of Georgia.

The statement of New York State Council of Churches, Syracuse, N.Y.

Unless there is objection, they will be entered in the record at this point.

(The statements referred to follow:)

STATEMENT OF HON. OLIN E. TEAGUE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman and Members of the Committee: For the record, let me say that my name is Olin E. Teague, and I represent the Sixth District of Texas in the Congress. I have had the privilege of representing the Sixth District of Texas for the past twenty-six years.

I want to express my appreciation to you, Mr. Chairman, and to the Committee, for permitting me to appear here today to share with you some of the thoughts I have, and some of the thoughts my constituents have, about compulsory massive busing of school children.

It has been my observation over the years, Mr. Chairman, that some of the most terrible injustices and some of the most revolting inhumanities in our history have been perpetrated by simple men of good will who held blindly and rigidly to a dogmatic and theoretic principle while ignoring the practical damage their rigidity was causing in terms of human values. The wars of religion, stretching over many centuries of human misery, provide innumerable examples of this blind inhumanity of man to man.

During the last century, in the late 1840's, when the potato famine struck Ireland, the British Government refused to permit food to be sent across the Irish Channel because this would violate the economic principle of *laissez-faire*. As a result, while the economists talked philosophy, between three and four million Irishmen starved to death.

I think the same can be said about the determination of some persons to force massive school busing down the throats of America, whether our citizens want it or not.

The whole idea of massive busing was conceived in a wave of idealism by a cadre of nice-thinking liberals who didn't know what in the devil they were talking about. The entire concept came into being when certain reports on school conditions seemed to indicate that black youngsters performed, or "achieved", more satisfactorily when they went to school with white youngsters than they did when they went to all-black schools. The nice-thinking liberals, therefore, got the bright idea of transporting youngsters all the way across town—or all the way across the county—or, as is true in my district, all the way across several counties—to achieve racial balance. There is no indication that the massive busing is having the slightest effect on the grades of the achievements of the youngsters, black or white. If anything, for reasons we shall discuss later, the bused children, deprived of their security, do worse than they did before.

It is also apparent that the program was decided upon hastily, without a proper analysis of the factual data. It seems that no one in authority realized that, by and large, the black youngsters who—in many parts of America, in the North *and* in the South— attended integrated schools, came from middle class and upper class negro families, professional and business type families, where literacy and concern for scholastic achievement are a way of life and have been for several generations. People like this, no matter what their color, almost invariably do better in school than do those who come from broken homes and low income families, where literacy, if it exists at all, is not broad or deep or even considered much of a virtue.

In my opinion, the decision to provide compulsory massive busing was made without any proper scholarly evaluation of the population "mix" upon which the various original reports were based.

The proponents of massive busing say that racial segregation is psychologically destructive. I agree. Ghettos are dreadful places and always have been over the centuries, no matter what race or what religion or what nationality was forced to crouch and crawl—by law or by economic circumstances—within the confines of a ruined slum.

But I also say that enforced, artificial integration is *also* psychologically destructive. What kind of a psychological effect do you think it has on black youngsters to send them chasing across several counties after white children just so they can go to school with them? The whole proposal is scandalous. It reinforces the poisonous myth that white children are inherently better and smarter than black children and that black children are automatically improved simply by being given the privilege of being with their white contemporaries!

Mr. Chairman, I am sorry to have to say this, but that is one of the most viciously racist proposals I have ever heard, and I say it has absolutely no place in the comparative racial enlightenment of twentieth century America. The Congress, in all good conscience, for its own good name and for the good of the nation, must reject such blatant and dangerous racism. I do not say that the sponsors of massive school busing were conscious racists. Far from it. But I do say the program they have embraced has been, unconsciously, I am sure, wickedly racist.

As usual, nice thinking but hazy-thinking people have picked up the wrong end of the stick. They are looking at the educational problem from entirely the wrong vantage point. They are so entranced with the prospect of achieving even a phony kind of integration that they lost sight of the principal and only objective we have in this case, that of improving the level of education for all school children—of making the standards of education uniform so that no one will get a better education solely because he is white and no one will get an inferior education solely because he is black.

If half the money that is being spent today for compulsory busing were spent for improving the quality and the standards of education in inferior schools, the problem could be solved efficiently and happily, without pain and without resistance and resentment.

The fact of the matter is that the compulsory busing program was a theoretic dream and it has been translated into a practical nightmare. The best thing we do for the children and for ourselves is to admit that we, as a nation, have made a terrible mistake and abandon the whole idea for more practical and positive ways of improving the standards of education *everywhere* in the nation.

The compulsory busing problem is not achieving anything significant in the way of educational progress. But whom is it hurting? It is hurting the youngsters, black and white and yellow and brown, whom it was designed to help.

In the Sixth District of Texas, Mr. Chairman,—and I am certain my district is not unique in the nation—many youngsters who used to go to school in their own neighborhood are now being transported an hour or more in each direction, solely to ge an acceptable racial mix in the schools. That's two unnecessary, useless hours out of their lives, every school day of the year! This is time that could be spent studying, or reading, or researching, or even playing healthy games. Instead it must be spent on a dreary bus ride, where the big thrill of the journey is waving to the busload of youngsters being transported all the way back in the opposite direction.

Quite honestly, I don't know anyone *actually involved in the busing program* who approves of it. Most of those involved, detest it. The only ones who approve seem to be the theoretic planners who don't ride the buses themselves and whose children don't ride them. And, of course, I am talking about all races, not just the white race. The Negro, if he is involved personally in the program, hates it as much as does the Caucasian. We have had a very interesting demonstration in Washington, D.C. during the last month of black people who were furious at what the busing program was doing to their children and to their family life.

In San Francisco, an attempt to bus Chinese children away from their own fine public school and scatter them around the city turned out to be an embarrassing fiasco. The Chinese children just refused to go; the parents went on strike. The authorities barely saved face with an embarrassing compromise. Like all others, the Chinese citizens and their children saw what compulsory busing was going to do to their home life and their family solidarity, and they would have nothing to do with it.

I am a passionate believer in the integrity of the home—in the importance of the home in shaping the character of the child and the adult that is to be. I am also a passionate believer in the importance of *roots*. Humans need roots just as much as trees need them. Roots involve not only one family's but one's neighborhood and one's local school. Most Americans grow up in the certain and sure knowledge that their closest friends are those with whom they grew up, those with whom they went to school. These are the people they can call upon in an emergency. The people they turn to instinctively in times of sorrow, in times of joy.

In the smaller communities of America the local public high school is usually the social center of the area. It is the center for the youngsters, and it is the center for the adults, who, as parents, go through life with an abiding loyalty to their local high school. In most cases, loyalty to the old high school supersedes loyalty to their college. I know all of this sounds corny and provincial to the high-brow element in our midst, but that is the way the minds and the desires of small-town and rural America run, and this is the way of life that has turned out generations of splendid, God-fearing, God-loving citizens who have been the backbone of the nation in good times and in bad, in war and in peace.

If a questionnaire were circulated among the population today asking for the principal cause of the unsatisfactory conduct on the part of certain segments of our youth today, I believe one of the answers that would receive the most support would be *rootlessness*. Family life—neighborhood life—has broken down in many areas of the country, particularly in the large urban areas in the north, and our young people have lost their roots and their interest in roots. They, and the nation, are much the worse for this loss. But, Mr. Chairman, why in the name of all that is holy are we going out of our way to encourage this disastrous rootlessness through thoughtless theoretic legislation?

Let me quote Rabbi Jacob J. Hecht, executive vice president of the National Committee for Furtherance of Jewish Education. The rabbi, who knows more than a little about the grim horrors of ghetto life, is still unalterably opposed to compulsory massive busing. "Busing a child daily many miles to school could hardly be conducive to providing him with a favorable educational environment," the rabbi says. "Busing in reality creates new tensions and anxiety at a time when he is already beset with the multiplicity of problems coincident with growing up and adolescence. Busing removes from a child one of his most powerful sources of security—his neighborhood. It places him smack into an alien atmosphere he could only react to with anxiety." I couldn't agree with the rabbi more.

Mr. Chairman, we are today crucifying hundreds of thousands of our youngsters on a cross of blind ideological dogmatism. We are sacrificing the youth of our young by making them conform to an unworkable philosophical theory. We are destroying the best years of our children by herding them up a pedagogical blind alley in the name of an untenable sociological doctrine.

We must stop this cruel and senseless course of action. We must stop damaging our youngters to satisfy the blind prejudices of their elders. Only we can do it, and we must have the courage and the morality to admit the mistakes of the past and act legislatively to rectify them. We must prevent compulsory massive busing from becoming a permanent part of our way of life.

Thank you very much.

Statement of Hon. Dawson Mathis, a U.S. Representative in Congress From the State of Georgia

Mr. Chairman, and distinguished members of this Committee: Thank you for the opportunity to testify on this very important issue. Much testimony has been received by this committee, and many words have been used to illustrate the frustrations that many citizens in this nation feel about the issue of forced busing, and I can agree with much of what has been said.

Mr. Chairman, I am privileged to represent 20 counties in Southwest Georgia, counties that are inhabited by freedom-loving, law-abiding, patriotic Americans, who value liberty highly, and do not take their citizenship lightly.

My constituents are disturbed, and rightly so, over the edicts from the Federal Government involving the forced busing of innocent school children for the sole purpose of achieving racial balance in our schools.

I would never come before this Committee and say that our section of the country has been lily pure in eliminating racial discrimination. I would never say that every citizen in Georgia has embraced total integration as a way of life, but the truth is that our schools are more integrated than those of the City of Washington, D.C., and many other cities and states. We have made great strides, Mr. Chairman, in doing away with total segregation, but this one issue now threatens to destroy all of the efforts that have been made.

I am not pleading a case for segregation as some would have you believe. We are not fighting integration. We are fighting for our schools and our school children. We are fighting for quality education. I fail to understand how the forced busing of a child, away from his neighborhood and his friends, into a new and different, often hostile, environment, will benefit that child. I have the idea that if we provide the same quality education for all of our children at their neighborhood schools, then busing is not necessary, and that, Mr. Chairman, is exactly what we are trying to do.

Many say that busing was used for years as a method of perpetuating segregation. This is a fact; but if it was wrong to bus school children for the purpose of achieving racial unbalance, is it not equally wrong to bus school children to achieve racial balance?

Mr. Chairman, I must point out also that many of my constituents are upset because they read and hear of Members of Congress, and employees of the various Departments, who yell loud and long about "achieving racial balance within our public schools," and then place their own children in a private school. Mr. Chairman, I feel that this is the most shameful form of hypocrisy. These hypocrites are saying, "Don't do as I do, do as I say do."

It is with mixed emotions that I see other Members of Congress begin to speak out on this emotional issue. It seems to me that they are doing so almost in direct relationship to the forced busing that has been shoved down the throats of their constituents. I have long told my people that we would never be allowed to get down to the business of quality education and away from the follies of social experimentation in our part of the nation until other citizens across this country felt the heel of the Federal boot on their necks. This is now coming to pass, and many who have used the South as a whipping boy for years are yelling the loudest for relief.

Mr. Chairman, we have a saying in the South that the birds come home to roost, and I predict if the Congress does not face up to this highly volatile issue, then more birds will be coming home to roost.

I respectfully urge this Committee to report out legislation that would restore sanity to our schools, that will bring equity to our people, and that will restore the faith of our people in the common sense of our government.

Thank you.

NEW YORK STATE COUNCIL OF CHURCHES,
Syracuse, N.Y., February 22, 1972.

To Members of the House of Representatives From New York State, and Senators.

DEAR FRIENDS: The New York State Council of Churches, representing 29 Protestant denominations within the State, has entrusted to its Legislative Commission responsibility to review legislative proposals in light of its Statement of Legislative Principles which those denominations helped to formulate. The 1972 Statement of Legislative Principles reaffirms "our support of quality integrated education" in public schools. This brief statement summarizes a long history of church support for integrated public education and church opposition to all those factors which have deprived members of racial minorities and the poverty stricken from equal educational opportunities.

In light of that long commitment on the part of the New York State Council of Churches and its member bodies, we urge your opposition to H.J. Res. 620, a proposal which we believe to be deceptive. Purporting to be an anti-busing amendment, its language, in fact, could well make unconstitutional any affirmative action to bring about school integration. We believe, furthermore, that H.J. Res. 620 could also undo the positive achievements which have flown from the decision in Brown v. Board of Education (1954) by again making segregation in public education acceptable.

The goal for our society should be integration, and that means integrated public schools as well as other public and private institutions. Busing is but a means towards the achievement of a goal, and is often necessary if the goal is to be achieved in the foreseeable future.

To turn the clock back, as HJ Res. 620 would permit, is to run serious risks for the United States. Not only would poor education be mandated for children in our inner city areas, but our society might be thrown into another convulsion of civil strife. Years ago, one Civil Rights leader, Bayard Rustin, warned that a society which does not intend to keep promises should not make them. Our society has, in fact, made a promise to its racial minorities and the disadvantaged, a promise of equal educational opportunity. Those promises have given hope to innumerable Americans that one day the scourge of racism will give way before enlightened and humane principles and actions. To take away the hopes implicit in those promises could mean a new period of embitterment for those who are now the victims of racism, and could mean the postponement for several decades of the ultimate achievement of a society where there is, in fact, "liberty and justice for all."

We, of course, oppose all similar measures which will inhibit the achievement of equal educational opportunity.

For the Legislative Commission,

ROBERT T. COBB,
Associate Executive Director.

Enclosure.

THE STATE COUNCIL CONSTITUENCY, 1972

For more than one hundred years the Protestant and Othodox Christian Churches of New York State have cooperated increasingly in common tasks through various agencies which have developed into the present New York State Council of Churches, Inc.

The purpose of this cooperative agency has been established by its member judicatories to continue and extend this historic work.

The Council is to "seek to be responsive and obedient to the will and purpose of Jesus Christ, The Divine Savior of the World, and the Lord of His Church". It is to "cooperate in planning, decision making and action; participate in and deal with social issues; provide agreed upon services; develop relationships with all faith groups and actively encourage, promote, and advocate greater ecumenical cooperation".

The governing body made up of representatives of the listed judicatories yearly review, up-date and put forth a document called "A Stament of Legislative Principles", which is the guideline for the position of the Legislative Commission on the many issues facing the people, the Legislature, and the Churches of New York State.

OUR CONSTITUENT AND COOPERATING BODIES

MEMBER DENOMINATIONS

Armenian Church in America.
Christian Church (Disciples of Christ).
Episcopal Church: Diocese of Albany; Diocese of Central New York; Diocese of Long Island; Diocese of New York; and Diocese of Rochester.
Church of the Brethren.
Hungarian Reformed Church in America.
Lutheran Church in America: Metropolitan New York Synod; Upper New York Synod.
Moravian.
New York State Baptist Convention.
Reformed Church in America: Synod of Albany; Synod of New York.
Religious Society of Friends.
Romanian Orthodox Church in America.
Seventh Day Baptist: New York State Council.
United Church of Christ.
United Methodist Church: Central New York Conference; New York Conference: Northern New Jersey Conference; Northern New York Conference; Troy Conference; Western New York Conference; and Wyoming Conference.
United Presbyterian Church in U.S.A.: Synod of New York.

OTHER COOPERATING DENOMINATIONS

Church of Christ, Scientist.
Episcopal; Diocese of Western New York.
Universalist.

Mr. HUNGATE. The committee will resume the hearing at 10 a.m. on Monday.

(Whereupon at 12:55 p.m., the committee adjourned, to reconvene at 10 a.m., Monday, March 6, 1972.)

SCHOOL BUSING

MONDAY, MARCH 6, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141 Rayburn House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Brooks, Hungate, Jacobs, Abourezk, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman Celler. The meeting will come to order.

We note the presence of the distinguished Member from Virginia, William Lloyd Scott.

Mr. Scott, we will be very glad to hear from you.

STATEMENT OF HON. WILLIAM L. SCOTT, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Mr. Scott. Thank you, Mr. Chairman, and gentlemen of the committee. Let me first thank you for holding these hearings. In my opinion the people of the country are more concerned with the busing problem than with any individual domestic problem that we have had in recent years. An indication of this is the results of an annual opinion poll sent to every home in my congressional district, in which the question was asked:

"Do you favor busing of schoolchildren to obtain racial balance: A. Between cities and suburban areas? and the answers were, "Yes," 9 percent; "No," 90 percent, and "No opinion," 1 percent;

"B. Solely within a city or county?" and the answers were, "Yes," 14 percent; "No," 85 percent, and "No opinion," 1 percent;

"C. Under any circumstances?" and the answers were, "Yes," 7 percent; "No," 91 percent, and "No opinion," 2 percent.

We received more than 50,000 replies to the over 275,000 questionnaires sent out to a district which includes urban, suburban, and rural areas.

While Virginia may have a stronger feeling than most States in view of the recent decision by Judge Merhige involving the Richmond area, I do feel that the overwhelming majority of the people of the country are opposed to busing. A recent editorial in the Richmond Times-Dispatch, which serves my congreessional district, and one from the Ashland Herald Progress, both suggest that busing is not the proper way to obtain quality education, and I would like to insert these two editorials in the record at this point.

Chairman CELLER. That will be so inserted.

(The editorials follow:)

[From the Richmond Times-Dispatch, Feb. 27, 1972]

David Tennant Bryan, Chairman and Publisher
Alan S. Donnahoe, President and Associate Publisher
John E. Leard, Executive Editor Alf Goodykoontz, Managing Editor
Edward Grimsley, Editor of Editorial Page

INVALID ARGUMENTS

Many liberal journalists and politicians are attempting to discredit the fight against compulsory busing by accusing opponents of this pernicious practice of exaggerating its dangers and of favoring a restoration of complete school segregation. It may be impossible to persuade the defenders of busing to alter their views, but the effort should be made.

Let us consider, point by point, some of their salient arguments:

(1) Objections to busing cannot be valid because buses have been used for decades to transport children to school. Currently, at least 18 million children go to school by bus daily.

The flaw in this argument is that it makes no distinction between necessary, nonracial busing and unnecessary, racial busing. Foes of busing do not object, per se, to the process of transporting children to school by yellow motor vehicles. Rather, they object to contrived busing plans that force children to attend a particular school solely to promote racial balance. They object to busing plans that remove a child from the school to which he logically should go and transport him to a school far away—solely to promote racial balance. They object, if you please, to the imbecility and unfairness of compulsory busing that is designed to transport children for sociological, not educational, purposes.

(2) Busing is a necessary but temporary evil.

According to this assinine argument, the hardships of busing are acceptable now because eventually busing will not be necessary. Within a few years, this argument continues, the residential areas of all communities will be fully integrated and it will not be necessary to bus children to promote racial balance in schools.

One of the major objections to this view is that it is indifferent to the effects of busing on the lives of children currently involved. It is cruel even to suggest that young children must suffer the hardships of busing today in order that young children will not have to suffer the hardships of busing tomorrow. Young years are precious, too precious to sacrifice upon yellow, motorized altars—to appease the gods of racial balance. Today's children like the children of tomorrow are entitled to be educated in a serene, orderly and constructive atmosphere.

(3) Opponents of busing are really segregationists who abhor the thought of black and white children going to school together.

The primary purpose of this cynical argument is to attempt to dissuade moderates from joining the antibusing crusade. The theory is that many people with sincere reservations about busing would rather accept the practice than be labeled rednecks.

Of course, the argument is false. Undeniably, many busing opponents are segregationists but most surely are not. Under Richmond's old freedom of choice plan, Negroes were accepted quietly in formerly all white schools. It was not until U.S. District Judge Robert R. Merhige, Jr., ordered busing for the city that a mass exodus of white pupils from the city's schools began. Integration of Chesterfield and Henrico County schools did not touch off a panicky flight of whites to private schools, but the prospect of busing threatens to do precisely that. Many white parents who withdrew their children from city schools last year, and many who are considering withdrawing their children from public schools if Judge Merhige's metropolitan busing plan becomes effective, are racial moderates or liberals who have no objection whatever to integration as such. But they are profoundly disturbed by the adverse impact that busing is likely to have upon the physical and educational welfare of their children.

As the debate on busing intensifies in coming weeks, those who oppose it can expect to be the target of a fusillade of slander. They can only hope that the justice of their cause will prove to be armor enough to withstand the assault.

[From the Ashland Herald Progress, Feb. 24, 1972]

BUSING: WRONG ROAD TO QUALITY EDUCATION

Resolutions on busing will be adopted tonight by the Hanover County Citizens Committee on Education, and on March 9 by the Patrick Henry High School PTA. Although Judge Merhige's decision to consolidate the school districts of Richmond, Henrico and Chesterfield does not directly affect Hanover, the precedents which would be set by this decree are profound and far-reaching.

If a Federal court judge can indeed sweep away school districts and force children to be bused 8–12 miles from their homes in order to achieve a racial balance in the schools, Richmond will be only the first of the ailing cities to fall in a domino-like reaction. Next will be Cincinnati, Chicago, San Francisco. . . . And of course eventually Hanover could be tossed into the Richmond basket for good measure if, one of these days, the "balance" gets unbalanced near our lower borders . . .

In the coming weeks and perhaps months as the case is sent to the Supreme Court and public reaction continues to claim the headlines of the daily newspapers, we will all be hearing more and more arguments about busing—surely most of them against, as parents react most strongly to what seems to them to be a dictatorial decision affecting their homes and family lives. And we don't intend to add to the rhetoric any more than seems irresistible . . .

But here is our two cents worth.

Busing is taking a lot of things that don't have anything to do with each other and putting them all together and coming up with a totally unrelated answer.

Two apples and an orange don't make a peach. One long distance school bus plus one racially balanced classroom and one school teacher don't equal quality education. What you get instead is a long distance school bus with some disgruntled parents at one end and some tired children at the other, a volatile and highly explosive classroom as children adjust to an unaccustomed social condition, a nervous teacher, and anyone who thinks that equals "quality education" is a mathematical magician.

If the most important human achievement of the '70s is racial adjustment of school age children (a laudable goal, don't misunderstand us) then busing is certainly a drastic and dramatic means to that end—or if the problems of the inner city with its ghettos and minority domination is the number one ailment to be dealt with in this decade then busing is certainly a cure . . .

But if, on the other hand, the education of this nation's children is the school system's chief reason-for-being, then the quality of education can be judged only by the academics offered and the abilities of the teachers. And busing has nothing whatsoever to do with it. Not only will it not help—it will do much harm.

If the quality of public education is to keep pace with the expansion of man's knowledge, the schools must increase and diversify their offerings, the curriculum must be flexible enough to adjust to the individual's needs, the trades should be available for those so inclined, and all human and financial resources should be geared toward the production of the educated man and woman. Wherever the socially integrated classroom fits into these goals, fine. But to divert this nation from its primary educational purpose to fit a mathematical racial quotient is to take the wrong road to a dead end.

We believe this is persuasive argument.

There are others.

The burden of busing on little children is a consideration, and the loss of the neighborhood school is tantamount in many minds as a reason to deplore busing. And then there is also the overall fact that with thousands and thousands of parents actively protesting the decree, surely some persuasion should be given to the fact that, after all, this is their country and their school system and the determining role of the parents should not be assumed by a branch of the government over which they have neither control nor influence.

Much is being said about busing. For the sake of all our futures, we hope it is being heard.

Mr. SCOTT. Mr. Chairman, a number of our colleagues are not signing the discharge petition because they believe in the committee system, and they believe that this committee will report a bill to the House for consideration. This may be a test as to whether our body is truly the people's legislative body and if sovereignty does reside in the people of the country collectively, because I am convinced that the American people want to stop the busing of schoolchildren for the purpose of achieving racial balance as a substitute for the neighborhood school concept.

In my opinion, there are a number of ways to carry out the will of the American people. The first is by the enactment of a law prohibiting the busing of children in our public schools. This concept is embodied in H.R. 914 which I cosponsored with Mr. Mizell, of North Carolina, and a number of other Members. Because of fear, however, that this would be declared unconstitutional, I also joined Mr. Mizell and others in cosponsoring a constitutional amendment.

I would hope that the committee would weigh the concept of exercising the legislative will without amending the Constitution against the need for an amendment to the Constitution to accomplish this same result.

I know that some members of the committee will disagree with this premise, but there is no doubt in my mind that recent decisions of our Federal courts are contrary to the desires of the vast majority of the people of this country. Therefore, I have introduced measures in the 90th, 91st, and 92d Congresses to limit the terms of our Federal judges to 10 years. The latest of these, House Joint Resolution 286, was introduced on February 4 of 1971. It provides for an amendment to the Constitution, providing for 10-year terms, with the right of reappointment and reconfirmation.

Although this committee has not held hearings on any of these measures, constituents have indicated their approval.

Under such a measure, judges would still retain their judicial independence but would not be inclined to act arbitrarily as they frequently do under lifetime tenure.

If ultimate sovereignty does reside in the people of the country, it seems reasonable that every public official, whether he be in the legislative, executive, or judicial branch of our Government, should periodically have to account to the people for this stewardship.

You and I face the electorate every 2 years. Members of the other body do this every 6 years, the President every 4 years, and the Governors of the various States at regular intervals. Periodic accounting of all Government officials to the public, in my opinion, is the only way to retain our representative form of government.

There is another manner in which we can curb the arbitrary action of our Federal courts, however, without an amendment to the Constitution. This is pursuant to the constitutional provision to the effect that Federal judicial power "shall be vested * * * in such inferior courts as the Congress may from time to time ordain and establish." This is a concept included in H.R. 12827 which I introduced on February 1, 1972, and an identical bill, H.R. 13176, introduced February 16, with cosponsors.

Their intention is to clarify the jurisdiction of Federal courts with regard to cases and controversies involving the public schools, and provide that neither the Federal district courts nor the circuit courts of appeals shall have any jurisdiction to hear or decide cases and controversies involving the public schools, but that jurisdiction with respect to such cases and controversies shall be vested in the courts of the respective States and territories, with the additional proviso that the Supreme Court of the United States shall retain appellate jurisdiction by writ of certiorari to the highest State or territorial court exercising jurisdiction.

The purpose of the bill, Mr. Chairman, is to insure that cases dealing with such a vital local issue as neighborhood schools be heard by judges attuned to the problems and the needs of our communities.

Protection of the constitutional rights of the parties to disputes over schools would still be available on appeal to the Supreme Court, and Federal supremacy would still be maintained.

There is no doubt of the power of the Congress to enact such legislation, and to not only set up a Federal judicial system below the Supreme Court, but also to fix the jurisdiction of such courts.

The First Congress exercised the power granted in the Constitution when it enacted the Judiciary Act of 1789 (1 Stat. 73). Congress did not grant to the Federal courts the full judicial power of the United States. Jurisdictional amount requirements kept many litigants from Federal courts and sent them instead to State courts to adjudicate Federal claims. The 1789 act contained no grant of "Federal question" jurisdiction, so that suits arising, in the words of article III, Section 2, "Under this Constitution, the laws of the United States, and treaties * * *," except where otherwise specifically and narrowly provided for, were required to be brought in the State courts until 1876 (18 Stat. 470). And a clause barring diversity jurisdiction where diversity had been created by the assignment of choses in action, kept in State courts cases which the Constitution would have permitted Congress to assign to Federal courts.

In a case involving the "assignee clause," the Court first announced the doctrine that Congress controlled much of its jurisdiction and all of that of the lower Federal courts. In the words of Justice Chase: "The notion has frequently been entertained, that the Federal courts derive their judicial power immediately from the Constitution: but the political truth is, that the disposal of the judicial power, except in a few specified instances, belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise; and if Congress has not given the power to us, or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound, and it would, perhaps, be inexpedient, to enlarge the jurisdiction of the Federal courts to every subject, in every form, which the Constitution might warrant." *Turner* v. *Bank of North America*, 4 Dall. (4 U.S.) 8, 10 (1799). And in *Cary* v. *Curtis*, 3 How. (44 U.S.) 236, 245 (1845), it was said that—

> The judicial power of the United States, although it has its origins in the Constitution, is (except in enumerated instances, applicable exclusively to this court) dependent for its distribution and organization, and for the modes of its exercise, entirely upon the action of Congress, who possess the sole power of creating the tribunals (inferior to the Supreme Court), for the exercise of the judicial power, and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.

For similar expressions, see, for instance, *Sheldon* v. *Sill*, 8 How. (49 U.S.) 441 (1850); *Plaquemines Tropical Fruit Co.* v. *Henderson*, 170 U.S. 511 (1898); *Kline* v. *Burke Const. Co.*, 260 U.S. 226 (1922); *Lockerty* v. *Phillips*, 319 U.S. 182 (1943); *South Carolina* v. *Katzenbach*, 383 U.S. 301, 331–332 (1966).

State judges under the supremacy clause, article VI, clause 2, are bound by oath to uphold the supremacy of the Constitution as well as constitutional Federal laws and treaties. Today, all cases which might be brought under "Federal question" and diversity jurisdiction in Federal courts which do not involve the requisite jurisdictional amount must be brought in State courts. Litigants may on their own bring most cases in State courts which could be brought in Federal courts, excepting only a few classes of cases in which Congress has made Federal jurisdiction exclusive.

Mr. Chairman, my bill does not go to the question of the restriction of the appellate jurisdiction of the Supreme Court, which may be the subject of a difference of opinion because the U.S. Supreme Court would still be the court of last resort, even though cases or controversies involving the public schools would be decided initially in State courts.

While I have advocated amendments to the Constitution and still do, this route is a longer and more uncertain one than the process of elimination of jurisdiction over the public schools from our Federal district and circuit courts.

In conclusion, Mr. Chairman, regardless of the vehicle used in its accomplishment—and I know that this committee has various proposals before it—the people of the country want the neighborhood school to be preserved.

When young couples are considering the purchase of a home in which to raise their children, they consider the location of churches, shopping centers, and schools, as well as the general condition of the neighborhood. Children make friends within this neighborhood, and it seems reasonable for them to attend school with the friends they develop over the years. In the event they are taken out of their neighborhoods into strange areas, they are not only less alert on arrival but also away from their friends, in strange neighborhoods, and sometimes even among hostile groups. Emotional problems can develop from such an experience.

It seems against the interest of children to attempt to use them as pawns to solve social conditions for which they have no degree of responsibility.

Small children especially tire easily. I am advised that they have nap times during the school day; and kindergarten and first graders sometimes even attend school for a lesser period of time than the older children.

Mr. Chairman, I am hopeful that the so-called strict constructionists who have been appointed to the Supreme Court in recent years will reversed the trial court in the Richmond case; but the House of Representatives cannot depend upon this being done without legislative action on our part. If we are interested in the welfare of children—and I believe each member of this committee is—and if we want them to receive the highest possible quality education, then we must find a solution to this problem. And I urge that this committee bring this matter to the floor for consideration at the earliest possible date so that sufficient time will remain in this session of the Congress to have the necessary legislation enacted into law before adjournment.

Again, Mr. Chairman and members of the committee, I appreciate your holding the hearings and giving me the opportunity to appear.

Chairman CELLER. Mr. Scott, you have raised some very, very interesting questions here, and I want to compliment you on your presentation of the views that you have expressed.

I would like to ask this question: Do you think it is within the power of the Congress to deprive a Federal court of the right to pass upon a constitutional right that might emanate, say, from the 14th amendment?

Mr. SCOTT. Mr. Chairman, I had the Legislative Reference Service of the Library of Congress prepare a memorandum for me, and it does cite authority. There is no question in my mind that the Congress does have this power. If you look at page 5 of the material, Mr. Justice Chase said:

"The notion has frequently been entertained, that the Federal courts derive their judicial power immediately from the Constitution; but the political truth is, that the disposal of the judicial power, except in a few specified instances, belongs to Congress. If Congress has given the power to this Court, we possess it, not otherwise; and if Congress has not given the power to us, or to any other court, it still remains at the legislative disposal. Besides, Congress is not bound, and it would, perhaps, be inexpedient, to enlarge the jurisdiction of the Federal courts to every subject, in every form, which the Constitution might warrant."

With the citation of authority.

Mr. Chairman, as far as the constitutional rights of any individual are concerned, this would be preserved because the State courts judges are sworn to uphold the Federal as well as their State constitutions, and under my bill, there would be an appeal to the Supreme Court of the United States. We still would have the maintenance of Federal supremacy, and any constitutional question could be tested in that way.

It would mean that the trial courts would be State courts rather than Federal courts. I have no doubt that the Congress has this power.

Chairman CELLER. I understand your position, then, is finally the Supreme Court of the United States would pass upon the constitutionality of the question.

Mr. SCOTT. Yes, sir.

Chairman CELLER. My concern is with whether or not Congress would have the right to deprive the Federal courts of jurisdiction to pass upon a constitutional question involving the 14th amendment.

Mr. SCOTT. Mr. Chairman, I believe the Congress has the power to abolish all Federal courts below the Supreme Court. Obviously that is a drastic move, but the Congress has a power to constitute the courts. They have the power in my opinion to abolish the courts.

Chairman CELLER. Can you conjure up any case where that has ever been done?

Mr. SCOTT. No, sir. And I would not advocate it. I think it would be a very rash and an unwise move. But I do believe this power rests with the Congress in all courts below the Supreme Court because that is what our Constitution says.

Chairman CELLER. Of course, if Congress would have the right that you say it has, then there would be no nationwide uniformity. The decision would simply be limited to the locality where the decision was made.

Mr. Scott. Mr. Chairman, I do believe that locally, there would be some lack of uniformity in that regard. Local conditions would be taken into consideration. But, since we would have the ultimate appeal to the Supreme Court on the important constitutional questions, I think there would be uniformity.

Chairman Celler. I am not asking these questions to indicate a position. I want to get clarification because we are in virgin territory here. We have never done this before as far as I know, and we want to be sure where we are going.

Mr. Scott. Mr. Chairman, I appreciate very much what you are doing, and let me say that the people of Virginia insofar as the Judge Merhige case is concerned, feel that the judge is in virgin territory, too, because I don't know of instances in which the political subdivision lines had been abolished for school purposes as was done in the Richmond-Chesterfield-Henrico County case.

As you know, the judge said we will have one school board consisting of the entire Third Congressional District of Virginia and, if he can do this with regard to school questions, he could do it with other local problems. He could say you are not getting the same trash collection in the city and in the suburbs. Therefore we are going to have a congressional-district-wide trash collection service. We are concerned about maintaining our local governments as well as maintaining the neighborhood school concept. This is also virgin territory.

Chairman Celler. Mr. Hungate.

Mr. Hungate. Thank you, Mr. Chairman.

Do I understand, Mr. Scott, that you think if the problems could be reached, the urgency is such that a statute would be preferable to a constitutional amendment?

Mr. Scott. Yes, I do, Mr. Hungate. When we are talking about a constitutional amendment, as you know, we have to get two-thirds vote and there would be some reluctance of some of our members to amend the Constitution. Also, three-fourths vote of our State legislatures would have to approve the amendment, and it could take a considerable period of time.

I would think in all candor, because of the great concern of the people, that we should try a number of these approaches, but if the committee is to recommend and report out one measure, then I would prefer that to be done without a constitutional amendment, perhaps amending the Constitution later, if that is deemed necessary.

Mr. Hungate. I understand that in some States the rule used to be, and may still be, that there were courts of law and courts of equity. Would you think it might be possible, or desirable if possible, to leave undisturbed the legal powers but eliminate the equity power of the Federal courts in school decisions?

Mr. Scott. I would leave the State laws as they are, and the court that would otherwise have jurisdiction would continue to have it, whether it be law or an equity court. I think it would be very difficult for us to write a law in which we would delve into these details that would apply to the different procedures we have in the States.

Whatever court would have jurisdiction, if the Federal court did not have it, courts of general jurisdiction in your courts would have the original jurisdiction with the right of appeal through the State courts to the highest court of the State and then to the Supreme Court of the United States through a writ of certiorari.

Mr. HUNGATE. Thank you very much.

Your bills, H.R. 12817 and H.R. 13176, are identical, I believe. You are joined by other members on the latter?

Mr. SCOTT. Yes.

Mr. HUNGATE. Thank you.

Chairman CELLER. Mr. McCulloch.

Mr. MCCULLOCH. Mr. Chairman, I think Mr. Scott has made an excellent statement on a question that is one of the most difficult of all questions that have been before Congress and this committee since I have been here. I think there are few people in America who do not love the children, but there are many of us in this country who are so prejudiced that they might hurt children even though that is not their intention.

I would like to ask the chairman a question? Do we have an expression of opinion from the Justice Department?

Chairman CELLER. We do not.

Mr. MCCULLOCH. Have we requested it?

Chairman CELLER. We have requested it.

Mr. MCCULLOCH. I think it would be helpful if we had an expression of opinion from the Justice Department. Will Rogers used to say: All I know is what I read in the paper. I have some indication from the Washington papers of yesterday and from the New York Times that the executive department is going to study this question and try to give us an answer.

Mr. SCOTT. Mr. Chairman, if I might, I would, of course, hope that the Justice Department and the administration would respond and give us their opinion because I think it always is well to have their opinion. But I would hope that this committee and the Congress will not be dependent upon the executive branch to decide whether we need legislation in this field. This is our prerogative, and I would hope that we would exercise it.

Mr. MCCULLOCH. Mr. Chairman, if I can respond in a friendly manner to that statement, I would hope that we would do that, too. I am sure the gentleman, being the good Congressman that he has been, knows that has been my position on several of the most controversial issues that have been before this Congress.

I think that this question is one of the most important, if not the most important, domestic question that the Congress will have before it this year, and I repeat what I said once before, I hope that prejudice and emotion will not dominate our decision.

I like the thoughts provoked by your statement this morning.

Mr. SCOTT. Thank you very much.

Mr. MCCULLOCH. So far as I am able to do so, I am going to pursue at least some of them.

Mr. SCOTT. Thank you, sir.

Chairman CELLER. Mr. Poff.

Mr. POFF. Mr. Chairman, I welcome Representative Scott to these hearings, and I think the committee is, indeed, indebted to the witness for the statement he had prepared by the Library of Congress; it illuminates the sometimes obscure question of Federal-court jurisdiction.

The chairman said quite rightly that the questions we ask should not be taken as a barometer of our attitudes or any of the action we expect to take.

Now with that being written in the record, I want to comment upon one feature of the jurisdictional question. The question, to restate it briefly is: Does the Congress have the power to deprive Federal courts of jurisdiction?

The language which defined what is a Federal question and which undertakes to outline the jurisdictional domain of the Federal courts is found in section 2 of article 3 and reads, in part, as follows:

> The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the Uinted States, and Treaties made, or which shall be made, under their Authority.

The Congress first acted in the field when it passed the Judiciary Act of 1789, and that act did not, I repeat, did not, confer upon the Federal courts general jurisdiction over Federal questions. No district court, except in isolated cases, had jurisdiction over Federal questions under that act. Thus, until 1875 such Federal questions were brought only in State courts.

That history makes the point, that if Congress can withhold granting Federal-question jurisdiction to Federal district courts for nearly a century, it can likewise withdraw that jurisdiction today.

Parenthetically I might note, too, that the gentleman's bill does not withdraw the particular Federal question from the Federal courts entirely. It preserves the status of the Supreme Court as the final arbiter on such questions. That last feature I most heartily applaud.

Indeed, I think the committee is indebted to the gentleman for the scholarly thought he has brought to this question.

Mr. SCOTT. Thank you.

Mr. Chairman and Mr. Poff, could I just call the committee's attention, paralleling what the gentleman has said, to the very last portion of page 5 and the beginning of page 6 of my statement where it says *Turner* v. *Bank of North America* and *Cary* v. *Curtis*, with the citations, it was said that the judicial power of the United States, although it has its origins in the Constitution, is dependent for its distribution and organization and for the modes of its exercise, entirely upon the action of Congress, who possesses the sole power of creating the tribunals inferior to the Supreme Court, for the exercise of the judicial power and of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degree and character which to Congress may seem proper for the public good, again citing authority.

And I thank my friend from Virginia for his comments.

Mr. POFF. If I might add one footnote, the Congress has, itself, in modern times, enacted Federal statutes and given State courts concurrent jurisdiction to decide Federal questions.

I suppose that might also be considered another example of how Congress can treat this question of jurisdiction when passing Federal statutes.

I thank you.

Mr. HUTCHINSON. Mr. Chairman.

Chairman CELLER. Yes, sir.

Mr. HUTCHINSON. I would like to pose this problem. Let us suppose that the Congress withdraws jurisdiction from Federal courts on these school questions.

I am informed that in the legislature of my State of Michigan a bill has been introduced which would withdraw the jurisdiction of all State courts in Michigan over those questions. The power of the legislature to define the judicial power of the courts apparently is clear in the constitution of Michigan. Presumably, it can withdraw that jurisdiction.

What would be the situation, may I ask the witness, if the legislature in his State withdrew the judicial power of the State from these matters and the Congress withdrew the judicial power from the Federal district courts in these matters? Where would we be then?

Mr. SCOTT. We would probably let the school administrators run the schools and, if the people of the country want this to be done, this might not be a bad thing.

I don't think, in all candor, Mr. Hutchinson, that this will happen. I can't conceive that Virginia would not permit any judicial questions. Certainly any law that would deprive people of a hearing of any right under the Constitution, which they are entitled to, would be contrary to that Constitution and would be held invalid in my opinion. As to routine school questions, perhaps they would be left to the judgment of the school administration.

I would hope, should this law pass, that the Legislature of Michigan, your State, would not enact such a law. Have they enacted it, sir?

Mr. HUTCHINSON. Oh, no: the bill has simply been introduced. I don't even know whether it has very much support. But it does raise the question.

Mr. SCOTT. Yes, sir. Thank you.

Chairman CELLER. Mr. McClory.

Mr. MCCLORY. No questions.

Chairman CELLER. If we passed a statute which eliminated the power of the Federal courts to pass on these particular questions, and the State court rulings prevailed then you would have each State with its own particular rule concerning busing. You would have no uniformity whatsoever, would you?

Mr. SCOTT. Mr. Chairman, we have our various Federal district courts now—usually more than one in each of our States—and yet we feel that through the appellate process we do obtain a degree of uniformity. It would seem to me that the same would be true as far as vital constitutional questions are concerned through the final authority of the Supreme Court of the United States.

But this is just my opinion on the question the distinguished chairman has posed.

Chairman CELLER. Yes, sir. Mr. Hungate.

Mr. HUNGATE. Thank you, Mr. Chairman.

In these decisions on school desegregation and busing, there runs a thread that the courts will not lay down one universal rule. I take it you don't see uniformity as an absolute necessity?

Mr. SCOTT. I would like to see uniformity on matters that are not purely local in nature. I would prefer uniformity and yet I have read the Charlotte-Mecklenburg case, and in that, as I see it, they just reaffirmed the *Brown* decision, and they did not advocate the busing of children, but they said, if it was necessary to prevent discrimination, this was permitted.

I think in the Richmond case that the judge has taken the bit in his teeth and gone very far afield. I would hope through the appellate—through the appeal process—that he will be straightened out because I don't believe there is any precedent for what has been done in Richmond.

We are talking about the Federal courts now, not the State courts. I think he is entirely out of line with the other decisions, but obviously this is just one individual Congressman's opinion.

Mr. **Hungate.** Thank you.

Mr. **Poff.** Mr. Chairman, if I may be permitted one other question.

With respect to the question of uniformity, I find it difficult to envision any situation inside or outside the Federal judicial system where absolute uniformity could be achieved, and I say that for this reason. The remedies fashioned by a district court are fashioned under equitable doctrines, to fit the fact situation in each local school district: so in the nature of things, it would be impossible to have absolute uniformity nationwide.

I suggest that we purposely do not have uniformity in the Federal judicial system on this and other questions because we have subdivided the judicial domain into different circuits and in each of those circuits we have what we call the law of the circuit.

In civil law and in criminal law, decisions vary among circuits and there is no uniformity.

If I may return to the hypothetical which my distinguished colleague from Michigan posed a moment ago, which was, if the Congress should pass a bill withdrawing jurisdiction from the Federal district courts and subsequently a State should pass legislation withdrawing jurisdiction from its State courts, what would be the impact?

My short answer to that question would be that the State statute under such circumstances would be unconstitutional under the due process clause.

Would you agree with that?

Mr. **Scott.** Yes, I would, Mr. Poff, if it were an issue. I know of the distinguished gentleman's background in the field of constitutional law, and certainly would not take issue, but my opinion concurs completely with his. It is a right protected by the Constitution, and I believe that a citizen is entitled to be heard. This is part of our due process; we cannot, by act of the legislature, deprive a citizen of the right to be heard.

Mr. **Poff.** I agree with the gentleman, and thank you.

Chairman **Celler.** We realize how perplexing this problem really is.

Mr. **Scott.** Mr. Chairman, I have been a lawyer for more than 30 years, and I realize the distinguished chairman has been knowledgeable for a far longer time, and maybe that is how we make a living because things aren't as easy as they might be.

Chairman **Celler.** Thank you very much, sir.

Mr. **Scott.** Thank you, Mr. Chairman.

Chairman **Celler.** Our next witness is Hon. Augustus F. Hawkins, of California.

Mr. Hawkins, I understand you are appearing for the Congressional Black Caucus.

STATEMENT OF HON. AUGUSTUS F. HAWKINS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, APPEARING ON BEHALF OF THE CONGRESSIONAL BLACK CAUCUS

Mr. HAWKINS. Yes, Mr. Chairman; I am authorized to speak for the 13 black Members of the House of Representatives. Regretfully the two other Members who had expected to be here are not in the city today, but I have been asked to speak for them and for the entire 13 Members.

Mr. Chairman, I have distributed a statement which some time ago the Caucus did adopt, but this morning I would like to deviate from that statement to merely give some of the educational aspects of this problem because I think that they are interwoven with the legal aspect of it, and I think perhaps have been terribly neglected.

(The statement referred to follows:)

QUALITY EDUCATION SHOULD COME FIRST

In answering its opposition to the proposed Constitutional Amendment to prohibit busing, the Congressional Black Caucus declared that quality education for all Americans should be sought first instead of rewriting the Constitution with negative limitations on the right of the states to seek the best ways of improving our schools.

Busing may or may not be the answer in many local situations, the Caucus stated, but in some areas it is already an accepted method, in other places, if prohibited, the cost to local communities to comply with judicial decisions of equal educational opportunities will be too costly for local taxpayers to bear.

The Caucus then declared it is well to remember that busing has only become an issue and judicially mandated because states and local school districts have not only maintained separate and unequal school systems but have actually manipulated school boundaries, segregated communities, provided inferior educational facilities and programs; and short-changed minority children in the receipt of school funds.

The Caucus position was stated in these specific recommendations:

(1) We recommend a broad, comprehensive program that deals with the real issues in quality education, including adequate funding; and with the relevant problems of better housing, full employment and equal opportunities for all Americans to achieve their full potential in a democratic society.

(2) We deem it incumbent on the Federal government to assume a heavier load of the cost of quality education and of the President to exercise a positive and more constructive leadership in educational goals for the nation.

(3) We urge President Nixon to include in his discussion on this subject not merely the proponents of legislation that sanction anti-busing amendments but representative Americans of opposing views as well. Beyond even this, we recommend that immediate steps be instituted to support legislation and implement judicial decisions already made to provide equal and quality education.

Passage of House Joint Resolution 620, the anti-busing amendment will not solve any of the real problems in education. It will still leave our schools underfinanced, segregated, and inefficiently operated. It will sustain racists emotions and promote hostile divisions in our society.

Mr. HAWKINS. It was the concern of the Caucus that even if some of the antibusing amendments were adopted or even if the 14th amendment were to be nullified, that we still would have a problem in American education.

We are concerned about what is happening to American education. There is a national assessment at the present time being made by the States' education commission. I think this assessment is revealing some glaring weaknesses in American education, not for black children but for all children, white and black children.

A few years ago when we found some weaknesses in science, mathematics, and language, we passed the National Education Act because the Soviets had launched Sputnik I. It did not take us long to recognize these weaknesses.

So it seems to us that the House has not had an opportunity to really address itself to the problems in education because we have been so involved in the emotional issue of busing.

The House Education and Labor Committee has held some rather excellent hearings on this subject, but unfortunately, our findings have not been presented to the House because every time a bill is before the House that pertains to education, the subject of busing occupies all of the time.

So it seems that we somehow are neglecting the real basic problems in American education.

While the Supreme Court had before it in the 1954 *Brown* case the legal question of what to do about segregated schools, the real meaning of equality of educational opportunity was a thing which seemed to have bothered them the most.

The Court was confounded by the concept of separate but equal as upheld in 1896, for even where equality appeared to exist, that is, where there were equal facilities or equal teacher salaries, equal expenditures, for some reason the results of schooling were disappointing. It just seemed that equality did not exist even where it was supposed to.

While the Court's decision could have rested adequately on legal grounds, its exploration of the educational causes of inferior schools brought into the open certain basic questions which had been ignored.

What is it that makes a school good or inferior? And why should we have the two classes? What has the most effect on achievement? How do we assess the quality of schools?

According to their inputs, according to the class size, teacher salaries, the buildings?

Or do we assess them according to the effects of the inputs?

In other words, what results are we obtaining?

By looking into these questions, it may be more efficient to direct our expenditures in different directions than what we are presently doing.

It was the persuasiveness of these basic questions that caused the Court to leave many unanswered questions to administrators and other officials of the implementation of the *Brown* decision.

This is also why now signing a discharge petition for passing an antibusing amendment will solve nothing, for these acts dodge the more troublesome and basic issues in education. They are a copout.

Basically the issue is not busing, but integration.

Even where busing is not involved, such as in the case of faculty and school administrators or intraschool or extracurricular activities, opposition to the principles of the *Brown* decision and subsequent decisions is just as severe.

Busing also as a substantial means of desegregation has assumed importance only in recent years, the last 2 or 3, fully one and a half decades after the *Brown* decision.

Many means of avoiding extensive busing have been available to local districts. But they were equally avoided.

Such techniques include pairing, altering attendance lines, the proper location of new sites, educational parks, strengthening curriculum and teacher personnel, consolidation of regional planning, and many others.

Busing comes at the end of the line, and perhaps the Courts' patience with defiance.

The argument that the real goal is quality education contains much truth, if quality education is properly defined to include equality of educational opportunity within the legal context of the constitutional requirements.

Some, however, would use the phrase "quality education" to mask separate and unequal education. Separate schools are a denial of the essential worth of human beings and disrespect in our democracy for the concept of one nation indivisible.

Education is more than academic performance or what is revealed in a standardized test. There are many other attributes derived from social interaction and open competitiveness. Often attitudes or one's self-image can be as important as verbal skill. Indeed, they may make the difference in how one performs in a verbal skill.

In the fight against integration, antibusing forces are sidetracking reforms in American education.

Likewise they are diluting the quality of our leadership.

Merely to be against busing has become a requirement for public office.

This is similar to McCarthyism, to the antioriental spirit of a few years ago, to the cry of ruin and rebellion and Romanism or to be against Negroes was a requirement to elect certain individuals in other eras in our national history.

How does the Nixon or McCarthy era face the President of the 1970's, and who is polling the people on whether they desire to have the law upheld?

Lastly, let me make a plea for a national compliance policy instead of the present fuzzy and indistinguishable policy that fluctuates between compliance and defiance.

This dichotomy is no better illustrated than in the President's support of antibusing amendments to his own very commendable proposal for a meaningful school desegregation bill.

Laxity and inequities in enforcement of law undermine confidence in authority and encourage lawlessness. It is absurd to express concern over rising crime in the streets if we tolerate and even encourage disrespect for law in the classrooms of America.

The charade of law and order so prominent in the last session is now revealed as out of date, replaced by the waltzing of the antibusing gang.

A national compliance policy is more than mere enforcement of law, for which a premium should not be needed. Two essential factors, it seems to me, are necessary. One is funds and the other is technical assistance.

In the school desegregation bill, so ably supported by the administration, it seems to me we had perhaps a workable solution.

This provided for the funds. It provided encouragement. It provided technical assistance. It did not encourage, as in so many instances, the lack of spirit, the lack of leadership.

Is HEW, the Department of Health, Education, and Welfare, in favor of such enforcement, or is it encouraging those who would defy the law?

Last night on a TV program I had the opportunity to listen to a person representing the department of education in the State of Connecticut. He was indicating how in Hartford they had succeeded, with Boston, in bringing about tremendous improvement in the performance of the children of that city and they wished to extend this program to the rest of the State.

But he indicated that, if some of the antibusing amendments now pending in this Congress were to be passed, they would be stopped in their tracks in such progress.

This, it seems to me, is what the Department of Health, Education, and Welfare is doing at the present time. I think the position of the President is doing this, and I think it is most information.

Is HEW, the Department of Health, Education and Welfare

I think, therefore, that a third factor in a national compliance policy should be the type of moral leadership which today, unfortunately, is lacking.

The Federal Government must move from a passive to more positive role and not as at present to a purely negative role.

So it seems to me, Mr. Chairman, that this is a time of emotion, that it is a time of very difficult choices that must be made. But it seems to me that at the present time too many of our leaders are involved in an educational milieu, in which innocent children are going to be educationally slaughtered and not enough of us are rising to real leadership in true greatness to make this what could be our very finest hour.

I am very pleased to commend the committee on getting into this subject and attacking these basic problems and perhaps, if you do nothing more than to slow down the emotional hysteria that is creeping, that is rapidly involving this country in a false debate over issues that are not basic, then perhaps you would have done the greatest service this committee has ever done to the Nation.

Chairman CELLER. I take it that the members of the Congressional Black Caucus are all opposed to this amendment, House Joint Resolution 620; am I correct?

Mr. HAWKINS. Yes, Mr. Chairman, each one of us is on record of being opposed to the pending ones, and having voted consistently against all that have been presented heretofore.

Chairman CELLER. Would you care to state for the record the names of the members of the Black Caucus?

Mr. HAWKINS. Mr. Charles Diggs, of Michigan; Mr. Robert Nix, of Pennsylvania; Mr. Bill Clay, of Missouri; Mrs. Shirley Chisholm, of New York; Mr. Charles Rangel, of New York; Mr. John Conyers, of Michigan, who is also a member of this committee; Mr. George Collins, of Illinois; Mr. Ralph Metcalfe, of Illinois; Mr. Louis Stokes, of Ohio; Mr. Parren Mitchell, of Maryland; Mr. Ronald Dellums; of California; and Mr. Walter Fauntroy, of the District of Columbia.

Mr. MCCULLOCH. Mr. Chairman, I should like to say that I think you have made an excellent statement for the committee and for the Congress.

I repeat again, this is one of the most important problems of our time, and I hope that our decision thereon will not be motivated by prejudice.

Mr. HAWKINS. Thank you, Mr. McCulloch.

May I say, Mr. Chairman, that while it may be that the assumption is that the 13 black Members of Congress represent almost exclusively black districts, may I indicate that in many of our districts there is a large percentage of groups other than black constituents.

My own area is almost 50 percent white. The State initiative in California, which has been initiated in opposition to busing, originated in my own district. So some of us, I think, face the very troublesome and difficult groups that some of you, I am sure, face also.

Mr. McCLORY. I would like to ask a few questions, if I may, Mr. Chairman.

According to other testimony we have heard that the antibusing amendment was supported by both blacks and whites and that there is general opposition to busing in some of the areas where there is a lot of crosstown, long-distance busing.

As a matter of fact, one black witness in the hearings last week testified that he was against busing and stated that he wanted his child to attend a black school and wanted him to associate with his black friends and did not want him to be bused a long distance to sit next to a white child.

What do you think about that attitude on the part of black? Shouldn't that be respected just as well as the other view that perhaps busing a black child from the inner city school out to the suburbs might provide a better education?

How do you feel about that?

Mr. HAWKINS. Mr. McClory, there are certainly a lot of differences in every group. I would not want to impose my views on those who differ with them. Certainly those who prefer separatism, in my opinion, in America don't have to fight for it. All they have to do is separate, and I don't think that is the question.

The question is whether or not the public funds should be used to allow individuals to have their separate institutions.

I am one who believes that those who dip their fingers in the public treasury should not object if a little democracy sticks to their fingers.

I would say to those who feel that way about it, certainly they can have their separate schools. I think that the 13 Members of the Congress speak probably for as wide and as large a section of the black population as perhaps any other group.

I think that there are some honest differences. I think there are some black parents who have come to the conclusion that some of the public schools have become inferior, that black leaders, black teachers, and administrators could not do any worse than what the white teachers and white administrators are doing at the present time and that they would like to take over control of those schools.

Mr. McCLORY. In the *Swann* case, limitations on busing were recognized. In view of that could not the Congress enact appropriate legislation which would delineate distance or time limitations and possibly take into consideration other factors?

I know that Congressman George Collins indicated his support of legislation which would restrict busing where it exceeded certain limits of time or distance.

Is that a variation from the general Black Caucus position, or is that consistent?

Mr. HAWKINS. No, I think all of us recognize inconveniences, but certainly this is a troublesome issue. I think many blacks feel that they are the ones who are bearing the brunt of compliance today, and as victims they do not see why they should be the only ones to bear the burden. Why should they be the ones to be bused away from their schools? Why should black teachers and black principals be dismissed from the school system, even when they are more qualified than the whites in many instances?

These are some of the troublesome problems that blacks face, and they see this destruction taking place. They also know that in many of the classrooms to which black children are going, that they are being treated with a great deal of hostility.

Sometimes the teachers, not having been accustomed to such a situation, are not prepared for this. These are some of the very, very troublesome problems. We recognize these problems.

But the question is whether the law is going to be upheld, and I think it is only through the encouragement that we will give to upholding the law, not only will we bring about compliance or respect for authority, but I think we would bring about much better education for all.

I recognize it will be several years of adjustment, but we have allowed a decade and a half to go by without making these adjustments.

What we have now is a situation in which decent people, in which strong administrators, in which qualified teachers are hesitating. They feel as if we are not encouraging them.

We are encouraging the defiance. We are encouraging individuals not to want to make integration work.

Mr. McCLORY. The testimony we have received so far, it is my recollection, has not indicated a desire to avoid the effects of the *Brown* decision or to go back to the period before that.

However, although the testimony has not indicated any opposition to the *Brown* decision, it has indicated opposition to decisions which have followed that, principally the *Swann* decision and the Richmond case. There seems to be no opposition to the black children being bused into the white schools. At least there has not been any direct testimony of that. You have implied that, but we haven't any direct testimony about that that I know of. But there has been some strenuous opposition to busing the white children into the black inferior school. Even Father Hesburgh, when he was here, said that he supported busing and didn't want us to amend the Constitution because he thought children should have an opportunity to go to good schools and not have to go to bad schools.

I can support the position of busing the black or white from the inner-city school into a better school, but how do you support busing anybody—black or white or other color—into what is an inferior school?

Mr. HAWKINS. I think you have put your finger right on the problem when you say "inferior school." Certainly it isn't our position that anyone should be bused to an inferior school. Why should there be an inferior school?

You are saying that the very existence of inferior schools indicated that the law is not being upheld.

We say if the law is upheld, you would not have an inferior school.

We have many wonderful opportunities. Certainly we could build schools that are not inferior. We could certainly create schools that are so attractive that individuals would not worry about whether they are being bused or not.

There is a school in San Mateo, Calif., which is an excellent school which a few years ago was all black. The school has been changed now. It has become the best school in that county because it was strengthened, its curriculum was strengthened.

It offers certain courses not available elsewhere. It offers perhaps the best array of teachers that could be obtained in our State, and what has happened? White children have volunteered to be bused to that school because that school offers them something which they want.

I say when you have a school that is good and an excellent school, parents are not going to object to their children being bused to that school.

Mr. McClory. No; but they are going to object when their children who are attending that school are ordered to be bused to an inferior school, and inferior students are bused in to that school.

Mr. Hawkins. Why should there be an inferior school? Why should you have an inferior school to which some children are assigned and a better school over here, and you say that these children over here are such that you are going to violate the Constitution in order to maintain a school which you admit is inferior?

Mr. McClory. You should not have to. I assume that you and the Education and Labor Committee, particularly with the emergency school legislation, are undertaking to provide the additional resources necessary to make the inferior school a quality school, so that it will meet the standards those bused from other areas would want. But that is a difficult task, and it is something that the Federal Government alone, I think, is not going to be able to accomplish. It takes a lot of local and State input, as well as legislation and funds at the Federal level. Isn't that true?

Mr. Hawkins. That legislation heads, I think, in the right direction. But there again we get into the question of busing, and some individuals who advocate that education is a local problem voted for a provision in that proposal to deprive the State and local administrators of using any of the local funds for busing.

If they believe that education is a local matter why would the Federal Government or Congress then intervene in that local problem? Obviously, it isn't a local issue. A school district is a creature of the State. The States have been very zealous of maintaining State control, and they have been very much in opposition, even sometimes to Federal assistance, on the basis that that control is being taken away from them.

Mr. McClory. May I ask one more question? A number of persons that I have regarded as great civil rights liberals have suddenly emerged as strong proponents of antibusing legislation.

The ethnic element is deeply involved in this whole issue, too, is it not? We have ethnic or racial neighborhoods when there is a strong resistance to busing the children out of the neighborhood, or for that matter, bringing other ethnic or racial groups into the neighborhood? Isn't that being exacerbated by this busing problem?

Mr. HAWKINS. Yes, unfortunately, I think the issue is bringing out the worst in most of us.

Certainly there are black power advocates who would like to take over control of the schools, and I say black power advocates in this context, not in the most acceptable way, but I think that the law must be complied with by them as well as by others, and I don't think that we are advocating that the law is going to be relaxed because some individuals would like to take over control of the schools.

Mr. MCCLORY. Thank you very much.

Chairman CELLER. The Chair wishes to announce that the committee has three bills on the suspension calendar, and so we have to conclude this session by 12 o'clock. Then we will adjourn this hearing until Wednesday morning at 10 o'clock, because tomorrow the subcommittee meets on other important legislation.

We are very grateful to you, Mr. Hawkins, for your testimony, and we want to thank you very much.

Mr. HAWKINS. Thank you, Mr. Chairman.

Chairman CELLER. Our next witness is Mr. William E. Minshall, of Ohio.

Mr. Minshall.

STATEMENT OF HON. WILLIAM E. MINSHALL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. MINSHALL. Mr. Chairman and members of the committee, I appear here today as author of House Joint Resolution 1039, a constitutional amendment to reverse the Merhige decision by insuring the right of States to establish and prescribe powers of the local educational agencies, and as cosponsor of constitutional amendment House Joint Resolution 646 to prohibit the assignment of public school students to particular schools on the basis of race, creed, or color.

By this action it should be abundantly clear that I am absolutely opposed to the mandatory busing of public schoolchildren away from their neighborhood schools and to the threat of the heavy hand of the Federal Government arbitrarily altering local school district boundary lines.

At the very outset, I would like to remind this committee that during all my years in the Congress, and I am sure, as the ranking minority member, my colleague from Ohio, well knows, I have voted for every civil rights bill they have sent to the floor of the House.

I reject the idea that racism is involved in objections to schoolbusing. It most certainly is not a factor in my case, and my record in support of the very bills you gentlemen have written in this committee to guarantee the civil rights of all Americans bears witness to my statement.

In that context, I also respectfully remind you that in the Civil Rights Act of 1964, your legislation for which I voted, there is provision, and it still is on the statute books, that spells out very plainly that the law in no way authorizes any U.S. official or court to issue orders seeking to achieve racial balance in schools by transporting children from one school to another, or from one school district to another, nor did the Civil Rights Act of 1964 enlarge the courts' existing power to insure compliance with constitutional standards.

Gentlemen, that is the law. It is in section 407(A) of Public Law 88–352. I do not see how any of us who voted for that act, after much consideration and debate, can now look the other way while the law is being flouted.

The 88th Congress recognized, and I now reaffirm, that mandatory busing of schoolchildren is not, and I repeat, not a racial issue. The antibusing provision was carefully written into this very civil rights legislation, because we realized that forced schoolbusing poses a real threat to children of all races to their safety, health, to parents, and to their own participation in school activities, to the very quality of their education.

In view of the actions taken since 1964, both by the courts and Department of Health, Education, and Welfare, it is apparent they do not intend to abide by the law. There is only one solution remaining. By constitutional amendment we must remove from the grasp of the courts and the bureaucracy, decisions of locations of school boundaries and schoolbusing. They have chosen to ignore the law on the statute books. I do not believe they would elect to ignore the Constitution.

Years ago a very great Senator from Massachusetts, Senator Henry Wilson, declared, "The States are something yet." I assure you on issues of schoolbusing and local control of school systems, the American people are something yet, and they will be heard. American parents of all creeds and races from all economic walks of life recognize the need for these amendments to protect their children.

I urge the committee to report both House Joint Resolution 646 and House Joint Resolution 1039 to the House floor so that it can work the will of the people.

At this point, Mr. Chairman and members of the committee, I would like to include in the record excerpts of some of the letters I have received from constituents explaining, with the insight only parents possess, their concern for their children.

Chairman CELLER. The committee will accept the material.

(The excerpts follow:)

From a man in Rocky River, Ohio.—Our children must not be used as pawns by the experimentalists. . . . Overall, the concept of neighborhood schools has done a pretty good job in educating our young people.

Lakewood, Ohio, mother.—I am opposed to forced busing of school children because—(1) It removes the children too far from the parents in case of sickness or accident; (2) It breaks up the Parent-Teacher Association which has been a good influence in our educational system; (3) It breaks down the family structure by separating brother and sisters, parents and children; (4) It's expensive; (5) Its worth has not been proven; to the contrary much harm has been done to the mental attitudes of many children; (6) It's against the statement in the Civil Rights Act of 1964 that "busing shall not be used to obtain racial balance".

Cleveland, Ohio, man.—I am strongly opposed to busing children out of their neighborhood. Any amendment or law stopping such practice I am for 100%. It's high time we stopped federal judges from making law. We did not elect a one of them to office, and we can't vote them out. The only thing a federal judge understands is the power of Congress through the people. Get us a law now.

Fairview Park, Ohio, woman.—The 1964 Civil Rights Act forbids busing but this fact has been ignored by the courts. I have great faith in America's elected representatives, but none in the dictates of the non-elected judiciary.

Seven Hills, Ohio, homemaker.—Forced busing is taking the right of a parent to decide where his child should go to school. How can a few judges or politicians decide the future of our children. We, as parents, want freedom to decide and send our sons and daughters to the schools we want.

A Parma, Ohio, woman.—I am 100% against school busing. The additional cost of purchasing, maintaining and driving the buses is another burden on the overburdened taxpayer. Our roads are jammed enough with traffic now, not to mention the added pollution. Most important of all, the children. Having to get up earlier in the morning, coming home later, cuts down on free hours all youngsters need. I know many of our young people walk a good distance to avoid the bus ride. Being taken farther from home can be traumatic for many children. Normal-thinking people seek out areas near schools when purchasing homes. I can go on stating further objections but cannot find one good thing about forced busing. This will not solve problems, only add to the ones we now have.

A Fairview Park, Ohio, man.—I am writing in support of your two constitutional amendments, namely anti-busing and consolidation of school districts. I believe these amendments would eliminate one-man court decisions (such as the Richmond one) of such important questions affecting so many people. It should be one's freedom of choice where one can send his children—not a court's decision. Massive busing cannot possibly overcome educational retardation of black, yellow or white children. It will, however, certainly increase economic costs. The time spent on buses can certainly be put to better use improving the basic skills such as the children's reading ability (which is called a key test of educational retardation) in one's local school, reached with a minimum of transit time. School systems should be on an equal basis as far as opportunity is concerned and maintained so by each state government.

A North Olmsted, Ohio, man.—The objective should be to improve the quality of education in all schools to a common level. Busing just wastes money which would go for improving the schools themselves. The idea of a neighborhood school must be preserved . . . Parents and children can maintain a closer interest and participate in extra-curricular activities. The other thing that scares me about busing is the safety of my child may be threatened. What if my child is hurt or gets sick and is a great distance away? We will never in good conscience allow my child to be bused when his safety is in doubt.

Chagrin Falls man.—I want you to know my opposition to any form of crosstown busing that is compulsory and will take my children away from the local school which my tax dollars support.

Bedford Heights grandmother.—I have all grown children, but I do have grandchildren. I very definitely don't want them bused to another neighborhood and if that happens I know my son will keep them out of school. I don't want that to happen either.

Rocky River man.—In my opinion he (Judge Merhige) was not in a position to pass judgment on this matter. How could a father with a status symbol whose son was not in public school but in a well-to-do private school be able to have an unbiased opinion in rendering his decision and not have it a sham on democracy or a "conflict of interest".

Olmstead Falls mother.—I feel that it is an outrage that my children may have to be bused to another city to go to school while we live here and pay taxes to schools someone else's children go to. I feel it is unconstitutional and a crime. I want to feel that my children are near and safe so I don't have to worry about them. And should some emergency arise, I want to be near.

Strongsville, Ohio, man.—We are definitely against forced busing. The Federal government should stay out of school matters of this kind. Everyone should go to his own neighborhood school.

Parma Heights couple.—This school busing has our dander up. We've worked hard and long to get where we are. We've paid a lot of taxes to our school district. We do not believe our children should have to go to another school.

Solon man.—I do not believe it is fair to any child to be bused into an unfamiliar area—it would certainly be a frightening experience. We have always taken an interest, in our children attending the best possible schools and I cannot understand how we could actively participate in a school many miles from our home, possibly even several different school districts.

North Olmsted man.—We will never tolerate the pending bus program some of your colleagues are perpetrating.

Mr. MINSHALL. I thank the committee for its time.

Chairman CELLER. Thank you, sir.

Our next witness this morning is the distinguished member from Tennessee, James H. Quillen.

STATEMENT OF HON. JAMES H. QUILLEN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSE

Mr. QUILLEN. Thank you, Mr. Chairman and members. It is a pleasure to appear before this distinguished committee in support of legislation which will provide that no public school student will be assigned to a particular school because of his race, creed, or color.

On September 23, 1971, I introduced House Joint Resolution 888, calling for a constitutional amendment to provide that no public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

We cannot, we must not, overlook the constitutional route. This is the best way to solve busing on a permanent basis, and I urgently request that the members of this subcommittee and the full Committee of the House Judiciary give thoughtful and serious consideration to reporting out a constitutional amendment with a favorable recommendation.

Needless to say, I am wholeheartedly in support of such legislation, for I believe that it is imperative to stop forced busing of our children out of their neighborhood schools to achieve racial balance. It is evident that the majority of the people do not want this, yet it exists.

For 18 years we have followed the simple guidelines of the Supreme Court's ruling in the case of *Brown* versus *Board of Education of Topeka*. The Court concluded "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." With these words the Supreme Court of the United States in its historic 1954 decision in *Brown* versus *Board of Education* declared unconstitutional those State statutes requiring or permitting separate public schools for white and Negro children. This ruling—rightfully and unanimously—simply stated that it was unconstitutional to assign students to school because of their race. What are the schools doing now? Under court orders they are assigning, and busing, students to school because of their race.

In my opinion, the Court has made a 180-degree turn since the 1954 decision by telling us that race must be a determining factor in the assignment of students to public schools. I believe this last decision and impetus is wrong.

The Constitution says, in effect, that laws are to be colorblind, and this is good. It is, I feel, wrong to give a person special consideration because of the color of his skin—just as it is wrong to discriminate against him for the same reason. Persons of every color should be treated equally and should be given the same opportunities. The denial of any right or privilege of citizenship because of race, creed, or color cannot be defensible on legal or moral grounds.

After many years of turmoil and wasted time and money, we finally got around to eliminating assignment by color, and now, in a complete turnaround, the Supreme Court, in the *Charlotte-Mecklenburg* case, *Swann* versus *Board of Education*, has decided that we should assign students by their color and bus them across town in order to educate them by set ratios. However, I, along with numerous lawmakers and concerned citizens all over the United States, feel that we should not divide people along racial lines and then allot each group so many percentages.

There are many things wrong with the forcible transfer of children from a nearby school to one across town in order to obtain the proper racial balance. It is, for one thing, a waste of time and money that could better be spent in providing a quality education for both black and white students.

To those of us who are concerned with the education of our children, it is a known fact that our schools already find it necessary to cope with inadequate operating budgets, and now they must plan vast outlays for the purchase and operation of enlarged bus fleets.

This money, I believe, could certainly be used to better the present education program for all children, regardless of color, and this is not a view of whites only, but it is also shared by many of our black leaders.

Mr. William Raspberry, a black columnist for the Washington Post, points out that:

> Convoluted efforts to achieve racial balance are not likely to produce educational improvements for the black children on whose behalf they are undertaken . . . in financially strapped school districts throughout the country it makes more sense to spend available resources for improving education than tripling bus fleets in order to furnish every black child with a white seatmate.

The additional funds required for forced busing could be better spent in upgrading our total education system so that each child would have an opportunity to get the best possible education and at the same time attend his neighborhood school.

The money could be used to purchase better teaching materials, to provide for special programs, to increase the teachers' salaries or to build new and better school buildings. Yet these needs, under forced busing, must take second place to the need of setting ratios which will achieve racial balance in our schools.

The Supreme Court decision makes it possible for our children to receive a second-rate education by attending a racially balanced school. Is this where our priority lies today? I say to you, Mr. Chairman, and to other members of this committee, the answer to that question must be "No."

Forced busing to achieve racial balance is also a waste of time. It is my strong feeling that the time each child is required to be on a bus, in some cases as much as or more than 2 hours per day, could better be spent either in the classroom or at home, rather than riding clear across town so that he can sit next to someone whose skin is a different color than his own.

Another thing wrong with the forcible transfer of children from a nearby school is the effect this act will have on the children. It is my feeling, which is also shared by literally thousands and thousands and thousands of concerned parents and educators, that requiring children of both races to be transported long hours through congested traffic arteries for many miles to schools remote from their homes is not in the best interest of these young children.

The inconvenience, fatigue, lack of normal recreational time after school, and the necessity of arising at early hours are all incompatible with the schedule and routine which children should maintain. Because of the new schedules imposed by forced busing, in many instances, there can no longer be time for a Boy Scout or Girl Scout meeting after school because school is too far away.

Again, it is many times impossible to participate in the athletic programs of the school because of the distance involved. It is a known fact that the greater the distance between home and school, the less interest there will be in school activities.

So it is evident that the heaviest price of forced busing is being paid by the children who are being forced to ride a bus to a strange school which they do not want to attend. They must leave behind friends and activities that play a major role in their lives in order to achieve some arbitrary, racially balanced school system. Is this fair to these children?

Finally, the forced busing of children across town is an added burden on the taxpayers. Where is the money for all this busing coming from? The answer to that is obvious: from the taxpayers.

Today when taxes are ever increasing, why should we expect the people to shoulder another heavy financial burden in order to pay the cost of forced busing which they strongly oppose in the first place? The taxpayers, who have contributed billions of dollars for our schools, will not continue to support expenditures to implement policies of which they strongly disapprove.

One of my constituents writes:

> If busing is done because children cannot get the education they should have, I would agree; but, if it is only to provide a certain mixture of whites and blacks, I think it is absurd . . . with the school systems asking for more funds each year, this added expense is unnecessary.

Forced busing should not be permitted. This is a complete waste of the taxpayers' money, and the people will not stand for such a needless expense.

Mr. Chairman, there is another fact which I would like to impress on the members of this committee today, and it is that opposition to forced busing does not spring out of deep-seeded prejudices. It is not regional. Parents throughout the country are opposed to the forced busing of children out of their neighborhood schools.

One parent writes to me:

> I am writing this letter to protest the proposed busing in Memphis. Let me say first that I am not a Southerner. I was born in Ohio but raised mostly out West. I went to school with Negroes all my life and never felt pushed around because it was by choice for all races.
>
> Secondly, my eight-year-old daughter had two excellent Negro teachers her first and second year in Memphis schools, both of whom she adored and respected. I am trying to impress upon you the fact this is not prejudice speaking.

This gentleman then goes on to say:

> But we feel it is wrong when a child lives three blocks away from school and possibly will be bused 45 minutes away to a school she does not want to attend.

Also, one more important factor should be remembered—the majority of the people are opposed to forced busing. This is evident throughout the country. I ask you, who are we to ignore this wish? Let me remind you that Congress must act to prevent forced busing. The majority of the people speak to us in this regard.

In conclusion, I would like to say that I believe in the Constitution, and I believe that it is a valid document; yet, when a few use it to impose their will on the many, then I strongly believe that it is time to amend the Constitution to reflect the wishes of the people. House Joint Resolution 888 will do this. It will return equality to all, regardless of race, creed, or color.

It is my hope that this committee will act favorably so that once again the voice of the majority will be heard and so that this most dangerous threat to our education system will be removed once and for all.

I appreciate the opportunity to appear before this distinguished subcommittee and I urge you to give favorable consideration to a constitutional amendment to do away with forced busing to achieve racial balance.

Let me take this opportunity to offer my congratulations to each and every one of you for the fine job that you are doing and I am especially appreciative of the fact that you are holding these hearings.

Thank you, Mr. Chairman.

Chairman CELLER. Mr. Quillen, it is always a pleasure to have you. We are especially happy to have heard from you on this very, very difficult question. It has been very enlightening and we want to thank you very much, sir.

Mr. QUILLEN. Thank you very much, Mr. Chairman.

Chairman CELLER. Our next witness is the distinguished gentleman from Texas, Graham Purcell.

STATEMENT OF HON. GRAHAM PURCELL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. PURCELL. Mr. Chairman, I appreciate this opportunity.

I am going to ask permission to file my statement and not take the time to read it to you.

I am for the legislation that is before you. I am against busing and I am in full agreement with what those witnesses are proposing to you.

So with your permission, Mr. Chairman, I will file my statement and not take the time of the committee to read it.

Chairman CELLER. Thank you.

We will file your statement, sir, and thank you very much for your representations.

(The statement referred to follows:)

STATEMENT OF HON. GRAHAM PURCELL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, the topic of concern, the busing of schoolchildren to balance racially—on an experimental level—the attendance throughout whole school districts, has generated more confusion, more fear, and more mistrust of the Federal government than any issue in recent memory. It is the mandatory obligation of this collective body of the Representatives of the people to still this confusion, calm this fear, and dispel this mistrust. The furor surrounding the busing issue has scarred the complexion of the real problem to the point where it is no longer the issue at hand.

Mr. Chairman and Members of the Committee, you have heard colleagues sit where I am sitting and explain at length that this question is not a racial question; rather, they say, it is a question of freedom. I say it is a question of both. We must realize that at issue in these hearings is a question which has its foundation rooted in the law of this Nation which states that "to separate children in grade and high schools from others of similar age and qualifications solely because of their race generated a feeling of inferiority as to their status in the community." The landmark decision in *Brown* v. *Board of Education* further stated that forced segregation of schoolchildren affected their motivation to learn.

It was precisely this kind of segregation which was attacked in that 1954 decision. Since 1954 the Courts have not been alone in fighting the lingering problems of racial segregation. We turned the corner on segregation well back in the 1960's. Racial restrictions in housing have been eliminated, and there has been genuine progress in wiping out the discrimination which for so many decades prevented black Americans from sharing the job and other economic opportunities of our country.

Until this busing scheme, though, no one was forced to attend one public facility over another; certainly convenience and traditional neighborhood affiliations have dictated—exactly as they should—the choice of schools. The answer to what's left of that 1954 dilemma is simply to quit skimping on money for neighborhood schools which are not of the same caliber as the others in a given community. Quite obviously, if equal education for all is to be our objective, and it must, then we must provide equal facilities. Carting children hither and yon like so many crates of cabbage doesn't change a system of unequal facilities one bit.

If voluntary integration is our objective, and I agree that it should be, then we must go beyond providing merely equal facilities. Instead, two decades later, Federal officials have struck and insisted upon the notion that forcefully uprooting American schoolchildren from their familiar neighborhood schools and sending them rattling off across town to strange areas is exactly what the Court had prescribed. HEW officials seem to insist that this scheme and this scheme alone will satisfy the Supreme Court mandate.

But no thought seems to be given to the fact that at hand is not the same problem the Supreme Court attacked. We are not confronting the forced segregation of community facilities. We are confronting the inequality of community facilities.

Unlike these cloistered officials, I say there are alternatives to providing an absolutely equal and racially integrated education to the children of this country which can be had without yanking them out of their home surroundings and freighting them like so many laundry bags back and forth across their communities. If there are bad schools in any part of any American town—I ask why should any children, black or white be forced to continue to receive their education there? It makes the problem no better that a certain percentage of black children and a certain percentage of white children receive one quantum of education while another percentage of each receives another quantum of a better education—all within the same school system.

We should provide "magnet" facilities—for examples, schools with such excellent full-time programs and supplementary services that they attract students from a wide geographical area. Unusual curricula, designed to meet specialized needs, could provide powerful incentives. Through such far-sighted programs our schools and communities could become genuinely, rather than artificially, integrated.

On at least seven occasions Congress has enacted legislation to prohibit Federal officials from requiring busing "in order to achieve racial balance." The first such provision was contained in the Civil Rights Act of 1964. Similar prohibitions have been included in the 1966 and 1967 amendments to the Elementary and Secondary Education Act of 1965 and in the Labor and Health, Education, and Welfare Appropriations Acts for fiscal 1968, 1970, and 1971. Recently, the House amended the Higher Education Act in a further effort to put a halt to busing.

I have fully supported every one of these provisions and amendments. Additionally, I went to the floor of the House in the fall of 1970 to discuss this issue. At that time I outlined many of the same things I have said here this morning. Other Members have spent similar time on this issue. We are as frustrated at our efforts as American parents are at this imposition from a Federal government which no one can blame them for mistrusting.

Mr. Chairman, for the reasons which I have outlined I introduced House Joint Resolution 854 last September. Unlike many similar proposed amendments to the Constitution which would serve only to prohibit the use of busing to achieve racial balance throughout community school systems, my Amendment would additionally insist upon the immediate equalization of all the schools within a given city or town. I am convinced we must not only put a stop to the HEW sociological experimentation, but we must also provide the means for a viable alternative to accomplish what is truly our objective—an education unparalleled in the world which is available to every last child in the United States.

We have an obligation to the children, and we have an obligation to the very bedrock notion of a phrase that has been so caught up in the furor over busing that it has almost lost its relevance—freedom of choice. It is not a trite phrase, Mr. Chairman. Neither is it a racial euphemism. It is a cornerstone of life for everyone born an American and it must not be shoved into obscurity by what Winston Churchill once called "the lamps of perverted science"—in this case, perverted social science.

This Committee must act favorably upon a Resolution which will meet all of the objectives which we must meet. Our action is overdue. None of our efforts to date have driven home to the HEW and other Administration officials the fact that Americans, regardless of race, want no part of a trumped-up scheme which will scatter their children across whole cities on a daily basis.

Chairman CELLER. Our next witness is the distinguished gentleman from Alabama, Hon. Tom Bevill.

STATEMENT OF HON. TOM BEVILL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. BEVILL. Thank you, Mr. Chairman. I would like to thank you for giving me this opportunity to appear before this committee today and to express my support for House Joint Resolution 620.

In the light of the recent court decision in the *Richmond* case, I feel that we must proceed with all possible speed in considering this proposed constitutional amendment to prohibit the forced busing of schoolchildren to achieve a racial balance.

You have already heard many arguments favoring such an amendment and arguments opposing it. And, you have heard various other proposals to stop busing by legislative acts and other means.

It is my contention, Mr. Chairman, that these other proposals have been tried and failed. They simply are ignored or bypassed by those who would have us continue this senseless busing.

The very foundation of our educational system is being shaken. Throughout the land there is upheaval. There is distrust and in some cases there is violence. Most of it has been brought on by forced busing, taking children from their neighborhoods and transporting them long distances to schools they do not wish to attend.

Forced busing to achieve a racial balance in our school has, in my judgment, significantly lowered the quality of education in our Nation. It has forced our educators to lower their goals; to change procedures; to adjust to unfamiliar patterns and programs.

The orderly process of education has been frustrated and often disrupted. Teachers have been forced to abandon their teaching duties in order to act as disciplinarians and guards to preserve the peace.

We should be spending the money we are currently spending on busing to improve our schools—all of our schools so that every child, regardless of his race, creed, or color would have the opportunity to receive a good education.

Recent decisions made by Federal courts have broken the longstanding tradition of local school boards, parents, and the community being responsible for local schools. These decisions are contrary to the wishes of the great majority of the people of this Nation.

Our schools are becoming nationalized. HEW edicts and Federal court rulings are steadily breaking down a system which has served us well these many years.

I believe our goal of providing a good education for every child is a worthwhile goal. And, I believe it can best be reached by making good schools available to every community and by relying on the good judgment of the people and local elected educational leaders to control these schools. Just think what progress could be made in the academic programs with the money being used on forced busing.

The neighborhood school is the foundation of the American system of education. It must be preserved. To do this and to protect the right of every citizen, we must adopt this constitutional amendment.

I respectfully urge this committee to approve House Joint Resolution 620 without delay.

Thank you.

Chairman CELLER. Thank you very much, Mr. Bevill.

The next witness is the distinguished gentleman from Michigan, Mr. James G. O'Hara.

STATEMENT OF HON. JAMES G. O'HARA, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. O'HARA. Thank you very much, Mr. Chairman.

Mr. Chairman, I appear before you in support of legislation or a constitutional amendment, if legislation should prove ineffective, to prevent court ordered assignment of children to schools on the basis of race.

I believe in the principle set forth in the cases of *Brown* versus *Board of Education* that it is constitutionally forbidden to assign pupils to schools on the basis of race. The decisions beginning with *United States* versus *Jefferson County Board of Education* and ending with *Swann* versus *Charlotte-Mecklenburg Board of Education*, to the extent they deviate from the principles set forth in *Brown*, are mistaken.

It is my hope that the Supreme Court in the *Denver* case, which it has agreed to review, or in some other appropriate case, will return to the principles of the *Brown* decisions. In this event, no constitutional amendment or legislation would be required.

If this hope is not fulfilled, it will be necessary for Congress to act to reestablish those principles and to require the States and their school systems to assign pupils to schools on a racially nondiscriminatory, colorblind basis.

We must be careful, however, that we do not permit a return to the purposeful segregation which the *Brown* decisions struck down. We must not sanction freedom of choice superimposed upon a tradition of racially segregated schools.

But, certainly, we should sanction the actions of a school system that now or hereafter shall assign students on the basis of neighborhood attendance areas drawn in a racially nondiscriminatory manner.

The Constitution requires no less. To do more is to repeat the very evil that we are attempting to correct.

Chairman CELLER. Mr. O'Hara, I am curious to know how the Supreme Court can get some proposal before it that might change its views as expressed in the *Brown* case?

Mr. O'Hara. Mr. Chairman, I don't want them to change their views as expressed in *Brown*. I would hope they would not and I don't think they would. But I think that those two Supreme Court decisions could be cited as those that I think have led us down the path that I consider to be mistaken.

The first is *Green* versus the *County School Board, New Kent County*, and the second is *Swann* versus *Charlotte-Mecklenburg Board of Education*.

Chairman Celler. Do I understand you are offering another amendment; is that it?

Mr. O'Hara. Mr. Chairman, I am not at this time offering an amendment. I would leave it to the committee to frame such amendment. I would suggest however that it not take the sweeping purview of some of the amendments that have been introduced and been advocated before this committee. Some of them I think would return you to the situation as it existed before *Brown* and I don't want to see the situation returned to the pre-Brown type of segregation.

I would think that if you were to go for an amendment, that it ought to be one that was rather narrow in scope, perhaps one along the lines mentioned in the next to last paragraph of my statement, as saying that no school system that assigns students on the basis of neighborhood attendance areas drawn in a racially nondiscriminatory manner shall be required to adopt any other method of pupil assignment.

That is a very simple and very carefully limited form of such an amendment which may not be particularly eloquent but which I think would be better than some of the sweeping declarations that I have seen which I think might return us to the situation which existed before the *Brown* case.

Chairman Celler. I take it that you believe in integration?

Mr. O'Hara. I do indeed, Mr. Chairman.

Chairman Celler. I take it also that you are in favor of the Dingell bill, H.R. 13534, which provides among other things, that:

> **No court of the United States shall issue an order requiring the transportation of students or the merger of school districts as a means of eliminating racial segregation in schools if . . . the court determines such plan [desegregation plan] provides for assignments of students to schools on a racially non-discriminatory basis and in a manner which will result in the elimination of segregation in such schools to the maximum extent feasible without requiring the transportation of students, or their attendance in the schools of another such agency, for that purpose.**

How can that be done without busing?

Mr. O'Hara. To begin with, Mr. Chairman, this is Mr. Dingell's bill and I understand he is going to be testifying before you and I think he will probably expand upon the ideas in it. I have cosponsored it with Mr. Dingell and all it says is that the assignment system must be one that is not discriminatory in any way.

If you can redraw geographic attendance areas or take other steps of that nature in a way that would promote desegregation of the schools, then you ought to do so; that is, without requiring the transportation of students or their attendance in the schools of another such agency for that purpose.

Chairman Celler. You stated in your answer exactly the import of my question. How could that be done?

Mr. O'Hara. To the extent that a school system has racially discriminatory attendance areas, correction of them would result in more integration. I think that you might in other ways change attendance areas. You might pair schools if they were nearby schools and involved essentially the same basic neighborhood and make one of them a school for grades 1 through 3 and the next a school for grades 4 through 6. I think in that way you might attain some fairly considerable degree of integration where none exists today.

But you would not be able to achieve, in a metropolitan area such as the one you represent or the one I represent, integration in every school in the area.

You could not do that because housing patterns would not permit it.

Chairman Celler. I believe you are sincere that this might be done that way, but how can Congress bind the Supreme Court to do it that way that you outline? Can we say to the Supreme Court, "You shall do it this way and no other way."

This is a bill that you are offering, not a constitutional amendment.

Mr. O'Hara. Yes, and my hesitation about the Dingell bill is that I am dubious whether or not we can achieve this by legislation and, therefore, as I said in my statement, I support legislation or a constitutional amendment if legislation should prove ineffective.

I have heard many, many qualified lawyers who would claim that you could do this by legislation. Indeed the claim has been made by the Vice President of the United States and by the majority and minority leaders of the U.S. Senate that you can take care of this problem by legislation.

I am dubious, Mr. Chairman, but I don't feel in a position to say that you absolutely cannot; although I am dubious I did agree to cosponsor this bill that Mr. Dingell has introduced because I think it is a good idea and a good piece of legislation.

Chairman Celler. Justice Burger in the *Swann* case, speaking for a unanimous Court, said among other things:

> Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems.

So here in advance you have an opinion by the Supreme Court which would in effect negate what you and the distinguished representative from Michigan, Mr. Dingell, would provide in H.R. 13534.

Mr. O'Hara. Mr. Chairman, as I attempted to make clear, it is my personal view that legislation would probably be ineffective, although there are others who claim the contrary. I think probably a constitutional amendment will be required unless the court in the Denver case, or in some other appropriate case, modifies the rule that it laid down in *Swann* v. *Charlotte-Mecklenberg* and the rule that it laid down in *Green* v. *New Kent County School Board*.

But Mr. Dingell's bill I thought was a meritorious one when he showed it to me. When he asked would I be willing to cosponsor, I told him I would, even though I am doubtful that legislation would be effective in this particular case.

Chairman Celler. Any questions?

Mr. Hutchinson. Mr. Chairman, I have a question.

Mr. Chairman, I would like to welcome my colleague from Michigan as a witness this morning. I appreciate very much the statement he has made and would simply like to ask him if he would agree with the observation that I am about to make. Perhaps he won't. He has said he is dubious that legislation could be effective to eleminate this problem. I wonder, if the Congress should enact legislation to lay down a guideline for the courts which would perhaps change the direction in which we seem to be going now whether such a guideline would be accepted by the courts.

In other words, would the courts hold that the Congress has laid this down as a national policy with regard to inordinate busing and accept this direction from the Congress?

Equal protection of the law is a very broad concept. Certainly the 14th amendment never intended, by its words, that the Supreme Court would be constituted a superlegislature.

The fifth section of the 14th amendment vests in Congress the power to enforce it. In order to do that effectively, Congress should have power to prescribe guidelines, and in a sense to define the terms.

So I come back to my original question. Suppose the Congress does pass legislation directly predicated upon its power under the 14th amendment, would the courts enforce that statute and be guided thereby?

Mr. O'Hara. My friend from Michigan has very ably stated the case for legislation. It is true, as the gentleman points out, that the 14th amendment, article V, grants the power of the Congress to implement this amendment by legislation.

The question then is, even though we state in the preamble that we are acting pursuant to this grant of authority to enforce the 14th amendment, whether or not the Court would consider that that is what we were acually doing, or whether the Court might consider, in light of the fact that they are now using racial assignment and transportation as a method of achieving enforcement of equal protection provision, that we were limiting their ability to enforce the 14th amendment?

I think that will be the question on which the issues would turn. Do they consider that we are implementing this in accordance with our responsibilities under section 5 of the 14th amendment, or do they consider that we are trying to restrict the Court in violation of what they would consider their duty to apply the 14th amendment?

Chairman Celler. I might ask a question of not only our witness but of our distinguished committee member from Michigan. Does not the Court always, when it declares an act unconstitutional, repudiate our views and repudiate our philosophy? It does it all of the time so why should we expect that in this vexatious busing problem, the Court would to a greater degree accept and bow down to our wishes?

Mr. Hutchinson. If the chairman would yield, I recognize the purport of his statement. I don't have any statistics now, but it has been my impression that the courts have not been eager to overthrow acts of Congress.

As a matter of fact, they have throughout our whole history asserted that they must give great weight to acts of Congress. If there is any possible way of upholding those acts, they must do it. That has been their tradition.

So that I submit that an act of Congress skillfully drawn to accomplish the purpose, presumptively would be a guide to the courts.

Chairman **Celler**. I know you are making the statements in support of the very painstaking efforts made by Mr. O'Hara and Mr. Dingell. I want to praise them for their efforts because they must have given a great deal of thought to the question, but I was curious as to whether the Supreme Court would bow down to our wishes in this regard?

Mr. **Hutchinson**. I guess the only way to find out is to try it, Mr. Chairman.

Chairman **Celler**. Any other questions?

Mr. Hungate?

Mr. **Hungate**. Thank you, Mr. Chairman.

Mr. O'Hara, as I understood you, you said that you favored integration. It seems to me in the language of the courts back in the *Brown* case, there is an attack on segregation, and that by the time you reach *Swann*, there is affirmative duty to integrate.

Neither the fifth nor 14th amendment opt positively to demand integration of the races but only negatively, and forbid government to enforce segregation. I wonder if the gentleman would comment on that.

Mr. **O'Hara**. Yes, I would agree there had been that shifting during that time. I think that the principles in the *Brown* case were correct, and I think the principles in the later decisions—*Swann*, and *Green* v. *New Kent County*—were, to the extent they went beyond *Brown*, incorrect.

Mr. **Hungate**. I find in these cases on one or two occasions they quote with favor Cicero that, "We should not have one law for Athens and another for Rome." I think the gentleman would agree with that.

But they neglect Cicero's next line which was, "Nor will it be one rule today and another one tomorrow." Do you find that objectionable between *Brown* and *Swann*?

Mr. **O'Hara**. Yes, I certainly do.

Mr. **Hungate**. Thank you.

Mr. **McClory**. Mr. Chairman.

Chairman **Celler**. Yes.

Mr. **McClory**. Mr. O'Hara, I understand that you have not signed this discharge petition to discharge this committee from further consideration of the constitutional amendment that is pending before us?

Mr. **O'Hara**. No, I have not, Mr. McClory, because I am little uncertain about the effects of the sweeping language of House Joint Resolution 620. To me it appears that either it does nothing or it does too much, depending on how you interpret it.

You could interpret it as simply restating the provisions of the present Constitution, in which case it does nothing; or you could interpret it as saying you shan't touch a school case in any way, in which case it does too much.

Mr. **McClory**. But in stating that you feel that perhaps the constitutional amendment approach may be the only route for us to follow now, you are supporting in that sense a constitutional change which would limit or restrict the use of busing in effecting desegregation?

Mr. **O'Hara**. That is correct, Mr. McClory. If the court does not, in the Denver case or in a similar case, straighten out what I consider were the errors of the *Swann* and *Green* decisions, then I would think that a constitutional amendment would probably be necessary.

I would like to agree with Mr. Hutchinson that legislation would be enough, but I think a constitutional amendment may be required.

Mr. McClory. The testimony we have heard to date on both sides of the issue has completely supported the policy of the *Brown* decision. However, these subsequent decisions, the *Swann* and other cases, have been relatively recent cases which have come at a time when there was strong criticism, especially on the part of civil rights leaders, that desegregation was simply not occurring. The testimony that we have heard from Father Hesburgh and from a number of constitutional lawyers who have communicated with the committee, seems to be all to the effect that adoption of a constitutional amendment would not only put a stop to desegregation but would be a backward step and take us back to before the time of the *Brown* decision.

Now, how do you reconcile your position as a staunch supporter of civil rights legislation in the past, with that position which is now being criticized as an anti-civil-rights and antidesegregation position?

Mr. O'Hara. I must confess that I am upset and disturbed by finding myself on the opposite side of this particular issue with some of my friends and some whose judgment I sincerely respect. I don't believe that a carefully drawn amendment would take us back to the pre-*Brown* decision situation. That is why I emphasize in my statement, and I have mentioned here in my subsequent testimony that we must be very careful how any such amendment is drawn, and it must be a very limited, carefully drawn amendment.

I haven't signed the discharge petition on House Joint Resolution 620 because I am not sure that it might not take us back before *Brown*.

Mr. McClory. And right now, you don't have any form of a constitutional amendment to recommend to this committee?

Mr. O'Hara. I would be willing to recommend some language to you and I can simply recite it: that no school system that assigns pupils on the basis of neighborhood attendance areas drawn in a racially nondiscriminatory manner may be required to adopt any other method of pupil assignment. There it is. It is quite simple. It simply says that if a school system has a bona fide nongerrymandered neighborhood school system, it can't be required to do anything else. They might wish to do more, but they cannot be required to do more.

I know a number of communities, smaller communities, that have adopted limited busing programs to achieve integration. They have done so without a court order and have done so because in their community they thought it made sense. They have done so by the action of the elected school board. If they want to do that, I think they should be free to do so. But I don't think if a community adopts a racially colorblind system of neighborhood attendance areas, that it ought to be required to do anything more than that.

Mr. McClory. And the local school board would decide what the attendance areas would be, so long as they were not racially gerrymandered.

Mr. O'Hara. That is correct. As long as it was not gerrymandered for racial purposes.

Mr. McClory. And what about busing within an attendance zone? You might have one neighborhood or one city that would constitute one zone. Yet, if you assigned children within that city-wide zone and did not try to desegregate, you would end up with racially separate schools which, of course, are unequal.

Mr. O'Hara. I would think that the size of the attendance areas would be something left to the local officials as long as they did not design those attendance areas to achieve a discriminatory racial result. That would be the test that I would apply.

Mr. McClory. Presumably, we would have the court deciding what was in the minds of the school board members.

Mr. O'Hara. Well, we have the courts deciding questions of intent all of the time.

Mr. McClory. In other words, this would not put an end to so-called de facto segregation, unless there were some racial gerrymandering?

Mr. O'Hara. De facto segregation would not be forbidden if the de facto segregation was truly that and was not the result of gerrymandering, that is correct.

Mr. McClory. I have no other questions.

Chairman Celler. If there was a 100-percent black school and a 100-percent white school, you could not do any busing between the schools?

Mr. O'Hara. No, you could not be required to do so on the basis of the Constitution. That is all that I would propose.

For instance, there is a small community in my congressional district, Mr. Chairman, 20,000 population. It has only one high school, so that high school is obviously integrated. But it has neighborhood attendance areas for elementary and junior high school that result in segregation because of housing patterns.

They decided to do away with one junior high school which was substantially all black and they bused kids to the other junior high schools. They in effect integrated junior high schools that way.

That was the decision of the community, and I think that decision ought not be disturbed. I would not want to forbid that. It seems to make sense in that community. No place in that town is more than 10 minutes from any other place, and no place in that town is unfamiliar to anyone. They are all going to be going to the same high school, and I think it makes sense there. The community decided it did, and they adopted that—and more power to them. That is fine.

What I am saying is that you could not require school systems to adopt busing programs for integration or for racial balance as long as they were operating in a colorblind racially nondiscriminatory manner.

Chairman Celler. I want to——

Mr. Jacobs. Mr. Chairman, I have a question. But I will yield to Mr. McClory.

Mr. McClory. Will the gentleman yield a minute?

In the grammar school, are there two grammar schools, both grades 1 to 8?

Mr. O'Hara. There are a number of grammar schools, six or eight grammar schools, all of them grades 1 through 6, and some of them are substantially segregated because of housing patterns.

Mr. McClory. Has there been any program to stagger the grades so that they could bus, for instance, grade 1 and 4 and put them in one school?

Mr. O'Hara. No, there has not.

Mr. McClory. Would you object to that kind of busing?

Mr. O'Hara. If the elected school board thought that that system made sense in that community and wanted to adopt it, I would support their decision.

Mr. Jacobs. I welcome the gentleman to the committee also. He is one of the very thoughtful Members in the House of Representatives.

On the question of neighborhood school zones being drawn by the local boards, and that being permissible so long as it is not done with regard to race, color, and creed, suppose a local school board were faced with two alternatives, either one of which would be equally convenient so far as distance from the homes of the students was concerned.

But one would involve a conscious consideration of integration. The other would not involve a conscious consideration of integration—letting the chips fall where they may.

Accept that hypothetical in the one alternative integration was taken into consideration and lines were drawn equally conveniently and equally compactly but race and color was taken into account for purposes of integration. Would that be prohibited under the constitutional language that the gentleman has discussed?

Mr. O'Hara. You said you could do it equally well either way?

Mr. Jacobs. Right, that would be the hypothetical. If you draw a straight line from the schoolhouse to the extreme distance within that school zone, it would be no longer than the other case.

Mr. O'Hara. I think the example is a little bit fallacious, if you will pardon my saying so. If the one equally acceptable way would be to produce integration, presumably the other equally acceptable way would produce segregation, not neutral results.

Mr. Jacobs. Excuse me, on that point, suppose the other way resulted in token white and token black enrollments, technically that would not be segregation, as I understand it. Nonetheless, it would not be integration as I understand it.

Mr. O'Hara. Presumably, if they made the choice that would produce less integration and if they had to make other choices and they made them all along the line that would produce less integration, that would be very strong evidence that they had not drawn a racially nondiscriminatory pattern of attendance areas.

On the other hand, if this was the only choice of this nature that confronted them in the school district, it seems to me it would not rule them out whichever way they went as long as there was no demonstrable intent to reach a racially discriminatory result.

Mr. Jacobs. In other words, you would favor language that would not prohibit the school board saying, here are two school assignment maps of the same neighborhood, under one pupils would cross 35th Street, the traditional black and white dividing line, and under the other, the assignment area would be bounded by 35th Street.

Under either plan it would be convenient physically to walk to school. You would not, I take it, favor language that would limit a school board's discretion of a court's discretion in drawing lines.

The problem we are really after is the crosstown bus ride that produces a lot of inconvenience and a lot of expense and winds up, in more cases than not, not accomplishing anything.

Mr. O'HARA. All I am saying is, if they adopt a racially nondiscriminatory system of geographical attendance areas, they can't be compelled to do more.

Mr. JACOBS. I understand. I am groping for the right kind of language so we do what we mean rather than we do what we say, which might be something else.

Mr. O'HARA. Mr. Chairman, if I might make one final comment, over the weekend there happened to come to my attention an article in the March edition of Commentary Magazine, written by Nathan Glaser titled "Is Busing Really Necessary." It is an excellent article and I would like, if I have permission of the committee, to provide a copy thereof to be appended to my statement. I would like, at the same time, to send copies to the members of the committee because I think they would be very interested.

Mr. HUNGATE (presiding). The committee welcomes that and without objection it will be made a part of the record. And you will furnish it.

Mr. O'HARA. Yes, I will.

(The article referred to follows:)

COMMENTARY—IS BUSING NECESSARY?

(By Nathan Glazer[1])

It is the fate of any social reform in the United States—perhaps anywhere—that, instituted by enthusiasts, men of vision, politicians, statesmen, it is soon put into the keeping of full-time professionals. This has two consequences. On the one hand, the job is done well. The enthusiasts move on to new causes while the professionals continue working in the area of reform left behind by public attention. But there is a second consequence. The professionals, concentrating exclusively on their area of reform, may become more and more remote from public opinion, and indeed from common sense. They end up at a point that seems perfectly logical and necessary to them—but which seems perfectly outrageous to almost everyone else. This is the story of school desegregation in the United States.

For ten years after the 1954 Supreme Court decision in *Brown*, little was done to desegregate the schools of the South. But professionals were at work on the problem. The NAACP Legal Defense Fund continued to bring case after case into court to circumvent the endless forms of resistance to a full and complete desegregation of the dual school systems of the South. The federal courts, having started on this journey in 1954, became educated in all the techniques of subterfuge and evasion, and in their methodical way struck them down one by one. The federal executive establishment, reluctant to enter the battle of school desegregation, became more and more involved.

The critical moment came with the passage of the Civil Rights Act in 1964, in the wake of the assassination of a President and the exposure on television of the violent lengths to which Southern government would go in denying constitutional rights to Negroes. Under Title IV of the Civil Rights Act, the Department of Justice could bring suits against school districts maintaining segregation. Under Title VI, no federal funds under any program were to go to districts that practiced segregation. With the passage of the Elementary and Secondary Education Act in 1965, which made large federal funds available to schools, the club of federal withdrawal of funds became effective. In the Department of Justice and in the Department of Health, Education, and Welfare, bureaucracies rapidly grew up to enforce the law. Desegregation no longer progressed painfully from test case to test case, endlessly appealed. It moved rapidly as every school district in the South was required to comply with federal requirements. HEW's guidelines for compliance steadily tightened, as the South roared and the North remained relatively indifferent. The Department of Justice, HEW, and the federal courts moved in tandem. What the courts declared was segregation became what HEW declared was segregation. After 1969, when the Supreme Court ordered, against the new administration's opposition, the immediate implementation of desegregation plans in Mississippi, no further delay was to be allowed.

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[1] Nathan Glazer is professor of education and social structure at Harvard, currently on leave at the Center for Advanced Study in the Behavioral Sciences at Stanford University. His books include *Beyond the Melting Pot* (with Daniel P. Moynihan) and *Remembering the Answers: Essays on the American Student Revolt*. Mr. Glazer has written frequently in these pages and elsewhere on social policy in general, on problems of ethnicity, and on the many questions surrounding the organization of American schools.

The federal government and its agencies were under continual attack by the civil-rights organizations for an attitude of moderation in the enforcement of both court orders and legal requirements. Nevertheless, as compared with the rate of change in the years 1954 to 1964, the years since 1964 have seen an astonishing speeding-up in the process of desegregating the schools of the South.

Writing during the Presidential campaign of 1968, Gary Orfield, in his massive study, *The Reconstruction of Southern Education*, stated:

"To understand the magnitude of the social transformation in the South since 1964, that portrait of hate [of black students walking into Little Rock High School under the protection of paratroopers' bayonets] must be compared to a new image of tense but peaceful change. Even in the stagnant red clay counties in rural backwaters, where racial attitudes have not changed much for a century, dozens or even hundreds of black children have recently crossed rigid caste lines to enter white schools. Counties with well-attended Ku Klux Klan cross-burnings have seen the novel and amazing spectacle of Negro teachers instructing white classes. It has been a social transmutation more profound and rapid than any other in peacetime American history.

"This is a revolution whose manifesto is a court decision and whose heroes are bureaucrats, judges, and civil-rights lawyers.* * *"

Mr. Orfield thought that it was all coming to an end. With Nixon attacking the guidelines that had brought such progress, and with the civil-rights coalition coming apart in the fires of the cities of the North, Mr. Orfield wrote, "A clear electoral verdict against racial reconciliation [that is, the election of Mr. Nixon] could mean that the episode of the school guidelines may recede into history as an interesting but futile experiment." Mr. Orfield underestimated the bureaucrats, the courts, and the overall American commitment to the desegregation of Southern schools. While Mr. Nixon's appointees were suffering the same abuse as Mr. Johnson's before them for insufficient zeal, the desegregation of the racially divided school systems of the South proceeded. Thus the Director of the HEW Office on Civil Rights, J. Stanley Pottinger, could summarize some of the key statistics as of 1970 in the following terms:

"When school opened in the fall of 1968, only 18 per cent of the 2.9 million Negro children in the Southern states attended schools which were predominantly white in their student enrollments. In the fall of 1970, that figure had more than doubled to 39 per cent * * * [and] the percentage of Negroes attending 100 per-cent black schools dropped * * * from 68 per cent to 14 per cent. In 1968, almost no districts composed of majority Negro (and other minority) children were the subject of federal enforcement action. It was thought * * * that the limited resources of government ought to be focused primarily on the districts which had a majority of white pupils, where the greatest educational gains might be made, and where actual desegregation was not as likely to induce white pupils to flee the system. * * * 40 per cent of all the Negro children in the South live in [such] systems. * * * Obviously, the greater the amount of desegregation in majority black districts, the fewer will be the number of black children * * * who will be counted as "desegregated" under a standard which measures only those minority children who attend majority white schools.

"In order to account for this recent anomaly, HEW has begun to extract from its figures the number of minority children who live in mostly white districts and who attend mostly white schools. Last year, approximately 54 per cent of the Negro children in the South who live in such districts attended majority white schools. Conversely, nearly 40 per cent of the 2.3 million white children who live in mostly black (or minority) districts, now attend mostly black (or minority) schools."[2]

There has been further progress since, and if one uses as the measure the number of blacks going to schools with a majority of white children, the South is now considerably more integrated than the North.

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[2] In *Inequality in Education*, Center for Law and Education, Harvard University, Aug. 3, 1971.

Yet the desegregation of schools is once again the most divisive of American domestic issues. Two large points of view can be discerned as to how this has happened. To the reformers and professionals who have fought this hard fight—the civil-rights lawyers, the civil-rights organizations, the government officials, the judges—the fight is far from over, and even to review the statistics of change may seem an act of treason in the war against evil. Indeed, if one is to take committed supporters of civil rights at their word, there is nothing to celebrate. A year ago the Civil Rights Commission, the independent agency created by the Civil Rights Act of 1957 to review the state of civil rights, attacked the government in a massive report on the civil rights enforcement effort. "Measured by a realistic standard of results, progress in ending inequity has been disappointing. * * * In many areas in which civil-rights laws afford pervasive legal protection—education, employment, housing—discrimination persists, and the goal of equal opportunity is far from achievement." And the report sums up the gloomy picture of Southern school segregation, 16 years after *Brown:* "Despite some progress in Southern school desegregation * * * a substantial majority of black school children in the South still attend segregated schools."[3] Presumably, then, when a majority of Negro children attended schools in which whites were the majority, success by one measure should have been reported. But in its follow-up report one year later, this measure of success in Southern school desegregation was not even mentioned. The civil-rights enforcement effort in elementary and secondary schools, given a low "marginal" score for November 1970 (out of four possibilities, "poor," "marginal," "adequate," and "good"), is shown as having regressed to an even *lower* "marginal" score by May 1971, after HEW's most successful year in advancing school integration.

But from the point of view of civil-rights advocates, desegregation as such in the South is receding as a focus of attention. A second generation of problems has come increasingly to the fore: dismissal or demotion of black school principals and teachers as integration progresses and their jobs are to be given to whites; expulsions of black students for disciplinary reasons; the use of provocative symbols (the Confederate flag, the singing of "Dixie"); segregation within individual schools based on tests and ability grouping; and the rise of private schools in which whites can escape desegregation.

But alongside these new issues, there is the reality that the blacks of the North and West are also segregated, not to mention the Puerto Ricans, Mexican Americans, and others. The civil-rights movement sees that minorities are concentrated in schools that may be all or largely minority, sees an enormous agenda of desegregation before it, and cannot pause to consider a success which is already in its mind paltry and inconclusive. The struggle must still be fought, as bitterly as ever.

There is a second point of view as to why desegregation, despite its apparent success, is no success. This is the Southern point of view, and now increasingly the Northern point of view. It argues that a legitimate, moral, and Constitutional effort to eliminate the unconstitutional separation of the races (most Southerners now agree with this judgment of *Brown*), has been turned into something else—an intrusive, costly, painful, and futile effort to regroup the races in education by elaborate transportation schemes. The Southern Congressmen who for so long tried to get others to listen to their complaints now watch with grim satisfaction the agonies of Northern Congressmen faced with the crisis of mandatory, court-imposed transportation for desegregation. On the night of November 4, 1971, as a desperate House passed amendment after amendment in a futile effort to stop busing, Congressman Edwards of Alabama said:

"Mr. Chairman, this will come as a shock to some of my colleagues. I am opposing this amendment. I will tell you why. I look at it from a rather cold standpoint. We are busing all over the First District of Alabama, as far as you can imagine. Buses are everywhere . . . people say to me, 'How in the world are we ever going to stop this madness?' I say, 'It will stop the day it starts taking place across the country, in the North, in the East, in the West, and yes, even in Michigan.' "

And indeed, one of the amendments had been offered by Michigan Congressmen, long-time supporters of desegregation, because what had been decreed for Charlotte, North Carolina, Mobile, Alabama, and endless other Southern cities was now on the way to becoming law in Detroit and its suburbs.

As a massive wave of antagonism to transportation for desegregation sweeps the country, the liberal Congressmen and Democratic Presidential aspirants who have for so long fought for desegregation ask themselves whether there is any third point of view: whether they must join with the activists who say that the struggle is endless and they must not flag, even now; or whether they must join with the Southerners. To stand with the courts in their latest decisions is, for liberal Congressmen, political suicide. A Gallup survey last October revealed that 76 per cent of respondents opposed busing, almost as many in the East (71 per cent); Midwest (77 per cent), and West (72 per cent), as in the South (82 per cent); a majority of Muskie supporters (65 per cent) as well as a majority of Nixon supporters (85 per cent). Even more blacks oppose busing than support it (47 to 45 per cent). But if to stand with the further extension to all the Northern cities and suburbs of transportation for desegregation is suicide, how can the liberal Congressmen join with the South and with what they view as Northern bigotry in opposing busing? Is there a third position, something which responds to the wave of frustration at court orders, and which does not mean the abandonment of hope for an integrated society?

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[3] *Federal Civil Rights Enforcement Effort*, 1970, p. 14.

How have we come from a great national effort to repair a monstrous wrong to a situation in which the sense of right of great majorities is offended by policies which seem continuous with that once noble effort? In order to answer this question, it is necessary to be clear on how the Southern issue became a national issue.

After the passage of the Civil Rights Act of 1964, the first attempt of the South to respond to the massive federal effort to impose desegregation upon it was "freedom of choice." There still existed the black schools and the white schools of a dual school system. But now whites could go to black schools (none did) and the blacks could go to white schools (few dared). It was perfectly clear that throughout the South "freedom of choice" was a means of maintaining the dual school system. In 1966 HEW began the process of demanding statistical proof that substantially more blacks were going to school with whites each year. The screw was tightened regularly, by the courts and HEW, and finally, in 1968, the Supreme Court gave the *coup de grace*, insisting that dual school systems be eliminated completely. There must henceforth be no identifiable black schools and white schools, only schools.

But one major issue remained as far as statistical desegregation was concerned; the large cities of the South. For the fact was that the degree of segregation in the big-city Southern schools was by now no longer simply attributable to the dual school systems they, too, had once maintained; in some instances, indeed, these schools had even been "satisfactorily" (by some federal or court standard) desegregated years before. What did it mean to say that their dual school systems must also be dismantled "forthwith"?

Contrast, as a concrete instance, the case of rural New Kent County in Virginia, where the Supreme Court declared in 1968 that "freedom of choice" would not be accepted as a means of desegregating a dual school system. Blacks and whites lived throughout the country. There were two schools, the historic black school and the historic white school. Under "freedom of choice," some blacks attended the white school, and no whites attended the black school. There was a simple solution to desegregation, here and throughout the rural and small-town South, and the Supreme Court insisted in 1968, fourteen years after *Brown*, that the school systems adopt it: to draw a line which simply made two school districts, one for the former black school, and one for the former white school, and to require all children in one district, white and black, to attend the former black school, and all children in the other, white and black, to attend the former white school.

But what now of Charlotte, Mobile, Nashville, and Norfolk? To draw geographical lines around the schools of these cities, which had been done, meant that many white schools remained all white, and many black schools remained all black. Some schools that had been "desegregated" in the past—that is, had experienced some mix of black and white—had already become "resegregated"—that is, largely black or all black as a result of population movements rather than any official action.

If there were to be no black schools and no white schools in the city, one thing at least was necessary: massive transportation of the children to achieve a proper mix. There was no solution in the form of geographical zoning.

But if this was the case, in what way was their situation different from that of Northern cities? In only one respect: the Southern cities had once had dual school systems, and the Northern cities had not. (Even this was not necessarily a decisive difference, for cities outside the Old South had also maintained dual systems until 1954. Indiana had a law permitting them until the late 1940's, and other cities had maintained dual systems somewhat earlier.) Almost everything else was the same. The dynamics of population change were the same. Blacks moved into the central city, whites moved out to the suburbs. Blacks were concentrated in certain areas, owing to a mixture of formal or informal residential discrimination, past or present, economic incapacity, and taste, and these areas of black population became larger and larger, making full desegregation by contiguous geographical zoning impossible. Even the political structures of Southern and Northern cities were becoming more alike. Southern blacks were voting, liberal candidates appealed to them, Southern blacks sat on city councils and school boards. If one required the full desegregation of Southern cities by busing, then why should one not require the full desegregation of Northern cities by busing?

Busing has often been denounced as a false issue. Until busing was decreed for the desegregation of Southern cities, it was. As has been pointed out again and again, buses in the South regularly carried black children past white schools to black schools, and white children past black schools to white schools. When "freedom of choice" failed to achieve desegregation and geographical zoning was imposed, busing sometimes actually declined. In any case, when the school systems were no longer allowed to have buses for blacks and buses for whites, certainly the busing system became more efficient. After 1970, busing for desegregation replaced the busing for segregation.

But this was not true when busing came to Charlotte, North Carolina, and many other cities of the South, in 1971, after the key Supreme Court decision in *Swann v. Charlotte-Mecklenburg County Board of Education*. The City of Charlotte is 64 square miles, larger than Washington, D.C., but it is a part of Mecklenburg County, with which it forms a single school district of 550 square miles, which is almost twice the size of New York City. Many other Southern cities (Mobile, Nashville, Tampa) also form part of exceptionally large school districts. While 29 per cent of the schoolchildren of Mecklenburg County are black almost all live in Charlotte. Owing to the size of the county, 24,000 of 84,500 children were bused, for the purpose of getting children to schools beyond walking distance. School zones were formed geographically, and the issue was, could all-black and all-white schools exist in Mecklenburg County, if a principle of neighborhood school districting meant they would be so constituted?

The Supreme Court ruled they could not, and transportation could be used to eliminate black and white schools. The Court did not argue that there was a segregative intent in the creation of geographical zones—or that there was not—and referred to only one piece of evidence suggesting an effort to maintain segregation, free transfer. There are situations in which free transfer is used by white children to get out of mostly black schools, but if this had been the problem, the Court could have required a majority-to-minority transfer only (in which one can only transfer from a school in which one's race is a majority, and to a school in which one's race is a minority), as is often stipulated in desegregation plans. Instead the Court approved a plan which involved the busing of some 20,000 additional children, some for distances of up to 15 miles, from the center of the city to the outer limits of the county, and vice versa.

Two implications of the decision remain uncertain, but they may lead to a reorganization of all American education. If Charlotte, because it is part of the school district of Mecklenburg County, can be totally desegregated with each school having a roughly 71–29 white-black proportion, should not city boundaries be disregarded in other places and larger school districts of the Mecklenburg County scale be created wherever such action would make integration possible? A district judge has already answered this question in the affirmative for Richmond, Virginia.

But the second implication is: If Charlotte is—except for the background of a dual school system—socially similar to many Northern cities, and if radical measures can be prescribed to change the pattern that exists in Charlotte, should they not also be prescribed in the North? And to that question also a federal judge, ruling in a San Francisco case, has returned an affirmative answer.

San Francisco has a larger measure of integration probably than most Northern cities. Nevertheless *de facto* segregation—the segregation arising not from formal decisions to divide the races as in the South, but from other causes, presumed to be social and demographic—has long been an issue in San Francisco. In 1962, the NAACP filed suit against the school board, charging it with "affording, operating, and maintaining a racially segregated school system within the San Francisco Unified School District, contrary to and in violation of the equal protection and due process clause of the Fourteenth Amendment of the Constitution of the United States." As John Kaplan has written:

"The history of this suit is a short and strange one. The Board of Education retained for its defense a distinguished local attorney, Joseph Alioto [now the mayor], who was primarily an anti-trust specialist. Alioto started discovery proceedings and the heart seemed to go out of the plaintiffs.

"In any case, after admitting in depositions that the Board had no intention to produce a condition of racial imbalance; that it took no steps to bring about such a condition; that its lines were not drawn for the purpose of creating or maintaining racial imbalance; that there was no gerrymandering; and finally that the Board was under no obligation to relieve the situation by transporting students from their neighborhoods to other districts, the plaintiffs' attorney allowed the suit to be dismissed for want of prosecution on December 2, 1964."

It was assumed that this disposed of the legal issue. Meanwhile the San Francisco school system continued to struggle with the problem. After a long series of censuses, disputes, and studies, the school board proposed to set up two new integrated complexes, using transportation to integrate, one North and one South of Golden Gate Park. They were to open in 1970. When, however, one was postponed because of money problems, suit was brought once again by integration-minded parents, this time charging *de jure* segregation on the ground that the school board's failure to implement the two integrated school complexes amounted to an official act maintaining the schools in their presently segregated state.

Judge Stanley Weigel, before whom the matter was argued, very sensibly decided to wait for the Supreme Court's ruling in the Charlotte-Mecklenburg County case which, he and many others thought, might once and for all settle the question of whether *de facto* segregation was no less unconstitutional than *de jure* segregation. Although one may doubt from certain passages in the Charlotte-Mecklenburg decision that the Supreme Court did indeed mean to outlaw *de facto* segregation, Judge Weigel seems to have decided that it did. "The law is settled," he declared, "that school authorities violate the constitutional rights of children by establishing school attendance boundary lines knowing that the result is to continue or increase substantial racial imbalance."

But in ordering the desegregation of the San Francisco schools by transportation, Judge Weigel did not simply rest the matter on *de facto* segregation; he also listed acts of commission and omission which he believed amounted to *de jure* school segregation.

Now one can well imagine that a school board which does not or did not recently operate under state laws that required or permitted segregation could nevertheless through covert acts—which are equally acts under state authority—foster segregation. It could, for example, change school-zone lines, so as to confine black children to one school and permit white children to go to another school. It could build schools and expand them so that they served an all-black or all-white population. It could permit a transfer policy whereby white children could escape from black schools while blacks could not. It could assign black teachers to black schools and white teachers to white schools.

Judge Weigel charged all these things. The record—a record made by a liberal school board, appointed by a liberal may, in a liberal city, with a black president of the school board—does not, in this layman's opinion, bear him out, unless one is to argue that any action of a school board in construction policy or zone-setting or teacher assignment that precedes a situation in which there are some almost all-black schools (there were no all-black schools in San Francisco) and some almost all-white schools (there were no all-white schools in San Francisco) can be considered *de jure* segregation.

Under Judge Weigel's interpretation, there is no such thing as *de facto* segregation. All racial imbalance is the result of state actions, either taken or not taken. If not taken, they should have been taken. *De facto* disappears as a category requiring any less action than *de jure*.

This is the position of many lawyers who are arguing these varied cases. I have described the San Francisco case because it led to a legal order requiring desegregation by transportation of the largest Northern or Western system so far affected by such an order. But massive desegregation had also been required by a district judge in Denver, who had then had his judgment limited by the Circuit Court of Appeals. It is this Denver case that will become the first case on Northern or Western *de facto* school segregation—if we still allow the term some meaning to be heard by the Supreme Court. What the Supreme Court will have to decide is whether the historical difference between Charlotte and Denver permits Denver or any other city to do any less than Charlotte has been required to do in order to integrate its schools.

Simultaneously, Detroit and the surrounding counties and the state of Michigan are under court order to come up with a plan that permits the desegregation of the schoolchildren of Detroit by busing to the neighboring suburbs, and a federal judge is moving toward the same result in Indianapolis. If the Supreme Court should uphold the district judge's ruling in the Richmond case, it will then similarly have to decide whether anything in the history or practices of Detroit and Indianapolis justifies ordering less in these cities than has been ordered in the city of Richmond.

The hardy band of civil-rights lawyers now glimpses—or glimpsed, before the two latest appointments to the Supreme Court—a complete victory, based on the idea that there is no difference between *de facto* and *de jure* segregation, an idea which is itself based on the larger idea that there is no difference between North and South. What is imposed on the South must be imposed on the North. As Ramsey Clark, a former Attorney-General of the United States, puts it, echoing a widely shared view:

"In fact, there is no *de facto* segregation. All segregation reflects some past actions of our governments. The FHA itself required racially restrictive covenants until 1948. But, that aside, the consequences of segregated schooling are the same whatever the cause. Segregated schools are inherently unequal however they come to be and the law must prohibit them whatever the reason for their existence."

In other words, whatever exists is the result of state action. If what exists is wrong, state action must undo it. If segregated schools were not made so by official decisions directly affecting the schools, then they were made so by other official decisions—Clark, for example, points to an FHA policy in effect until 1948—that encouraged residential segregation. Behind this argument rests the assumption, now part of the liberal creed, that racism in the North is different, if at all, from racism in the South only in being more hypocritical. All segregation arises from the same evil causes, and all segregation must be struck down. This is the position that many federal judges are now taking in the North—even if, as Judge Weigel did, they try to protect themselves by pointing to *some* action by the school board that they think might make the situation *de jure* in the earlier sense as well.

II

I believe that three questions are critical here. First, do basic human rights, as guaranteed by the Constitution, require that the student population of every school be racially balanced according to some specified proportion, and that no school be permitted a black majority? Second, whether or not this is required by the Constitution, is it the only way to improve the education of black children? Third, whether or not this is required by the Constitution, and whether or not it improves the education of black children, is it the only way to improve relations between the races?

These questions are in practice closely linked. What the Court decides is constitutional is very much affected by what it thinks is good for the nation. If it thinks that the education of black children can only be improved in schools with black minorities, it will be very much inclined to see situations in which there are schools with black majorities as unconstitutional. If it thinks race relations can only be improved if all children attend schools which are racially balanced, it will be inclined to find constitutional a requirement to have racial balance.

This is not to say that the courts do not need authority in the Constitution for what they decide. But this authority is broad indeed and it depends on a doctrine of judicial restraint—which has not been characteristic of the Supreme Court and subordinate federal courts in recent years—to limit judges in demanding what they think is right as well as what they believe to be within the Constitution. Indeed, it was in part because the Supreme Court believed that Negro children *were* being deprived educationally that it ruled as it did in *Brown*. They were being deprived because the schools were very far from "separate and equal." But even if they were "equal," their being "separate" would have been sufficient to make them unconstitutional: "To separate them from others of similar age and qualifications simply because of their race generates a feeling of inferiority as to their race and status in the community that may affect their hearts and minds in a way unlikely ever to be undone."

While much has been made of the point that the Court ruled as it did because of the evidence and views of social scientists as to the effects of segregation on the capacity of black children to learn. the fact is that the basis of the decision was that distinctions by race had no place in American law and public practice, neither in the schools, nor, as subsequent rulings asserted, in any other area, whether in waiting rooms or golf courses. This was clearly a matter of the "equal protection of the laws." It was more problematic as to what should be done to insure the "equal protection of the laws" when such protection had been denied for so long by dual school systems. But remedies were eventually agreed upon, and the Court has continued to rule unanimously—as it did in *Brown*—on these remedies down through *Swann* v. *Charlotte-Mecklenburg Board of Education*.

Inevitably, however, the resulting increase in the freedom of black children—the freedom to attend the schools they wished—entailed a restriction on the freedom of others. In "freedom of choice," the freedom of white children was in no way limited. In geographical zoning to achieve integration, it was limited, but no more than that of black children. But in busing to distant schools, white children were in effect being conscripted to create an environment which, it had been decided, was required to provide equality of educational opportunity for black children. It was perhaps one thing to do this when the whites in question were the children or grandchildren of those who had deprived black children of their freedom in the past. But when a district judge in San Francisco ruled that not only white children but Chinese children and Spanish-speaking children must be conscripted to create an environment which, he believed, would provide equality of educational opportunity for black children, there was good reason for wondering whether "equal protection of the laws" was once again being violated, this time from the other side.

We are engaged here in a great enterprise to determine what the "equal protection of the laws" should concretely mean in a multi-racial and multi-ethnic society, and one in which various groups have suffered differing measures of deprivation. The blacks have certainly suffered the most, but the Chinese have suffered too, as have the Spanish-speaking groups, and some of the white ethnic groups. Is it "equal protection of the laws" to prevent Chinese-American children from attending nearby schools in their own community, conveniently adjacent to the afternoon schools they also attend? Is it "equal protection of the laws" to keep Spanish-speaking children from attending school in which their numerical dominance has led to bilingual classes and specially trained teachers? Can the Constitution possibly mean that?

One understands that the people do not vote on what the Constitution means. The judges decide. But it is one thing for the Constitution to say that, despite how the majority feels, it must allow black children into the the public schools of their choice; and it is quite another for the Constitution to say, in the words of its interpreters, that some children, owning to their race or ethnic group alone, may not be allowed to attend the schools of their choice, even if their choice has nothing to do with the desire to discriminate racially. When, starting with the first proposition, one ends up with the second, as one has in San Francisco, one wonders if the Constitution can possibly have been interpreted correctly.

Again and again, reading the briefs and the transcripts and the analyses, one finds the words "escape" and "flee." The whites must not escape. They must not flee. Constitutional law often moves through strange and circuitous paths, but perhaps the strangest yet has been the one whereby, beginning with an effort to expand freedom—no Negro child shall be excluded from any public school because of his race—the law has ended up with as drastic a restriction of freedom as we have seen in this country in recent years. No child, of any race or group, may "escape" or "flee" the experience of integration. No school district may facilitate such an escape. Nor may it even (in the Detroit decision) fail to take action to close the loopholes permitting anyone to escape.

Let me suggest that, even though the civil-rights lawyers may feel that in advocating measures like these they are in the direct line of *Brown*, something very peculiar has happened when the main import of an argument changes from an effort to expand freedom to an effort to restrict freedom. Admittedly the first effort concerned the freedom of blacks, the second in large measure concerns the freedom of whites (but not entirely, as we have seen from the many instances in the South where blacks have resisted the elimination of black schools, and in the North where they have fought for community-controlled schools). Nevertheless, the tone of civil-rights cases has turned from one in which the main note is the expansion of freedom, into one in which the main note is the imposition of restrictions. It is ironic to read in Judge Stanley Weigel's decision, following which every child in the San Francisco elementary schools was placed in one of four ethnic or racial categories and made subject to transportation to provide an average mix of each in every school, an approving quotation from Judge Skelly Wright:

The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity, and forbearance from all of us, of whatever race. But the principle is that we are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God.

That was the language of 1956. One finds very little "patience, understanding," etc., in Judge Weigel's own decision, which required the San Francisco School District to prepare a plan to meet the following objectives:

"Full integration of all public elementary schools so that the ratio of black children to white children will then be and thereafter continue to be substantially the same in each school. To accomplish these objectives the plans may include:

> "(a) Use of non-discriminatory busing if, as appears now to be clear, at least some busing will be necessary for compliance with the law.
>
> "(b) Changing attendance zones whenever necessary to head off racial segregation."

"According to Judge Weigel, the law even requires:

"Avoidance of the use of tracking systems or other educational techniques or innovations without provision for safeguard against racial segregation as a consequence."

Can all this be in the Constitution too?

A second issue that would seem to have some constitutional bearing is whether those who are to provide the children for a minority black environment are being conscripted only on the basis of income. The prosperous and the rich can avail themselves of private schooling, or they can "flee" to the suburbs. And if the Richmond and Detroit rulings should be sustained, making it impossible to "escape" by going to the suburbs, the class character of the decisions would become even more pronounced. For while many working-class and lower-middle class people can afford to live in suburbs, very few can afford the costs of private education.

Some observers have pointed out that leading advocates of transportation for integration—journalists, political figures, and judges—themselves send their children to privatae schools which escape the consequences of these legal decisions. But even without being *ad hominem*, one may raise a moral question: if the judges who are imposing such decisions, the lawyers who argue for them (including brilliant young lawyers from the best law schools employed by federal poverty funds to do the arguing), would not themselves send theeir children to the schools their decisions bring into being, how can they insist that others poorer and less mobile than they are do so? Clearly those not subject to a certain condition are insisting that others submit themselves to it, which offends the basic rule of morality in both the Jewish and Christian traditions. I assume there must be a place for this rule in the Constitution.

A key constitutional question with which the Supreme Court will now finally have to do deal is whether *de facto* segregation is really different from *de jure* segregation, and if so, whether lesser remedies can be required to eradicate it.

Is there really a meaningful difference between a 100 per-cent black school under a law that prohibits blacks from going to school with whites, and a 100 per-cent black school that is created by residential segregation? The question has become even subtler: is there a difference between a majority black school in a city which once had *de jure* segregation, and such a school in a city which did not? I believe that the answer to the second question is "No." But in the first case the distinction was meaningful when the Supreme Court handed down *Brown* and is meaningful today. In the *de facto* situation, to begin with, not all schools are 100 per cent segregated. Indeed, none may be. A child's observation alone may demonstrate that there are many opportunities to attend integrated schools. The family may have an opportunity to move, the city may have open enrollment, it may have a voluntary city-to-suburb busing program. The child may conclude that if one's parents wished, one could attend another school, or that one could if one lived in another neighborhood—not all are inaccessible economically or because of discrimination—or could conclude that the presence of a few whites indicated that the school was not segregated.

Admittedly social perception is a complicated thing. The child in a 100 per-cent black school as a result of residential concentration and strict zoning may see his situation as identical to that of a child in a 100 per-cent black school because of state law requiring separation of the races. But the fact is that a black child in a school more than 47 per-cent black (the San Francisco definition of "segregation") may also see himself as unfairly deprived. Or any black child at all, in view of his history, and the currently prevailing interpretation of his position, even if he is the only black child in a white school, may so conclude. Perception is not only based on reality, a reality which to me makes the *de facto* segregated school a very different thing from the *de jure* segregated school. Perception can turn the lovely campuses of the West Coast into "jails" which confine young people, and can turn those incarcerated by courts for any crime into political prisoners. If we feel a perception is wrong, one of our duties is to try to correct it, rather than to assume that the perception of being a victim must alone dictate the action to be taken. False perceptions are to be responded to sympathetically, but not as if they were true.

If one finds segregation of apparently *de facto* origin, what is the proper remedy?

In some cases, one can show that it is not really *de facto* by pointing to actions that the school board took with a segregatory intent—for example, changing a school-zone line when blacks moved into an area to keep a school all or mostly black or another one all or mostly white. I do not think this was demonstrated in the case of San Francisco, but it was the crucial issue in the first Northern school desegregation case, that of New Rochelle, which was never reviewed by the Supreme Court, and in Pontiac, Michigan, and for some schools in Denver. In districts with a hundred or more schools and a long history, with perhaps scores of school-zone lines changed every year, it would be unlikely if one could not come up with some cases that seemed to show this. Sometimes it was done under pressure of local white parents. Finding this, a court might require something as simple as that the zone line be changed back (this, of course, by the time it came to court would hardly matter since the black residential area would almost certainly have expanded and both zone lines would probably be irrelevant). Or it might require that no zone line be set in the future which had the effect of maintaining segregation. Or that no parental wishes of this sort be taken into account. In cases where segregatory zone lines were commonly or regularly set (Pontiac) more radical relief would be more appropriate.

But there is a basic and troubling question here. School boards are either elected, or appointed by elected officials. They are thus directly or indirectly responsible to citizens. One can well understand the constitutional doctrine which asserts that no elected or appointed board, no governmental official, may deny constitutional rights—e.g., allowing a Communist to speak in a school building—regardless of the wishes of its constituency. But in the case of schooling and school-zone boundary-setting, a host of issues is involved: convenience of access, quality of building, assumed quality of teaching staff, racial composition of students, etc. A board is subject to a hundred influences in making such a decision. It is not as simple a matter as proving this Communist was not allowed to speak because of mass pressure. Nor is the motivation of parents and boards ever unmixed.

In Boston, the school board opened a new school in a black section. It tried to save the state aid that would be lost if it did not take some action to desegregate, and it zoned children living at some distance away into the new school. The white parents protested and eventually the board succumbed to their pressure and allowed them to send their children to their old nearby schools. To the minds of most enforcers of school desegregation, state and national, the board condemned itself for a segregatory act. One of the things the boycotting parents said was that they were afraid their children would get beaten up going through the area they had to traverse in order to get to school. Who is to say that this was pure fantasy, in the conditions of the modern city, and that what the white parents really meant was that they did not want their children to go to a mostly black school? It is this kind of determination on the intent and effect of hundreds of school-board decisions that judges are now required to make. When one reads cases such as those in Indianapolis, Detroit, and elsewhere, the mind reels with the complexity of numerous school-zoning and construction decisions. Briefs, hearing transcripts, exhibits run to thousands of pages. And at least one conclusion that this reader comes to is that no judge can or ought to have to make decisions on such issues, and the chances are that whatever decision he makes will be based on inadequately analyzed information.

Is it the law—and, not being a lawyer, I do not know—that if a segregatory intent plays *any* part in school decisions, then *every* measure of relief, no matter how extensive, is justified? If so, from a non-legal point of view it seems odd that one uncertain act with an uncertain effect on the social and racial patterns of an entire city should justify massive measures to reconstruct a school system.

Perhaps the most serious constitutional issue in a line of cases erasing the distinction between *de jure* and *de facto* segregation and also erasing the political boundaries between school districts in order to achieve a racial balance in which every black student is in a minority in every school (and presumably, as the cases develop, every Spanish-speaking student, and so on), is that all this makes impossible one kind of organization that a democratic society may wish to choose for its schools: the kind of organization in which the schools are the expression of a geographically defined community of small scale and regulated in accordance with the democratically expressed views of that community. This is the point Alexander Bickel has argued so forcefully. We have had a good deal of discussion in recent years of "decentralization," "community control," and "parental control" of schools. There were reasons for "community control" long before the issue exploded in New York in the late 1960's, and there were reasons for "parental control" long before the educational voucher scheme was proposed. Now the new line of cases makes the school ever more distant from the community in which it is located and from the parents who send their children to it.

While busing schemes vary, in some, children from a number of different areas are sent to a single school and children from one area are sent to a number of schools. It becomes hard for parental or community concerns to be exercised on the particular school to which one's children go. Thus, in San Francisco, in the Mission district, owing to the effective work of the Mission Coalition (an Alinsky-style community organization), the local community has considerable influence on public programs in the area. With a wide base of membership, this organization can help determine what is more effective in the local schools. But if it wants to create an atmosphere in the school best suited to the education of Spanish-speaking children, what sense does this make when the schools are filled with children from distant areas? And how can it influence the education the Mission children receive in the distant schools to which many of them are now sent?

In effect, the new line of cases gives enormous control to central school bureaucracies, who will make decisions subject only to the courts and the federal government on the one hand, and the mass opinion of a large area dominated by the inevitable slogans which can create majorities on the other. Clearly this is one way of reducing the influence of people over their own environment and their own fate. I believe indeed that the worst effect of the current crisis is that people already reduced to frustration by their inability to affect a complex society and a government moving in ways many of them find incomprehensible and undesirable, must now see one of the last areas of local influence taken from them in order to achieve a single goal, that of racial balance.

The one reason for community control that has recently been considered most persuasive is that the inadequate education of black children may be improved under a greater measure of black community control. This may or may not be the case, but I believe that all people, black and white, have the right to control as much of their lives as is possible in a complex society, and the schools are very likely the only major function of government which would not suffer—and might even benefit—from a greater measure of local control. In education, there are few "economies of scale." It has always seemed fantastic that educators, in proposing "complexes" for 20,000 elementary-school children for purposes of desegregation, could also argue that schools of that size would also be more "efficient." Interestingly, lawyers and judges, in their effort to find *de jure* segregatory intent intent in the acts of Northern school boards, will sometimes claim that schools were deliberately made small to lessen the chances of integration. Thus in Detroit, one charge against the school board, accepted by Judge Roth, was that the board built small schools of 300 in order to contain the population and make desegregation more difficult. Paul Goodman and many others would argue that even schools of 300 are probably too large. In San Francisco, on the other hand, the argument was that schools were expanded to "contain" the black and white population. The Detroit judge, it seems, would have preferred the large San Francisco schools, and the San Francisco judge would have preferred the small Detroit schools, if one takes their arguments at face value. But one may be allowed to suspect that if the situations had been reversed, they would [illegible] both have found "*de jure*" segregation in their respective cities.

One consequence of this transfer of power to the center when one transports for racial balance is that there is no local perssure to build a school to serve a local population, since one cannot know what the effect of any local school will be. Thus all decisions on school building revert to the hands of the central school authorities, only affected, as I have already pointed out, by judges and the federal government on the one hand, and a mass opinion unrelated to local district needs on the other. I am skeptical as to whether this will improve school-construction policies. Federal civil-rights agencies and judges have not as yet shown themselves very perceptive in their criticism of local school-construction policies. One piece of evidence of *de jure* segregation, cited by the San Francisco judge, was the building of a new school in Hunter's Point, a black area. The school authorities had resisted building there. The local people insisted on a new school. Just about everyone who supports desegregation in San Francisco supported the local people, even though they knew that the school would be segregated. The local NAACP also supported the building of the new school. The judge, in his decision, cited the building of this school as a sign of the "segregatory" policies of the San Francisco school authorities. To the judge, the black people of Hunter's Point were being "contained," when they should have been sent off elsewhere, leaving their own area devoid of schools (or perhaps any other facilities). But for the people of the area who demanded the school, they were being served. That their school would be, to a federal judge's mind, "segregated" did not seem to them a good reason for all city facilities to be built only in white or Spanish-speaking or Chinese areas.

The attempt of judges and civil-rights lawyers to argue that this or that school was built to be "segregated" for whites or blacks is in any case often naive. The dynamics of population movements in the cities have been too rapid (the black population of San Francisco increased from 5,000 in 1940 to 96,000 in 1970) and the process of school-building too slow, for any such intention to be easily demonstrated or realized in Northern cities. One of the schools cited in the San Francisco case as "segregated" black (64 per-cent black in 1964), had been cited as recently as 1967 in the Civil Rights Commission's report on *Racial Isolation in the Public Schools* as having been built in order to foster the "segregation" of whites, since it had opened in 1954 with a student body that was almost all white. Presumably, at least for the intervening period, it must have been integrated.

The crucial point is: do federal courts have the right to impose a school policy that would deprive local communities and groups, white and black, of power over their schools? Some of them seem quite sure that they do. Judge Roth in Detroit is critical of the blacks of that city for contributing to what he considers "segregation" by demanding black principals and teachers:

"In the most realistic sense, if fault or blame is to be found it is that of the community as a whole, including of course the black components. We need not minimize the effect of the actions of federal, state, and local governmental officers and agencies . . . to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is a place of confinement and a place of refuge. There is enough blame for everyone to share."

We would all agree with Judge Roth that the ghetto must not be a place of confinement and that everything possible must be done to make it as easy for blacks to live where they wish as it is for anyone else. But why should it be the duty or the right of the federal government and the federal judiciary to destroy the ghetto as a place of refuge if that is what some blacks want? Judge Roth is trying to read into the Constitution the crude Americanizing and homogenizing which is certainly one part of the American experience, but which is just as certainly not the main way we in this country have responded to the facts of a multi-ethnic society. The doctrines to which Judge Roth lends his authority would deny not only to blacks, but to any other group, a right of refuge which is quite properly theirs in a multi-ethnic society built on democratic and pluralist principles.

I do not speak here of limiting what communities may freely choose to do in order to integrate their schools. I speak only of the judicial insistence that they *must* do certain things. Much busing for desegregation is engaged in by school boards independently of court decisions, because the board feels this is good for education; or because it is under pressure from blacks and white liberal citizens who demand such measures; or because it is required or is under pressure to do so from state education authorities—who, in the major Northern and Western states, and in particular Massachusetts, New York, Pennsylvania, and California, require local school districts to eliminate racial imbalance defined in various ways. More than 50 per-cent black is racial imbalance in Massachusetts, and 15 per-cent more or less of each group in each school than the proportion of that group in the entire district is racial imbalance in California. (It was on the basis of the 15 per-cent rule that more than 47 per-cent black was considered segregated in San Francisco, for the proportion of black students in the schools was 32 per cent.) Thus, the City of Berkeley has been transporting its children to achieve integration for three years now, without any court or federal action. Riverside has done the same. Many cities have implemented, independently of court action, some degree of transportation for integration. Many of these actions have been attacked in the courts from the other side—that is, by white parents charging that for racial reasons alone they were being assigned to schools for from their homes. All these challenges have been struck down in the courts, in spite of state laws (such as New York's) which declare transportation for desegregation illegal. Interestingly enough, while the San Francisco school board was under attack from one side for having failed to implement one of its integration-through-busing school complexes, it was under attack from the other side for having implemented the one it had. It was of course the first of the two attacks that was supported by the district judge.

It is not this kind of action-to-integrate—undertaken by elected school boards, or by school boards appointed by elected officials, for educational or political reasons—that is under discussion here. Unless a political decision is clearly unconstitutional it should stand. Indeed, it is very likely that decisions to achieve racial balance taken by school boards not under judicial or federal order but because the political forces in that district demand it, have better effects than those undertaken under court order by resentful school administrations. In the first case, the methods of reducing racial imbalance have been worked out through the processes of political give-and-take, the community and teachers and administrators have been prepared for the change by the political process, the parents who oppose it have lost in what they themselves consider a fair fight. The characteristics of judge-imposed decisions are quite different.

III

There is, then, considerable room for doubt as to whether the Constitution actually mandates a system whereby every school shall have a black minority and no school shall have a black majority. Nevertheless present-day judges, with whom the doctrine of judicial restraint is not especially popular, seem able to find constitutional warrant for whatever policies they feel are best for the society. And so we come to the other crucial questions raised by the new line of cases: Is school desegregation the only way to improve the education of black children and/or the relations between the races?

Without rehearing the terrible facts in detail, we know that blacks finish high school in the North three or more years behind whites in achievement. We also know with fair confidence that this huge gap is not caused by differential expenditures of money. Just about as much is spent on predominantly black schools outside the South as on predominantly white ones. Classes in black schools will often be smaller than classes in white ones—because the black schools tend to be located in old areas with many school buildings, while white schools tend to be in newer areas with fewer and more crowded school buildings. Blacks will often have more professional personnel assigned, owing to various federal and other programs. There are, to be sure, lower teacher salaries in the predominantly black schools, because they usually have younger teachers with less seniority and fewer degrees. Anyone who believes this is a serious disadvantage for a teacher has a faith in experience and degrees which is justified by no known evidence. (It is quite true that the big cities spend much less on their schools, white and black, than the surrounding suburban areas, which are almost entirely white. Regardless of the fact that spending more is unlikely to do much to improve education—it tends mostly to improve teachers' salaries and fringe benefits—it is quite unconscionable that more public money should be spent on the education of those from prosperous backgrounds than on those from poorer families. But this is quite separate from the issue of whether within present school districts less is spent on the education of black children, and whether spending more would reduce the gap in achievement.)

If money is not the decisive element in the gap between white and black, what is? In 1966 the Coleman report on *Equality of Educational Opportunity* reviewed the achievement of hundreds of thousands of American school children, black and white, and related it to social and economic background, to various factors within the schools, and to integration. In 1967, another study, *Racial Isolation in the Public Schools*, analyzed the effects of compensatory-education programs and reviewed the data on integration. Both studies—as well as subsequent experience and research—suggested that if anything could be counted on to affect the education of black children, it was integration. However, the operative element was not race but social class. The conclusion of the Coleman report still seems the best statement of the case:

". . . the apparent beneficial effect of a student body with a high proportion of white students comes not from racial composition per se, but from the better educational background and higher educational aspirations that are, on the average, found among white students."

On the other hand, if such integration did have an effect, it was not very great. The most intense reanalysis of Coleman's data [4] concludes:

"Our findings on the school racial composition issue, then, are mixed . . . the initial *Equality of Educational Opportunity* survey overstressed the impact of school social class. . . . When the issue is probed at grade 6, a small independent effect of schools' racial composition appeared, but its significance for educational policy seems slight."

The study of these issues has reached a Talmudic complexity. The finding that integration of different socioeconomic groups favors the achievement of lower socioeconomic groups apparently stands up, but the effect is not large. One thing, however, does seem clear: integrating the hapless and generally lower-income whites of the central city with lower-income blacks, particularly under conditions of resentment and conflict, as in San Francisco, is likely to achieve nothing, in educational terms.

In San Francisco, the number of children enrolled in elementary schools dropped 6,519 against a projected drop of 1,508 (a 13 per cent decline against a projected 3 per cent decline) in response to Judge Weigel's decision. The junior-high-school enrollment, not yet subjected to full-scale busing, declined only 1 per cent, and high-school enrollment remained the same. In Pasadena, California, there was a 22 per cent drop in the number of white students in the school system between 1969—before court-imposed busing—and 1971. In Norfolk, Virginia, court-imposed busing brought a drop of 20 per cent. If, as seems probable, it is the somewhat better-off and more mobile who leave the public-school system when busing is imposed, the effect on the achievement of black children is further reduced.

It is in response to such facts as these and in the light of such findings as Coleman's that judges in Detroit and Indianapolis and elsewhere now call for combining the central city and the suburb into unified school districts. But if this elaborate reorganization of the schools is being undertaken so that the presumed achievement-raising effect of socioeconomic integration may occur, we are likely to be cruelly disappointed. There is little if any encouragement to be derived from studies published and unpublished, of voluntary busing programs even though such busing takes place under the most favorable circumstances (with motivated volunteers, from motivated families, and with schools acting freely and enthusiastically.) Indeed, much integration through transportation has been so disappointing in terms of raising achievement that it may well lead to a revaluation of the earlier research whose somewhat tenuous results raised what begin to look like false hopes to the educational effects of socioeconomic integration.

IV

There is yet a final argument. One will hear it in Berkeley, which underwent full desegregation by busing three years ago, and which has seen a particular reduction of the white-black achievement gap. The argument is that school integration will improve relations between the races and that in view of the extremity of interracial tensions in this country, anything that improves these relations must be done. In Berkeley, a liberal community with an elected school board which voluntarily introduced transportation for racial balance and was not turned out for doing so, one can perhaps make this argument. But race relations are not ideal even in Berkeley, as Senator Mondale's committee discovered last year when it conducted hearings there on the most successful American case of racial balance through transportation.

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[4] David K. Cohen, Thomas F. Pettigrew, and Robert S. Riley, "Race and the Outcomes of Schooling," in Frederick Mosteller and Daniel P. Moynihan, eds., *On Equality of Educational Opportunity,* Random House, 546 pp., $15.00.

The Mondale committee discovered, for example, that after the schools were fully integrated, a special program for blacks—Black House—was established at the high-school level from which non-black students and teachers were excluded. (Berkeley High School, the only one in the city, has always been integrated.) The committee discovered, when it spoke to students—selected, one assumes, by the school authorities because they would give the best picture of integration—that students of different groups had little to do with one another. The black president of the senior class said: ". . . the only true existence of integration of Berkeley High is in the hallways when the bell rang everybody, you know, pass [sic] through the hallways, that is the only time I see true integration in Berkeley High." Senator Brooke probed deeper. Since the young man was black and a majority of his classmates were white, had they not voted for him? "The whites didn't even participate in voting. . . . They felt the student government was a farce." (The opposing candidate was also black.) What about social activities? "Like we have dances, if there is a good turnout you see two or three whites at the dances. . . ." Intramural sports? "The basketball team is pretty integrated, the crew team is mainly white, soccer team mainly white, tennis team mainly white." Did this mean, Senator Brooke asked, "that blacks don't go out for these teams that are white and whites don't go out for those teams that are all black?" The class president guessed that "whites like to play tennis and blacks like to play basketball better." Still, he did think integration was a good idea, as did a Japanese girl who told the Senators: "I think like the Asian kids at Berkeley High go around with Asian kids."

A Chicano student testified:

"I think the integration plan is working, started to work in junior high, it is different levels, the sixth graders go up to seventh grade now. I think now the Chicanos and blacks, they do hang around in groups. Usually some don't, I admit, like I myself hang around with all Chicanos but I am not prejudiced. I do it because I grew up with them, because they were my school buddies when there were segregated schools."

A black girl in elementary school said: "About integration, I don't think it is too integrated, but it is pretty well integrated. I have a lot of white friends. . . ." She lives in an integrated neighborhood. A white girl from the high school testified:

"Integration, ideally, as far as I can see it isn't working. I mean like as far as everybody doing things together . . . I have one class where there are only two whites in it, I being one of them, you know like I don't have any problems there, but outside . . . [with other blacks] we just do different things. I am not interested in games. I couldn't care less. I don't know anything about Berkeley as far as the athletics go. . . . I wear very short skirts and walking down the halls I get hassled enough by all the black Dukes, you know. . . ."

Senator Brooke was surprised she wasn't hassled by the white boys too and suggested that they might use a different technique.

This is about the most positive report one can make on school integration. Why should anyone be surprised? There is a good deal of hanging around in groups, and there is some contact across racial lines, but the groups seem to have different interests and different social styles. The younger children have more in common than the older ones. It would be hard to say whether this commonalty of interest will continue through high school—a popular Berkeley theory—or whether differences will assert themselves as the children grow older even though they were exposed to integration earlier than those now in high school. In other communities which have been studied, black children who are bused tend to become more anti-white than those who are not bused. One can think of a number of reasons for this.

If, then, the judges are moving toward a forcible reorganization of American education because they believe this will improve relations between the races, they are acting neither on evidence nor on experience but on faith. And in so acting on faith they are pushing against many legitimate interests: the interest in using tax money for education rather than transportation; the interest of the working and lower-middle classes in attending schools near their homes; the interest of all groups, including black groups, in developing some measure of control over the institutions which affect their lives; the interest of all people in retaining freedom of choice wherever this is possible.

There is unfortunately a widespread feeling, strong among liberals who have fought so long against the evil of racial segregation, that to stop now—before busing and expanded school districts are imposed on every city in the country—would be to betray the struggle for an integrated society. They are quite wrong. They have been misled by the professionals and specialists—in this instance, the government officials; the civil-rights lawyers, and the judges—as to what integration truly demands, and how it is coming about. Professionals and specialists inevitably overreach themselves, and there is no exception here.

It would be a terrible error to consider opposition to the recent judicial decisions on school integration as a betrayal of the promise of *Brown*. The promise of *Brown* is being realized. Black children may not be denied admittance to any school on account of their race (except for the cases in which courts and federal officials insist that they are to be denied admittance to schools with a black majority simply because they are black). The school systems of the South are desegregated. But more than that, integration in general has made enormous advances since 1954. It has been advanced by the hundreds of thousands of blacks in Northern and Western colleges. It has been advanced by the hundreds of thousands of blacks who have moved into professional and white-collar jobs in government, in the universities, in the school systems, in business. It has been advanced by the steady rise in black income which offers many blacks the opportunity to live in integrated areas. Most significantly, it has been advanced because millions of blacks now vote—in the South as well as the North—and because hundreds of blacks have been elected to school committees, city councils, state legislatures, the Congress. This is what is creating an integrated society in the United States.

We are far from this necessary and desirable goal. It would be a tragedy if the progress we made in achieving integration in the 1960's were not continued through the 70's. We can now foresee within a reasonable time the closing of many gaps between white and black. But I doubt that mandatory transportation of schoolchildren for integration will advance this process.

For, so far as the schools in particular are concerned, the increase in black political power means that blacks—like all other groups—can now negotiate, on the basis of their own power, and to the extent of their own power, over what kind of school systems should exist, and involving what measure of transportation and racial balance. In the varied settings of American life there will be many different answers to these questions. What Berkeley has done is not what New York City has done, and there is no reason why it should be. But everywhere black political power is present and contributing to the development of solutions.

There is a third path for liberals now agonized between the steady imposition of racial and ethnic group quotas on every school in the country—a path of pointlessly expensive and destructive homogenization—and surrender to the South. It is a perfectly sound American path, one which assumes that groups are different and will have their own interests and orientations, but which insists that no one be penalized because of group membership, and that a common base of experience be demanded of all Americans. It is the path that made possible the growth of the parochial schools, not as a challenge to a common American society, but as one variant within it. It is a path that, to my mind, legitimizes such developments as community control of schools and educational vouchers permitting the free choice of schools. There are as many problems in working out the details of this path as of the other two, but it has one thing to commend it as against the other two: it expands individual freedom, rather than restricts it.

One understands that the Constitution sets limits to the process of negotiation and bargaining even in a multi-racial and multi-ethnic setting. But the judges have gone far beyond what the Constitution can reasonably be thought to allow or require in the operation of this complex process. The judges should now stand back, and allow the forces of political democracy in a pluralist society to do their proper work.

Mr. Polk. Mr. O'Hara, would the language you suggested to the committee prohibit a Federal court from requiring pairing of several schools? You mentioned that there were several elementary schools in your area for grades one through six. What if Federal courts were to make one of those schools the first grade and another school the second grade, and so on?

Mr. O'Hara. The reason I haven't proposed a formal amendment is that I have been taking a position that the Constitution does not now require the result that is reached in *Swann* and I hope we will get clarification on that.

But the language I proposed for consideration of the committee would forbid the court from requiring pairing, if in the elementary schools of that system there was a racially nondiscriminatory attendance pattern set up.

If the school system wanted to go beyond that and paired, they would not be forbidden to do so under my proposed language. But they could not be required to do so.

Mr. Polk. In my hypothetical the court would also be drawing nondiscriminatory attendance zones but they would be larger ones.

Mr. O'Hara. My proposal would simply say no school system which assigns students on the basis of racially nondiscriminatory racial attendance area may be required to adopt any more. You say could they change the neighborhood system? I would say no. The purport of my amendment, and perhaps it isn't worded perfectly, is that if they have a neighborhood attendance system that is truly color blind and racially non-discriminatory, they can't be required to do anything to change that system in any way.

Mr. Polk. Thank you, Mr. O'Hara.

Mr. Hungate. We thank you very much.

The next witness is Congressman John D. Dingell of Michigan.

STATEMENT OF HON. JOHN D. DINGELL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Dingell. Mr. Chairman, I brought before the committee for edification of members thereof a box full of correspondence and petitions that I received on this subject from my constituents.

I would advise the Chair that the correspondence is uniformly opposed to the concept of enforced busing to achieve racial balance in schools.

Mr. Jacobs. Mr. Chairman, can we have the gentleman read those into the record?

Mr. Dingell. I would be glad to if you wish.

I would offer them if the Chair desired.

Mr. Hungate. The Chair would have the gentleman offer them as exhibits for our files. Could you describe the dimensions of your box there?

Mr. Dingell. The box is approximately 16 by 12 by 12 inches.

Mr. Hungate. Thank you very much.

We appreciate that evidence of considerable concern from your district on this problem.

Mr. Dingell. For the Chairman, I am a Member of Congress from the 16th Congressional District of Michigan. I have before you a prepared statement which I am sure the membership of your committee is aware of. I will, because of the time limitations imposed on the committee, not read it.

Mr. HUNGATE. Without objection the prepared statement will be made a part of the record at this point.

(The statement referred to follows:)

STATEMENT OF HON. JOHN D. DINGELL, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Chairman, I am most grateful to you and the members of the Committee on the Judiciary for this opportunity to give testimony on the subject of court-ordered busing of school children, and the related issue of court-ordered merger of school districts, which are flowing from school segregation suits in different part of the United States.

For a long time we in this country have been afflicted with many problems which arose because of the denial of equal opportunity to all our citizens in many areas of our national life. One of the most difficult of these problems is that of achieving equality of education for all our children.

For generation upon generation black children in many parts of this Nation were denied fundamental decency and justice by being required to attend entirely segregated schools and in many instances they were compelled to ride long distances past superior schools which had been reserved for white children. I opposed that vicious practice for several reasons including the fact that the Constitution did not allow for children to be assigned to schools on the basis of race, creed or color.

Of late there has been initiated a program of court-enforced busing again based on color. Pursuant to this program, hundreds of thousands of our young people—both black and white—are being bused to schools distant from their home to achieve a particular racial composition in schools, a practice which is of dubious merit educationally and highly questionable insofar as my reading of the Constitution is concerned.

To my mind assigning a child to a particular public school on the basis of race to achieve an all-black or an all-white school—a practice which was outlawed in Brown vs. The Board of Education—is no less wrong than forcing a child to go to school at a place distant from his or her home to achieve a still different racial complexion in our public school system.

Time unnecessarily spent riding a bus does not contribute to a child's education in any meaningful fashion. In fact, excessive time spent riding a bus imposes a substantial burden on a child's comfort and well-being.

The economics of busing also tend to deny children an opportunity to enjoy high quality educational opportunities by diverting funds from the classroom to the streets and highways of our cities and countryside. As an example of the substantial costs involved, I cite one plan which is pending before the Federal court in Detroit involving the busing of many thousands of school children in the Detroit metropolitan area at a cost of something like $21 million a year. I think it is interesting to note that the Detroit school system has a deficit this year of something approaching $20 million. The quality of education offered in the Detroit public schools is not as high as it should be in large part because of the lack of adequate funds. Does it make any sense to require an already under-funded school system to divert funds into a program of wholesale busing? I do not believe that it does.

Proposed Constitutional amendments on the subject of busing abound. Apart from the traditional approach of the Congress that the Constitution should not be turned into a book of statutes, there is strong reason to recognize that the proposed amendments pending before this Committee do not directly meet the problem of enforced busing to achieve specific racial balances in our public schools. In fact, some of these amendments would actually have us retrogress towards policies and practices that our Nation has wisely abandoned. Indeed it is fair to say that most, if not all, of them do not meet the problem of enforced merger of school districts—something which looms in the Detroit case and something which is most offensive to my constituents and I am sure to constituents of many other Members of the Congress.

It also should be noted that the process of amending the Constitution is lengthy and complicated. First, the proposed amendment must be approved by a two-thirds vote in the House and in the Senate. It then must be ratified by three quarters of the States. The State ratification process can take as long as seven years. Thus, it is clear that a Constitutional amendment would not meet in a timely fashion, the problem of enforced school busing and merger which is very much with us here and now. The period of time involved in the amendment procedure is so long that the people's will would not be given recognition in time to prevent the full implementation throughout the nation of an unwise and an unnecessary course of action. Enforced busing and school district mergers will not achieve the goal of providing full equality for all our people. Rather, I am very much afraid that it will go far toward destroying any chance we have to preserve and improve our system of free public education.

The fact that public opinion polls indicate that an overwhelming majority of Americans—black and white—oppose enforced busing and school district merger should indicate to this Committee that better means of resolving the problem must be found if we are to expeditiously provide equal rights and high quality education for all.

In a very real sense, the problem before this Committee today is not enforced busing or merger of school districts but rather how best to provide full equality of educational opportunity to all our children regardless of race, creed or color.

The resolution to this problem is not to be found in busing or in arbitrary fiixing of racial quotas. It does not lie in merger of school districts. As a matter of facts it does not even lie in equality of educational opportunity itself but rather in equality of the result of the educational process. This last fact is something much overlooked and yet it is perhaps the most important point to be borne in mind if the problem is to be properly and expeditiously resolved.

One of the tasks facing this Committee is how to achieve a resolution to the matter legislatively and not by a Constitutional amendment.

The President has expressed doubt as to the wisdom of a Constitutional amendment here. The Attorney General, the Secretary of Health, Education, and Welfare, the Vice President, the Majority and Minority Leaders of the Senate have all expressed opposition to a Constitutional amendment. The Governor of Michigan has taken a similar stand.

Debate in the Senate in the past few weeks indicates with clarity that a legislative resolution is possible if we utilize the powers of the Congress over the jurisdiction of the courts.

I do not appear before this Committee to urge a setback in this Nation's march toward full equality of opportunity in education. I appear rather to advocate the best and most expeditious method to achieve that end and I believe that a legislative approach is not only feasible but wise. As a result of studies of this matter, Congressman James G. O'Hara (D-Mich.) and I have drafted and introduced legislation, H.R. 13534, recognizing clearly the right of all our children to equality of educational opportunity and guiding the courts in the selection of remedies to achieve this goal. We have sought in this bill not only to require the most expeditious way of achieving full equality of educational opportunity for all our young people, but also to provide funds—$5 billion a year—to assist the hard-pressed school districts to move rapidly toward that goal.

Briefly, our bill would bar any court from issuing an order requiring the transportation of students or the merger of school districts as a means of eliminating racial segregation in schools if the local school district has adopted an approved plan assuring full equality of educational opportunity to all children in that district. The bill provides that three quarters of the net additional cost of implementing the plan will be paid by the Federal Government and one quarter by the States or local school districts.

We in the Congress must not stand idly by while the effort goes forward to achieve equality of educational opportunity for all our children. Rather, we in the Congress must provide leadership which will allow that end to be accomplished with the least possible social disruption. We have the responsibility to see to it that there are available effective and acceptable tools which can be wisely utilized to achieve the end which we all desire. I believe that H.R. 13534 provides such tools and I strongly urge that this Committee report the measure to the House for early action.

Mr. DINGELL. Mr. Chairman, I have tried in my statement to outline first of all my position of opposition to enforced busing and enforced merger of school districts to achieve racial balance.

I pointed out in my statement that I regard the transportation of young people to all black schools and all white schools equally vicious and I regard it equally wasteful to transport children long distances to achieve any other racial balance and that has been consistently my position during my time in the Congress of the United States.

I have given a great deal of thought to the alternatives before this committee. I want to commend this committee and its chairman for holding these hearings and for giving us an opportunity in the Congress to go very carefully into the question of busing and enforced merger of school districts to achieve racial balance in the schools.

The committee has before it a large number of constitutional amendments. It has also a number of pieces of legislation before it. I am sure the committee has before it H.R. 13534 which was cosponsored by my friend and colleague, Mr. O'Hara and myself on March 2.

This bill represents a very carefully drafted piece of legislation whose purpose is to find us a way out of this thicket in which we seem to have wandered, of requiring court enforced busing or merger of school districts.

I think that we have before us possibly a series of alternatives, one which would forbid further desegregation or which might take us back to that unfortunate time previous to the *Brown* case.

We have also proposals which would restrict the capacity of Federal courts to issue orders of this kind. I regard H.R. 13534 as perhaps the best and the third alternative before this committee, and that is, an attempt to guide the hands and ways of the courts into perhaps the most expeditious and satisfactory conclusion to the cases before them.

The legislation simply says that, first of all, there is a statement of findings, that we find that enforced busing and merger of school districts has not been good because counterveiling rights and equities of many children tend to be disregarded in that kind of action.

And that it affords the court a better alternative, that is, it affords it a State or Federal plan, adequately funded, to achieve desegregation of the public schools in the community.

It affords $5 billion a year and it requires 75 percent of the additional costs to meet this desegregation plan shall be paid by the Federal Government. It says that where such a plan is in being, is approved, and where there is adequate level of funding, there can be no court ordered mergers or busing of school children to achieve racial balance.

In the course of affairs, Mr. Chairman, we sometimes tend to lose sight of what our real goal and purposes are. Busing in the mind of some has become a sort of sacred cow. Busing in the minds of others has become a great evil. In fact, it is only a tool to achieve what the court wanted to have in the *Brown* case and that is equality of educational opportunities for all of our children. The purposes of the bill which you have before you, H.R. 13534, is simply to say that the court has an additional option which is triggered in part by the action of the community and in part by the Federal Government to assure that there be the fullest equality of educational opportunity for all of our children.

As you recall, the *Brown* case said that segregated school systems were inherently inequal. The other cases have gone as far as to say that there is a requirement that there be affirmative action to desegregate.

I personally do not regard the last cases as being necessarily definitive. I had a constitutional law professor who told us in my days in law school that the courts tend to be quite flexible both in terms of establishing trends and also in terms of following or not following previous decisions, and so forth.

What the Congress does here is to really guide the hands of the court in achieving the best remedy.

What we really seek here is equality of educational opportunity for all of our children and busing is simply a means toward that end.

In H.R. 13534 which is before you, Mr. Chairman, I have simply sought to see to it that the mind and hands and feet of the courts of the United States are guided into the pathways most appropriate to achieve real educational opportunity.

I suspect that some of the more forceful and vigorous actions of the court of late are related less to any determination that busing is a desirable tool than to a simple recognition that matters have not been going forward as we would have liked and the courts are feeling that there is a great deal of frustration arising from the failure of local school districts and communities to achieve real equality of educational opportunity.

So, Mr. Chairman, the function of the bill is as I have briefly outlined before you. It is my feeling the bill will afford an opportunity for the courts to really come to the ultimate and which is sought by all and that is equality of educational opportunity and which is something that is not going to be achieved by busing or by enforced school district merger, something which is displeasing to not only my constituents but I am sure the constituents of each and every one of us.

Yet, I think H.R. 13534 carries out the mandate to Congress that we should by appropriate legislation enforce the equal protection of laws which are considered in the school cases.

We make certain legislative findings in that bill and we make funding available to see to it that we really resolve this problem of desegregation of our school systems and of affording to our young people an equal opportunity to high-equality education.

Mr. HUNGATE. On behalf of the committee I want to thank the gentleman from Michigan for his contribution. He is a valued member of the Congress, as was his father before him, and the legislative effort he has brought to us along with our colleague, Mr. O'Hara, is much appreciated as we seek some solution to this problem.

Mr. Hutchinson?

Mr. HUTCHINSON. Thank you, Mr. Chairman. I also want to take this occasion to welcome my colleague from Michigan, Mr. Dingell, to the committee. I deeply appreciate that members of the Michigan delegation will appear on this matter which is, as I guess the whole country knows, an issue of considerable interest in our State.

I would like to ask Mr. Dingell if it is the purpose of his bill to achieve an equality of excellence with regard to faculty, facilities, and educational programs in all of the schools? Do you seek an equal excellence?

Mr. DINGELL. That really is the function of the bill. Not only to achieve equal education but equal educational opportunity and equality of result because, as you know, for many reasons, we find that in particular with racial groups or with people who happen to be economically deprived, there is real need for special educational work.

One of the evils of the busing that we are seeing is that a lot of children of low economic means are going to remain in the schools from whence the busing takes place with the result that busing tends actually in many instances to further aggravate an educational deprivation that strikes certain people in our society.

Mr. **Hutchinson.** I thank the gentleman for that observation. I think he makes the point that has not been brought out in these hearings heretofore, and that is, that unless you move everybody out of a so-called inferior school, you simply exacerbate the situation.

Mr. **Dingell.** That is right. Not only do you impose difficulty on the child that you ride out by forcing him to ride the bus long distances, or difficulty on the child that you bus in, but you also create the problem of remaining in an educationally deprived atmosphere for those children compelled to remain in the school under the busing plan.

There is no one who apparently has given thought to their rights nor apparently have they given thought in the courts to rights of children who are bused in.

Mr. **Hungate.** Mr. Jacobs.

Mr. **Jacobs.** You made a very good statement, Mr. Dingell.

On the question of spending money for quality education rather than for buses for transportation, would the gentleman agree with me that probably a system of preschool education going all the way back to birth in lieu of long-distance busing, and in lieu of a number of remedial programs would be of substantial value. So that for the poor child from a poor home in which good English is not spoken and other basic educational building blocks do not exist, a basic program of preschool education, such as they have in Israel should be adopted.

So by the time a child enters the first grade, he would have a linguistic skill. He can understand and speak the language and take the next step of learning to read and write. That is where the fight should be taking place in this country to achieve equality of educational opportunity. Would the gentleman agree with that?

Mr. **Dingell.** I would agree that is the most important part. But we have had this experience with Headstart which has been successful. After a child goes through a Headstart program and receives this extra preparation, all of a sudden he finds the programs that should follow being terminated and then the child tends to either retrogress or not to progress sufficiently rapidly with the result that a lot of the benefits if not all of the benefits of Headstart are lost.

I think what the gentleman is really saying is that we need an overall package of educational opportunity in this country which will deal with a child from the cradle right through graduation from college or community college or high school, and this is something which has never been present.

We have always promised much and done small in the field of education which is the reason we have this problem we are addressing ourselves to today.

Mr. **Jacobs.** In Great Britain they pay a bonus to teachers who teach in poor neighborhood schools for the simple reason that the job of remedial education is so much more difficult.

Mr. **Dingell.** And they want to bring quality teachers to those schools to bring those children up.

Mr. JACOBS. In our country, we exalt the idea of equal pay for equal work. It seems to me along those lines rather than along the lines of long-distance busing, which as the gentleman has pointed out is quite artificial in its final result; it seems to me along those lines we could do what we all want to do, and that is make this country a place where we can be brought together when that is not just a pretty phrase of oratory.

I especially appreciate the gentleman's testimony. I believe it is the best we have had so far.

Mr. DINGELL. I thank my good friend very much.

Mr. HUNGATE. The gentleman would prefer to reach this by a statute rather than amendment?

Mr. DINGELL. The answer is "Yes." Like my friend, Mr. O'Hara. I am not sure what the Lent amendment does. I don't know whether it takes us back before *Brown* or whether it is the same as *Brown* or whether it is in some fashion different. It is a very ambiguously drawn piece of constitutional law. There is the other problem, and I think this is something most people have tended to overlook, which is that constitutional amendments take a long time. They are very difficult to bring to a successful conclusion.

Once they have been adopted into the Constitution, they then are subject to lengthy litigation to find out what they mean. So we would find ourselves, if we were to amend the Constitution, it would be a very time-consuming process.

We have a national problem. A lot of our children are being denied full educational opportunity. Let's try and put forward a quick, effective, and properly drafted resolution of the problem. I think—and I have no pride of authorship here, I would say H.R. 13534 may not be perfect in its approach, but at least it is in my view the way out of this thicket.

It will give this Nation the means of putting to rest for good and all this question of equality of opportunity and it will say that we are going to give the children what they really need in terms of equal opportunity. That is the idea.

Mr. HUNGATE. Thank you very much. We appreciate your contribution.

No further questions?

Thank you again.

Mr. HUNGATE. The next witness is our colleague, the Honorable Ben B. Blackburn of Georgia.

We want to thank you for waiting. We are glad to have you.

STATEMENT OF HON. BEN B. BLACKBURN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. BLACKBURN. Mr. Chairman, I will submit my statement for the record and summarize the high points of the statement.

Mr. HUNGATE. Your statement will be made a part of the record at this point.

(The statement referred to follows:)

STATEMENT OF HONORABLE BEN B. BLACKBURN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman and Members of the Committee, hearings are being conducted today because policies affecting the operation of public school systems throughout the United States have been instituted by court decrees. These policies, which are meeting a broad resistance from all areas of the country, generally require the transportation of school children from the school facilities most convenient to their homes to school facilities at varying distances from their homes in order to achieve, what the courts have determined to be, a desirable racial mix in individual schools.

Parents, demonstrating a very human instinct to keep their children as close to home as possible during their educational periods, are objecting to these policies. School boards and school revenue authorities, finding that the financial burdens imposed by such massive transportation requirements, combined with the increased complication of scheduling classes, are protesting likewise. In some school systems extracurricular activities have been curtailed, if not eliminated, because of the combination of financial burdens and scheduling complications. Many parents and school boards are expressing fear that the quality of education is suffering under the policies now being promulgated and implemented under Court decrees.

I personally fear that their concerns are valid. When courts initiate policies which the majority of the people do not support, then grave questions arise as to the proper role of government in the affairs of the citizens in a democratic society. The courts are an instrument of government. In a constitutional democracy, the ultimate authority for government action is the will of the people. The will of the people is expressed first in the legal document which gives authority to government, the Constitution itself. It has always been my understanding that the role of the courts in our government is to protect the citizenry against abuses of the executive or legislative branches of government when either of these two branches, or both, exercise authorities not granted in the Constitution.

These hearings are testimony to the fact that the people of the United States are becoming alert to the danger that their desires can be subverted by the courts themselves. The courts are no longer content to prevent excesses of authority by the other two branches of government but have now assumed the role of a legislative body.

When the courts assume a legislative function and promulgate policies that are not supported by the will of the people, then a duty arises on the elected representative branch of government, that branch which reflects the will of the people, to take affirmative and responsible action to bring national policies into a position more consistent with the will of the people. To fail to do so is to permit a tyranny of the Judiciary.

Indeed, I am of the opinion that the courts are themselves in violation of clear constitutional limitations. For example, Article I, Section 7, Clause 1 of the Constitution provides that revenue measures arise out of the Lower House: "Article I, Section 7. All Bills for raising Revenue shall originate in the House of Representatives. . . ."

It is obvious that in the enactment of the Constitution, the people of this country demonstrated a high concern for the protection of their pocketbooks. So that unpopular invasions into their pocketbooks could be rectified by calling to account at the next general election those who impose tax burdens, the people insured a direct link between themselves and the policymaking organ of government which exercises the most direct impingement upon their financial affairs.

When the courts impose substantial financial burdens on the school systems of our country, the courts are imposing a tax. Local taxing authorities and school boards either have the option of decreasing the quantity, or quality, of academic services in order to meet the cost of additional transportation expenses to comply with busing requirements or, such authorities must increase revenues by increasing tax burdens on local citizens. Yet, the citizenry who must bear the additional taxes cannot call to account the court responsible for imposing such taxes.

A challenge has been posed to the Congress. Recent public opinion polls reveal that currently approximately 80% of Americans oppose the transportation of school children over long distances where such transportation is not necessary.

It is the Congress which is the instrument of government charged with the responsibility of reflecting the will of the people in government policy. When government policy runs counter to the will of the people, then government has ceased to be the servant of the people. Do we as Congressmen have the right to remain silent when the people who have placed such trust in us are demanding relief from government abuses. The fact that these abuses have arisen from the judicial branch of government makes them no less onerous and makes our responsibility to respond even more clear.

The court decisions which are creating the problem arise under the provisions of the Equal Protection Clause of the 14th Amendment. In the enactment of the 14th Amendment, the framers of that amendment specified the authority of the Congress to enforce the provisions of that Act.

Specifically, Clause 5 of the 14th Amendment states, "The Congress shall have the power to enforce the provisions of this article." The Supreme Court regards Clause 5 as a positive grant of power by the people to the Congress to be used in the enforcement of the 14th amendment. In *Ex parte Virginia*, 100 U.S. 339, at page 345 the Court states: "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective."

When the 14th Amendment was on the Floor of the Senate Under discussion in 1867, Senator Jacob M. Howard of Michigan described Clause 5 as "a direct affirmative delegation of power to the Congress," and added, "It casts upon Congress the responsibility of seeing to it, for the future, that all sections of the amendment are carried out in good faith and that no state infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it imposes upon Congress this power and this duty. It enables Congress in case the state shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment." Con. Globe, 39th Cong., 1st Sess., 2766, 2768 (1866).

Clause 5 of the 14th Amendment is a logical extension of Article I, Section 8, Clause 18 of the Constitution in which the Congress is given the general power" . . . to make all laws which shall be necessary and proper for carrying into execution . . ." the powers vested by the Constitution in the government of the United States.

There have been proposals advanced before this Committee that to meet the demands of the public for relief from court-ordered transportation schemes the Congress should enact a constitutional amendment prohibiting "busing" of school children. I am not in agreement with such suggestions. The United States Constitution is a document intended for promulgation of statements of bread public policy. One of its principal purpose, as repeated throughout THE FEDERALIST PAPERS, and as specified in the first 10 Amendments, is to limit the parameters of Federal activities as they might impinge on individual freedoms. The Constitution should not become a legislative vehicle to deal with particulars of the day-to-day mechanics of government operation.

The proposal for a constitutional amendment is unrealistic in the present political climate. The Senate, within the past week, by a narrow vote has defeated legislation dealing with the subject matter of school busing. To suppose now that the same Senate would adopt by a ⅔ vote a strong constitutional amendment is unrealistic.

Securing ratification of a constitutional amendment requires the cooperation of state governments as well as federal action. The mere mechanics of securing passage of a constitutional amendment complicates and would delay the granting of relief to the American public. Thus, on several grounds, I am opposed to the proposed constitutional amendment as being unwise, unnecessary, and too cumbersome.

It is my suggestion that the Congress exercise the authority which it now possesses under Clause 5 of the 14th Amendment. I suspect that the courts, having plunged into the thicket of school administration and financing would welcome congressional direction. The courts were never intended to be legislative bodies. They operate in the confines of narrow rules of evidence. Conflicting attorneys, in presenting their cases are seeking to serve the immediate needs of their clients. The courts can only act on the basis of facts presented before them and differing skills and resources of legal counsel have a great influence on the factual basis upon which a court can act. In short, a court, proceeding in accordance with established rules of evidence and legal procedures is not equipped to legislate or formulate new public policies which have wide-ranging and direct effects on our citizenry.

The question of racially segregated versus racially integrated schools has been long since laid to rest both in the courts and in the minds of our citizens. The matters of increasing concern to our citizens are those of quality and equality in educational opportunity to all of our children in the public school systems and, increasingly, the convenience and expense involved in delivering those educational opportunities.

Let me suggest that legislation embodying the following general principles would be adequate. (1) There shall be equality of educational services in each school in a school system; (2) Each child shall be first designated to attend the school most convenient to his home, providing that school attendance zones are not created in such a manner as to create or perpetuate segregation and (3) It shall be provided that any child will have the right to transfer, upon reasonable notice, to any other school within the same school system at no expense to the school system.

In the final analysis we are dealing with a question of the will of the people when their desires are being over-ruled by an instrument of government, the courts. The legislative branch of government is a co-equal branch with that of the courts. As that branch of government most responsive and responsible to the will of the people, it is our duty to act as a co-equal branch of government and specify limits and conditions within which the judiciary may act in establishing government policy.

Mr. Blackburn. Mr. Chairman, What I say in my statement is that the courts are an instrument of government. The Federal court system is another instrument of government just as the Chief Executive is an instrument of government and as we are an instrument of government.

The courts today are instituting polices that are not supported by the great majority of people such as the busing business that brings us here today.

Under such a situation I think it is our responsibility as that organ of government which is designed and intended to be responsive to the will of the people to insert our views to correct the courts where the courts have gone beyond what the people want them to do.

I personally do not feel that we need a constitutional amendment. In fact, if we review the history of the 14th amendment, we find that clause 5 says specifically: "The Congress shall have the power to enforce the provisions of this article."

The Supreme Court has interpreted clause 5 of the language "It is the power of Congress which has been enlarged," talking about section 5 of the 14th amendment.

> Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective.

When the 14th amendment was on the floor under discussion in 1867, Senator Howard of Michigan described clause 5 as "a direct affirmative delegation of power to the Congress" and he added "it cast upon the Congress the responsibility of seeing to it for the future that all sections of the amendment are carried out in good faith."

Clause 5 of the 14th amendment is a logical extension of article 1, section 8, clause 18 of the Constitution in which Congress is given general power "To make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution in the Government of the United States."

Gentleman, I also agree with my colleague, John Dingell, when he states that the constitutional amendment is a very cumbersome and very bulky process. It requires affirmative action on the part of State legislatures.

If the Congress will specify very clearly the parameters under which the Court can act in carrying out the purposes of the 14th amendment, we will be giving the Court a very welcomed congressional direction which at the present time is lacking.

I also point out in my testimony that a court operates under the confines of narrow rules of evidence. It operates under confines of the facts which are presented to the court which are determined in part by the differing skills of the attorneys, as well as the resources of the attorneys in the case, both of which are very much a part of the accessibility of the court to facts.

We are supposed to be the legislative body. I think we have authority under the Constitution to act in this field and I suggest that legislation be drawn. I have not prepared legislation but let me suggest that the following general principles would be adequate in legislation.

One, there should be equality of educational services in each school in a school system.

Two, each child should be first designated to attend the school most convenient to his home provided school attendance zones are not created in a manner to create or perpetuate segregation.

Three, it should be provided that any child should have the right to transfer to any school within the school system at the child's own expense.

Very briefly, Mr. Chairman, this is a summary and essence of the statement that I submit to the committee.

Mr. HUNGATE. That is a very helpful statement on ramifications of the 14th amendment. Your summary had 14 points and someone said the Lord only needs 10 and you got close to the Lord.

Thank you for your contribution.

Mr. Hutchinson?

Mr. HUTCHINSON. Mr. Chairman, I have no questions to put to the witness. I appreciate his appearing at this late hour today and his contribution will be most helpful.

Mr. HUNGATE. Mr. Jacobs?

Mr. JACOBS. It was an excellent contribution. Thank you.

Mr. HUNGATE. Thank you again. The committee will be in recess until 10 a.m., Wednesday.

(Whereupon, at 12:30 p.m., the committee adjourned, to reconvene Wednesday, March 8, 1972.)

SCHOOL BUSING

WEDNESDAY, MARCH 8, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler presiding.

Present: Representatives Celler, Hungate, Mikva, McCulloch, Poff, and Hutchinson.

Staff members present: Benjamin L. Zelenko, general counsel, Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman **Celler**. The meeting will come to order.

The Chair wishes to announce the names of the witnesses for the following week: On Monday, March 13, Hon. Joyce Symons, Michigan State representative; Students for Quality Integrated Education, Pontiac, Mich.; Mrs. James C. Farrell and Mr. Odis Clark, Pine Bluff, Ark.; Frank E. Jones, M.D., Social Action Committee of Christians & Jews of Nashville, Tenn.; and Prof. Gary Orfield, Princeton University.

On Wednesday, March 15, Dr. Michael Bakalis, Illinois Superintendent of Public Instruction; Mr. Alan R. Perry, chairman, Winston-Salem/Forsyth County Board of Education; Mr. W. Harry Davis, member, Minneapolis Board of Education; Mr. John Plath Green, president, School Board, Dallas, Tex.; Dr. Nolan Estes, superintendent of schools, Dallas, Tex.; Mr. Ben Clark, general chairman, citizens for Neighborhood Schools, Dallas, Tex.; and Mr. L. K. Schultz, president, Concerned Neighbors, Inc., Corpus Christi, Tex.

On Thursday, March 16, Mr. Roy Wilkins, chairman, Leadership Conference on Civil Rights, accompanied by Nathaniel R. Jones, Esquire, general counsel, NAACP; Mrs. Larnell A. Cleveland, Rochester, N.Y.; Commissioner Ewald B. Nyquist, New York State Commissioner of Education, president of the University of the State of New York; Mr. Victor Solomon, associate national director, Congress of Racial Equality (CORE); Mrs. Robert E. Wolf, member, Board of Education of Prince George's County, Maryland; and Mr. Mario Diaz, president, Board of Education, Southgate Community School District, Southgate, Mich.

Our first witness this morning is Mr. David Selden, president, American Federation of Teachers. Mr. Selden.

STATEMENT OF DAVID SELDEN, PRESIDENT, AMERICAN FEDERATION OF TEACHERS, AFL–CIO, ACCOMPANIED BY CARL J. NAGEL, LEGISLATIVE DIRECTOR, AND GREGORY HUMPHREY, ASSISTANT LEGISLATIVE DIRECTOR

Mr. SELDEN. Thank you, Mr. Chairman. I have with me today Carl J. Nagel, legislative director for American Federation of Teachers; and Gregory Humphrey, assistant legislative director for American Federation of Teachers.

Chairman CELLER. You are all welcome.

Mr. SELDEN. Mr. Chairman and members of the committee, The American Federation of Teachers is opposed to any change in the present constitutional guarantees of equal protection of the laws, particularly as these grantees apply to the right of any citizen to have equal access to the same quality of education as that available to any other citizen within a State.

We are also opposed to any effort to restrict constitutional rights through legislation or to modify Supreme Court decisions interpreting the U.S. Constitution in regard to the educational rights of citizens.

In other words, we are opposed to any attempt to amend the Constitution so that busing of schoolchildren could be restricted in ways that are at present illegal, and we are opposed to any legislation which would seek to accomplish this purpose without benefit of the constitutional amendment.

The American Federation of Teachers supports the basic principle established by the U.S. Supreme Court in *Brown* v. *the Board of Education* to the effect that racially segregated education is inherently inferior to integrated education; and further, we support the doctrine the U.S. Supreme Court advanced in the *Charlotte-Mecklenburg* decision to the effect that school boards have a responsibility to eliminate racially segregated schooling through all possible means, including the busing of children.

I have written a summary of civil rights progress in the field of education over the past two decades, and it has been published in the newspaper of the AFT. It is entitled "Don't Step to the Rear of the Bus." I request that this material be inserted in the record.

Chairman CELLER. We will include the material in the record.

(The statement referred to follows:)

"Don't Step to the Rear of the Bus," a statement by David Selden, President, American Federation of Teachers, AFL-CIO. Reprinted from *American Teacher*, February 1972.

In a few short months, President Nixon has succeeded in undermining 25 years of efforts by the NAACP, the AFL-CIO, churches, and reform organizations to bring about racial justice and a more nearly integrated society. He has corrupted the social morals of many a liberal congressman and senator, and he has created doubt that even the decisions of the Supreme Court will be carried out.

Let us review how it all happened. The Supreme Court decided in 1954 that segregated education was bad education and that even if the former official doctrine of separate-but-equal facilities had been lived up to in practice, the education received by black children would still have been inferior to that received by white children.

COURAGE AND DIGNITY

We went through the battle of Little Rock. The issue then was whether black children would be allowed to walk to the same schools that white children walked to. We—humanity—won that battle. We went through all the other battles around the issue of school integration. We remember the hate-filled faces of the New Orleans mothers who did not want their children to attend an integrated school, and we remember the wonderful dignity and courage shown by black children in city after city. Yes, and we remember the courage shown by those whites who were willing to fight for integration in areas of this country where such actions were widely regarded as akin to sedition.

Then in 1968 we had a change in the national administration. Mr. Nixon became President and Mr. Mitchell, the victorious candidate's campaign manager, became Attorney General. Soon the shape of what came to be known as the Southern Strategy began to emerge. By tilting the law away from integration, it would be possible to win the favor of politicians who had long traded in the dirty coin of segregation.

The civil-rights-compliance unit of the Dept. of Health, Education, and Welfare was slowed down and muffled. A representative of Mitchell's Justice Department appeared before the Supreme Court to argue against the NAACP lawyers in the Charlotte-Mecklenburg case, in which the issue was how much integration would be deemed good enough to satisfy constitutional requirements. In that instance, the administration argued that all that was required was a reasonable effort, but the court found otherwise and directed the school district to reassign pupils in such a way as to maintain approximately the same racial balance in every school as that for the school district as a whole. It went further. It said that such pupil reassignments must be made even if some of the pupils would have to be bused to their schools.

The decision was unanimous. Seemingly, an important question had been decided once and for all—but President Nixon had, the year before, declared

himself opposed to school busing for purposes of integration. When reporters asked the President if he had changed his mind in the light of the court's decision, he replied that he had not, and that he still was opposed to school busing.

A month later, 10 school buses were blown up by segregationist parents in Pontiac, Mich. I happen to have grown up in Pontiac. The area has long been an incubator for rightwing movements, even though most people in Pontiac are as good and decent as people everywhere. It was a center for the Black Legion during the '30s. The rightwingers in Pontiac hardly needed a signal from the President of the U.S. for them to spring into action. They formed NAG—the "National Action Group"—to oppose "forced busing."

The hate campaign, stimulated by the opening of the school year in September, began to escalate. A recall petition was circulated against Sen. Phil Hart, who had stood steadfastly for integration, through increased busing, if necessary.

Anti-busing amendments were tacked on to President Nixon's $1.5-billion so-called school-desegregation bill to make sure that none of the money would go for transportation of pupils. Education Commissioner Marland, to his shame, came out in opposition to using federal funds for busing. Sen. Robert Griffin and Republican House Majority Leader Gerald Ford announced their intention of trying to prohibit pupil busing by constitutional amendment. Political panic began to set in. Some liberal congressmen and senators even found it expedient to backtrack on their pro-integration records. Just to make sure that the issue wasn't allowed to cool off, President Nixon in his State of the Union message in January inserted an impassioned plea for "local control" of education, which everyone understood to mean "no busing."

The busing issue, of course, is only a minor facet of the nation's overall integration problem. The Serrano and other cases outlawing local school-property taxes on the grounds that they deny children the equal protection of the laws and recent cases extending the Supreme Court integration dictum across school-district lines where the districts have been created to promote segregation, point up the fact that it will take more than the national guard, so successful in Little Rock, to give black children the right to ride to integrated schools as well as to walk. Nixon to the contrary notwithstanding, it is my personal conviction that we cannot provide either equality of education or quality of education without shifting over to statewide school systems.

Statewide systems would have the taxing power and planning authority to solve our educational and racial problems in a fair and reasonable way. In the Charlotte-Mecklenburg case, the court said that the school district was required to use all means at its command, including busing, to achieve racial balance. If education were a statewide function, we would have every right to expect the court to issue a similar directive, which would then compel maximum statewide efforts to integrate.

DO THE BEST WE CAN

No one with any grasp of reality can believe for a minute that the Supreme Court or the national guard can force the immediate busing of the hundreds of thousands of children which would be required to overcome longstanding massive segregated housing patterns in New York, Detroit, Chicago, and other American supercities. But, likewise, no one can deny that we have the obligation—legal and moral—to do the best we can. The Supreme Court, in 1954, required school districts to proceed with "all deliberate speed." We cannot have instant integration, but we can hold steadfastly to the integration goal, and that means that we must not be panicked by Nixon, or NAG, or George Wallace.

There are signs that the panic may be subsiding. The kids, bless them, did not buy the elders' bias. They are being bused in Ponitac, Oklahoma City, Norfolk, and hundreds of other cities with little or no conflict. NAG's effort to recall Sen. Hart only generated 50,000 signatures despite its high-priced campaign. The Leadership Conference on Civil Rights, the working arm of the labor-liberal civil-rights alliance, including the NAACP and the AFL-CIO, has taken a firm stand against any legislation prohibiting busing for integration. Even though the major candidates for President have been somewhat less than forthright on the busing issue, none of them—not even President Nixon for that matter—has made an all-out unequivocal statement opposing all busing for integration. Only George Wallace has campaigned heavily against busing and everybody expected that.

Now is the time for all **good** men and women to stand up for what is **right**—as they have done time and time again in the past two decades of civil-rights progress.

Mr. SELDEN. In the 1950's, the question was whether black children would be allowed to walk to the same school attended by white children. In the 1970's, the question is whether black children will be able to ride to the same school attended by white children.

As the debate over busing has grown more clamorous, many attempts have been made to skirt the central issue. One of these caveats is contained in the aphorism "It depends on what's at the end of the bus ride." This sounds reasonable enough; nobody wants his children bused to inferior schools, but what it is really saying is that "I don't want any kids bused until I am sure that the schools they are going to will be better than those that they otherwise would have attended."

For most ghetto children, this formula poses no problem. Ghetto schools have the oldest buildings, the greatest overcrowding, the least experienced teachers, and the most rundown equipment. But there are hundreds and thousands of instances in which the quality of a school is strictly a judgment call. Furthermore, as the Court has ruled and researchers have supported, integrating a school helps to improve the quality of education.

We are not suggesting that busing is the only way to improve the quality of education. We have said over and over again that well-qualified teachers with time to teach and classes small enough with plenty of remedial and psychological assistance can overcome the downward pull of the slum ghetto. Even so, all other things being equal, integration is an educational plus as well as a legal and moral necessity.

It is quite apparent that this Nation cannot long survive if half the population has to be bused to where the other half lives in order to observe as an exhibit what a decent American standard of living is supposed to be. But until we have taken steps to establish a truly integrated society, stop-gap measures such as busing are an absolute necessity.

As president of the AFT, I do not propose to present myself as an expert on constitutional law. This distinguished committee has more than enough experts in that field.

What I do seek to present myself as is the president of an organization whose members are intimately affected by busing. We have been on the front lines of this issue even before it was recognized as political dynamite.

The question of busing and quality education has been a bread-and-butter concern of our membership for many years. I come to you to report that our teachers, who have more experience in this matter than almost anyone who will appear before you, are convinced that to prohibit busing is to insure that they will be unable to do their jobs properly. To prevent the possibility of busing is to guarantee that the poor and the black will continue to attend substandard schools, and our membership will be frustrated in their attempts to teach.

But we do not oppose these amendments only because of narrow interest as a teachers' union whose membership is largely in the major cities. We also believe that to pass such a constitutional amendment will inevitably lead to a separate and unequal school system—a separate and unequal school system that will begin the process of apartheid in America.

The schools are the last chance to bridge the gap of misunderstanding and hatred between black and white in our society. Bigotry is an adult disease. It can continue to poison our national life, consume us all in the process, or we can stand up at this time and say we intend to put an end to it once and for all. In large part, the answer depends upon what you gentlemen decide. Thank you very much.

Chairman Celler. How many members are there in the Teachers' Union?

Mr. Selden. 250,000—a quarter million.

Chairman Celler. In what States are they located?

Mr. Selden. They are largely in the Northeastern part of the United States. The largest number is in New York, Illinois, Michigan, Pennsylvania, Massachusetts, Rhode Island, and Connecticut. We have about 25,000 members in California. We are the bargaining agent of the teachers in Portland, Oreg. We are beginning to make progress in the South.

Chairman Celler. Was your statement approved by a constituted committee of your union?

Mr. Selden. Not this precise statement, but it is based on resolutions adopted by our convention and by our executive council.

Chairman Celler. Any questions?

Mr. McCulloch. I would like to ask a question. By what vote were the resolutions adopted?

Mr. Selden. Acclamation, I believe. Our voting process in our convention is usually by a voice vote. If there is a difference of opinion, then we usually have a show of hands, and if they ask for a count, we count. And then if people are still not satisfied, we have a rollcall vote procedure, where people vote their ultimate strength.

Mr. McCulloch. You had no rollcall vote in this decision?

Mr. Selden. No; it wasn't necessary.

Chairman Celler. Is there any other teachers' union of the type that you represent?

Mr. Selden. No; we are the only organization for teachers affiliated with AFL-CIO and excludes supervisors and administrators from membership.

Chairman Celler. Mr. Hungate?

Mr. Hungate. I wonder if you could file with the committee copies of the resolution on which the statement was based.

Mr. Selden. I can, yes.

(Subsequently the following resolutions were submitted:)

The following statement was unanimously approved by the Executive Council of the American Federation of Teachers, AFL-CIO, as part of the overall program for quality education:

"Our schools cannot neglect their great socializing function. We must strengthen and continue the trend toward racial integration. We support the principles enunciated by the United States Supreme Court in the Brown case of 1954, the Charlotte-Mecklenburg case in 1971, and the U.S. District Court's decision in the Richmond case of 1972. We deplore efforts to modify or obstruct the orders of the court.

The urgency of educational reform cannot be denied. The viability of our democracy rests on an educated citizenry. We pledge ourselves to achieve this goal."

Equal Educational Opportunity Free From Segregation and Discrimination

Whereas, democracy requires and American philosophy, heritage and practice support the right of every child to adequate and equal educational opportunity; and

Whereas, such opportunity requires an ending of segregation which leads to individual and group injustices abhorrent to those who believe in the dignity of man and in equal opportunity for all and which has been ruled inherently unequal and therefore unconstitutional by the Supreme Court of the United States; and

Whereas equal opportunity requires equal educational facilities, instructional materials, faculty and staff of the highest quality; and

Whereas, the AFT is pledged through the signature of our president to the "Joint Statement of Union Program for Fair Practices" of the President's Committee on Equal Employment Opportunity and in our Bill of Rights for Teachers to do all in our power to implement fair employment practices in hiring, placing and promotion of workers without regard to creed or color; now therefore be it

Resolved, that the American Federation of Teachers call upon its local and state federations to work for the immediate end of all forms of segregation in all schools and to uphold our traditional policy of insisting upon excellence and equality of educational faciilties, instruction materials, related and supportive services and qualifications of professional staff to all pupils without discrimination; and be it further

Resolved, that we call upon our state and local federations to work for the provision of such additional and special compensatory facilities and instruction as shall contribute to the equalization of opportunity for all socially, educationally, mentally, culturaly, economically and physicaly handicapped children; and be it further

Resolved, that all locals be urged to make non-discriminatory hiring, placing, transferring, and promotion of teachers a subject for negotiation in any collective bargaining contract or other general negotiation or presentation vis-a-vis their local school board; and be it further

Resolved, that the AFT, upon request, shall furnish assistance to locals in their efforts to achieve the integration of professional staff and to solve other school integration problems; and be it further

Resolved, that national, state and local federations recognize our professional responsibility for the development and selection of textbooks, other instructional material and curricula that present accurate information about all peoples and shall contact publishers and/or state boards or departments of education and local school boards, urging publication and selection of such textbooks, instructional materials and curricula; and be it further

Resolved, that every AFT local be urged to organize a standing committee on Human Rights to work for integrated quality education, equal rights for teachers and civil rights in the local community; and be it finally

Resolved, that in this campaign for school integration and equal educational opportunity the statement of goals to be achieved found in our AFT publication, *Guidelines for AFT Involvement in Big City Integration*, under the four topics of:

1. Integration of pupils;
2. Integration of school staff;
3. Compensatory education; and
4. Teaching integration;

be the official policy of the American Federation of Teachers, and that the Executive Council will so inform all officers of state and local federations. (1965)

SCHOOL SEGREGATION

Whereas, there are indications that there is an increase in the number of pupils attending segregated elementary and secondary schools in our nation's urban areas; and

Whereas there are indications that frequently race is a factor in the establishment of boundaries and in site selection for schools; and

Whereas, the desegregation of schools is an important positive factor in maintaining the quality of education for all children and preparing them for the problems posed by the mounting complexities and crises of a multi-racial world; and

Whereas, public school integration is long overdue; and

Whereas, President Nixon has provided no leadership in school integration; therefore be it

Resolved, that

1. The AFT condems segregated education in the United States; and

2. The AFT President shall reaffirm in writing to President Nixon our unqualified support of public school integration; and

3. The AFT strongly urges President Nixon to develop and implement national plans for the elimination of segregated schools in America, such plans to provide penalties to be applied for noncompliance with federal regulations, these penalties to include withholding of *all* federal funds; and

4. The Civil Rights Department of AFT will update and publish the results of AFT and AFL–CIO efforts toward reduction of discrimination, segregation, and racism in education and distribute such information to all locals; and

5. The Civil Rights Department of the AFT will encourage the AFL–CIO to eliminate racism in any form in their local, national, and international affiliates; and

6. The Civil Rights Department of AFT is directed to call a *National Conference To Integrate The Schools* no later than June of 1971; such conference to include liaison with all major civil rights, labor, and educational groups; and

7. The AFT President shall direct local AFT unions to help school boards integrate the schools by proposing integration plans and working with parent groups opposed to integration; and

8. The AFT President shall direct local unions to work closely with local chapters of civil rights groups to initiate action, legal or otherwise, against local school boards who seek to impede the progress of integration; and

9. The Civil Rights Department of AFT will inform all members of AFT of the provisions of this resolution through our national publications.

ESTABLISHMENT OF AN INTEGRATED SOCIETY

Whereas, the American Federation of Teachers has always been dedicated to the objective of building a society wherein people of all colors, races, and religious or political creeds could live together in harmony with equal and enhanced opportunity to share in a better life; and

Whereas, the integration of diverse groups within our country has not only not been achieved but, indeed, there has been intensification in segregation along racial and economic lines particularly in urban areas; and

Whereas, the National Advisory Commission on Civil Disorders has warned that our nation is moving towards two societies "separate and unequal"; therefore be it

Resolved, That the American Federation of Teachers intensify its efforts in cooperation with the labor movement and other organizations that have similar objectives to remove all patterns of segregation in education, housing, job opportunities and public and private institutions; and be it further

Resolved, That we favor all effective means of aiding minority groups in overcoming their handicaps that have come about through long years of injustice, oppression and neglect.

SCHOOL SEGREGATION

Whereas, Judge Wright's recent decision in the *Hobson vs. Hansen* case outlawed de facto segregation in the schools of Washington, D.C.; and

Whereas, the American Federation of Teachers entered the suit with an amicus curiae brief; and

Whereas, equal enforcement of school desegregation guidelines in all 50 states has won widespread support; and

Whereas, de facto and de jure segregation must be eliminated; and

Whereas, numerous practices such as gerrymandering, optional school zones, segregated facilities and faculties, and other inequalities are being utilized to create and perpetuate de facto segregation; therefore be it

Resolved, That the 51st Convention of the AFT reaffirm its traditional position that racial segregation in public education is a violation of the Constitution of the United States and the democratic principal of educational opportunity; and be it further

Resolved, That members and locals of AFT renew their efforts to make integration of school facilities and faculties a reality in the immediate future; and be it further

Resolved, That members and locals of AFT join with other community groups to hasten the attainment of completely integrated education. (1967)

Integrating School Faculties

Whereas, the American Federation of Teachers is deeply concerned with the integration of school facilities; and

Whereas, the need exists to spread the range of talents, age, experience, training and specialization to provide quality education for all children in the various schools; now therefore be it

Resolved, that the locals of the American Federation of Teachers be urged to present local school boards with ***plans*** to encourage teachers to seek positions in schools where their presence would bring about increased faculty integration.

(Resolution of Executive Council—1968, 1969)

Integrated Education

Whereas, indications have been found concerning violations of Title VI dealing with equal educational opportunities of the Civil Rights Act; and

Whereas, such indications conclude that segregation in public schools limits the participation of all children in the mainstream of American society; and

Whereas, findings point out that the social class of a pupil's classmates . . . measured by the economic circumstances and educational background of their families . . . also strongly influence his achievements and attitudes; and

Whereas, the Nation's metropolitan areas are fast becoming increasingly separated, socially and economically, as well as racially; and

Whereas, the American Federation of Teachers cares deeply about the future of the urban areas and what kind of country this will be; and

Whereas, bold, new leadership in properly planned educational experiments could provide higher quality integrated education and even greater individual attention to the needs of all students by permitting advances and innovations in educational techniques which are not now possible in isolated schools; and

Whereas, no positive program has been initiated since Commissioner Howe's report February 20, 1967, on Civil Rights, and the National Commission on Civil Disorders (Kerner Report); and

Whereas, desegregation of schools is an important positive factor in maintaining and improving the quality of education for all children and preparing them for the problems posed by the mounting complexities and crises of a multiracial world; now therefore be it

Resolved, that the American Federation of Teachers again request the Congress of the United States to appropriate funds and enact legislation to improve the quality of education for all children; and be it further

Resolved, that active support for such legislation to strengthen and integrate the educational program be requested and sought from all locals of the American Federation of Teachers; and be it finally

Resolved, that a copy of this resolution be sent to the Commissioner of Education and Secretary of the Department of Health, Education and Welfare.

(Resolution of Executive Council—1969)

Desegregation of Schools

Whereas, the President of the United States and his appointed executive officers have seen fit to alter national policy so as to slow down school desegregation; and

Whereas, it is an established fact that segregated education is not equal education; and

Whereas, it is obvious that large numbers of children, nationwide, are still subjected to a vicious system of segregation both de jure and de facto; now therefore be it

Resolved, that this Convention go on record as officially being in opposition to President Nixon's policies regarding school desegregation; and be it further

Resolved, that the American Federation of Teachers at the national level work to bring about a change in President Nixon's policies; and be it finally

Resolved, that copies of this resolution be sent to all members of Congress, the Cabinet, and the President's Office.

Integrated Teaching Staffs

Whereas, the American Federation of Teachers is committed to a policy of nondiscrimination in all areas of education; and

Whereas, the American Federation of Teachers is committed to a policy of nondiscrimination in all areas of education; and

Whereas, many school districts throughout the nation still maintain all white or nearly all white teaching staffs; and staffs segregated by race, religion, as ethnic background; and

Whereas, collective bargaining contracts may be used and are used to further implement the process of achieving fully integrated instructional staffs which are reflective of all races; now therefore be it

Resolved, that the American Federation of Teachers "in order to reinforce its long standing policies on integrated teaching staffs increase its efforts by the use of its offices to inform all AFT locals, teacher training institutions, and other concerned organizations, of locals that have obtained provisions in collective bargaining contracts calling for hiring practices to assure fully integrated teaching staffs."

Mr. Hungate. You state that ghetto schools have the oldest buildings, the greatest overcrowding, the least experienced teachers, and the most rundown facilities. Could you name two or three examples of this?

Mr. Selden. I don't think I could do that right off the top of my head.

Mr. Hungate. But you could provide that to the committee?

Mr. Selden. Yes.

Mr. Hungate. I think we have had testimony regarding buildings. I am not sure whether it was in the inner city, but we have had testimony that some of the newer buildings were in the black areas.

Mr. Selden. I presume that might be true in areas in the South. I think that under the pressure of the Court, made possible under present constitutional provisions, that formerly segregated systems, segregated by law, have been forced to do a great deal of things that many school systems in the North have not, because the question of de facto segregation in schools has not really been taken up.

Mr. Hungate. Would you think there might be any cases where new buildings had been built prior to the *Brown* case?

Mr. Selden. There are some cases of this kind, yes.

Mr. Hungate. Thank you, Mr. Chairman.

(Subsequently the following materials were submitted:)

Equality of Educational Opportunity

(U.S. Department of Health, Education, and Welfare, John W. Gardner, *Secretary*, Office of Education, Harold Howe II, *Commissioner*)

West—Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, Wyoming (containing 4 percent of Negro and 11 percent of white children age 5 to 19)

The nonmetropolitan schools are usually classified into only three regions:

South—as above (containing 27 percent of Negro and 14 percent of white children age 5 to 19).

Southwest—as above (containing 4 percent of Negro and 2 percent of white children age 5 to 16).

North and West—all States not in the South and Southwest (containing 2 percent of Negro and 17 percent of white children age 5 to 19).

Data for minority groups other than Negroes are presented only on a nationwide basis because there were not sufficient cases to warrant a breakdown by regions.

FACILITIES

The two tables which follow (table 1, for elementary schools, and table 2, for secondary) list certain school characteristics and the percentages of pupils of the various races who are enrolled in schools which have those characteristics. Where specified by "average" the figures represent actual numbers rather than percentages. Reading from left to right, percentages or averages are given on a nationwide basis for the six groups; then comparisons between Negro and white access to the various facilities are made on the basis of regional and metropolitan-nonmetropolitan breakdowns.

Thus, in table 1, it will be seen that for the Nation as a whole white children attend elementary schools with a smaller average number of pupils per room (29) than do any of the minorities (which range from 30 to 33). Farther to the right are the regional breakdowns for whites and Negroes, and it can be seen that in some regions the nationwide pattern is reversed: In the nonmetropolitan North and West and Southwest for example, there is a smaller average number of pupils per room for Negroes than for whites.

The same item on table 2 shows that secondary school whites have a smaller average number of pupils per room than minorities, except Indians. Looking at the regional breakdown, however, one finds much more striking differences than the national average would suggest: in the metropolitan Midwest, for example, the average Negro has 54 pupils per room—probably reflecting considerable frequency of double sessions—compared with 33 per room for whites. (Nationally, at the high school level the average white has one teacher for every 22 students and the average Negro has one for every 26 students.)

It is thus apparent that the tables must be studied carefully, with special attention paid to the regional breakdowns, which often provide more meaningful information than do the nationwide averages. Such careful study will reveal that there is not a wholly consistent pattern—that is, minorities are not at a disadvantage in every item listed—but that there are nevertheless some definite and systematic directions of differences. Nationally, Negro pupils have fewer of some of the facilities that seem most related to academic achievement: they have less access to physics, chemistry, and language laboratories; there are fewer books per pupil in their libraries; their textbooks are less often in sufficient supply. To the extent that physical facilities are important to learning, such items appear to be more relevant than some others, such as cafeterias, in which minority groups are at an advantage.

Usually greater than the majority-minority differences, however, are the regional differences. Table 2, for example, shows that 95 percent of Negro and 80 percent of white high school students in the metropolitan Far West attend schools with language laboratories, compared with 48 percent and 72 percent respectively, in the metropolitan South, in spite of the fact that a higher percentage of Southern schools are less than 20 years old.

Finally, it must always be remembered that these statistics reveal only majority-minority average differences and regional average differences; they do not show the extreme differences that would be found by comparing one school with another.

PROGRAMS

Tables 3 and 4 summarize some of the survey findings about the school curriculum, administration, and extracurricular activities. The tables are organized in the same way as tables 1 and 2 and should be studied in the same way, again with particular attention to regional differences.

The pattern that emerges from study of these tables is similar to that from tables 1 and 2. Just as minority groups tend to have less access to physical facilities that seem to be related to academic achievement, so too they have less access to curricular and extracurricular programs that would seem to have such a relationship.

Secondary school Negro students are less likely to attend schools that are regionally accredited; this is particularly pronounced in the South. Negro and Puerto Rican pupils have less access to college preparatory curriculums and to accelerated curriculums; Puerto Ricans have less access to vocational curriculums as well. Less intelligence testing is done in the schools attended by Negroes and Puerto Ricans. Finally, white students in general have more access to a more fully developed program of extracurricular activities, in particular those which might be related to academic matters (debate teams, for example, and student newspapers).

TABLE 1.—PERCENT (EXCEPT WHERE AVERAGE SPECIFIED) OF PUPILS IN ELEMENTARY SCHOOLS HAVING THE SCHOOL CHARACTERISTIC NAMED AT LEFT

Characteristic	Whole Nation						Nonmetropolitan						Metropolitan									
							North and West		South		Southwest		Northeast		Midwest		South		Southwest		West	
	M-A	PR	I-A	O-A	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.
Age of main building:																						
Less than 20 years	59	57	66	61	63	60	48	54	72	34	73	40	31	59	28	63	77	75	52	89	76	80
20 to 40 years	18	18	20	20	17	20	35	13	21	43	17	28	23	23	18	18	11	20	27	10	14	9
At least 40 years	22	24	13	18	18	18	17	32	4	20	9	29	43	18	53	18	12	4	21	1	7	7
Average pupils per room	33	31	30	33	32	29	25	28	34	26	21	31	33	30	34	30	30	31	39	26	37	31
Auditorium	20	31	18	21	27	19	3	5	16	40	14	19	56	40	27	10	20	21	11	1	47	12
Cafeteria	39	43	38	30	38	37	41	33	46	64	47	54	41	45	24	22	34	32	48	38	34	14
Gymnasium	19	27	20	14	15	21	9	8	15	31	15	21	46	49	36	19	6	5	13	17	0	8
Infirmary	59	62	64	77	71	68	52	52	49	44	38	39	74	90	74	79	81	76	59	48	93	96
Full-time librarian	22	31	22	24	30	22	4	13	32	22	5	11	46	43	22	15	38	50	11	12	19	13
Free textbooks	80	82	80	85	84	75	73	56	70	73	99	98	100	98	72	54	84	82	83	65	98	100
School has sufficient number of textbooks	90	87	91	93	84	96	97	99	76	94	97	96	90	97	97	99	74	98	82	84	95	90
Texts under 4 years old	66	68	60	52	67	61	66	51	60	60	47	85	57	56	67	59	71	91	76	53	77	77
Central school library	69	71	72	83	73	72	44	58	74	77	48	75	83	89	57	70	79	69	59	33	81	95
Free lunch program	64	73	66	52	74	59	61	50	87	94	83	70	50	43	42	48	90	85	74	82	65	47

TABLE 2.—PERCENT (EXCEPT WHERE AVERAGE SPECIFIED) OF PUPILS IN SECONDARY SCHOOLS HAVING THE SCHOOL CHARACTERISTIC NAMED AT LEFT

Characteristic	Whole Nation						Nonmetropolitan						Metropolitan									
							North and West		South		Southwest		Northeast		Midwest		South		Southwest		West	
	M-A	PR	I-A	O-A	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.	Neg.	Maj.
Age of main building:																						
Less than 20 years	48	40	49	41	60	53	64	35	79	52	76	44	18	64	33	43	74	84	76	43	53	79
20 to 40 years	40	31	35	32	26	29	15	26	13	33	22	46	41	20	38	37	18	14	16	56	46	19
At least 40 years	11	28	15	26	12	18	21	38	3	15	3	10	40	15	29	20	3	0	6	1	2	3
Average pupils per room	32	33	29	32	34	31	27	30	35	28	22	20	35	28	54	33	30	34	28	42	31	30
Auditorium	57	68	49	66	49	46	32	27	21	36	56	68	77	72	51	44	49	40	67	57	72	45
Cafeteria	72	80	74	81	72	65	55	41	65	78	78	97	88	73	55	54	77	97	75	63	77	79
Gymnasium	78	88	70	83	64	74	51	52	38	63	71	71	90	90	75	76	52	80	70	77	99	95
Shop with power tools	96	88	96	98	89	96	97	96	85	90	88	91	67	97	99	100	89	90	92	97	100	100
Biology laboratory	95	84	96	96	93	94	99	87	85	88	93	96	83	94	100	99	95	100	100	97	100	100
Chemistry laboratory	96	94	99	99	94	98	98	97	85	91	92	95	99	99	100	100	94	100	100	97	100	100
Physicis laboratory	90	83	90	97	80	94	80	90	63	83	74	93	92	99	94	96	83	100	96	97	76	100
Language laboratory	57	45	58	75	49	56	32	24	17	32	38	19	47	79	68	57	48	72	69	97	95	80
Infirmary	65	77	77	69	70	75	47	56	53	45	23	47	96	99	70	83	83	83	74	85	71	87
Full-time librarian	84	93	85	98	87	83	53	58	69	76	67	61	97	99	99	94	96	99	71	63	100	99
Free textbooks	74	79	78	88	70	62	42	53	51	43	94	92	98	91	67	39	58	34	98	97	99	86
Sufficient number of textbooks	92	89	90	96	85	95	99	99	79	91	97	100	94	99	98	100	69	97	94	57	96	96
Texts under 4 years old	58	68	65	55	61	62	77	56	64	54	73	66	55	59	51	67	56	65	99	82	59	67
Average library books per pupil	8.1	6.2	6.4	5.7	4.6	5.8	4.5	6.3	4.0	6.1	8.1	14.8	3.8	5.3	3.5	4.8	4.5	5.7	5.6	3.7	6.5	6.3
Free lunch program	66	80	63	75	74	62	58	54	89	88	61	82	66	52	74	63	79	79	89	52	47	54

Again, regional differences are striking. For example, 100 percent of Negro high school students and 97 percent of whites in the metropolitan Far West attend schools having a remedial reading teacher (this does not mean, of course, that every student uses the services of that teacher, but simply that he has access to them) compared with 46 and 65 percent, respectively, in the metropolitan South—and 4 and 9 percent in the nonmetropolitan Southwest.

PRINCIPALS AND TEACHERS

The following tables (5, 6a, and 6b) list some characteristics of principals and teachers. On table 5, figures, given for the whole Nation of all minorities and then by region for Negro and white, refer to the percentages of students who attend schools having principals with the listed characteristics. Thus, line 1 shows that 1 percent of white elementary pupils attend a school with a Negro principal, and that 56 percent of Negro children attend a school with a Negro principal.

Tables 6a and 6b (referring to teachers' characteristics) must be read differently. The figures refer to the percentage of teachers having a specified characteristic in the schools attended by the "average" pupil of the various groups. Thus, line 1 on table 6a: the average white student goes to an elementary school where 40 percent of the teachers spent most of their lives in the same city, town, or county; the average Negro pupil goes to a school where 53 percent of the teachers have lived in the same locality most of their lives.

Both tables list other characteristics which offer rough indications of teacher quality, including the types of colleges attended, years of teaching experience, salary, educational level of mother, and a score on a 30-word vocabulary test. The average Negro pupil attends a school where a greater percentage of the teachers appears to be somewhat less able, as measured by these indicators, than those in the schools attended by the average white student.

Other items on these tables reveal certain teacher attitudes. Thus, the average white pupil attends a school where 51 percent of the white teachers would not choose to move to another school, whereas the average Negro attends a school where 46 percent would not choose to move.

STUDENT BODY CHARACTERISTICS

Tables 7 and 8 present data about certain characteristics of the student bodies attending various schools. These tables must be read the same as those immediately preceding. Looking at the sixth item on table 7, one should read: the average white high school student attends a school in which 82 percent of his classmates report that there are encyclopedias in their homes. This does not mean that 82 percent of all white pupils have encyclopedias at home, although obviously that would be approximately true. In short, these tables attempt to describe the characteristics of the student bodies with which the "average" white or minority student goes to school.

Clear differences are found on these items. The average Negro has fewer classmates whose mothers graduated from high school; his classmates more frequently are members of large rather than small families; they are less often enrolled in a college preparatory curriculum, they have taken a smaller number of courses in English, mathematics, foreign language, and science.

Again, there are substantial variations in the magnitude of the differences, with the difference usually being greater in the Southern States.

ACHIEVEMENT IN THE PUBLIC SCHOOLS

The schools bear many responsibilities. Among the most important is the teaching of certain intellectual skills such as reading, writing, calculating, and problem-solving. One way of assessing the educational opportunity offered by the schools is to measure how well they perform this task.

TABLE 3.—POPULATION CHARACTERISTICS, MIGRATION, AND SEGREGATION PATTERNS IN 20 LARGE CITIES [1]

City	1960 SMSA population	1960 city population	1960 city nonwhite population	1960 city nonwhite percent	1964 estimate SMSA population	1960–64 estimate change in migration	1960 city residential segregation index [2]	1950–60 change in segregation pattern	1960 suburban residential segregation index [2]
New York	10,695,000	7,781,984	1,141,322	14.7	11,260,000	115,000	79.3	−8.0	[3] 77.5
Chicago	6,221,000	3,550,404	837,656	23.6	6,591,000	3,000	92.6	.5	88.7
Los Angeles	6,039,000	2,479,015	417,207	16.8	6,674,000	286,000	81.8	−2.8	[3] 83.7
Philadelphia	4,343,000	2,002,512	535,033	26.7	4,617,000	56,000	87.1	−1.9	[3] 82.0
Detroit	3,762,000	1,670,144	487,174	29.2	3,914,000	−80,000	84.5	−4.3	[3] 87.6
Baltimore	1,727,000	939,024	328,416	35.0	1,829,000	(4)	89.6	−1.7	80.9
Houston	1,418,000	938,219	217,672	23.2	1,640,000	108,000	93.7	2.2	
Cleveland	1,909,000	876,050	253,108	28.9	1,958,000	−51,000	91.3	−.2	
Washington	2,002,000	763,956	418,693	54.8	2,323,000	173,000	79.7	−.4	87.8
St. Louis	2,105,000	750,026	216,022	28.8	2,203,000	−24,000	90.5	−2.4	90.3
Milwaukee	1,233,000	741,324	65,752	8.9	1,262,000	−50,000	88.1	−3.5	
San Francisco	2,649,000	740,316	135,913	18.4	2,894,000	107,000	69.3	−10.5	[3] 79.7
Boston	2,595,000	697,197	68,493	9.8	3,177,000	−81,000	83.9	−2.6	65.5
Dallas	1,084,000	679,684	131,211	19.3	1,256,000	89,000	94.6	6.2	
New Orleans	907,000	627,525	234,931	37.4	1,001,000	32,000	86.3	1.4	
Pittsburgh	2,405,000	604,332	101,739	16.8	2,368,000	−132,000	84.6	.6	
San Antonio	716,000	587,718	43,221	7.4	787,000	8,000	90.1	1.8	
San Diego	1,033,000	573,224	44,712	7.8	1,131,000	19,000	81.3	−2.3	
Seattle	1,107,000	557,087	46,528	8.4	1,178,000	9,000	79.7	−3.6	
Buffalo	1,307,000	532,759	73,388	13.8	1,319,000	−54,000	86.5	−3.0	82.3

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[1] This table was constructed for a paper prepared by Robert A. Dentler and James W. Elsbery for the U.S. Commission on Civil Rights, November 1967.

[2] Adapted from the Tauber's Racial Segregation Index, Negroes in Cities, tables 1 and 12, pp 12–33, 59.

[3] Where more than 1 suburb is clustered about a city an average segregation index is calculated.

[4] Less than 500 or 0.05.

URBAN SCHOOL CRISIS—THE PROBLEM AND SOLUTIONS PROPOSED BY THE HEW URBAN EDUCATION TASK FORCE

(Final Report of the Task Force on Urban Education of the Department of Health, Education, and Welfare, Submitted to HEW Secretary Robert H. Finch, January 5, 1970)

The inner city's Negro median number of years of completed schooling was 9 in 1967, compared to 12.1 for whites (Census, 1968, Table 156)

Impact of In- and Out-Migration on the System.—As a result of the above factors, schools are facing a near paralysis in both dealing with the sheer numbers and in attempting to integrate the isolated groups. With the 40 percent none-white population, the higher non-white birthrate, and with many whites sending their children to parochial and private schools, the majority of students in the public schools would necessarily become increasingly non-white—thus creating additional problems in efforts to integrate. The growing population has only increased the inadequacy of school facilities. It has made the existing teacher shortage more acute. The following two sections will discuss these obstacles faced by overpopulated urban school systems.

INCREASED INADEQUACY OF FACILITIES

The Kerner Commission (1968) pointed out that because of the rapid expansion of the Negro population which "has been concentrated in segregated neighborhoods, ghetto schools have experienced acute overcrowding. Shortages of textbooks and supplies have developed. Double shifts are common; hallways and other non-classroom space have been adapted for class instruction, and mobile classroom units are used. Even programs for passive construction of new schools in Negro neighborhoods cannot always keep up with increased overcrowding." (Kerner, et al. National Advisory Commission on Civil Disorders, 1968, p. 432).

Difficulties with facilities result not only from increased population but are also combined with the age of such facilities. This combination presents a bleak picture in the inner cities when compared to the suburbs. Core schools generally have more impoverished or makeshift instruction rooms per buildings than do fringe schools. A greater percentage of core students than suburban students attend schol buildings which are older and larger, with more students in the school, more students per teacher, and more students per room. For instance, in the Northeast, 43 percent of the elementary core schools are over 40 years old, while in the fringe schools, only 18 percent are over age 40. Figures are comparable for secondary schools. In secondary education, there are seven more students per classroom in the core than in the fringe in the Northeast. In the Midwest, there are 21 more students per classroom (Coleman, 1966, pp. 68, 69, 71). In addition, there are fewer librarians attending to the core schools with a centralized library, fewer volumes in the core school library, and fewer volumes per core school student (Coleman, 1966, p. 74). Further, there is definite advantage in the suburban schools in facilities for preparing hot meals and for providing health services (Coleman, 1966, p. 71).

INCREASED PERSONNEL PROBLEMS

In its study of the problems and priorities of urban education, the Study Group on Urban Education of the Republican Coordinating Committee draws the following conclusion about the quality of teaching in our urban areas:

"The teacher is a fundamental and crucial link between the education system and the child. A child is under the influence of his teacher for a continuous period of five hours or more per day, 180 days or more per year. . . . It is apparent that success or failure of an education system will depend most vitally upon the quality of teaching. Yet in urban areas today, because of numerous difficulties, the quality of teaching and the pupil-teacher relationship frequently do not meet the needs of the disadvantaged child." (Republican Coordinating Committee, Study Group on Urban Education as cited by the Center for Urban Education).

These difficulties become abundantly clear from the following data.

Teacher shortages.—Significant numbers of large city school systems reported that they were encountering extreme difficulty in filling teaching positions for 1968–69. The most frequently identified assignments, these school systems report having extreme difficutly in filling and the number of unfilled positions in early August are shown in Table 4. Supporting these reports of shortages are the relatively large numbers of these school systems which report they have had to employ persons with substandard qualifications in these assignment areas for 1968–69; 21, industrial arts; 27, special education; 15, mathematics; 11, trade-industrial-vocational-technical courses; 17, regular instruction in elementary grades; 7, natural and physical science; and 6, women teachers of physical and health, education.

It is interesting to note the relatively small number of teachers for the educationally disadvantaged citied in these figures. It would seem that the shortages referred to above are those in special programs for the disadvantaged, but the need for more qualified teachers for inner-city schools exists in virtually all of the shortage areas cited.

TABLE 4.—SURVEY OF DIFFICULT-TO-FILL POSITIONS IN LARGE SCHOOL SYSTEMS

Assignment	Number of school systems reporting having extreme difficulty in filling position	Number of positions not filled in August in the large school systems
Industrial arts	45	284
Special education	32	867
Mathematics	27	382
Trade, industrial, vocational	20	89
School psychologists	15	91
Physical education (women)	13	180
Remedial reading speech, etc	13	153
Librarians	11	124
Elementary, regular instruction	10	2, 123
Natural and physical sciences	10	193
Instruction of educationally disadvantaged	10	148

Source: Center for Urban Education.

Looking to the staffing problems of the cities selected for study in connection with this report, it can be noted that in Washington, D.C. over the period of 1966–68 pupil population increased from 145,951 to 148,719, a gain of 1.9 percent. During the same period the teacher population decreased from 6,391 to 5,958, a loss of 6.3 percent. The pupil-teacher ratio was thus raised from 23:1 to 25:1. A similar inverse relationship was observable in Los Angeles. Pupil population for the same period increased 2.8 percent while teacher population decreased by almost 1 percent. This change increased the pupil-teacher ratio from already high 29:1 to 30:1 (pupil-ratio ratio average for all schools in the United States is 23:1). Milwaukee showed a pupil population increase of 2.1 percent and a teacher population decrease of 1.9 percent, with a rise in pupil-teacher ratio from 26 : 1 to 27 : 1. While not displaying inverse pupil-teacher population development, the cities of Chicago and Philadelphia both reveal a significantly greater rate of increase in pupil population than teacher population growth could keep pace with. Pupil population in Chicago showed an increase of 4.1 percent and an increase in teacher population of only 2.7 percent. Philadelphia's pupil body expanded by 5.3 percent, compared to its teaching staff growth of 4.4 percent. Pupil-teacher ration was then observed to increase in Chicago from 24.5 : 1 to 26.2 : 1 and in Philadelphia from 23.8 : 1 to 24.0 : 1.

High pupil-teacher ratio.—Taking pupil-teacher ratio as an index of instructional staff supply problems in urban areas, a fall 1968 survey revealed that eight of the twelve cities under study in this document exceeded the national average pupil-teacher ratio of 23:1 by as much as 5.1 more pupils per teacher. The range of excess was from 5 to 5.1 (See Table 5).

Lack of fully accredited teachers.—Among the many staffing difficulties experienced by big city school systems, the short supply of fully accredited or licensed teachers remains a vexing problem. This is clear from the following comparison. The total number of full time teachers with less than standard certificates in the United States reported in a fall 1968 survey was 108,000, this figure representing 5.6 percent of all employed full time teachers. At the same time, cities such as Chicago, Baltimore, and Washington, D.C. reported much higher percentages of classroom teachers with less than standard certificates, i.e., Chicago 33.9 percent, Baltimore 23.8 percent and Washington, D.C. 26.0 percent.

TABLE 5. PUPIL-TEACHER RATIOS IN 8 LARGE CITIES

	Pupil-teacher ratio	Number of pupils over national average
City:		
Baltimore	23.6	0.5
Chicago	24.5	1.4
Cleveland	27.0	3.8
Houston	26.9	3.8
Los Angeles	26.5	3.4
Milwaukee	27.5	4.4
Philadelphia	24.7	1.6
St. Louis	28.2	5.1

Source: Center for Urban Education.

Comparison between cities and suburbs.—The straits of big cities regarding the supply of educational personnel is further illustrated by comparisons drawn between several of the cities under consideration and their surrounding suburbs and towns. Striking differences favoring the suburbs are evidenced regarding the supply of school nurses, school librarians, and school psychologists. For example, Washington, D.C. reveals a ratio of 1,377 pupils per school librarian, in sharp contrast to that of neighboring Arlington County, Virginia which presents a ratio of only 459 pupils per librarian. Similar contrasts are to be found when comparisons are made between Baltimore and Baltimore County (2,314 : 1 and 787 : 1 respectively) ; Cleveland and Cleveland Heights (1,365 : 1 and 802 : 1 respectively) ; Philadelphia and Bristol Township (6,287 : 1 and 1,446 : 1 respectively) ; Milwaukee and Racine (10,508 : 1 and 1,432 : 1 respectively) ; San Francisco and Berkeley (1,958 : 1 and 750 : 1 respectively) ; Los Angeles and Long Beach (2,354 : 1 and 1,138 : 1 respectively). A comparison of some of the same cities and nearby suburbs regarding school nurses and school psychologists reveals yet another staffing disadvantage of big city school systems. In Washington, D.C., there is a ratio of 3,105 pupils per school nurse, while in Arlington County, Virginia, one finds a ratio of 1,540 per school nurse. Again, similar contrasts are to be found when comparisons are made between Philadelphia and Bristol Township (1,172 : 1 and 732 : 1 respectively) ; and between Chicago and Rockford (4,034 : 1 and 1,589 : 1 respectively). Likewise, in the matter of school psychologist, striking contrasts are found between Washington, D.C. and Arlington County, Virginia (6,346 : 1 and 3,273 : 1 respectively) ; and between San Francisco and Haywood (9,400 : 1 and 4,308 : 1 respectively).

Racial distribution of teaching staffs.—The problems of big city schools will not be completely solved if more minority group teachers and administrators are recruited and promoted, but unless they are, all other reforms seem hypocritical. Unless prejudice and racism are overcome, all other programs will fall short of their goals. Moreover, quite apart from moral exhortations, it is clear that minority group teachers represent an under-utilized manpower pool which might substantially contribute to the reduction of the shortage mentioned above. The results of generations of discriminatory hiring and promotion practices are revealed in one of the findings of the Coleman Report : "Compared to the teachers of the average white pupil, the teacher of the average Negro pupil is . . . much more likely to be Negro in every region." A 1963 study of Cleveland's East Side, for example, showed that 81 percent of the teachers assigned to nearly-all Negro schools were Negro, 91 percent of the teachers in majority-Negro schools were Negro, and 3 percent of the teachers in nearly-all white schools were Negro. That the process of changing these racial patterns is far from complete may be exemplified by illustrations from a number of school systems. In Los Angeles (Fall 1967), for example, where 21.4 percent of the pupils are black, only 6.1 percent of the administrators, 12.8 percent of the counselors, and 14.7 percent of the teachers are black. Even more striking 20.3 percent of the pupils have Spanish surnames, but only 1.3 percent of the administrators and 3.0 percent of the teachers have Spanish surnames. In Chicago, where approximately 54 percent (1966) of the student body is black, 33.9 percent of the teaching staff is black, and approximately 21.9 percent of the administrative supervisory staff and specially assigned teachers are black. The situation in New York City schools is even more acute. Only 6,000 (11 percent) of a 55,000 teaching force is black. The proportion of black administrators is even lower.

Teacher drop-out.—The perennial and increasing problem of staffing big city schools is aggragated by a phenomenon identified by B. Othanel Smith and his associates as the "Teacher Dropout." And this attrition problem among new teachers and teachers at all levels of experience seems greater in the inner-city regions of the big cities. It has been noted for example that the rate of exit from Chicago inner-city schools is ten times that of less poverty-stricken areas. Citing Haubrich and others, Smith offers a useful summary of current information concerning the high rate of teacher exit from inner city schools.

In the borough of Manhattan, according to Haubrich, one third of the teachers appointed to positions do not accept their assignments. Moreover, in a study of teacher attitudes in 15 major American cities, it was reported that 17 percent of the teachers had been in their ghetto school for one year and 63 percent in their present position for five years or less. The proportion of teachers remaining after five years dropped off radically. At the same time, some 88 percent of the teachers indicated that they were satisfied with their positions. But the rate of dropouts from the ghetto schools would seem to indicate that the teachers tend to move on even though they may express satisfaction with the school in general.

The teachers in the above-mentioned study were least satisfied with the working conditions, their teaching loads, and the community. About 63 percent were satisfied with their working conditions and approximately 62 percent with their teaching loads. But only 58 percent expressed satisfaction with the community with 48 percent of these being only somewhat satisfied. A large proportion of the teachers were satisfied with their colleagues, supervisors, the pupils and with their salaries and the flexibility permitted them in the classroom. These findings seem to indicate that the dissatisfaction of within the school itself. Since teachers seem not to prefer neighborhoods where working conditions are unfavorable, young and inexperienced teachers, who must accept positions wherever they find them, are often located in the disadvantaged areas. With the highest rate of turnover among beginning teachers, it is not surprising that schools in deprived communities suffer a high rate of attrition among their teachers.

THE PROBLEMS OF THE EDUCATION SYSTEM IN PERCEIVING ITS STUDENTS

This section argues the inability, in many cases, of the system to cope with a pluralistic culture, and cites some of the reasons for the problems which many teachers have in perceiving their students as they are—and as they can be—and to respond to their needs.

Perhaps one of the most serious problems with many urban systems today is their lack of awareness of the effects of their own biases on their students. The racial and ethnic minorities, the urban immigrants of today, possess essentially the same general goals as those of the nationality immigrants of yesterday. Among these goals are the attainment of self-respect, personal safety, economic security, and acceptance in the mainstream without loss of individual self-identity. Despite the similarity in goals, today's minorities are separated from previous groups by more than years alone. The school systems which expected middle class performance from those earlier immigrants were fulfilled in their expectations for they were similar to those of the students.

The populations have changed; their strengths and weaknesses have changed; their problems have changed; their needs have changed; their values have changed. Most systems have not. Many systems' unconscious biases and static expectations have limited its capacity to teach children who enter the schools without certain attributes held by previous constituencies of the system. Such attributes relate to being oriented to middle class values and expectations, being reading-ready, and having the structural orientation that facilities sifting from subject matter to subject matter as dictated by time blocs rather than by interest and substance. Because of the widespread use of systems' equating a student's capacity to meet their expectations with his possession of such middle class attributes, the concept of the self-fulfilling prophecy has all too often been demonstrated. "Children who are treated as if they are uneducable invariably become uneducable" (Clark, 1965, p. 128).

Studies indicate that a student entering the school doors has a significantly better chance if he is neither black nor nonwhite. However, scattered throughout urban education systems are a growing number of activities which reflect efforts to overcome these biases—and, are, indeed, hopeful indicators. These efforts reflect a very considerable variety and scope. Among them are: decentralization and *de facto* community involvement in real decision-making, sensitivity training for school personnel; addition of courses in institutions of higher education on impoverisred children and youth at the request of local educational systems; early childhood programs which are aimed at parents as well as their children; bilingual programs with emphasis on the cultural as well the linguistic aspects of language; job training in the high schools; and the like.

REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS

II. EDUCATION

Introduction

Education in a democratic society must equip the children of the nation to realize their potential and to participate fully in American life. For the community at large, the schools have discharged this responsibility well. But for many minorities, and particularly for the children of the racial ghetto, the schools have failed to provide the educational experience which could help overcome the effects of discrimination and deprivation.

This failure is one of the persistent sources of grievance and resentment within the Negro community. The hostility of Negro parents and students toward the school system is generating increasing conflict and causing disruption within many city school districts.

But the most dramatic evidence of the relationship between educational practices and civil disorder lies in the high incidence of riot participation by ghetto youth who had not completed high school. Our survey of riot cities found that the typical riot participant was a high school dropout. As Superintendent Briggs of Cleveland testified before the Commission:

"Many of those whose recent acts threaten the domestic safety and tear at the roots of the American democracy are the products of yesterday's inadequate and neglected inner-city schools. The greatest unused and underdeveloped human resources in America are to be found in the deteriorating cores of America's urban centers."

The bleak record of public education for ghetto children is growing worse. In the critical skills—verbal and reading ability—Negro students fall further behind whites with each year of school completed. For example, in the metropolitan Northeast Negro students on the average begin the first grade with somewhat lower scores on standard achievement tests than white, are about 1.6 grades behind by the sixth grade, and have fallen 3.3 grades behind white students by the twelfth grade.[3] The failure of the public schools to equip these students with basic verbal skills is reflected in their performance on the Selective Service Mental Test. During the period June 1964–December 1965, 67 percent of Negro candidates failed the examination. The failure rate for whites was 19 percent.

The result is that many more Negro than white students drop out of school. In the metropolitan North and West, Negro students are more than three times as likely as white students to drop out of school by age 16–17.[4] As reflected by the high unemployment rate for graduates of ghetto schools and the even higher proportion of employed workers who are of low-skilled, low-paid jobs, many of those who do graduate are not equipped to enter the normal job market, and have great difficulty securing employment.[5]

Several factors have converged to produce this critical situation.

Segregation

The vast majority of inner-city schools are rigidly segregated. In 75 major central cities surveyed by the U.S. Commission on Civil Rights in its study, "Racial Isolation in the Public Schools," 75 percent of all Negro students in elementary grades attended schools with enrollments that were 90 percent or more Negro. Almost 90 percent of all Negro students attended schools which had a majority of Negro students. In the same cities, 83 percent of all white students in those grades attended schools with 90 to 100 percent white enrollments.

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[3] "Equality of Educational Opportunity," U.S. Department of HEW, Office of Education (1966), p. 20. This report, generally referred to as the "Coleman Report," was prepared pursuant to Section 402 of the Civil Rights Act of 1964.

[4] The actual nonenrollment rate for Negro students in these areas is 20 percent, as opposed to 6 percent for white students. Coleman Report, p. 31.

[5] Employment figures reflect discriminatory practices as well. The contribution of inadequate education to unemployment, while not qualified, is clearly substantial.

Racial isolation in the urban public schools is the result principally of residential segregation and widespread employment of the "neighborhood school" policy, which transfers segregation from housing to education. The effect of these conditions is magnified by the fact that a much greater proportion of white than Negro students attend private schools. Studies indicate that in America's twenty largest cities approximately four out of ten white students are enrolled in nonpublic schools, as compared with only one out of ten Negro pupils. The differential appears to be increasing.[6]

Segregation in urban schools is growing. In a sample of 15 large Northern cities, the Civil Rights Commission found that the degree of segregation rose sharply from 1950 to 1965. As Negro enrollments in these 15 cities grew, 97 percent of the increase was absorbed by schools already over 50 percent Negro and 84 percent by schools more than 90 percent Negro.[7] By 1975, it is estimated that, if current policies and trends persist, 80 percent of all Negro pupils in the twenty largest cities, comprising nearly one-half of the nation's Negro population, will be attending 90 to 100 percent Negro schools.[8]

Segregation has several major effects that have acted to reduce the quality of education provided in schools serving disadvantaged Negro neighborhoods.

Most of the residents of these areas are poor. Many of the adults, the product of the inadequate, rural school systems of the South,[9] have low levels of educational attainment. Their children have smaller vocabularies, and are not as well equipped to learn rapidly in school—particularly with respect to basic literary skills—as children from more advantaged homes.

When disadvantaged children are racially isolated in the schools, they are deprived of one of the more significant ingredients of quality education: exposure to other children with strong educational backgrounds. The Coleman Report and the Report of the Civil Rights Commission establish that the predominant socio-economic background of the students in a school exerts a powerful impact upon achievement. Further, the Coleman Report found that "if a minority pupil from a home without much educational strength is put with schoolmates with strong educational backgrounds, his achievement is likely to increase."[10]

Another strong influence on achievement derives from the tendency of school administrators, teachers, parents and the students themselves to regard ghetto schools as inferior. Reflecting this attitude, students attending such schools lose confidence in their ability to shape their future. The Coleman Report found this factor—destiny control—"to have a stronger relationship to achievement than . . . all the 'school' factors together" and to be "related, for Negroes, to the proportion of whites in the schools."[11]

In other words, both class and race factors have a strong bearing on educational achievement; the ghetto student labors under a double burden.

Teachers

The schools attended by disadvantaged Negro children commonly are staffed by teachers with less experience and lower qualifications than those attended by middle-class whites.[12] For example, a 1963 study ranking Chicago's public high schools by the socio-economic status of surrounding neighborhoods found that in the 10 lowest-ranking schools only 63.2 percent of all teachers were fully certified and the median level of teaching experience was 3.9 years. In three of these schools, the median level was one year. Four of these lowest ranking schools were 100 percent Negro in enrollment and three were over 90 percent Negro. By contrast eight of the ten highest ranking schools had nearly total white enrollments, and the other two were more than 75 percent white. In these schools, 90.3 percent of the teachers were fully certified and the median level of teaching experience was 12.3 years.

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[6] "Big City School Desegregation: Trends and Methods," Dentler and Elsbery, National Conference on Equal Educational Opportunity, November 1967, p. 3.

[7] While the proportion of Negroes attending all-Negro schools in Southern and border states has declined in the 14 years since the Supreme Court's shool desegregation decision, the number of Negro students attending schools with all or nearly all Negro enrollment has risen. "Racial Isolation in the Public Schools," p. 10.

[8] "Big City School Desegragation: Trends and Methods," *Supra*.

[9] The poor quality of education offered in these schools, located in the most poverty stricken section of the country, is attested to by the fact that "the 12th-grade Negro in the nonmetropolitan South is 0.8 standard deviation below—or, in terms of years, 1.9 years behind—the Negro in the Metropolitan Northeast . . ." Coleman Report, p. 21.

[10] This finding was limited to performance of students from minority groups. The Coleman report states:

> "if a white pupil from a home that is strongly and effectively supportive of education is put in a school where most pupils do not come from such homes, his achievement will be little different than if he were in a school composed of others like himself." p. 22.

[11] Coleman Report, p. 23.

[12] The Civil Rights Commission's survey found no major national differences in the educational attainment (years completed) of teachers in majority-Negro or majority-white schools. However, many large cities did not take part in the basic studies which supplied the data for this conclusion. It is precisely in these cities that teachers of disadvantaged Negro students tend to be the least experienced. Moreover, the Commission did conclude that Negro students more often than whites, had teachers with non-academic college majors and lower verbal achievement levels.

Testifying before the Commission, Dr. Daniel Dodson, Director of the New York University Center for Human Relations and Community Services, stated that:

"Inner-city schools have not been able to hold teaching staff. Between 1952 and 1962 almost half the licensed teachers of New York City left the system. Almost two out of every five of the 50,000 teaching personnel of New York City do not hold regular permanent licenses for the assignments they have.

"In another school system in one of the large cities, it was reported of one inner-city school that of 84 staff members, 41 were temporary teachers, 25 were probationaries and 18 [were] tenure teachers. However, only one of the tenure teachers was licensed in academic subjects."

U.S. Commissioner of Education, Harold Howe, testified that many teachers are unprepared for teaching in schools serving disadvantaged children, "have what is a traumatic experience there and don't last." Moreover, the more experienced teachers normally select schools in white neighborhoods, thereby relegating the least experienced teachers to the disadvantaged schools. This process reinforces the view of ghetto schools as inferior.

As a result, teachers assigned to these schools often begin with negative attitudes toward the students, and their ability and willingness to learn. These attitudes are aggravated by serious discipline problems, by the high crime rates in areas surrounding the schools, and by the greater difficulties of teaching students from disadvantaged backgrounds. These conditions are reflected in the Coleman Report's finding that a higher proportion of teachers in schools serving disadvantaged areas are dissatisfied with their present assignments and with their students than are their counterparts in other schools.[13]

Studies have shown that the attitudes of teachers toward their students have very powerful impacts upon educational attainment. The more teachers expect from their students—however disadvantaged those students may be—the better the students perform. Conversely, negative teacher attitudes act as self-fulfilling prophecies: the teachers expect little from their students; the students fulfill the expectation. As Dr. Kenneth Clark observed, "Children who are treated as if they are uneducable invariably become uneducable."[14]

In disadvantaged areas, the neighborhood school concept tends to concentrate a relatively high proportion of emotionally disturbed and other problem children in the schools. Disadvantaged neighborhoods have the greatest need for health personnel, supplementary instructors and counsellors to assist with family problems, provide extra instruction to lagging students and deal with the many serious mental and physical health deficiencies that occur so often in poverty agents.

These conditions which make effective teaching vastly more difficult, reinforce negative teacher attitudes. A 1963 survey of Chicago public schools showed that the condition creating the highest amount of dissatisfaction among teachers was lack of adequate provision for the treatment of maladjusted, retarded and disturbed pupils. About 79 percent of elementary school teachers and 67 percent of high school teachers named this item as a key factor. The need for professional support for teachers in dealing with these extraordinary problems is seldom, if ever, met.

Although special schools or classes are available for emotionally disturbed and mentally handicapped children, many pupils requiring such help remain in regular classes because of negligence, red tape or unavailability of clinical staff. An example is provided by a National Education Association Study of Detroit:[15]

"Before a disturbed child can receive psychological assistance, he must receive diagnostic testing. But before this happens, the teacher must fill in a form . . . to be submitted . . . to a central office committee . . . If the committee decides that psychological testing is in order, the teacher must fill out a second form . . . to be submitted to the psychological clinic. The child may then be placed on the waiting list for psychological testing. The waiting period may last for several weeks, several months, or several years. And while he waits, he 'sits in' the regular classroom . . . Since visiting teachers are scarce and special classes insufficient in number, the child who has been tested is usually returned to the regular classroom to serve more time as a 'sit-in.' "

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[13] Coleman Report, p. 12.

[14] Dr. Kenneth Clark, *Dark Ghetto*, Harper & Row, New York (1965), p. 128.

[15] "Detroit, Michigan: A Study of Barriers to Equal Educational Opportunity in a Large City," National Commission on Professional Rights and Responsibilities of the National Education Association of the United States, March 1967, p. 66.

Teaching in disadvantaged areas is made more difficult by the high rate of student turnover. In New York City during 1963–1964, seven of ten students in the average, segregated Negro-Puerto Rican elementary school either entered or left during the year.[16] Similar conditions are common to other inner-city schools. Continuity of education becomes exceedingly difficult—the more so because many of the students entering ghetto schools during the school year come from rural southern schools and are behind even the minimum levels of achievement attained by their fellow northern-born students.

Enrollments

In virtually every large American city, the inner city schools attended by Negroes are the most overcrowded. We have cited the vast population exchange—relatively affluent whites leaving the city to be replaced by Negroes—which has taken place over the last decade. The impact on public education facilities has been severe.

Despite an overall decrease in the population of many cities, school enrollment has increased. Over the last 15 years, Detroit has lost approximately 20,000 to 30,000 families. Yet during that same period the public school system gained approximately 50,000 to 60,000 children. Between 1961 and 1965, Detroit's Negro public school enrollment increased by 31,108, while white enrollment dropped 23,748. In Cleveland between 1950 and 1965, a population loss of 130,000 coincided with a school enrollment increase of 50,000. Enrollment gains in New York City and Chicago were even larger.

Although of lesser magnitude, similar changes have occurred in the public school systems of many other large cities. As white students withdraw from a public school, they are replaced by a greater number of Negro students. This reflects the fact that the Negro population is relatively younger, has more children of school age, makes less use of private schools, and is more densely concentrated than the white population.

As a result, Negro school enrollments have increased even more rapidly than the total Negro population in central cities. In Cincinnati, for example, between 1960 and 1965 the Negro population grew 16 percent, while Negro public school enrollment increased 26 percent.[17] The following data for four other cities illustrate how the proportion of Negroes in public schools has outgrown the Negro proportion of the total city population.[18]

NEGRO POPULATION AND PUBLIC SCHOOL ENROLLMENT

	Negro percent of population			Negro percent of public school enrollment		
	1950	1965	Change	1950	1965	Change
Atlanta	36.6	43.5	+6.9	39.1	53.7	+14.6
Milwaukee	3.5	10.8	+7.3	6.6	22.9	+10.3
Oakland	12.4	30.0	+17.6	14.0	45.0	+31.0
Washington	35.0	55.0	+20.0	50.1	39.4	+39.3

Negroes now comprise a majority or near majority of public school students in seven of the ten largest American cities, as well as in many other cities. The following table illustrates the percentage of Negro students for the period 1965–1966 in the public elementary schools of 42 cities, including the 28 largest, 17 of which have Negro majorities:

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[16] The comparable rate in the white schools was 4 out of 10.

[17] Cincinnati report of U.S. Commission on Civil Rights, pp. 8–9, 11.

[18] Figures for Atlanta, Milwaukee and Oakland are from their reports to the Civil Rights Commission: Atlanta, pp. 2–3, 25; Milwaukee, pp. 19, 37, 42; Oakland, pp. 7, 11–15A; and the Bureau of the Census. Washington figures are from the District of Columbia Board of Education.

Proportion of Negro Students in Total Public Elementary School Enrollment, 1965–1966

City	Percent Negro
Washington, D.C	90. 9
Chester, Pa	69. 3
Wilmington, Del	69. 3
Newark	69. 1
New Orleans	65. 5
Richmond	64. 7
Baltimore	64. 3
East St. Louis	63. 4
St. Louis	63. 3
Gary	59. 5
Philadelphia	58. 6
Detroit	55. 3
Atlanta	54. 7
Cleveland	53. 9
Memphis	53. 2
Chicago	52. 8
Oakland	52. 1
Harrisburg	45. 7
New Haven	45. 6
Hartford	43. 1
Kansas City	42. 4
Cincinnati	40. 3
Pittsburgh	39. 4
Buffalo	34. 6
Houston	33. 9
Flint	33. 1
Indianapolis	30. 8
New York City	30. 1
Boston	28. 9
San Francisco	28. 8
Dallas	27. 5
Miami	26. 8
Milwaukee	26. 5
Columbus	26. 1
Los Angeles	23. 4
Oklahoma City	21. 1
Syracuse	19. 0
San Antonio	14. 2
Denver	14. 0
San Diego	11. 6
Seattle	10. 5
Minneapolis	7. 2

Source: U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools."

Because this rapid expansion of Negro population has been concentrated in segregated neighborhoods, ghetto schools have experienced acute overcrowding. Shortages of textbooks and supplies have developed. Double shifts are common; hallways and other non-classroom space have been adapted for class instruction; and mobile classroom units are used. Even programs for massive construction of new schools in Negro neighborhoods cannot always keep up with increased overcrowding.

From 1951 to 1963, the Chicago Board of Education built 266 new schools or additions, mainly in all-Negro areas. Yet a special committee studying the schools in 1964 reported that 40 percent of the Negro elementary schools had more than 35 students per available classroom, as compared to 12 percent of the primarily white elementary schools. Of the eight Negro high schools, five had enrollments over 50 percent above designed capacity. Four of the 10 integrated high schools, but only four of the 26 predominantly white high schools, were similarly overcrowded. Comparable conditions prevail in many other large cities.

The Civil Rights Commission found that two-thirds of the predominantly Negro elementary schools in Atlanta were overcrowded. This compared with 47 percent of the white schools. In 1965, all Atlanta Negro high schools were operating beyond their designed capacity; only one of three all-white high schools, and six of eight predominantly white schools were similarly overcrowded.[19]

Washington, D.C. elementary schools with 85–100 percent Negro enrollments operated at a median of 115 percent of capacity. The one predominantly white high school operated at 92.3 percent, an integrated high school at 101.1 percent, and the remaining schools—all predominantly Negro—at 108.4 percent to 127.1 percent of capacity.

Overcrowded schools have severe effects on education, the most important of which is that teachers are forced to concentrate on maintaining classroom discipline, and thus have little time or energy to perform their primary function—educating the students.

Facilities and Curricula

Inner-city schools are not only overcrowded, they also tend to be the oldest and most poorly equipped.

In Detroit, 30 of the school buildings still in use in these areas were dedicated during the administration of President Grant.[20] In Cincinnati, although from 1950 to 1965, Negro student population expanded at a faster pace than white, most additional school capacity planned and constructed was in predominantly white areas. According to a Civil Rights Commission report on Cincinnati, the added Negro pupil population was housed, for the most part, in the same central-city schools vacated by the whites.[21]

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[19] Atlanta report for Civil Rights Commission, pp. 32–34.

[20] Testimony of Norman Drachler, Superintendent of Schools, Detroit.

With respect to equipment, the Coleman Report states that "Negro pupils have fewer of some of the facilities that seem most related to achievement: Their books per pupil in the libraries; their textbooks are less often in sufficient supply." [22]

The quality of education offered by ghetto schools is diminished further by use of curricula and materials poorly adapted to the life-experiences of their students. Designed to serve a middle-class culture, much educational material appears irrelevant to the youth of the racial and economic ghetto. Until recently, few texts featured any Negro personalities. Few books used or courses offered reflected the harsh realities of life in the ghetto, or the contribution of Negroes to the country's culture and history. This failure to include materials relevant to their own environment has made students skeptical about the utility of what they are being taught. Reduced motivation to learn results.

Funds

Despite the overwhelming need, our society spends less money educating ghetto children than children of suburban families. Comparing the per capita education costs for ghetto and suburban schools—one educator, in testimony before this Commission, said:

"If the most educated parents with the highest motivated children find in their wisdom that it costs $1,500 per child per year to educate their children in the suburbs, isn't it logical that it would cost an equal amount to educate the less well motivated, low-income family child in the inner city? Such cost would just about double the budget of the average inner-city school system." [23]

Twenty-five school boards in communities surrounding Detroit spent up to $500 more per pupil per year to educate their children than the city. Merely to bring the teacher/pupil ratio in Detroit in line with the state average would require an additional 1,650 teachers at an annual cost of approximately $1.3 million.[24]

There is evidence that the disparity in educational expenditures for suburban and inner-city schools has developed in parallel with population shifts. In a study of twelve metropolitan areas, the Civil Rights Commission found that, in 1960, 10 of 12 central cities spent more per pupil than the surrounding suburbs; by 1964, in seven of the 12 the average suburb spent more per pupil than the central city in seven.[25]

This reversal reflects the declining or stagnant city tax base, and increasing competition from nonschool needs (police, welfare, fire) for a share of the municipal tax dollar. The suburbs, where nonschool needs are less demanding, allocate almost twice the proportion of their total budgets to education as the cities.[26]

State contributions to city school systems have not had consistent equalizing effects. The Civil Rights Commission found that, although state aid to city schools has increased at a rate proportionately greater than for suburban schools, states continue to contribute more per pupil to suburban schools in seven of the twelve metropolitan areas studied. The following table illustrates the findings:

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[21] Cincinnati report for the Civil Rights Commission, pp. 21–25.
[22] Coleman report, pp 9–12.
[23] Testimony of Dr. Dodson.
[24] Testimony of Norman Drachler, Superintendent of Schools, Detroit.
[25] "Racial Isolation in the Public Schools," p. 27.
[26] "Racial Isolation in the Public Schools," p. 26.

REVENUES PER PUPIL FROM STATE SOURCES

Place	Amount per pupil		Percent increase 1950–64
	1950	1964	
Baltimore:			
City	$71	$171	140.8
Suburbs	90	199	121.1
Birmingham:			
City	90	201	123.3
Suburbs	54	150	177.7
Boston:			
City	19	52	173.7
Suburbs	30	75	150.0
Buffalo:			
City	135	284	110.4
Suburbs	165	270	63.6
Chattanooga:			
City	62	136	119.4
Suburbs	141	152	7.8
Chicago:			
City	42	154	266.6
Suburbs	32	110	243.8
Cincinnati:			
City	51	91	78.4
Suburbs	78	91	16.7
Cleveland:			
City	50	88	76.0
Suburbs	39	88	125.6
Detroit:			
City	135	189	40.0
Suburbs	149	240	61.1
New Orleans:			
City	152	239	57.2
Suburbs	117	259	121.4
St. Louis:			
City	70	131	87.1
Suburbs	61	143	134.4
San Francisco:			
City	122	163	33.6
Suburbs	160	261	63.1

Source: U.S. Commission on Civil Rights, "Racial Isolation in the Public Schools."

Federal assistance, while focused on the innercity schools, has not been at a scale sufficient to remove the disparity. In the 1965-1966 school year, federal aid accounted for less than 8 percent of total educational expenditures. Our survey of federal programs in Detroit, Newark and New Haven during the school year 1967–1968 found that a median of approximately half the eligible school population is receiving assistance under Title I of the Elementary and Secondary Education Act (ESEA).

Community-School Relations

Teachers of the poor rarely live in the community where they work and sometimes have little sympathy for the life styles of their students. Moreover, the growth and complexity of the administration of large urban school systems has compromised the accountability of the local schools to the communities which they serve, and reduced the ability of parents to influence decisions affecting the education of their children. Ghetto schools often appear to be unresponsive to the community, communication has broken down, and parents are distrustful of education officials.

The consequences for the education of students attending these schools are serious. Parental hostility to the schools is reflected in the attitudes of their children. Since the needs and concerns of the ghetto community are rarely reflected in educational policy formulated on a citywide basis, the schools are often seen by ghetto youth as being irrelevant.

On the basis of interviews of riot area residents in Detroit, Dr. Charles Smith, of the U.S. Office of Education's comprehensive elementary and secondary education program, testified that "one of the things that came through very clearly to us is the fact that there is an attitude which prevails in the inner city that says in substance we think education is irrelevant."

Dr. Dodson explained this phenomenon as follows:

"This divergence of goals [between the dominant class and ghetto youth] makes schools irrelevant for the youth of the slum. It removes knowledge as a tool for groups who are deviant to the ethos of the dominant society. It tends to destroy the sense of self-worth of minority background children. It breeds apathy, powerlessness and low self-esteem. The majority of ghetto youth would prefer to forego the acquisition of knowidege if it is at that cost. One cannot understand the alienation of modern ghetto youth except in the context of this conflict of goals."

The absence of effective community-school relations has deprived the public education system of the communication required to overcome this divergence of goals. In the schools, as in the larger society, the isolation of ghetto residents from the policy-making institutions of local government is adding to the polarization of the community and depriving the system of its self-rectifying potential.

Ghetto Environment

All of the foregoing factors contribute substantially to the poor performance of ghetto schools. Inadequate and inefficient as these schools are, the failure of the public education system with respect to Negro students cannot fully be appraised apart from the constant and oppressive ghetto environment.

The interaction of the ghetto environment and the school is well described in the testimony of Superintendent Briggs of Cleveland:

"But what about the child of the ghetto? It is he whom we must save for we cannot afford to lose this generation of young Americans.

"If this child of despair is a young adult, there is a better than a 50 percent chance that he is a high school dropout. He is not only unemployed, but unemployable, without a salable skill. Neither of his parents went beyond the eighth grade. Preschool or nursery school was out of the question when he was four, and when he was five he was placed on a kindergarten waiting list. . . . At six he entered school; but could only attend for half a day because of the big enrollment. . . . During his six years in elementary school, he attended four different schools because the family moved often, seeking more adequate housing for the six children. When he got to high school he wanted vocational training, but none was available.

"The family was on relief and he couldn't afford a good lunch at noon because Cleveland schools at that time were not participating in the federal hot lunch program and the average cost of lunches amounted to 70 cents.

"Of his few friends who were graduated from high school none had found jobs and they couldn't afford to go to college.

"Here he is now, discouraged and without hope—economically incompetent at a time in life when, traditionally, young Americans have entered the economic mainstream as job holders.

"A younger brother, age 9, is now in the fourth grade. He attends a new school, opened in 1964. Though he lives one mile from Lake Erie, he has never seen it. He has never taken a bus ride, except when his class at school went on a field trip. The family still does not subscribe to a daily newspaper. The television set is broken and there is no money to have it repaired. His mother has never taken him downtown shopping.

"He has never been in the office of a dentist and has seen a physician only at the local clinic when he was injured playing in an abandoned house in the neighborhood.

"At home there are no books. His toys, if any, are secondhand. His shoes are too small and his sweat shirt, bought for 25 cents at a rummage sale, bears the insignia of a suburban school system.

"Each morning he looks forward anxiously to the free milk he gets at school because there is no breakfast at home.

"He can't study well at home because of the loud blare of rock-and-roll music from the bar up the street. There are nine bars in his rather compact neighborhood. . . .

"The screaming police siren is a very familiar sound to him for he hears it regularly in his neighborhood, where the crime rate is Cleveland's highest.

"These boys both have better than average intelligence but they are the victims of neglect and are lost in the maze of statistics. Their plight and that of thousands like them in America's ghettos can certainly be considered the most pressing unattended business on America's agenda."

Basic Strategies

To meet the urgent need to provide full equality of educational opportunity for disadvantaged youth, we recommend pursuit of the following strategies:

Increasing efforts to eliminate de facto segregation

We have cited the extent of racial isolation in our urban schools. It is great and it is growing. It will not easily be overcome. Nonetheless, we believe school integration to be vital to the well-being of this country.

We base this conclusion not on the effect of racial and economic segregation on achievement of Negro students, although there is evidence of such a relationship; nor on the effect of racial isolation on the even more segregated white students, although lack of opportunity to associate with persons of different ethnic and socio-economic backgrounds surely limits their learning experience.

We support integration as the priority education strategy because it is essential to the future of American society. We have seen in this last summer's disorders the consequences of racial isolation, at all levels, and of attitudes toward race, on both sides, produced by three centuries of myth, ignorance and bias. It is indispensable that opportunities for interaction between the races be expanded. "The problems of this society will not be solved unless and until our children are brought into a common encounter and encouraged to forge a new and more viable design of life."[27]

Provision of quality education for ghetto schools

We recognize that the growing dominance of pupils from disadvantaged minorities in city populations will not soon be reversed. No matter how great the effort toward desegregation, many children of the ghetto will not, within their school careers, attend integrated schools.

If existing disadvantages are not to be perpetuated, we must improve dramatically the quality of ghetto education. Equality of results with all-white schools in terms of achievement must be the goal.

We see no conflict between the integration and quality education strategies we espouse. Commitment to the goal of integrated education can neither diminish the reality of today's segregated and unequal ghetto schools nor sanction the tragic waste of human resources which they entail.

Far from being in conflict, the strategies are complementary. The aim of quality education is to compensate for and overcome the environmental handicaps of disadvantaged children. The evidence indicates that integration, in itself, does not wholly achieve this purpose. Assessing his report in light of interpretation by others of its findings, Dr. Coleman concludes that:

"It is also true that even in socially or racially integrated schools a child's family background shows a very high relation to his performance. The findings of the [Coleman] Report are quite unambiguous on this score. Even if the school is integrated, the heterogeneity of backgrounds with which children enter school is largely preserved in the heterogeneity of their performance when they finish. As the Report indicates, integration provides benefits to the underprivileged. But it takes only a small step toward equality of educational opportunity."[28]

Moreover, most large integrated schools retain a form of ability grouping, normally resulting in resegregation along racial lines. The Civil Rights Commission found that "many Negro students who attend majority-white schools in fact are in majority-Negro classrooms."[29]

In short, compensatory education is essential not only to improve the quality of education provided in segregated ghetto schools, but to make possible both meaningful integration and maximum achievement in integrated schools.

Mr. Mikva. Mr. Selden, I want to compliment you on your statement and your pamphlet.

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[27] Testimony of Dr. Dodson.

[28] Towards Open Schools," James S. Coleman, *The Public Interest*, Fall 1947, p. 23.

[29] "Racial Isolation in the Public Schools," p. 162.

Mr. Selden. Thank you.

Mr. Mikva. I am particularly impressed because I think you deal with one group of people that may have more expertise on the pluses and minuses of busing than anybody else. Perhaps the kids have more erperience but, next to the kids, I think the teachers know more about what is good and bad about busing than anyone. I am inteersted if you could embellish your statement in terms of the teachers you have talked to who have been involved in places like Pontiac or some of the southern school districts. What was their attitude generally? I realize I am asking you to make difficult generalizations.

Mr. Selden. No; as a matter of fact, I grew up in Pontiac, Mich., and was educated in the schools of Pontiac. Pontiac is a place that has had segregated housing patterns for a long time, and this, of course, was reflected to some extent in the schools.

My parents are still alive and live in Pontiac, and I visit them quite frequently. So I have had a chance to make checks as I have gone along. I have watched the schoolbuses go by, and I was there when the boycotts were on, too.

The buses are operating today and kids are riding the buses and they are attending the schools, and I don't think that the level of disturbance or violence is any greater than one might expect in any kind of a situation where there are a lot of kids involved.

Teachers are in most respects like other people. They want to be able to succeed at what they are doing and they like to do it in as comfortable a way as possible. It is easier to teach white, middle-class children, by and large, than it is to teach nonwhite, economically deprived ghetto children.

So teachers who have found their way to those pockets where the white, middle-class lives quite naturally are not too enthusiastic about busing. They have a pretty good thing going for them and they don't want it disturbed.

On the other hand, as our cities become more and more ghettoized and the schools continue to decline, the number of teachers in favor of busing to get a different social mix increase. I am not talking about racial mix necessarily. I am talking primarily about social mix. It is very difficult to teach in schools where children come from environments which inhibit school-type learning. It is hard to teach and hard to learn. If this mixture could be leavened, the teachers involved would be able to do a better job and everybody would benefit.

Furthermore, the rapid turnover of teachers in these areas in big city schools would be slowed down if not halted if this could be done.

I recognize that in Chicago busing the entire black school population to where the whites live isn't a credible idea just from a physical standpoint, let alone finding solutions for any other problems that might be involved. But there are areas of Chicago where this could be done without any great disruption, and if it had been done years ago it might have prevented some of the block-busting and racial conflict that have occurred in Chicago.

Mr. Mikva. That has been done in some suburbs, and I have been impressed with the experience in Evanston. Most of the teachers I have talked to up there say it has been an educational plus for all concerned.

Mr. **Selden.** That is right. Now, in the South—we do have an organization in Birmingham, Savannah, Jacksonville, Mobile, and New Orleans—teachers are accepting the law. They are trying to live with it. By and large, they are succeeding. I would hate to have Congress come along now and tell them that "It was all a big mistake. You were wrong." And this is really the kind of emotion that you are dealing with.

Mr. **Mikva.** May I comment on one line in your statement, Mr. Selden. You talk about the fact that a lot of us in office or campaigning for office are using the slogan of what has become known as "The Bus."

I am sure you are aware that parents have a legitimate concern about trying to keep their kids from going to a worse school system than they are now going to. If there are any schools suffering from too much education, that fact has escaped me. So I think parents are legitimately concerned about not worsening their own children's education, and therefore we have legitimate reason for trying to reassure them that isn't what this is all about. In other words, this is not an attempt to level out an inadequate education for everybody.

Mr. **Selden.** Mr. Mikva, I know from your record in Springfield and in the Congress here that you have supported improvements in education. You have supported educational appropriation bills throughout your public career. You have been a great supporter of education.

Putting this issue in this conditional way, "It depends on what is at the end of the bus line," is the negative approach. I think that we ought to say that very few of our schools are good enough. Our school system does not educate half of the children that come into kindergarten even by our own standards. We have to put more money in these schools and get the staff in the schools so they can do the job that they are hired to do. This should be done whether you bus kids or not. Yet, we are being tragically shortsighted.

To illustrate the nature of this tragedy, in New York City, the union negotiated with the then superintendent of schools and set up a program called "More Effective Schools." These are elementary schools where the amount of staffing and equipment put into the schools is about 50 percent more than is put into other elementary schools.

Most of the schools, all except one or two, are located in the ghetto. Those schools have been educational successes. Teachers don't leave them. There is a waiting list of teachers who want to get into those schools. The children have an orderly school experience and they learn at grade level, whereas before, they dropped back every year.

But what is happening now under the system of decentralization of the New York school system, where you have 32 local school districts, school districts that have more effective schools are under pressure to give them up. The parents say, "Look, why should those kids get this special treatment? My kid is just as good as those kids; and if my kid can't go to that school, I want the money that goes into that school spread around."

What a tragedy to set up a situation for human beings which makes them like a dozen rats fighting over one piece of cheese. What a tragedy. We need 300 more effective schools in New York City. This is true in other big cities of this Nation, too.

Mr. MIKVA. Thank you.

Chairman CELLER. Any questions?

I would like to ask whether you are familiar with the organization known as the American Association of School Administrators?

Mr. SELDEN. Yes. I spoke at their convention 2 weeks ago.

Chairman CELLER. We checked on that organization, and that has schools in various cities, and they have put out a pamphlet resolution. I would like to know whether you agree with this resolution, which is as follows:

> We believe integrated schools to be the best preparation for participation in America's multiethnic society. In most areas of the country, particularly in metropolitan centers, schools serve a cross section of the racial, ethnic, and economic groups that make up our country.
>
> Superintendents have an affirmative responsibility to provide the leadership not only to desegregate schools but also to integrate teaching staffs, curriculum, and activities. Many means of integrating schools for the purpose of improving educational opportunities have been developed, including but not limited to paired schools, magnet schools, specialized schools, bus transportation, and gerrymandering. All school districts should use these and other means to the extent necessary to provide meaningful integrated education.

In other words, you would agree with the AASA that one of the means by which you can improve the school system, the integrated school system, is the use of buses?

Mr. SELDEN. Yes; they are simply reiterating the doctrine of the Court in the Charlotte-Mecklenburg case in that regard, and I support that doctrine and I support that resolution.

Chairman CELLER. Any further questions? Mr. Polk.

Mr. POLK. Mr. Selden, it has been the view of a couple of witnesses before this committee that busing black children into so-called white schools actually underscores a sense of inferiority in blacks because it tells them that they aren't quite good enough as they are and that they can't obtain good schooling in a black context. Could you comment on that?

Mr. SELDEN. Well, there probably is a certain amount of truth to it, but I don't think it is compelling. You see, life is a series of choices among alternatives, none of which is ever completely satisfactory. There is some loss in busing if it is only the gasoline that is used, but I don't think busing leads to feelings of inferiority. I live in Virginia, and my child is bused to an integrated school. I have occasion to go up to that school every now and then as a parent. We don't represent the teachers there, incidentally.

From all I have been able to see of the activities that go on in the school, and from what my boy tells me, the school is a really integrated school. I don't see any grouping of black kids off to one side with their fingers in their mouths feeling sorry for themselves. I don't think that they are psychologically damaged by being bused to that school. They might be if they were told, "You better stay in your place; we don't want you here."

Mr. POLK. Thank you.

Chairman CELLER. Thank you very much, sir. We were very interested in getting your testimony and we thank your associates.

Mr. SELDEN. Thank you very much, Mr. Chairman.

Chairman CELLER. Our next witness is Mr. James F. O'Neil, member, Michigan State Board of Education.

Mr. Hutchinson.

Mr. **Hutchinson**. Mr. Chairman, I appreciate very much the opportunity to introduce to the subcommittee Jim O'Neil, who is a member and has been a member for a number of years of the Michigan State Board of Education. He holds a position, Mr. Chairman, which is elective Statewide. In other words, the members of the State board of education have to go out and campaign the whole State of Michigan, and they are elected for 8-year terms. I think there are eight members of the board and the terms of two of them expire every 2 years. So it is a staggered board.

The size of the State of Michigan being what it is, I think that the fact that a man has to go out and campaign throughout that State just as though he were campaigning for Governor or U.S. Senator indicates the position of the State board of education in our State structure.

It is very pleasing to me to have Mr. O'Neil here to testify on this issue.

STATEMENT OF JAMES F. O'NEIL, MEMBER, MICHIGAN STATE BOARD OF EDUCATION

Mr. **O'Neil**. Mr. Chairman, first of all, Congressman Hutchinson, thank you for the very kind introduction. I want to thank the committee for giving me the opportunity to testify here today. As Congressman Hutchinson has indicated, the State board of education has the responsibilities for—and I would like to call them out—leadership and general supervision over all of education in Michigan except for the degree-granting institutions; planning and coordinating responsibilities for all of education, including higher education; and responsibilities to recommend to the legislature the financial needs of all of education.

Chairman **Celler**. Do you speak for the Michigan State Board of Education this morning or are these your personal views?

Mr. **O'Neil**. These are my personal views, Mr. Chairman.

I might point out a story here which I think is analogous to the situation we are in. There is a well-known juvenile judge, Judge Gilliam, of Denver, Colo., who was in Michigan recently, and he told the story of being in one of our elementary schools in one of the lower grades. He said he felt a compulsion to ask one of the youngsters in the classroom who brought down the wall of Jericho. He said the youngster seemed to be quite stunned and then startled and finally blurted out, "Your Honor, I don't know, but I know I didn't do it."

He was a little bit surprised at that, and he approached the teacher and told her what had happened, and the teacher says, "Your Honor, I will have to be very frank. I don't know who brought down the wall of Jericho, but I know Johnny Jones and he is an honest boy, and if he said he didn't do it, he didn't do it."

He hurried to the principal of the school and apprised him of what had happened in the classroom, and the principal says, "Frankly, Your Honor, I don't know who brought down the wall of Jericho and I don't know Johnny Jones, but I do know Miss Edwards and I know her to be an honest person, and if she said Johnny didn't do it, then he didn't do it."

The judge could hardly wait to see the superintendent of schools, which he did on first opportunity. The superintendent was well up on what was happening in the district. He met the judge and he said, "Your Honor, let me say first I don't know who brought down the wall of Jericho and I don't know Johnny Jones, but we in the administation have had some misgivings about Miss Edwards for some time. She is only a probationary teacher, and this will be her last year in the school system."

Well, the judge then could hardly wait for the first meeting of the school board to apprise them of the situation in the schools. He was met by the president of the school board, who was well up on the situation and he told the judge this: "We on the board don't know who brought down the wall of Jericho, but we have conducted a very thorough investigation and, from our investigation, we determined that that wall had been in a weakened condition and safety hazard for years and should have come down years ago. But," he said, "in the interest of better community relations, we are appropriating $10,000 and we are going to rebuild it."

I think at times our courts are rebuilding the wall of Jericho, and I say this because of the deep concern I have of what is happening.

I particularly request your attention to my recommendations regarding the most crucial domestic issue of our time in view of the foresight and perception I have previously demonstrated on other major issues but which has been unfortunately ignored to the detriment of our people and our country.

In 1962, as a congressional candidate, I identified the following three major issues:

First. Seek a complete reappraisal of our Southeast Asian policy which may be leading us to another Korean-type war or even worse.

2. Head off the economic chaos we are rapidly moving toward if we do not stop the current inflationary trend as evidenced by the Government's overspending of $7 billion this year—1962—and the Government's plan to overspend by billions of dollars in future years.

3. Protect Congress from having its powers usurped by the executive branch and protect our system of checks and balances in the Government as provided by the Constitution.

Unfortunately, my concerns were ignored and as a result today:

1. We have experienced one of the most disastrous and unconstitutional wars of our time.

2. Inflation is at an all-time high and the dollar is at an all-time low, and

3. Congress, which has had its constitutional power for war and peace usurped by the Presidency, now is having its constitutional power to legislate and represent the people usurped by the courts.

As a result of the above and as a result of the courts' threatening the freedom of all the people with court-ordered discrimination, our democracy of the people, by the people, and for the people is in jeopardy and it is threatened with being taken over by an oligarchy made up of the President and the judges.

The tyranny our forefathers sought to escape and the very freedoms they sought to establish and safeguard are being threatened by the very judges and courts that were established to protect these freedoms.

I believe any discrimination is both unconscionable and unconstitutional. I also believe that court-ordered discrimination is just as unconscionable and unconstitutional as any other type. However, court-ordered discrimination is doubly dangerous because:

1. The courts were established to protect individual freedoms, and
2. If the judges can misuse their power to pervert our democracy by taking away the freedoms and rights of parents and schoolchildren, then all of our freedoms are in jeopardy.

I would add that courts cannot protect the rights of anyone by violating the rights of everyone. I am wearing this black armband today in mourning because I believe our living Constitution is being strangled to death by today's judges.

I believe, as I have indicated, we are presently confronted with the most crucial domestic issue of our time. The issue before us is:

(*a*) The issue that led to the Revolution of 1776;

(*b*) The issue that led to the most tragic war our country has ever experienced—the Civil War; and

(*c*) The issue that today carries the threat of either mass civil disobedience or a major revolution in our country.

That issue is freedom of rights. That is the issue that led our forefathers to come to this country. It is the issue that led to the Revolution and formation of our democracy. And it is the issue that led to the Civil War. And it is the issue that will today lead to either mass civil disobedience or a revolution if the threat to it is not removed and control of the Government restored to Congress and the people.

The U.S. Constitution is one of the greatest documents ever conceived by man to safeguard individual freedoms, and the judges are betraying that document. The very courts that were established to safeguard individual freedoms are now presided over by judges who are ordering that those individual freedoms be taken away from the people. In doing this, the judges are in violation of the following constitutional amendments established to protect the fundamental rights and freedoms of the people:

1. ARTICLES IX, X, AND XIV OF OUR U.S. CONSTITUTION'S BILL OF RIGHTS

Article IX. "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Article X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

Article XIV. "No State shall make or enforce any law which shall abridge the privilege or immunities of the citizens of the United States."

I also believe recent actions by the judges are in violation of our Declaration of Independence, which states:

> We hold these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it and to initiate a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect

> their safety and happiness. Prudence indeed will dictate that governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

And then we get to the punch line of the Declaration of Independence:

> But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security.

Chairman CELLER. I notice that you underscored four lines of the portion of the Declaration of Independence and emphasized that "it is their duty to throw off such government." You don't mean that if the situation continues, there should be, as was the case after the Declaration of Independence, a revolution to overthrow the Government; do you?

Mr. O'NEIL. Mr. Chairman, I am saying that is a possibility that exists, either mass civil disobedience or revolution based upon the very principles of our Declaration of Independence, because the people in this country, the majority of people, black and white, particularly parents of schoolchildren, believe that their rights are threatened by the very courts that were established to safeguard these rights.

Chairman CELLER. Do you counsel that?

Mr. O'NEIL. No, sir. And I will offer my recomemndation here as to what to do within the system, sir.

Chairman CELLER. Go ahead.

Mr. O'NEIL. I submit that such court-ordered abuses and usurpations of the individual freedoms and rights should not, cannot, and must not continue. The only fundamental and peaceful way to prevent this current threat to our constitutional rights of individual freedoms is a constitutional amendment to prevent the judges from ordering discrimination in the assignment of children to schools on the basis of race, color, creed, or national origin.

The blacks have practiced civil disobedience to insure their equal rights, in our day. More recently youths have practiced civil disobedience to protest the violation of their rights in an unconstitutional war. Now our country stands on the brink of mass civil disobedience by the parents of both black and white children who will not permit their rights and the rights of their children to be taken away, and taken away by the very judges who were established to safeguard these rights.

The vast majority of black and white parents believe that their rights and the safety and well-being of their children are being jeopardized by the courts, and this is evidenced in the latest Gallup poll which was just released. The people are extremely apprehensive because they fear that if the courts can violate the Constitution's Bill of Rights by authorizing court-ordered discrimination, then all our freedoms are in jeopardy.

For these reasons, including a deep concern for the welfare of our country and democracy, I ask, I beg, I plead with you to approve House Joint Resolution 620 in order that the States may ratify it to protect our freedoms and prevent a grave domestic tragedy from befalling our people and our democracy.

I make this statement as one who, in 1967, 6 weeks before the devastating riots in Detroit—at the Michigan Bar Conference on Crime and Delinquency, June 8, 1967—warned of that danger, only to be ignored.

I make this statement as one who has been intimately involved with people and education over the past decade. I make this statement as one who is committed to enhancing the opportunity for an integrated society and who has been deeply involved in the desegregation and busing issues as a member of the State Board of Education of Michigan.

The improvement of black schools is being neglected because the prevailing judicial prejudice narrows the discussion of the various means by which educational equity may be obtained for black Americans to desegregating schools. Such hostility on the part of judges toward majority black schools reinforces the assumption that majority black schools are inferior and therefore bad schools. This is a disservive to black Americans and it prevents the development of effective educational programs for all races.

Unfortunately, the judges of the lower courts have become hung up on racial manipulations to the point of obsession. They have seldom concerned themselves with the fundamental needs of equal opportunity for quality education. Nor have the judges concerned themselves with black pupil performance either before or after desegregation. In this regard, the judges have done a particular disservice to black children by assuming an automatic improvement in black pupil performance in desegregated schools.

In addition, judicial hostility to majority black schools infers and implies that majority black schools are inferior and therefore bad schools. In so doing, the judges have conspired to compel desegregation as a means of racial redress to the exclusion of all other means of redress. And if desegregation is as restrictive of black choice as segregation, then desegregation is neither legal nor just for either blacks or whites.

I submit to you Members of Congress and the people, that the major domestic issue of our time and society today is how to provide equal opportunity for quality education, and it is not how many blacks and whites are in each school.

Unfortunately, as I previously indicated, the lower courts are hung up to the point of obsession with racial manipulations rather than providing equal opportunity for quality education. Equally unfortunate is the fact that the courts are continuing to base their decisions on the 1965 Coleman report, which has since been refuted by HEW. The 1970 reevaluation of the Coleman report by HEW concluded that the single most important element in terms of pupil achievement is not socioeconomic factors nor school facilities and materials but it is the impact of the teachers and that is of greatest importance for children from low-income or disadvantaged backgrounds.

Unfortunately, court-ordered discrimination, no matter how well intended, will guarantee nothing in the way of better racial understanding. For, as one black writer in a Detroit paper said, "Didn't the Jews and Germans go to school together?" She then went on to say, "If this country wants citizens who understand and respect each other, they better teach them the fullest meaning of citizenship."

Gentlemen, I would suggest to you Members of Congress we better teach them respect for others before they are mixed artificially if we don't want that mixture to become a volatile one.

What, then, is the answer?

The answer is twofold:

1. Implementing the newly adopted common goals of Michigan education on a nationwide basis; and
2. Providing a K–16 system of free public education.

The new common goals of Michigan education were recently adopted after 2 years' effort and with public participation throughout the State—and this was not only by educators but parents and students as well—and provide for:

I. Citizenship and morality.—The development of youth as citizens who have self-respect, respect for others and the law—the most pressing need in our schools and society.

II. Democracy and equal opportunity.—Advance the principles of democracy by recognizing the worth of eevry individual and by respecting each person's right to equal educational opportunity. This includes:

(*a*) Adequate financial support for education and equity in the allocation of funds; and

(*b*) Greater community and parental participation in the educational system.

III. Student learning.—Help each individual acquire a positive attitude toward school and learning processes in order that he may achieve optimum personal growth and render service to society. This includes:

(*a*) Improve teaching of the three R's, and

(*b*) Career preparation to insure each high school graduate of a job entrance skill—which 75 to 80 percent of both black and white students need. Passage of Senate bill 569 will be most helpful in this regard.

I might add, the Esch-Steiger bill H.R. 11688, regarding manpower development and training, is also very much needed in order to insure equal opportunity and quality education for all students.

IV. Education improvement.—Provide actions which will lead to the attainment of the common goals. This includes:

(*a*) Better programs for training and retraining of teachers;

(*b*) Improved methods of education, such as performance contracting;

(*c*) Improved assessment of educational achievement; and

(*d*) Educational accountability.

V. K–16 system of free public education.—Through the almost complete statewide system of community colleges in Michigan, we can move immediately to K–14 system of free public education.

In addition, by 1976, the 200th anniversary of our democracy, our Nation should celebrate that anniversary by insuring everyone in the country of an equal opportunity for quality education. This is the essence of our democracy and, by opening wide the doors to equal educational opportunity, we will open wide the doors to equal opportunity for jobs, housing, and all other opportunity in this great land of ours.

Wouldn't this be expensive? To a degree, yes—however, very inexpensive when compared to the costs of present-day crises.
Cost of crises, estimate for 1970:

Cost of crises, estimate for 1970:	*Billion*
Social welfare	$160
War and defense	80
Crime and delinquency	51
Mental illness	20
Total	311

Many of these costs in both dollars and human tragedy are as a result of the lack of equal opportunity for quality education.

In addition, the proposed educational programs directed toward equal opportunity for quality education are the best investment this country could possibly make and will return continuous dividends through the lives of those provided this opportunity.

Your assistance is essential if we are to clothe our past rhetoric with real substance by meeting the fundamental needs of our schools and society.

In closing, let me say I believe that in every crisis there is an opportunity. I am hopeful that you Members of Congress, who are the most representative group of the people in our Government, will seize this opportunity to:

1. Safeguard the rights of the people and Congress by approving House Joint Resolution 620 to amend the Constitution;

2. Adopt the Common Goals of Michigan Education, which were developed by the people, as a blueprint for the Nation to provide equal opportunity for quality education and provide a K-16 system of free public education; and

3. Approve an amendment to the U.S. Constitution to give power to the people to initiate constitutional amendment. This will insure that our democracy will not only continue as a democracy but will grow as a living example for the rest of the world to follow.

Presently, the people do not have an opportunity to initiate amendments to the U.S. Constitution. It is recommended that a constitutional amendment be approved to permit 10 percent of the electorate to initiate a constitutional amendment—similar to Michigan—which would then require ratification by a majority of voters in two-thirds of the States. This would insure people control of their Government and reduce the threat of an oligarchy controlling the people. Thank you very much.

(A document entitled "Special Report IV" by Mr. O'Neil follows:)

Special Report IV

JAMES F. O'NEIL, MEMBER
STATE BOARD OF EDUCATION OF MICHIGAN
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'Cures for the Crises'

Common Goals for Schools and Society

> "The entire object of education is to make people not merely do the right things, but enjoy the right things; not merely learned, but to love knowledge, not merely pure, but to love purity; not merely just, but to hunger and thirst after justice."
>
> John Ruskin

Recently, Governor Milliken of Michigan stated, "There is a Crisis of Confidence in our educational system." At that time, he indicated that the crisis of confidence extended to elementary and secondary schools as well as higher education. He also referred to the increasing prevalence of student disorders as one example of this crisis.

I agree with his assessment of education and I believe one of the major reasons for this crisis has been a general lack of comprehensive and contemporary educational goals as well as a lack of dedication on the part of all those involved in education to address themselves to the goals of education in a constructive and concerted manner.

Frank Goble of the Thomas Jefferson Research Center has stated: **Unless our schools and society are able to find far better and more economical solutions to exploding human crises, we face social and economic chaos.**

Crime, delinquency, drug addiction, poverty, alcoholism, mental illness and war drained an estimated $311.0 billion from our economy last year. In addition to the staggering economic cost, social problems cause untold fear and suffering for millions of Americans.

The situation is worse than most Americans realize. **Virtually every crisis is out of control.**

COST OF CRISES
Estimate for 1970

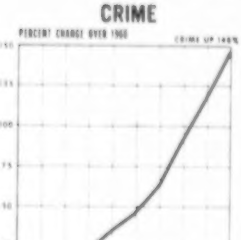
	In Billions
1. **SOCIAL WELFARE**	**$160.0**
2. **WAR & DEFENSE**	**80.0**
3. **CRIME & DELINQUENCY**	**51.0**
4. **MENTAL ILLNESS**	**20.0**
TOTAL	**$311.0**

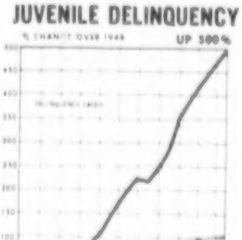
These goals are the result of utilizing a citizens task force which was representative of the major elements of our society. Their recommendations were then reviewed and revised utilizing the experience of the State Board of Education and adopted as tentative goals. Statewide public hearings were held to secure the public's recommendations regarding these goals which are called the "Common Goals of Education". As a result of these hearings, the goals were finalized and we hope we have a common understanding as well as common dedication to these goals.

I believe these "Common Goals for Education" represent the most significant accomplishment of the State Board of Education to date. I believe these contemporary goals will provide "Cures for the crises in our schools and society" if the people, educators, legislators and governors support them and the news and communication media publicize them.

'COMMON GOALS OF EDUCATION'

★ CITIZENSHIP AND MORALITY ★





There are four major areas. **The first one addresses itself to Citizenship and Morality. It calls for the development of youth as citizens who have self-respect, respect for others, respect for the law, as well as good citizenship.** It emphasizes students' responsibilities as well as their rights.

I believe this particular goal area is one of the most crucial to the schools and our society. It has been the general lack of self-respect, respect for others and the law that is causing most of the problems in society and our schools. In this regard, when we realize: A. 75% of all major crimes in our country are committed by youth 21 and under; B. 50% of the total major crimes are committed by youth 17 and under, it is obvious that we are not teaching self-respect and respect for others and the law. Therefore, it is most essential that we emphasize this need and at the same time the need for good citizenship.

First, because all respect starts with **Self-Respect**. Second, **Respect for Others** even though we may not always agree with each other is essential to the well being of our schools and society. Third, **Respect for the**

Law, even while efforts may be under way to change some aspects of the law — for the alternative is anarchy, and Fourth, **Good Citizenship**, which emphasizes the need for all citizens to become involved in their society and in politics. In this regard, the words of the ancient Greek philosopher Pericles are still true today, when he said, "those who say they have no business in politics, have no business at all."

Schools and society must expeditiously inject large quantities of this cure if we are to resolve the crises of increasing demonstrations, disorders and destruction which threaten to destroy our schools and society.

★ DEMOCRACY AND EQUAL OPPORTUNITY ★

The second Goal Area addresses itself to Democracy and Equal Opportunity. This goal area calls out: A. the need for education to support and advance the principles of democracy by recognizing the worth of every individual and by respecting each person's right to equal participation in the educational process, B. the need for more and greater equalization in the allocation of financial resources, and C. a more effective means for involving parents in the educational development of their children.

In regard to Democracy and Equal Opportunity, our personal commitment to all that this statement implies will take us a long way toward achieving the "Dream of our Democracy" and the "Commitment of our Constitution." In the effort to provide greater equity in the allocation of resources, we should not be misled into believing we will achieve this only by an equal dollar expenditures for each student. To really achieve equality of educational opportunity—education must offer courses relevant to the needs of students. We can hardly say we have this today when:

1. we have more dropouts than college graduates, and
2. when over 75% of our students do not earn college degrees but less than 20% are enrolled in real vocational and technical programs.

In addition, if we are really committed to equality of educational opportunity, we should give consideration to providing a K-14 system of free public education to insure all youth of two years of post high school education. This would be an immediate step toward the ultimate goal of a K-16 system of free public education.

This goal area also emphasizes the need for greater parental participation in the education of their youth. I personally believe this is the crucial "missing link" in education today. And while I cannot deny the charges of parental apathy and lethargy, neither can I deny the charges that education is not doing enough to: A. overcome this apathy and lethargy, and B. help parents to help in the education and development of their own children.

It has frequently been reported that one of the reasons youth turns to drugs is their alienation with society. Certainly both parents and educators have a need to correct this most detrimental condition. Certainly both want to and by working together we can and we will.

★ STUDENT LEARNING ★

It has been said that we have the 3 R's in elementary education and the 6 R's in higher education, namely Remedial Reading, Remedial Riting, and Remedial Rithmetic.

The third Goal Area addresses itself to Student Learning and says that education must help each individual to acquire a positive attitude toward school and the learning process so that as a result of his educational experience he is able to achieve optimum personal growth, to progress in a worthwhile and rewarding manner in the career of his choice, and to render worthwhile service to society.

The idea of helping each individual acquire a positive attitude toward school is of particular significance as related to the State Board's Assessment Program. The results of this assessment indicate that in many school districts having: A. the highest amount of financial support, and B. the largest number of teachers with masters degrees, the school children have the poorest level of achievement. At the same time the assessment indicated that many of these children who were the real low achievers, had a very low attitude toward their schools. It is obvious that this attitude must be changed if we hope to motivate these youngsters to learn and to use their knowledge in a positive and constructive manner in society. The third Goal Area also highlights the need for preparing students for changing society, creative and critical thinking, self-worth, vocational and technical skills, and also improving the environmental quality of our society. All of these are essential to our society which is a society that is different from any that have existed since the beginning of civilization. This is brought about by a number of things, including:

1. the transient nature of society which leads to a high degree of anonymity and with this anonymity the lack of moral inhibitions as we have known them in the past,
2. the "electronic day and age" we live in where now children are exposed to all the cultures of the world and all the elements in each of these cultures, and
3. the rapidly changing society, not only with the major impact of innovations in this nuclear and space age society, but also the rapidity of these changes.

We must through education overcome one of the major handicaps of society which has been very perceptively identified by Marshall McLuhan when he says "We're going through life not knowing where we're going or even where we are but only where we have been" and making decisions on the basis of our rear view mirror perspective.

In this regard, we need to pay particular attention to the quality of our environment.

★ EDUCATIONAL IMPROVEMENT ★

The fourth Area addresses itself to Educational Improvement and says education must include adequate provisions to assess, evaluate, and improve on an on-going basis progress of the educational system in achieving the goals essential for quality and equality education. This calls for improvement in the quality of teaching, a system of educational accountability, assessment and evaluation, and improved research and development.

A system of educational accountability has long been needed in education to insure that we are both effectively and efficiently accomplishing the goals of education. The assessment program is one of the steps that will give us the feedback that will enable us to improve education. **However, we must expand the assessment program.** For to really evaluate the achievements of education relative to the schools, we must be able to evaluate the end results which are the high school graduates, and we must be able to evaluate how well those who go to college succeed and how well those who are trained for jobs succeed in getting jobs and filling them successfully.

★ SUMMARY ★

I sincerely request your thorough study of these goals and your support of them in overcoming this "Crisis of Confidence." I believe if we can get a common understanding and common support of the "Common Goals of Education" then we will be able to direct education to meet the fundamental and pressing needs of our schools and our society. I believe that if we can get an equitable allocation of funds in the area of vocational and technical training and career development we'll have gone a long way toward providing equality of educational opportunity at the K-12 level.

Beyond K-12, there is not equality of educational opportunity as evidenced by the small percentage of students who go on to post high school education. **I believe the fundamental way of meeting this need would be to establish a K-14 system of public education.**

I believe it is now time for us to clothe our past rhetoric with substance. That substance would be concerted actions to insure the promises of our democratic society and thereby providing cures for the crises. **Let us begin today and let us do it together.**

(Address requests for additional copies to the address listed on the other side.)

James E. O'Neil

STATE BOARD OF EDUCATION

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Chairman CELLER. Any questions?

Thank you very much, Mr. O'Neil. We have been very interested to hear you, and we appreciate your coming.

Mr. O'NEIL. Thank you very much, Mr. Chairman.

Chairman CELLER. Our next witness is Mrs. Robert C. Anderson, president, PTA Council, Pontiac, Mich.

STATEMENT OF FRANCILE ANDERSON, PRESIDENT, PTA COUNCIL, PONTIAC, MICH.

Mrs. ANDERSON. Chairman Celler and Representatives, thank you for the opportunity to tell my story of a Pontiac successful busing story with a plea for amending the Constitution.

Federal district judge Demon Keith took a look at the Pontiac School District and found six all-black schools. The Honorable Damon Keith gave an assignment to Pontiac to integrate all schools by the opening day of school on September 7, 1971.

This decree was the signal for a break with tradition in the schools and community patterns of our city. Some citizens reacted to this change with rebellion; others, with relief.

I am so proud of Pontiac. We no longer have two separate Pontiacs—one black, one white—but we have the beginning of a unified city where brown, white, and black are working together for Pontiac.

This all began last summer when our superintendent, Dr. Dana Whitmer, made a plea to the public to support the school's implementation of the integration plan.

Our assistant superintendent, William Lacy, worked out an equitable busing plan where all children would be bused at some time during their school years. Black and white schools were paired or clustered, and each junior high served one grade only. The two high schools were not affected, since boundary lines were changed for racial balance.

Many citizens strongly opposed busing; many strongly favored busing; but the strength of our community was evident when parents of 20,000 schoolchildren obeyed the law and put their children on those buses the opening day of school to bring about desegregation.

Fear was a great contributing factor to the reluctance of many parents to send children to their newly assigned schools in the different neighborhoods. Many white parents were afraid to go into the black community themselves, so they were very apprehensive to send their children there. This same feeling was shared by black parents.

Many parents were disappointed at the inconvenience of leaving neighborhood schools with which they were familiar.

Many parents were angered at the cost of $665,000 for buses and transportation added to a $2 million cut for Pontiac school district education by the State.

These same parents and many citizens of Pontiac planned, talked, encouraged, reasoned, prayed, and worked diligently to make the opening day of school a safe one for all children who rode schoolbuses across Pontiac from one section to the other, and safe it was.

That opening day of school was a scene of contrast in human emotions. Most all schools, particularly in the black community, enjoyed a happy, kind attitude exchange between students, parents, and administrators.

Hatred ran rampant in the northern section of Pontiac at several schools as busloads of first-, second-, and third-grade black students arrived, to be met by white pickets. This same attitude was demonstrated as older black elementary and junior high students arrived at their schools. It was very evident that those pickets were not antibusing but antiblack. Then there were also incidents of antibusing pickets hurling unkind, uncouth remarks at their neighborhood children as they got on the buses to go to their new schools.

We had some unfortunate incidents. With a crowd of angry, taunting parents outside the schools, making certain with their signs and remarks that the black children understood they were not welcome at their newly assigned schools, naturally some of these black children reacted.

The black community of Pontiac should be commended for the dignity and restraint which they displayed during those opening weeks of school. They did not retaliate when racial tensions were so explosive. They saved our city from further serious conflict.

The black people earned the respect of many citizens of Pontiac. No one can destroy or erase the many acts of kindness, the friendships made, and the spirit of good will which was generated between the black and white community.

This change in attitude is so essential to help resolve many deep problems which must concern each of us, whether we reside in Pontiac or any place else in America.

One constructive, strong PTA group of black, Spanish American, and white parents is meeting each Tuesday morning to discuss problems and interests of the three schools in their one cluster. This chance to get acquainted and communicate is a positive and pleasurable advantage to the integration plan. This group is working so beneficially that a plan had been made to organize the same type of group in each pair or cluster of schools in Pontiac. Fortunately, many PTA people do want to work together.

I firmly believe this statement on equality of educational opportunity adopted by the board of managers of the Michigan PTA on November 2, 1971:

> Since both the National PTA and the Michigan Congress have consistently over the years recorded by both statement and action unequivocal support for equality of opportunity in all areas of life in a democracy committed to freedom and equality;
>
> And since we recognize that equality of opportunity is a hollow ideal unless accompanied by equality of experience;
>
> And since we recognize that segregated education disadvantages all students who study in a segregated situation regardless of their group membership;
>
> And since we recognize that the vast majority of Michigan's students are in fact receiving inadequate educational experience by virtue at least of segregated schooling;
>
> And since all efforts at achieving integration to date have not met with success and since we recognize that busing has for years been an option to assure the receiving of better education;
>
> We, therefore, believe that all Michigan's children should no longer be deprived of the maximum potential for the best possible education which without busing has been denied them. We do further believe that the achieving of educational excellence through busing of children as one measure to overcome segregation patterns is wholly consistent with the aims and goals of the PTA and therefore, the Board of Managers of the Michigan Congress of Parents and Teachers supports all efforts including busing to achieve racial, religious, and ethnic integration of our schools of Michigan. We continue our traditional support of ending all types of segregation and discrimination in our society.

In retrospect, the Court's decision to integrate our schools gave to us parents a challenge, a job, and an opportunity.

First, our challenge was to take this new situation and racially balance all schools for quality education. We had no precedent, no outline to follow. What we do will be Pontiac's answer and solution to a difficult but not impossible assignment. We can take this challenge and through much planning, testing, studying, and trying, we can reach the goal of integrated schools and a better community.

This school integration involvement is like a puzzle with a thousand pieces. All these pieces can fit together if we have the time, patience, interest, and determination to solve this puzzle.

We parents have a critical job to do. Each parent must honestly ask himself: "What kind of a parent am I?"

We must have an impartial attitude toward all races and accept them as our equals. This is the only way we can teach our children to treat each person kindly and fairly regardless of his skin color.

Now is a great opportunity for us to help improve the status of mankind. We have a chance to dissolve some of the racial tensions by teaching our children to accept their Spanish-speaking neighbor, their white neighbor, their black neighbor. We should diligently teach our children to try to understand them.

The next generation is destined to have more tolerance if our children are taught to respect each race. This can be our lasting contribution to the history of our great Nation—to build solid stepping stones of racial equality for our children to use to reach greater heights in this progress for generations to follow.

The true spirit of Pontiac was seen by the thousands of parents who accepted the challenge of making integration work by working hard at their job of being better parents so that all of Pontiac can benefit from this opportunity.

Integration is working in Pontiac, particularly well in the elementary schools. This is where the success of better racial relations must begin in the early grades so children are conditioned to working and playing together and accepting each other for the person he is. This will eliminate tensions and confrontations at junior high and senior high when constructive foundations of racial acceptability have been built during the elementary years.

It is touching to see our sixth-grade son appreciating his new black and Mexican classmates and to listen to his fun experiences with them.

It is touching to watch his kind, personable, black principal show special attention and interest in a white child who is vying for his attention. He shows no partiality, and the children love him.

It is touching to watch a black mother hug our son because he played a good football game with her son to win the game.

It is touching to watch dedicated black and white teachers creating a pleasant atmosphere for learning academics and lessons in living.

The inconvenience busing creates for the parents and the extra time students spend on the bus seem a very small price to pay to see, hopefully, our children mature into the type of American citizens that the drafters of our Constitution and the present interpreters of the Constitution must have envisioned when they included and interpreted the provisions for equality.

Chairman CELLER. The resolution that you read is a resolution of the board of managers of the Michigan Congress of Parents and Teachers. Could you tell us about that organization, please?

Mrs. ANDERSON. The Michigan Congress of Parents and Teachers has a membership of 118,000 people in Michigan. The board of managers is an executive board representing the Michigan Congress, and they put this resolution together and gave it to the rest of the State as their adopted platform against his particular kind of thing or for busing.

Chairman CELLER. Are all of the PTA organizations in Michigan represented by this board of managers?

Mrs. ANDERSON. They are represented, yes. This resolution has not been voted on by all local units of PTA. Is that what you are asking?

Chairman CELLER. Yes.

Mrs. ANDERSON. No. This is simply a platform which the State board has issued because it really supports the national policy of parents and teachers concerning the stand against any legislation which would prohibit busing of students.

Chairman CELLER. Any questions?

Mr. MCCULLOCH. I should like to make a statement, Mr. Chairman. I think you have made a remarkably good statement to this subcommittee this morning. It would serve a useful public purpose if each of us could bury our prejudices and look at this difficult problem, which I admit is one of the most difficult facing the Union, and solve it to promote the common good.

I have just read the statement of Mr. Frank P. Anderson, Jr., of Augusta, Ga., which is part of the record of these hearings. I quote from the last paragraph of that statement:

> We feel that we speak from realistic experience, and we are absolutely convinced that where there is a positive attitude among students, staff, and parents, there is no limit to what can be achieved in the unitary school system.

And here is a statement made by the Michigan Civil Rights Commission, and I quote from page 2:

> The young people in Pontiac who are actively seeking to convince their elders that they can make it work are symbolic of the commitment to the sense of justice which was the original source of our constitutional strength.

Adults have a moral duty to take note of and to emulate the leadership of this type of young people. Public officials have a constitutional duty to do so. I am glad that you were a witness before this subcommittee this morning.

Mr. HUTCHINSON. I appreciate the statement of the witness. I understand that you are the president of the Pontiac PTA Council.

Mrs. ANDERSON. Yes.

Mr. HUTCHINSON. I assume that you speak on behalf of the entire council. Did they all agree with your statement?

Mrs. ANDERSON. I am speaking for myself.

Mr. HUTCHINSON. Just for yourself; you are not speaking for the council?

Mrs. ANDERSON. I will tell you why. At the beginning of the school year, we took the "let's make it work" approach. We did not touch on the busing idea. We touched on the "let's make it work by obeying the law," because busing is too emotional. We tried to reason with people, and people are hesitant to really tell you how they feel on some issues, and this is one issue where people were afraid to take a stand.

It is easier to obey the law and do as we are told to do, not because we are forced to do it in many cases, but simply because many people wanted the transition to be as smooth as it could be.

I am saying there are people in Pontiac, good PTA people, who feel very strongly opposed to busing. However, those are the people who said: "But, oppose it or not, I will go along with the Court's order." And this is why I say Pontiac was strong—because people were willing to try to make it work.

Mr. HUTCHINSON. I appreciate that. But what I wanted to do was to clarify the situation on the record with regard to whether your statement was a statement of the thinking of the majority of your own group or the majority of the people of Pontiac or whether it was just your own statement.

Mrs. ANDERSON. This is my statement, yes, but I would say, with great confidence, that the feeling of the people in Pontiac is not one that you have seen nationally televised. The people in Pontiac worked hard together. They worked well together.

I want to avoid the probusing or the antibusing situation because that is where the trouble lies. Right now, when I say I speak for people in Pontiac, I feel very strongly that I can say Pontiac people at this stage of the game have lost that fear, and when they have lost the fear, then they have lost the fight of saying that, "This isn't going to work."

Mr. HUTCHINSON. Is it fair to conclude, then, that the people in Pontiac probably don't like the law, but they want to obey the law? Is that correct?

Mrs. ANDERSON. I don't know if I can say that they don't like the law, not the majority of them. I don't know that that is true. But I know the majority would obey the law.

Mr. HUTCHINSON. Yes, I am sure they will.

Chairman CELLER. Would you say that there is peace and quiet now on this issue?

Mrs. ANDERSON. Very definitely. As a matter of fact, I think it is astounding how quickly, after people realized that their children were not going to be hurt in different sections of the country—I think it is amazing how quickly, after the pickets left and after the hatred was gone—how much the community settled down into accepting this as a change which was a necessary change perhaps and one in which they could work quite well.

Chairman CELLER. In other words, time has become a mighty healer?

Mrs. ANDERSON. Indeed it has.

Chairman CELLER. Any other questions? Mr. Hungate.

Mr. HUNGATE. As I understood it, you say you seek to avoid a probusing or antibusing stance. Now, this is an antibusing amendment and, as I take it, you oppose it?

Mrs. ANDERSON. I do, firmly.

Mr. HUNGATE. Thank you.

Chiarman CELLER. Counsel.

Mr. ZELENKO. Mrs. Anderson, the Commission on Civil Rights has submitted a description of Pontiac desegregation plan and a description of the Pontiac school system, which has been placed in the record. I would like to confirm some of the description with you.

The Commission on Civil Rights report states that the Pontiac desegregation excludes kindergarten students to attend their neighborhood schools. Is that correct?

Mrs. ANDERSON. Yes.

Mr. ZELENKO. Let me read some of the Commission's report. "Students attend their neighborhood schools for kindergarten and grades 1, 2, and 3 or for kindergarten, and grades 4, 5, and 6. For the 3 elementary school years in which a student is not attending his neighborhood school, he is transported to another school." Is that correct?

Mrs. ANDERSON. Yes.

Mr. ZELENKO. "Junior high schools are organized so that each enrolls only one grade and draws students from half of the Pontiac School District. Thus, within the Pontiac School District, there are two seventh-grade, two eighth-grade, and two ninth-grade schools." Is that correct?

Mrs. ANDERSON. Yes.

Mr. ZELENKO. "The plan assures that students who are together in the first grade will probably remain together through all their school years." Is that a correct description of the plan as you understand it?

Mrs. ANDERSON. They are together first, second, and third, yes.

Mr. ZELENKO. "Under the plan, most students will be required to attend five rather than three different schools from kindergarten onward." Is that correct?

Mrs. ANDERSON. There would be three junior high schools, senior high, and two, perhaps, elementary schools. So it could be more.

Mr. ZELENKO. It could be six.

Finally, referring to pupil transportation, this statement, in the description: "The average trip for the 1971–72 school year is 4 miles in the morning and 4 miles in the afternoon, taking approximately 20 minutes each way. During the 1970–71 school year, the average mileage is approximately 6 miles in each direction." Are you familiar with that?

Mrs. ANDERSON. Yes. As a matter of fact, my son is one who rides the bus the farthest, and he goes to a school exactly 6 miles away. He takes the bus at 5 minutes of 9, arrives at our neighborhood school first, and goes on to the other school, and school begins at 9:30, so you can see that bus ride is not very long.

Mr. ZELENKO. When the school desegregation plan was first put into effect what efforts did the Pontiac PTA undertake to help the plan work?

Mrs. ANDERSON. The school administration assigned people to be monitors on buses and on playgrounds. However, the PTA offered more than just assigned parents. There were many parents who volunteered to go on these buses to watch children, to stand at the bus stops, to be at school when the children got off of the buses, to go there during any crucial time they needed to be there.

There were PTA people monitoring halls, particularly in the junior high school where we had much difficulty for even a month after school began. These are people who were not paid. These were PTA voluntary people.

Mr. ZELENKO. Are those monitors still on duty?

Mrs. **Anderson.** Oh, no. In fact, as soon as the pickets left, the racial tension left a great deal and, other than normal difficulties which the schoolchildren seem to have, we have settled down into a very comfortable, normal school situation, and when the conflict was gone, then there was no need to have people patrolling or helping in that particular way.

The racial tension—there were difficulties in several of our—well, in one particular junior high school, black and white details, as long as there were people turning up trouble, there were difficulties inside those schools. But that since alleviated itself.

Mr. **Zelenko.** Thank you very much.

Chairman **Celler.** Any other questions?

Thank you very much, Mrs. Anderson, for your intelligent and courageous and informative statement. I certainly personally admire your candor and your delightful personality.

Mrs. **Anderson.** Thank you.

Chairman **Celler.** Our next witness is Mr. Charles J. Hause, president, Save Our Country, Inc., Wilmington, N.C.

Mr. Hause.

STATEMENT OF CHARLES J. HAUSE, PRESIDENT, SAVE OUR COUNTRY, INC., WILMINGTON, N.C., ACCOMPANIED BY H. M. ROLAND, FORMER SCHOOL SUPERINTENDENT

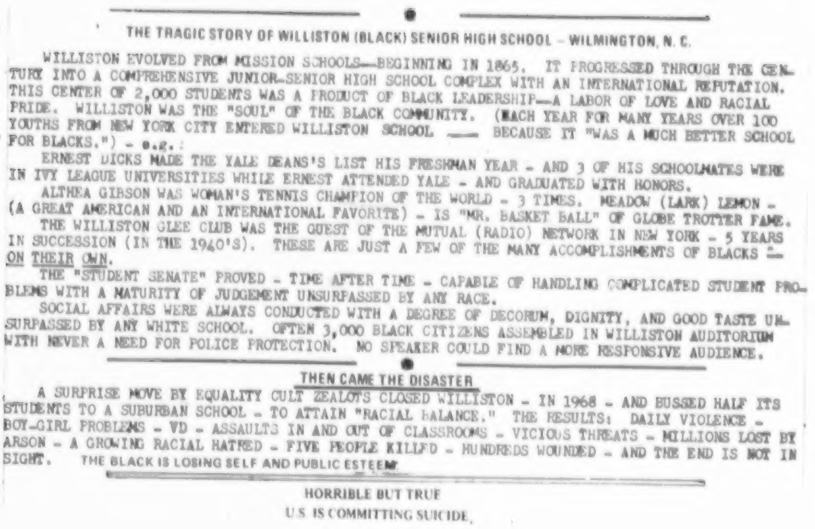
Mr. **Hause.** Mr. Chairman and fellow members of the subcommittee, I have Mr. H. M. Roland with me. Mr. Roland is a former school superintendent of some 35 years in our district.

Chairman **Celler.** We welcome both of you gentlemen.

Mr. **Hause.** I assume you have the articles before you from Mr. Roland. Mr. Roland is the gentleman who compiled these statistics. We are not going to try and read it. We would like to go over it a little bit, because it would take too much time for the committee to read it.

Chairman **Celler.** The statement will be placed in the record.

(The documents referred to follow:)



THE TRAGIC STORY OF WILLISTON (BLACK) SENIOR HIGH SCHOOL – WILMINGTON, N. C.

WILLISTON EVOLVED FROM MISSION SCHOOLS—BEGINNING IN 1865. IT PROGRESSED THROUGH THE CENTURY INTO A COMPREHENSIVE JUNIOR–SENIOR HIGH SCHOOL COMPLEX WITH AN INTERNATIONAL REPUTATION. THIS CENTER OF 2,000 STUDENTS WAS A PRODUCT OF BLACK LEADERSHIP—A LABOR OF LOVE AND RACIAL PRIDE. WILLISTON WAS THE "SOUL" OF THE BLACK COMMUNITY. (EACH YEAR FOR MANY YEARS OVER 100 YOUTHS FROM NEW YORK CITY ENTERED WILLISTON SCHOOL — BECAUSE IT "WAS A MUCH BETTER SCHOOL FOR BLACKS.") - e.g.:

ERNEST DICKS MADE THE YALE DEANS'S LIST HIS FRESHMAN YEAR - AND 3 OF HIS SCHOOLMATES WERE IN IVY LEAGUE UNIVERSITIES WHILE ERNEST ATTENDED YALE - AND GRADUATED WITH HONORS.

ALTHEA GIBSON WAS WOMAN'S TENNIS CHAMPION OF THE WORLD - 3 TIMES. MEADOW (LARK) LEMON - (A GREAT AMERICAN AND AN INTERNATIONAL FAVORITE) - IS "MR. BASKET BALL" OF GLOBE TROTTER FAME.

THE WILLISTON GLEE CLUB WAS THE GUEST OF THE MUTUAL (RADIO) NETWORK IN NEW YORK - 5 YEARS IN SUCCESSION (IN THE 1940'S). THESE ARE JUST A FEW OF THE MANY ACCOMPLISHMENTS OF BLACKS — ON THEIR OWN.

THE "STUDENT SENATE" PROVED - TIME AFTER TIME - CAPABLE OF HANDLING COMPLICATED STUDENT PROBLEMS WITH A MATURITY OF JUDGEMENT UNSURPASSED BY ANY RACE.

SOCIAL AFFAIRS WERE ALWAYS CONDUCTED WITH A DEGREE OF DECORUM, DIGNITY, AND GOOD TASTE UNSURPASSED BY ANY WHITE SCHOOL. OFTEN 3,000 BLACK CITIZENS ASSEMBLED IN WILLISTON AUDITORIUM WITH NEVER A NEED FOR POLICE PROTECTION. NO SPEAKER COULD FIND A MORE RESPONSIVE AUDIENCE.

THEN CAME THE DISASTER

A SURPRISE MOVE BY EQUALITY CULT ZEALOTS CLOSED WILLISTON - IN 1968 - AND BUSSED HALF ITS STUDENTS TO A SUBURBAN SCHOOL - TO ATTAIN "RACIAL BALANCE." THE RESULTS: DAILY VIOLENCE - BOY-GIRL PROBLEMS - VD - ASSAULTS IN AND OUT OF CLASSROOMS - VICIOUS THREATS - MILLIONS LOST BY ARSON - A GROWING RACIAL HATRED - FIVE PEOPLE KILLED - HUNDREDS WOUNDED - AND THE END IS NOT IN SIGHT. THE BLACK IS LOSING SELF AND PUBLIC ESTEEM.

HORRIBLE BUT TRUE

U.S. IS COMMITTING SUICIDE.

"BUSING TO OBTAIN RACIAL BALANCE."

The Supreme Court

P 1

IN 1954:

Decreed that race or color are not to be used in assigning pupils to schools.

Yet - federal district judges destroy all schools in order to have a racial quota balance in all schools solely on the basis of race. (Come and see the results.)

Congress - in 1964 - said busing is not to be used to obtain racial balance.

Yet--federal district judges order city-center children to enroll in suburban schools "in order to obtain racial balance" - regardless of constant student failures.

The Supreeme Court ruled that only children of similar age and the same "educational qualifications" are to be classed together.

Yet--despite the findings of the U. S. Office of Education--all levels of ability, from each race, are classed together. This is what busing is all about. (See next page for a list of official surveys and findings.)

Also - despite the official findings that there is a wide lag in Black scholastic ability and achievement - students are classed by age--not achievement or ability--with 7 to 15 grade levels per class.

The resulting motley mass of misfits "lowers scholarship, increases costs and creates juvenile delinquents, etc." (See pages 3 and 4.)

Substandard teachers - especially trained for, and highly successful with, slow learners - now "teach"(?) college capacity students - upon HEW or federal judge orders. A judge now acts as the Board of Education, school superintendent, supervisor, teacher placement, etc.

Unearned promotions - sham high school diplomas - misleading report cards - "permissive" education methods - and other disastrous policies make public schools a farce. (Study pages 3 and 4.) This is NOT "Quality Education."

Congress should make a study of our confused schools - for example, in Wilmington, North Carolina - Congress will find:

The complete destruction of once famous schools - for all children;
School policies designed by "Equalitarians" in HEW, the courts, and in the local school administration;
Busing (as now designed) denies Blacks - (and Whites) - of their Civil Rights;
The "Civil Rights" of Black - (and White) - youth is totally ignored;
Constant failure of 2/3 of Black and 1/4 of White youth is assured;
School costs are climbing to fantastic heights; and, HEW sends $310,000. chiefly to brainwash teachers - and $50,000. to leftist in the NAACP - and larger amounts to other agencies - (duplication upon duplication) - to aid in integration.
(These groups are the real causes of racial friction, hatred, violence, and lower scholarship.)

Ultra Liberals in the North teach themselves that they gave Blacks an equal education and that the South denied Blacks an education.

It was once said: "The North is hypocritical and the South realistic in treatment of Blacks." In 1954, in the North, there were very few Black teachers, Black highschool students, fewer Black college students, and hosts of Black drop-outs. The following facts should be told to all fair and unbiased citizens of the North.

EDUCATION OF BLACK CHILDREN

ACCEPTABLE EDUCATION - FOR BOTH RACES - STARTED IN THE SOUTH AFTER WORLD WAR I. THE WAR AND ROSENWALD AID TO RURAL BLACK SCHOOLS AROUSED BOTH RACES. THE RESULTS WERE MIRACULOUS. IT WAS NATURAL FOR THE NORTH TO ASSUME THAT THEIR CENTURY OF INTEGRATION HAD PRODUCED A FAR BETTER EDUCATION FOR BLACKS THAN IN THE POVERTY STRICKEN SOUTH. BUT - THE FACTS ARE:

MISCONCEPTIONS REFUTED

"THE NATIONAL SCHOLARSHIP SERVICE AND FUND FOR NEGRO STUDENTS" (NSSFNS) RELEASED TO THE PRESS SOME FACTS FOUND IN THEIR SEARCH FOR TALENTED NEGROES. NEWSWEEK, JULY 25, 1955, SAYS: "THE AGENCY'S (NSSFNS) NEWEST INTEREST IS SOMETHING IT CALLS THE 'JUNIOR HIGH SCHOOL PROJECT' WHICH BEGAN WITH THE DISCOVERY THAT IN 50 LARGE NORTHERN SCHOOLS WITH 30 PER CENT NEGRO ENROLLMENT, ONLY A FRACTION OF THE 1 PER CENT OF THE NEGROES BECOME ELIGIBLE FOR COLLEGE."

THE 1963 NSSFNS REPORT "THE NEGRO STUDENT IN INTERGRATED COLLEGES" - BY DR. KENNETH CLARK AND DR. LAWRENCE PLOTKIN - INCLUDED THE STUDY OF 1,278 NEGRO STUDENTS IN TOP RANK UNIVERSITIES. (IVY LEAGUE, BIG 10, BIG 7, ETC.) THE ARTICLE TO PAGE 23 IS SUMMED UP ON PAGE 6. HERE IS A PHOTOSTAT OF THE FINDINGS: "*The Major Findings* COLLEGE PERFORMANCE" STATUS OF NON-WHITES

Geographical. Students born in the south tend to achieve higher college grades than those born elsewhere. This seems to refute the preconception that Negroes receive better secondary preparation in northern high schools; students from southern secondary schools have higher college grades than those from high schools in New York, Pennsylvania, and New Jersey

DR. KENNETH CLARK WAS AN ADVISOR FOR THE U.S. SUPREME COURT IN ITS 1954 DECISION. (THESE FACTS WERE NOT AVAILABLE TO THE SUPREME COURT IN 1954.)

AN APPEAL TO OUR GOVERNMENT FOR JUSTICE WITH EQUITY

P-2

A WRONG WAS RIGHTED BY LAW, BUT THE ADMINISTRATION OF JUSTICE HAS MISCARRIED
MAY WE HAVE DE-SEGREGATION WITHOUT DESTROYING THE NATION?
IT CAN BE DONE. SEE "UNIVERSAL EDUCATION" PLAN

A STUPENDOUS OFFICE OF EDUCATION SURVEY

(Makes the OE "guidelines" look like a treacherous conspiracy to wreck the Nation.)

U. S. OFFICES FIND SCHOOL GUIDELINES FATAL TO "EQUALITY OF EDUCATIONAL OPPORTUNITY"

The U. S. Office of Education (OE) in 3 major surveys ("Project Talent"--"Equality of Educational Opportunity"--and, "How Good Are Our Schools") found that - without exception - their "guidelines" (as now applied by the Equalitarians) bring disaster to all schools which comply; and, permanently cripple the youth of all races.

IN "PROJECT TALENT" (Pages 1-8)

The U. S. Office of Education (OE) found that: "Schools integrated _en masse_ in all areas of the United States evidence:

(a) lower academic performance, (b) higher costs, and (c) behavioral delinquency increased";

and, "without exception these unfavorable and unfortunate consequences occur in direct proportion to the number of Negroes enrolled." (Quoted from federal court summary of "Project Talent.") This project alone was sufficient to justify a halt in integration until an acceptable program was found.

IN "REAL EQUALITY OF EDUCATIONAL OPPORTUNITY

A 737 page report by the U. S. Office of Education, they found that: (speaking of learning ability--pages 219-220.) "The differences between the White and other racial and ethnic groups (excluding the Orientals) is great indeed. For the Negro the disadvantage appears to be about the same for all areas tested." If the lag "is found in one subject it is found in others." (page 273)..."the lag in Negro scores in terms of years behind grade level is progressively greater."

This survey report--ordered by Congress--signed by Harold Howe, II, was to guide the operation of the 1964 Civil Rights Act.

In "HOW GOOD ARE OUR SCHOOLS"

The U. S. Office of Education comments on 10 million tests given inductees and draftees for our Armed Forces. "These mental test results are the closest things there is to a national index of educational strengths and weaknesses." (An OE quote.)

THE U. S. DEPARTMENT OF LABOR VIEWS ON BLACK PROGRESS

(Quotations from their publication "The Negro Family" - 1965)
The dire results of integration *"en masse"* can no longer be concealed.
The Negro masses are "getting worse, not better."

INEQUALITY IS ADMITTED

"The harsh fact is that as a group...in terms of ability to win out in the competitions of American life, they (the Negroes) are not equal to most of those groups with which they will be competing....The Negro American community in recent years has probably been getting worse, not better...The gap between the Negro and most other groups in American society is widening."

THE ULTIMATE GOAL

The Negroes "will now expect that in the near future equal opportunities for them as a group will produce roughly equal results, as compared with other groups. This is not going to happen. Nor will it happen for generations to come unless a new and special effort is made."

The..."increasing visibility of a Negro middle class may beguile the Nation into supposing that the circumstances of the remainder of the Negro community are equally prosperous, whereas just the opposite is true at present, and is likely to continue so."

Overwhelming official and authentic evidence proves that balanced classes are disastrous to the youth of all races. The following pages describe how the Equalitarian school plan destroys schools and deprives Blacks--(and Whites)--of--

"REAL EQUALITY OF EDUCATIONAL OPPORTUNITY."

WITH SEAWATER U. S. USES "TRIAL PROJECTS" TO PERFECT "PILOT PROJECTS" TO GUIDE IN MAKING SEAWATER USABLE--AT A LOW COST. WHY NOT USE THE SAME POLICY FOR SCHOOLS?

GIVE US FREEDOM WITH JUSTICE FOR ALL - BEFORE A HITLER OR STALIN TAKES CONTROL.

WHY THE RACIALLY BALANCED CLASS
IS DISASTROUS TO ALL RACES

---------0---------

CONCLUSIVE EVIDENCE

---------0---------

THE U. S. OFFICE OF EDUCATION ANALYZED 10 MILLION ARMY TESTS AND FOUND:
In "HOW GOOD ARE OUR SCHOOLS"

THE PATTERN OF DISTRIBUTION OF MEN BY ABILITY TO LEARN

(Established by the Army, and verified by 50 years of experiences in testing and training over 20 million men)

(PHOTOSTAT OF TABLES OF
ARMED FORCES QUALIFICATION TEST)

Armed Forces Qualification Test Provides a Clue

What are the Armed Forces mental tests, and what do they have to do with schools?

The basic test in the Armed Forces is the AFQT. All draftees and enlistees are required to take it before entering any branch of the military services. It is a standard examination administered on a uniform basis throughout the country.

In the last 10 years, over 10 million young men aged 18 to 26 have taken the AFQT. This is the largest group of standardized test scores that has ever been available for State and regional comparison.

For these reasons, these mental test results are the closest thing there is to a national index of educational strengths and weaknesses.

By the basis of this percentile score, men are classified into one of five mental groups.

Mental group	Percentile score
I	93 - 100
II	65 - 92
III	31 - 64
IV	10 - 30
V	0 - 9

Groups I, II, and III automatically meet mental standards for military service.

Estimated percentage distribution of draftees by mental group, by race: FY 1966

Mental group	White	Negro	Total
I	7.6	0.3	6.7
II	32.1	3.3	28.8
III	34.6	18.2	32.8
IV	16.0[1]	38.2[1]	18.5[1]
V	9.1	37.1	12.3
Admin. acceptable	0.6	2.9	0.9

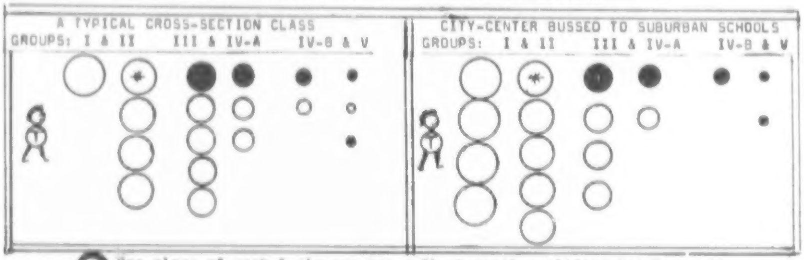
[1] Mental group IV consists of (a) white—9.4% passed AQB, 6.6% failed AQB (trainability limited); (b) Negro—17.5% passed AQB, 20.7% failed AQB (trainability limited); (c) total—10.3% passed AQB, 8.2% failed AQB (trainability limited).

Only rigged tests--or wishful thinking--will show any substantially different results.

THE APPROXIMATE SCHOLASTIC CAPACITY OF EACH GROUP:

GROUP I	University Masters, Doctors, and equivalent levels of learning.
GROUP II	Standard college bachelors degrees--and similar achievement.
GROUP III	Junior college, senior high school, highly skilled trades, etc.
GROUP IV-A	Junior high school, simpler skills, in trades, etc.
GROUP IV-B	Army classes as "Trainability Limited" - Army failures.
GROUP V	"Functionally illiterate" and "Unfit for armed services," and "With less than a fifth grade education."

TWO TYPES OF FULLY BALANCED CLASSES - WITH BUSING - DESTROYED SCHOOLS IN WILMINGTON, N.C. WITH A RACIAL RATIO OF 13 WHITES TO 5 BLACKS.


A TYPICAL CROSS-SECTION CLASS
GROUPS: I & II III & IV-A IV-B & V
CITY-CENTER BUSSED TO SUBURBAN SCHOOLS
GROUPS: I & II III & IV-A IV-B & V

⊛ One class of each 5 classes has a Black pupil qualified for Group II.
(The size of the circle indicates comparative learning capacity.)

Top ability Blacks in Black schools develop into leaders in all school affairs: all rewards, honors, positions, social events, student government, etc.

As a minority submerged in White slower learning Groups - superior only in athletics - Blacks become objects of pity or contempt - also they lose their self-respect.

Beginning at grade one each class period - each day - each year - they suffer frustration, humiliation, smoldering fury, and severe emotional upsets.

When old enough - and big enough - they explode violently - or subside into being "Uncle Toms" - accepting favors granted by patronizing Whites.

In either case he becomes a misfit - or a nonentity - with his ambitions crushed.

In suburban schools White parents whose children are unable to "keep up" with their classmates usually move to other districts to avoid failures.

Blacks forced to attend suburban schools form a Black block of slower students. A dual-standard-school system develops in each class room.

To avoid this, Equality Cult zealots have all ability levels "working side by side at common tasks to ensure understanding and mutual respect...to build together - (a society) - where equality is real." (Read: AASA - "School Racial Policy.")

THE DASTARDLY BETRAYAL OF AMERICAN YOUTH

A FEDERAL JUDGE ORDERED THE TOTAL DESTRUCTION OF ALL CITY-COUNTY SCHOOLS AT WILMINGTON, N. C. BY "BUSING TO ATTAIN RACIAL BALANCE."

P-4

WHAT IS GOING ON IN THE RESULTING MOTLEY MASSES OF MISFITS?
COSTS MAY BE DOUBLED.

About 1,300--(1,300 White and 500 Black)--students enter grade one each year. A balanced class of 18 pupils, or an ability grouped class of 36 are considered the maximum size for acceptable teaching.

Note: This makes 100 "balanced"--or 50 ability grouped classes--or about double the cost for schools with Motley masses of misfits.

(For method of ability distribution see ~~opposite~~ page--Army pattern.)

THE MOST DEPRIVED STUDENTS

○ Group I; and, --------(See diagrams on ~~opposite~~ page.)

○ Group II - locally - have over 500 students--or 5 for each balanced class. By age 15 their reading ability should range from college to graduate school levels of difficulty--if given a chance.

Now less than half of their teachers have a general education above the high school level. (See section on teacher certification.)

It is folly to expect acceptable teaching from such a staff.

SHAM SCHOOLING INDICATED

Since adequate scholarship is impossible, schools turn to activities--or busy work-- which sets all groups "working side by side at a common task to build together a - (society) - where equality is real."

Activities designed for Group V are a disastrous handicap to Groups I & II.

THE ULTIMATE GOAL

After 12 years in Federal Court schools American youth will enter world affairs with many grades of education below their counterparts in Europe, Russia and Japan.

AVERAGE STUDENTS

○ Group III - with junior college or senior high capacity; and,

○ Group IV-A - with junior high school and some trade school capacity, enroll-- locally, about 800-- for each age group--or 8 per balanced class.
(Racial Ratio: 600 Whites - 200 Blacks.)

State courses of study, textbooks and teaching methods are usually centered on these average Groups. They should have fewer handicaps.

But--often the teacher will concentrate upon Groups I & II; or, Upon Group V -- and neglect the average students.

These groups furnish skilled tradesmen - and workers in all business fields.

SLOW AND VERY SLOW LEARNERS

○ Group IV-B - students will be reading at Grammer school level; and,

● Group V ---- students at primary levels at age 15. There will be about 500 enrolled - or 5 students each for balanced classes of 18 pupils.

Teaching methods include a variety of "projects" to impress lessons on slow learners. Each year these pupils lag farther and farther behind the average, as the average lags farther behind the gifted.

No amount of money--no gimmicks--or methods will make these groups achieve equally with the average - or the average with the Groups I & II. (Late bloomers" will be offset by "drop-backs.")

OVERWHELMING EVIDENCE REVEALS THAT SCHOLASTIC EQUALITY CAN NEVER BE ACHIEVED

HORRIBLE BUT TRUE — U. S. IS COMMITTING SUICIDE

Of the many ills and demoralization resulting from this tragic mistake - the most alarming is the startling increase in VD - (especially among White girls). D.C., N.Y.C., and scores of other cities report similar results. (The usual estimate is that only about 10% of the total cases are reported.) Here is the New Hanover report:

GONORRHEA

Years and No. of cases
1968 - 78
1969 - 165
1970 - 218
1971 - 423

The 1971 Board of Health report shows 5.4 times as many cases (423) as the 78 cases in 1968. The report:

Age Groups	Total Cases	Black Males	Black Females	White Males	(White - girls only) Females - H.S. & College
H.S.& Col.	346	169	43	47	87 = 72 - 15
All Others	77	35	21	12	9

No. of cases
1968 - 16
1969 - 42
1970 - 98

SYPHILIS

This dreaded disease multiplied over 6 times during the first 2 years of "busing to obtain - (High School) - racial balance."

Mr. HAUSE. I feel somewhat strange when I hear people speaking of the schools with no problems. May I submit certain press clippings of our schools before you?

Chairman CELLER. We will receive those press clippings for the file rather than for the record. But you might proceed.

Mr. HAUSE. I personally was born and raised between the shadows of the Triborough and Hell Gate Bridges in New York City. I went to Long Island City High School which had but a handful of black students in the entire school. After I was married, I moved to Poughkeepsie, N.Y., and my daughters and sons attended Arlington Senior High School on the outskirts of Poughkeepsie, N.Y. There was a total enrollment of five black students in both the grammar school and senior high school.

Chairman CELLER. Is that Long Island City?

Mr. HAUSE. No, I went to Long Island City. When I got married, I moved to Poughkeepsie, N.Y., where I lived. That is upstate. The Arlington Senior High School is on the outskirts of Poughkeepsie, N.Y.

We moved to Wilmington, N.C., in April 1967, and the schools down South at that particular time were under the freedom of choice system.

In Hoggard High School, the school that my children chose to attend, there were over 300 black students enrolled. That is more black students than I personally went to school with, more black students than the entire Poughkeepsie enrollment in Arlington grammar school had, and this was under the freedom of choice system.

In 1966 Wilmington received the honor of becoming an all-American city, and in that year there was peace and harmony among both races. One could observe quite easily and readily that the South was on the move, as far as I was concerned, and the impression that I got was that the South had solved that so-called segregated problem.

But then came the disaster. Someone who certainly was far removed from the scene and perhaps in Washington, D.C., decided the ratio wasn't according to what they wanted, so in 1968 they had started forced busing by closing down the Williston Senior High School, and we gave you a supplement on the closing of Williston Senior High School. This was the all-black high school, and it remained all black under the freedom of choice for those students who did not want to integrate or for reasons they wanted to go to a neighborhood school.

It is confusing to me to hear people testify that somehow forced busing will give a person the right to live. It is strange how they come up with this. Either we have forced busing or 50 percent of the black persons do not have the right or opportunity to live.

We are a small city in Wilmington, N.C., and Althea Gibson is a graduate of Williston Senior High School. Althea Gibson was born and raised in Harlem, but was sent down to Williston Senior High School, and the ironic part of it, to better her education and get more opportunity in life.

That is a strange paradox that she, born and raised in New York City, yet she had to go to the so-called segregated South. Althea Gibson became the woman's tennis champion of the world three times.

Another graduate of the all-black school was Meadow Lark Lemon, who is the captain of the Harlem Globe Trotters. We had many other distinguished black students and people that graduated from Williston

Senior High School. Ernest Dicks made the dean's list at Yale his first year and went on to graduate with honors.

The reason why I mention that is for those people who claim that if you do not have forced busing, somehow we lose all of the black people. With forced busing, we went from a peaceful community of 1967, when we moved down South and the school systems were under freedom of choice, in 1968, we had nothing but havoc, riots, vandalism, school closing, and five murders.

We went from a peaceful integrated community into two armed camps. Numerous people have been shot, and among the five deaths were two unarmed security guards, guarding a school against vandalism.

Now, education is coming in a poor second to survival. We went from educational classrooms for all students to integrated social centers where discipline is only maintained, which we never had before, but they are maintained now by parent overseers and armed patroling policemen.

This is just this year, a portion out of the local paper since the school opening of how many times our schools have been closed because of riot and students' disorders. I don't know if you would want to see it.

Like any other small community, we have human relations workshops. We now have all kinds of workshops for teachers. We are spending hundreds of thousands to make it work. But I say this, that I saw firsthand, freedom of choice was working in the South, and the people did accept it, and those who were free to accept what school they wanted to go to, they did it willingly, and the races did mix in harmony.

I think what we need is freedom of choice up North rather than going down South and forcing it with closing black schools which had pride. None of the blacks wanted their schools closed because there was a certain pride to them.

I am going to stop at this point and allow Mr. Roland to speak.

Mr. ROLAND. Mr. Chairman and members of the subcommittee.

Chairman CELLER. May I read something concerning so-called "freedom of choice" schools?

I read from the decision in *Green* against the *School Board of Virginia*, an opinion written by Justice Brennan, for a unanimous Court:

> We do not hold that "freedom-of-choice" can have no place in such a plan. We do not hold that a "freedom-of-choice" plan might of itself be unconstitutional, although that argument has been urged upon us. Rather, all we decide today is that in desegregating a dual system a plan utilizing "freedom-of-choice" is not an end in itself.

Then the Court went on to say:

> Although the general experience under "freedom-of-choice" to date has been such as to indicate its ineffectiveness as a tool of desegregation, there may well be instances in which it can serve as an effective device. Where it offers real promise of aiding a desegregation program to effectuate conversion of a state-imposed dual system to a unitary non-racial system there might be no objection to allowing such a device to prove itself in operation. On the other hand, if there are reasonably available other ways, such for illustration as zoning, promising speedier and more effective conversion to a unitary, non-racial school system, "freedom-of-choice" must be held unacceptable.

That is a decision of the court in *Green v. School Board of Virginia*, 391 U.S. 430 (1968).

Mr. HAUSE. I don't know for what purpose you read that to me. For what reason was that?

Chairman CELLER. Because you emphasized the "freedom-of-choice" plan in your initial remark.

Mr. HAUSE. Well, it seems to me there is a conflict of communication of thoughts, because the courts have decided that freedom of choice was not the law of the land, it is unconstitutional. Is that what we are saying?

Chairman CELLER. They are saying if there are other means by which there can be effectively developed a unitary school system, "freedom-of-choice" will be unacceptable.

Mr. HAUSE. Right. Unfortunately, it is always those who decide on it who do not get the full avenue of all of the information. They make these decisions and sort of, to use my own expression, they are in an ivory tower and are not down at the grassroots where things are happening, and they are fed certain wrong decisions and opinions. But if they were there firsthand and saw what I saw, and I feel I have been on, so to speak, the two sides of the street.

I saw what the North was, and I saw what the South was under the freedom of choice, and it was working. I would like to challenge those who claim that they have got the solution. I would like to go back to freedom of choice in our county and let us spend the millions of dollars that are going to be wasted on forced busing. Let us spend that money on the high school dropouts, of which we are now having an alarming rate, that this forced busing has caused, and let us spend that millions of dollars for better equipment and better schools, and I would challenge anybody to compete with us under a freedom of choice.

Mr. POLK. Mr. Chairman.

Chairman CELLER. Yes.

Mr. POLK. If I may, I would like to refer to the memorandum of the judge on July 23, 1971. I quote:

> At the beginning of the 1970–71 school year the school system had 19,537 pupils in 30 schools. Approximately 27 per cent of the pupils were black and 73 per cent white. Two of the schools were all-white and an additional ten were over 90 per cent white, including two integrated schools having only one black pupil each. Three schools were over 90 per cent black. Obviously these fifteen schools at least are racially identifiable under the existing plan.

Mr. HAUSE. OK. May I answer that? What schools do you have? You mentioned two schools were all white. Could you indicate what schools they are?

Mr. POLK. I was quoting the judge's memorandum.

Mr. HAUSE. Now, it is obvious that if you have a young child 6 years old, and if you can recall sending your child to school, the first day is a frightening experience. Those all-white schools are the lowest grades. The black people did not want to send their 6-year-olds the first day to a distant school. Those are the schools that they are referring to.

But there was no high school that was all white. There was no junior high school that was all white. When the people were old enough to choose, or parents felt the students were old enough, they did send them under freedom of choice, but it was natural that a white person or a black person wanted their child to go to the closest nearby school. That is a basic American constitutional right, our neighborhood schools, where you could take part in your PTA.

Our PTA has suffered over 70-percent total decline. I heard someone speak here roughly about percentages. We are on a 72–28 percentage ratio. It is going to go to 60–40, and that is because you have white people going to private schools. It is going to happen exactly what has happened in Washington, D.C.

This is not the answer, this forced busing for integration purposes. We speak of quality education and part of our people are not getting it. The black people are supposedly not getting a decent quality education. Let's say then if we make a superior race, so to speak, of those people who could afford to send their children to private schools—they are doing it at an alarming rate.

Our public schools are now at least 3 years behind our private schools. If we continue, we are going to create just exactly what we don't want. We are going to create these supereducated people coming from private schools and our public schools are going to be in shambles, in lower education. Our education in our county is coming in second to survival, believe me it is.

Mr. ROLAND. Mr. Chairman and members of the subcommittee, I became superintendent of schools in biracial areas in 1924. I have spent my whole life in seeing what can be done in the way of full development of both races and within each race the full development of the slow learner, the average learner, in speed and capacity, and the superior one.

It is upon such a program that I worked for 35 years, and we were wanting to install it, but it did not fit in with the HEW's idea of integration. My plans would be like it was in the Negro high school, popular enough that every person would feel that he was getting maximum amount of development out of each day's work and that he could succeed in the courses of study and in each day's assignment that he was given.

There is such a program that can be a grouping by each basic subject, where, if you may be good in math, you go to the top group. If you are average in history, you go to the middle group. I won't go into that because here is what we are faced with in Wilmington.

I might say, Mr. Counsel, that the two schools you are talking about are beach residences out on the sand banks. Above the elementary school they did go to mixed schools, but they did have their elementary schools in those two spots.

All junior high schools had integration, and all senior high schools.

You have in a note there the results of a program, and this program could be applied for integrated schools and absolutely no reference to race or color or economic standing in the community.

I would like to impress upon you that is the greatest handicap that you find in all of the schools. Like in Pontiac, Mich., you are going to find that after they have been to school a while, they get madder than ever, unless they have a program of classes whereby both white and black, the slow learners; and the whites have just as many slow learners, maybe not the percentage, but they have just as many as the blacks in most places, and they have a lot more where the blacks are not in great number.

I am not going to try to go over this. I presume you have this, starting here with the Supreme Court, and at the bottom of the page there you have a report of Kenneth Clark in the fact that we were doing some good work in preparing children for Ivy Leagues in all of those schools.

On the second page is something that anyone dealing with his children should read and study, the U.S. Office of Education surveys and findings in regard to integrated schools.

Since I retired in 1960, I have been in 48 States, Canada, and Mexico, making a study of the quality of education in biracial areas.

I have contacted 37 tribes of Indians. I have been back and forth through New York City many times and in many towns and in Brooklyn and Queens.

For example, in Brooklyn they used to have a Catholic parochial school, the Bishop Loughlan School, where top students, boys, were given an especially high grade of training. I have a son-in-law who came from that school. Brother Arnold, the principal of the school, was one of the most competent men I have ever known. But what has happened, when the forced busing started in Brooklyn?

Finally, the Bishop Loughlan School, which numbered 1,800 boys, dropped down to 400 in one year, and most of those were seniors and when that class graduated—I haven't checked it yet—they were to send all of those who qualified for the Bishop Loughlan type of school to Cardinal Hayes School over in Manhattan, but why did they have to do that? Because of the type of teaching that they were doing left the black child completely out in the cold.

What I was hoping was that the Congress would appropriate money like they do down in Wilmington. We have a saline plant which tries to find out how we can get sea water that is potable; to work out the cheapest way it can be done and work out trial projects as a model project for us to copy.

Instead of having this program of integration tried out everywhere with new people—totally inexperienced like they are now in Pontiac, Mich.—develop a model integrated school for all to follow, like the saline project.

Mr. **Hungate.** I didn't get your name and position, sir.

Mr. **Roland.** H. M. Roland, R-o-l-a-n-d. I came to Wilmington as superintendent of schools in 1936, but I had been in two or three other areas, all of them in biracial schools. I have been dealing over 36 years with whites and blacks in trying to get all of these different elements between the races adjusted.

We should have a trial project run by some people who have had a lot of experience with both races. I took so much pride in my neighborhood schools that I can say this, probably boastfully, that we were a model for the U.S. Office of Education when they sent people from foreign countries down to visit us.

We had hundreds to come. Thirty-one came one year from Germany alone. But now, if we can work out a program that the Negroes can profit by, like we had in the Negro schools better equipped than most of the schools North or South, it might not be a typical situation, but there are plenty of them that are functioning exceedingly well.

Chairman **Celler.** May I refer to something that is in the statement that we have placed in the record.

You speak of certain rather startling facts, and you state as follows:

> Of the many ills and demoralization resulting from this tragic mistake, the most alarming is the startling increase in VD.

I presume that is venereal disease?

Mr. **Roland.** Yes, and that has increased.

Chairman CELLER. I am quoting your statement: "Especially among white girls, D.C. and N.Y.C. and scores of other cities report similar results. The usual estimate is that only 10 percent of the total cases are reported."

Then you give some statistics on what you call evidence of the spread of venereal disease among black students in these integrated schools. Where did you get all of this information?

Mr. ROLAND. The Board of Health of Wilmington.

Chairman CELLER. Did you nail down the fact that VD was caused by integration?

Mr. ROLAND. This was the senior high school alone. We have only this year when junior high schools integrated by busing to have racial integration. Morality, peace, and everything else went by the board.

Chairman CELLER. Could not that have been caused by other factors than busing? We know that in New York City, from whence I come, that dread disease is spreading, but I don't know of any records in the Public Health Service of New York City which point to the fact that busing has caused an increase in VD.

Mr. ROLAND. Of course, it is not on the bus. It is the fact that these people are so dissatisfied, sir. And the increase did not increase under freedom of choice, but immediately after the integration.

I would like to say one more thing in conclusion. This is one thing that I want to be sure that you understand what happened.

Mr. HAUSE. Mr. Chairman, it is strange to me that this four-page—is that the only thing that is going in the record? Over this four-page report you mention, and it is the very bottom and last thing?

Chairman CELLER. We will accept whatever you desire to place on file with the committee. We will accept that, of course.

Mr. HAUSE. I was wondering why that one item caught your attention.

Chairman CELLER. We will accept the entire document.

Mr. ROLAND. Turn to page 3 and I think we can explain to you what the U.S. Department of Labor said. Unless something is done with these students at the end of the busline to give them an opportunity to succeed in the work, then we are killing the very thing we think we are doing. We are causing the ills that we and you are trying to cure.

Now, here at the top of page 3 is photostatic copy of a report of the U.S. Office of Education following the survey of the Armed Forces qualification test. I won't go into that, but I want to picture two classrooms you have after you finish busing.

Now, some of these places, like in Richmond, that you are going to take the pupils from center of the city, there are whites and blacks in there, and, of course, this applies only to blacks, and take them out to the suburban schools. What do they do when they go in the classes in the suburban schools? What happens to them?

If you put the quota, the percentage, which in the county is 13 white students to five blacks, and let's see where they come according to the test of the Army.

In 37 years of testing, I found close to these results. And I have checked it in many of the 48 States, and it doesn't deviate from this sufficiently to try to explain any other findings.

When you take the total picture, most of the things where you find deviations is when they take a very small sample. On the left there you have a teacher with 18 students, and there you have a rank according to the potential development of the child. What he is capable of doing. And that is according to the 50 years of experience of the Army and of thousands of other school systems.

Now, you have in these classes at least 11 or 12 or 15 levels of ability in reading and knowledge of the subject, in some of them in this group.

Mr. HUNGATE. Mr. Chairman, may I inquire briefly at this point?

Chairman CELLER. Yes.

Mr. HUNGATE. Let me ask you a question briefly, and then I want to ask Mr. Hause a few questions.

As I understand it, this statement will be made a part of the record.

Chairman CELLER. Yes.

Mr. HUNGATE. But do you agree with the *Brown* decision?

Mr. ROLAND. Yes; I think a long time ago we should have had freedom of choice. In other words, I believe in freedom, and now it is not freedom.

Mr. HUNGATE. Pardon me a moment.

Mr. Hause, you had some newspaper clippings there. I would ask that they be placed on file with the committee to be available to members.

Chairman CELLER. That is agreeable. You wish to have those newspaper clippings on file, and we will accept them, if you wish.

Mr. HUNGATE. Mr. Hause, you stated in 1968 there were five murders. How many murders were there in 1967?

Mr. HAUSE. It depends. There were five murders, school connected. There were a lot more accidents. I am speaking in reference to schools. Prior to this there was none.

Mr. HUNGATE. What about 1971, how many? How many murders were school connected in 1971?

Mr. HAUSE. There were two. I am giving you a total of five murders since the forced busing began in 1968.

Mr. HUNGATE. That is for the whole period?

Mr. HAUSE. I don't know where you are from, but that is a lot of murders in our community.

Mr. HUNGATE. Well, despite my debonair attitude, I am not from New York.

Mr. HAUSE. I was saying in relationship.

Mr. HUNGATE. I noticed a verse on the back of the paper about the tragedy at Williston; and since I have modest piano abilities, I wondered what the melody was to the verse: "Along came Justice Warren Burger, giving evil rulings, he stripped the young-uns of their brains, to equalize their learning."

The decision we are talking about in many of these problems arose about 1968, and you, of course, appreciate that Justice Burger was not appointed until 1970, I think. Isn't that correct?

Mr. HAUSE. Yes. But the forced busing was initiated. What we are saying is that forced busing is not the solution to our problem. It only aggravates a situation. I saw it firsthand. I saw it when I moved down there. We were under an integrated school system outside of two white schools that were neighborhood schools for smaller children, and that is understandable.

But, by and large, and you know I went down there from New York, with my eyes wide open. I thought I was going to see the dirty old

South, segregated and all of this business, because coming from the North, this is the way I believed. But going to the South, and registering my children, I said, thank goodness, the problem has been solved, and it was solved under the freedom-of-choice plan, and there was harmony and peace, and there was education, but then came the closing of the Williston School, forced integration and forced busing, and from that point on schools have been out constantly with fighting, with rioting, with looting, and just prior to this we had none of that.

Mr. HUNGATE. Thank you very much.

Mr. ROLAND. I want to straighten out this one thing about the forced busing.

Chairman CELLER. May I ask you to be as brief as you can. We have another witness, and the House will be in session in a few moments. So we will ask you to terminate as quickly as you can.

Mr. ROLAND. The busing in 1968 was done locally. It was in 1971 that the Burger order came out that wrecked all of the schools in our county, tore them all to pieces, and sent them everywhere without any preparation whatsoever.

I want to finish this one thing in regard to these two schools. When you take a city center school and take it over to a suburban school, there is very little overlap in the ability and speed of learning. You have already then adapted for every classroom a dual school system with dual standards, and that is what we have.

We are promoting children who have not earned a promotion when the teachers didn't want to do it. You present them to the next grade, and they fail. What do you have in a few years? We have bedlam. We have been through it, and we know what they are going to get in Pontiac, Mich.

I am not saying you can't get integration, but you can't get it as it is being done by HEW and the judges. I am afraid the judges are acting in our area as superintendents, school supervisors, and for placement of children. We had well-trained teachers to teach those who are going to college.

Thank you, gentlemen.

Chairman CELLER. Thank you, Mr. Hause; and thank you, Mr. Roland.

Mr. POLK. Mr. Chairman, may I ask this question?

In the press clippings submitted for the file, did you include in the clippings the school-related activities of a group called "The Rights of White People"?

Mr. HAUSE. Yes, it would be in there. I don't know what you refer to. The Rights of White People organization is one part of our problem. It is a militant white group, as is the Black African Society, which is on the other side of the coin.

And prior again to forced busing, there was no such thing as ROWP militant group. We had a peaceful community, and we were on our way to educating people, and that ROWP is part of the group that came out of this.

Mr. POLK. These organizations are not contributing to the solution of the problem, are they?

Mr. HAUSE. Absolutely not. In fact, they are leading into it. When emotions rise, militant groups can take over, and they have taken over on both sides, and I am afraid you are going to read about Wilmington, N.C., very shortly, and I work on the human relations board, and we are trying to cool things and calm things, and we are on the brink of bloody race riots.

Mr. POLK. Thank you.

Chairman CELLER. Thank you very much, Mr. Roland and Mr. Hause.

Our next and final witness this morning is Mr. David J. Doherty, executive director of Pontiac Urban Coalition.

STATEMENT OF DAVID J. DOHERTY, EXECUTIVE DIRECTOR, PONTIAC URBAN COALITION

Mr. DOHERTY. Mr. Chairman and members of the committee, I will try to be as brief as possible. I want to give some background of the city of Pontiac as it was prior to the integration order, so you can see what was affected when the court issued its decision.

The city of Pontiac, Mich., is the industrial center and county seat of Oakland County, reputed to be the fifth wealthiest county in the United States in terms of per capita income. A city of 85,300 people, its three major automobile and truck facilities employ more than 37,000 men and women.

Pontiac, whose unemployment rate, according to recent figures of the Michigan Employment Security Commission, is almost 15 percent, 40 percent more than the rest of the county, is home for more than 95 percent of all the blacks who reside in the cities of Oakland County and more than 90 percent of all the Latin Americans in the county.

Pontiac, with less than 10 percent of the county population, has constructed 58 percent of all Federal- and State-sponsored housing for the poor and senior citizens of the county. Pontiac is the leader in health facilities, with four major hospitals. Pontiac's total population is 62,000 whites and 23,300 minorities.

THE PONTIAC SCHOOLS

The boundaries of the school district of Pontiac contain the entire city of Pontiac, plus sections of four outlying townships and a village. The enrollment in the Pontiac schools in 1965–66 was 22,772; in 1970–71, it was 23,807; and this present school year it is 21,300. The percentage of black enrollment in 1965–66 was 26.5; in 1970–71, it was 32.7; and this school year, it is 37. The Latin American enrollment is indicated at about 5 percent.

In June 1968, the Michigan Civil Rights Commission held a 5-day public inquiry into the status of race relations in Pontiac. Their report stated in part that:

> Pontiac is a city divided by racial and ethnic prejudices and fears. Negro and Spanish-American citizens are excluded from full participation in employment, housing, education, and social services * * *. Residential areas of the city are clearly segregated, with nonwhites confined to a slowly expanding ghetto in the southern part of the city * * * school segregation has existed in Pontiac since before World War II. This is true primarily because the city's educational program is organized on a neighborhood basis.
>
> Pontiac has 28 elementary schools * * * 75 percent of all black elementary school children attended six schools which were more than 80 percent nonwhite. Of the total white youth in elementary grades, 75 percent attended 15 schools which had less than 9 percent nonwhite students.

When considering the preceding statistics, whether they were created by design, by tradition, or by accident, it is apparent that the students in Pontiac schools were at a severe disadvantage when they were expected at age 14 to enter one of Pontiac's two integrated high schools and immediately overcome a lifetime of isolation and adult-engineered alienation, fear, and distrust.

Small wonder that racial uneasiness and tension have been identified at Pontiac's racially mixed high schools. As similar antagonisms carried over beyond high school, adult attitudes were expressed in terms of flight by those who had the option of fleeing.

A recent report commissioned by the city of Pontiac has indicated that during the past decade the population of Pontiac increased by only 3,000 people. In all categories above 15 years, there was a net migration into the city of nonwhites, while in all age categories except one there was a net migration of whites out of the city. All of these events had occurred before busing for integration began.

In 1969, the handwriting was on the wall for the people of Pontiac. Racial polarization, school segregation, white flight, and community isolation were all realities. Pontiac was two communities, growing in bitterness and distrust.

What should, perhaps, be most discouraging to the leadership of our Nation is that the Pontiac community is the only city in this wealthy, white, middle-class county with the immediate potential of becoming what America espouses to be—a land where all citizens can live and work in harmony. Pontiac is the only community with that potential because no other community in Oakland County has any true representation of minority people. In 1969, Pontiac's greatest asset, its people, was proving to be its greatest handicap as well.

A SECOND CHANCE

In February of 1970, U.S. district court judge Damon J. Keith found the Pontiac School District guilty of deliberate segregation of it 29 elementary schools and eight secondary schools and he ordered the implementation of the plan prepared and submitted by the Pontiac School District calling for the transporting of 9,500 children.

It is important to note that frequent claims have been made that the cost of transporting children is excessive and in disproportion to the advantages achieved, especially when such funds could be used to bolster the quality of education in segregated minority schools.

In Pontiac this is simply not true, the claims of busing opponents notwithstanding. Prior to the 1971–72 school year, when the desegregation order was first implemented, the Pontiac School District was transporting 3,775 children who either lived too far from school to walk or for whom walking presented a hazard. The amount spent for transporting these children was $328,500. There was no parental opposition but rather parental support for this type of busing.

As the integration plan got underway, the 1971–72 school year witnessed a total of 9,500 children who are presently being transported, a net increase of 5,725 children. The total amount budgeted for all busing in 1971–72 is $681,581, or a net increase of $353,081, which is solely attributable to transportation for integration. This amount is 1.5 percent of the total operating budget of the Pontiac schools.

The above amount could scarcely make a significant change in the educational program of more than 8,000 minority children, and even if sufficient dollars were available, they could not resolve the basic evil of segregated education.

One must also realistically examine the proposition that if busing could be halted, sufficient moneys would or might be provided to insure a better education for minorities. Given the past response of the general public and the existing opposition to increased taxes, is it likely that once the threat of busing is removed there would be any further discussion of additional support to minority schools? That, of course, leaves out the question of whether segregation is still an evil in that case.

The major question facing the Pontiac schools at this time is whether or not the integration plan is achieving its objectives and is gaining the support of students, parents, and teachers.

To respond adequately to that question requires an understanding of the anguish, frustration, and confusion shouldered by teachers and students during the fall semester when white parents blocked buses, picketed schools, hurled verbal abuses, closed local industry, and created a general state of emergency and chaos, all in the name of defending their legal rights to oppose the law.

The hatreds that were exposed throughout our community are ample evidence to convince those who were directly involved that the issue was not busing but rather integration and fear.

Today in Pontiac, most of the fear has been overcome by a new experience open to those parents and students willing to give it a try. That experience is understanding and friendship.

To be sure, there are still a lot of interpersonal problems to be overcome. An entire lifetime of resentment and fear by both blacks and whites cannot be easily altered in a short time, but the mechanics of the program are working much better than most had expected.

Spokesmen for the school administration announced recently that calls of complaint and disruptions in school were now running just about the same as in previous years. It would be a major miracle if the classroom achievement were at all improved over previous years, given the turmoil and anxieties of the first few months of school. Many teachers feel that after this year of acclimation, next year will offer new opportunity for academic growth.

The most significant fact is that for the first time in years there is a new hope for our children, and that means a new hope for all of us. Parents, black and white, are meeting and working in their PTA clusters; teachers, black and white, are consulting together in their new assignments; students, black and white, are getting to know each other.

Many, of course, are still frightened—some to the point that they will leave the school district if they can. Many more, however, are catching the spirit of hope that they can make it work. Remember, 2 years ago the future seemed hopeless.

I want to comment on the point brought up earlier of the fact that students need to be taught respect of themselves and respect of others before being integrated. We would like to ask the question of how you teach respect of others in isolation, respect when they are growing up in an isolated white suburb, respect when they are going to an all-white school, respect when they are home in an all-white environment, and then put into a plant in Detroit or Pontiac with black workers, chicano workers, and white workers on the line aside each other; they are not integrated; they are only racially mixed, and that is where we have the problem.

Recently the Pontiac Urban Coalition, an organization representing community leadership from churches, labor, government, business, civic groups, and educational institutions, supported this resolution:

> Resolution by the Board of Governors of the Pontiac Urban Coalition on Behalf of the Transportation of Students for the Achievement of Quality Integration, February 10, 1972.
>
> Whereas, the Pontiac Urban Coalition was created as a broad-based coalition of leading Pontiac area citizens to address the problems of urban life, particularly as they affect the residents of the City of Pontiac, and
>
> Whereas, equity of quality education for all area residents is the keystone for the development of a health and progressive community, and
>
> Whereas, integrated quality education in the Pontiac school district, particularly at an early age, is a proved means of dissolving social barriers and misunderstandings as well as creating a common sense of understanding and dignity beneficial to successful participation in a pluralistic society, and
>
> Whereas, integrated quality education has been demonstrated to be educationally advantageous to minority children and to be of no educational detriment to the majority population, and
>
> Whereas, the goal of integrated quality education should not be thwarted by the unpredictable time necessary for open housing and equal employment opportunities to support the neighborhood school concept, and
>
> Whereas, the transportation of children to attain the above objectives of better educational results both academically as well as socially has raised new hopes and provided a better school climate for long-term growth and development, in spite of strong initial opposition, and
>
> Whereas, local school administrators, teachers, parents, and students have recently voiced publicly their belief that significant progress has been achieved since the opening of school, and that the normalcy of school activity, lessening of fears, and the increased support by parents are signs which indicate that the Pontiac community is stabilizing and preparing for renewed growth;
>
> *Therefore Be it Resolved*, that the Board of Governors of the Pontiac Urban Coalition, recognizing that the transportation of students is an added financial burden and a personal inconvenience, nevertheless supports the approach in appropriate circumstances as a successful and necessary means of attaining the paramount goal of integrated quality education and
>
> Be it further *Resolved*, That the Pontiac Urban Coalition is adamantly opposed to any Federal statute, any amendment to the United States Constitution, or any effort by the Legislature of the State of Michigan which would in any way deny a school district the right to transport students to attain racial balance in its learning institutions for the purpose of quality education, and
>
> Be it further *Resolved*, That the members of this Board wish to formally state their support for the positive strides taken by the citizens of Pontiac to correct serious educational inequities in our community and we are opposed to any legislation that will endanger the progress which has been made.

This resolution has since been endorsed by 54 out of Pontiac's 56 block clubs representing approximately 6,500 residents. It has been endorsed by the local chapter of the League of Women Voters and by their State committee.

The Concerned Clergy of Pontiac, representing over 45 pastorates, has endorsed the resolution as well as several civic groups and ad hoc citizens' bodies in support of integrated schools. I was receiving phone calls as late as 12:30 this morning from groups calling in, asking to endorse the resolution.

Gentlemen, we are all very much aware of the disadvantages and imperfections inherent in a plan to transport children for integrated quality education, but we were even more painfully aware of the inevitable loss of human talent, continued social stress, and possible demise of our community if we did not act immediately to right what was an ever-worsening situation.

This is not the final answer. Much, much more has to be achieved if we are going to make our urban educational systems worthy of all of our children. In the meantime, however, Pontiac cannot turn back. As a community, we have come too far and suffered too much to give up our gains and return to a pattern of segregation which runs contrary to all that America stands for and which, in my estimation, spells disaster for our society. Issues of such overwhelming dimension call for leadership decisions of equal understanding and wisdom. Most of the objections to busing for quality integrated education are being overcome in Pontiac. Fear is still the major obstacle, and we cannot allow it to dictate the course of the next generation.

Next Monday, you will have the opportunity of hearing testimony from among the leadership of Pontiac's student bodies. Please ask them pointedly about the changing attitudes in our city. Thank you for giving me this opportunity of speaking with you.

Chairman CELLER. Mr. Zelenko.

Mr. ZELENKO. Mr. Chairman, Mr. Hungate, before he left, asked this question to be asked: On page 4 of your statement, Mr. Doherty, you refer to the increase in the costs of operating school transportation as a consequence of desegregation. Congressman Hungate wanted to know whether that net gain annually of $350,000 covers capital expenditures as well as cost of current operations.

Mr. DOHERTY. Yes; capital expenditures of buses are being written off over a 5-year period, and this covers this year's proportion of capital expenditures.

Mr. ZELENKO. Finally he wanted to know whether 1.5 percent of total operating budget included such capital expenditures or whether there was another budget that covered that.

Mr. DOHERTY. Yes; there is a building fund, bond issues are levied in the State of Michigan for buildings, and, of course, this would even reduce the 1.5-percent figure since the capital expenditures for the purchase of buses is included in that $328,000 which makes up 1.5 percent.

Mr. ZELENKO. It is included in that figure?

Mr. DOHERTY. Yes.

Mr. ZELENKO. Thank you very much.

Chairman CELLER. We appreciate the public spirit you have shown here and the fact that in Pontiac there are real, concerned citizens who are very much disturbed about this difficult problem and seeking ways to solve it. Thank you very much.

Mr. DOHERTY. My point, if I might add, Mr. Chairman, in conclusion, is that Pontiac is a city in isolation in Oakland County. We have to resolve the problems ourselves, and we feel we have come a long way, and the people of our community are saying,

> Please, that great group in the middle that back last September was being pulled by emotion against the integration order seems to be supporting more and more; we are succeeding in Pontiac, and please don't turn us back. Thank you.

Chairman CELLER. Thank you very much.

At this point I shall include in the record the following: A statement of Hon. J. Kenneth Robinson, a U.S. Representative in Congress from the State of Virginia; a statement of the Hon. Page

Belcher, a U.S. Representative in Congress from the State of Oklahoma; and remarks made by Hon. Charles W. Whalen, Jr., of Ohio, on the floor of the House of Representatives on February 28, 1972; as well as a number of other statements and documents.

(The statements and documents referred to follow:)

STATEMENT OF HON. PAGE BELCHER, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF OKLAHOMA

I appreciate having this opportunity to submit my statement coupled with a letter of March 6 by Mr. Robert J. Riggs, President of the Board of Education for Independent School District No. 1 in the First Congressional District of Oklahoma.

I submit my statement and the accompanying letter in order to help you prepare language for either a constitutional amendment or other appropriate legislative language. I know this distinguished Committee will hear much testimony covering the entire spectrum and will explore in depth through the aid of experts every essence of the technical language needed to sustain a legal solution to this vital problem.

I respect the Constitution of the United States as a "living document" and feel as most citizens that any change in or addition to the Constitution must be done in a most careful and responsible manner. Nearly every "bad law" has been the result of haphazard draftsmanship or hasty passage. Needless to say, since the Constitution is the "Supreme Law of the Land," any amendment must be clear and concise so as to insure that the proper meaning of the language will live on and serve the people under our great democratic form of government for generations to come.

Therefore, I don't proffer any casual suggestions or alternatives as to the means, but rather I come in all good faith to express the consensus of my constituents for the dire need in the manner of an end result.

An approach taken to eliminate the undesirable and unsound mandates by various federal courts to order "forced busing" to achieve integration solely for the sake of integration is in my opinion what is required of Congress.

If after a thorough deliberation by this Committee, it becomes evident that laws can't alleviate this area of grave social tension then I urge the Committee to report out language in the form of the constitutional amendment to accomplish the result desired by the great majority of the citizens of this country.

On several occasions I have discussed with various members of the Board of Education from my District some of the problems encountered with desegregation. From these conversations, I have learned that the Board in Tulsa had to release approximately 300 teachers last fall because raises in salaries, increased costs in administration, increased construction costs for new schools and at the same time, they were faced with the increased costs of providing a transportation system under a mandate of a U.S. Court of Appeals—those costs being set out in Mr. Rigg's letter.

Of course, it takes money to pay for all of the before-mentioned items and it should be noted that this Board has an approximate budget of $43 million a year and they can't increase their revenues. So we are simply looking at a situation of rising costs but a limit on revenues.

Not too long ago I received 47,000 letters from my constituents against "forced busing." These people are not bigots, but rather are parents concerned with quality education. The members of the Board with whom I have talked indicate that their responsibility is to provide a quality education for the children but they are worried because it takes money to implement quality educational programs, and if they continue to be faced with busing costs, they must raise the funds from somewhere.

The public entity which should be given the prime responsibility and power to provide quality education is the local school board. How can the costs of acquiring additional buses be justified when the money diverted for this purpose denies children of other basic needs in the pursuit of a quality education? What type of a "quality education" does a child receive when he is sitting on a school bus several hours total each day?

It appears that the courts have become enveloped in their own self-inflicted cloud. They require these plans under the guise of "quality education" but apparently quality education isn't the prime consideration because the courts are attempting to use the school systems as a method of correcting social imbalances which may or may not have been the result of discriminatory housing patterns. In most instances persons select homes based on their economic and social structure. A very useful purpose of the educational process has been the local interest of the parents in the area schools that their children attend. Without this common bond among the parents, teachers and the children, much will be lost.

There is no doubt that discrimination has been practiced in many instances as to housing patterns but now some of the courts are overextending the famous 1954 *Brown vs Board of Education*, since they have no authority under the Constitution or federal statutes to force the children's parents or other adults to move, to reshift the children of this country. When we take this into consideration with the attitude of the U.S. District Court in the recent Richmond decision, the ruling on ad valorem taxes in the State of Texas by a federal court, it appears that some federal courts are embarking on a concept away from local schools and states rights and are attempting to establish a national school system. In my opinion this attitude is repugnant to every principle on which our country was founded.

I must therefore ask the question which I certainly haven't been able to answer—what good will all of this do, the way things are presently being conducted?

I urge that quality education is the key when the schools are involved and this is the responsibility of the Congress, courts, state and school boards under the 14th Amendment and the 1954 Brown case and not the establishment of an arbitrary percentage of racial mix.

As I stated in my recent letter to you, Mr. Chairman, I feel this issue is of the highest priority and it is imperative that the Committee take final action and report out the solution that can be brought to a final vote before our schools are once again engulfed by a nebulous legal cloud in the upcoming fall term.

BOARD OF EDUCATION, TULSA PUBLIC SCHOOLS,
Tulsa, Okla., March 6, 1972.

Hon. PAGE BELCHER,
Member of Congress,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN BELCHER: This letter is in response to your letter regarding school integration matters and the pending legislation in Congress. Perhaps it would be useful for you to be aware of some of the costs we are incurring as a result of our litigation with the Justice Department.

The lawsuit we are currently litigating with the Justice Department, concerning integration in the Tulsa Public Schools, has now dragged on for about 3½ years. During this time court decisions on the law have changed so we have been placed in the position of taking a "reasonable and legal" position, only to find that during the passage of time court decisions changed and thus have required us to develop new sets of plans.

Development of such new plans is a long and involved process that requires very considerable staff time and seemingly endless public hearings. The uncertainties make future academic planning and budget projections most difficult. Use of staff time, the bad effect on school employee morale, and lack of long range planning make for high costs. Such additional costs are seldom identified, but we believe these to be a significant percentage of the total budget. The 3½ year period for litigating a civil rights suit such as ours is not at all untypical of the time it takes to resolve these matters. The legal fees involved in defending a case against the massive legal resources of the Justice Department are quite considerable.

The table below demonstrates the very large demand on our resources that transportation is making.

TRANSPORTATION

	Capital outlay	Operating cost	Total
1970-71	$108,075.96	$322,906.52	$430,982.48
1971-72	202,003.60	[1] 503,150.00	[1] 705,153.60
1972-73	294,000.00	[1] 673,296.00	[1] 967,296.00

[1] Estimated.

Cost figures for 1971–72 and 1972–73 are estimates subject to adjustment.

Already these costs have required us to make substantial personnel and program reductions. You have demonstrated an awareness of the grave fiscal difficulties faced by the Tulsa system, in particular, and large urban systems in general. If bussing is to be required, then federal financing of all such required transportation is a necessity if we are to maintain the quality of our academic program.

Presently the courts are making a distinction between "de jure" and "de facto" segregated schools without the benefit of clear legislation addressing itself to that question. A formidable attempt is being made to break down that distinction or at least to greatly expand the number of schools that can be classified as "de jure", with special rules applying to "Southern" schools.

The elmination of the "de facto" category would have a lesser impact on Tulsa than almost any other of the 50 largest school systems in America. However, such a change would virtually bankrupt most of the major urban school systems as well as thousands of smaller systems. It would cause a dramatic reduction in the quality and quantity of academic programs we could offer here in Tulsa. Therefore, from a practical point of view, the overwhelming majority of our Tulsa School Board and the citizens who elected us believe it is time for Congress to act in establishing the priorities in education and providing the means to fund these objectives.

It appears that the courts have lost sight of the basis for opposing segregation, as spelled out in 1954 in the Brown case. Quality education for all and elimination of second class educational facilities for minority groups was the key to the Brown decision. The courts apparently have "painted themselves into a corner" in demanding racial balance in the classroom as the major method, rather than only one of the means of helping to achieve this quality objective. By going "overboard" on this singular point, the courts are introducing a self-defeating process. The funds chewed up in transportation to achieve a court approved "body count" ratio are not available for teachers, books, counselors, remedial facilities, etc.

Very truly yours,

Robert J. Riggs, Jr., *President*.

Remarks Made by Congressman Charles W. Whalen, Jr., a U.S. Representative in Congress from the State of Ohio, on the Floor of the House of Representatives—Tuesday, February 29, 1972

Mr. Speaker, this week the Judiciary Committee of the House of Representatives begins consideration of various proposals relating to the busing of school children. In view of the mounting national interest in this subject, Chairman Celler is to be commended for scheduling these hearings.

Busing, of course, is a means to an end, not an end in itself. Thus, among other reasons, busing has been implemented to provide for the health and safety of school youngsters (Ohio law requires that transportation be provided children residing more than three miles from school) or to acheive the economies of school consolidation. The Senate Select Committee on Equal Educational Opportunities estimates that forty percent of our children—65 percent when those riding public transportation are included—ride to school every day in the furtherance of these objectives.

Busing designed to effect child safety or school consolidation has not been questioned. The current controversy, then, centers on the goal of desegregation for which some school children are now being bused. Therefore, my comments shall be directed to the question of school desegregation rather than busing, per se.

1. DE JURE SCHOOL SEGREGATION

Both the Federal courts and the United States Congress have acted to curb *de jure* segregation of school children. What is *de jure* segregation? Simply stated, it is pupil segregation stemming from state law and/or local school board policy which provides for two separate school systems—one for white youngsters, the other for black children.

In 1954 the Supreme Court, in the case of *Brown* v. *Board of Education*, ruled that dual school systems must be dismantled. The following is the essence of that decision:

> We must consider public education in the light of its full development and its present place in American life throughout the Nation. Only in this way can it be determined if segregated public schools deprive these plaintiffs of the equal protection of the law.

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education in our democratic society . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

The Court summarized:

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought, are by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Since the 1954 decision, numerous *de jure* school segregation cases have been decided by the Supreme Court and lower courts. In each instance, this type of segregation has been ruled unconstitutional. Last spring, Chief Justice Warren Burger, explaining the unanimous decision of the Supreme Court in *Board of Education* v. *Swann*, wrote:

> Absent a constitutional violation there would be no basis for judicially ordering assignment of students on a racial basis. All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school system.

Ten years after the *Brown* v. *Board of Education* decision, Congress considered and passed the Civil Rights Act of 1964. While I was not a Member of the House of Representatives that year, I most certainly would have voted for this measure.

In the 1964 Act, Congress prescribed a means whereby relief from alleged civil rights violations could be sought through the executive branch of government (specifically, the Attorney General). In fact, Congress echoed the words of the Court in Section 407(a)(1) of the Act by referring to those students who "are being deprived by a school board of the equal protection of the law."

The 1964 Act, in Title VI, also stated that "no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Incidentally, it is under the authority of Title VI that HEW officials have reviewed the operation of the Dayton schools.

In summary, authority to order the termination of *de jure* school segregation is derived from the Fourteenth Amendment and the Civil Rights Act of 1964. Busing, as a means of attaining this objective, is, therefore, both constitutionally and statutorily sanctioned.

2. DE FACTO SCHOOL SEGREGATION

While there has been complete consistency in the attitudes of the courts and the Congress regarding the necessity of abolishing *de jure* school segregation, there has been ambivalence in matters regarding *de facto* school segregation. What is *de facto* school segregation? In instances of *de facto* segregation, individual schools are attended either by a predominance of black or white students. This segregation, however, does not result from state law or school board policy. Rather, it stems from neighborhood housing patterns.

Several lower courts (both state and Federal) have held or indicated that local school districts have an obligation to correct *de facto* school segregation. Others have ruled that there is no obligation to remedy the effects of *de facto* school segregation. In still other instances, courts have declined to become involved in cases of *de facto* school segregation on the premise that nothing in the Fourteenth Amendment forbids state corrective action.

Incidentally, when lower court *de facto* school segregation rulings have been appealed to the Supreme Court, this Court, until recently, has refused jurisdiction. However, in December the Supreme Court accepted a case involving the Denver schools. In this case, the lower court held that there is some obligation to correct *de facto* school segregation. This ruling was reversed by the Court of Appeals and, as stated previously, is now before the Supreme

Court. Consequently, there is a possibility that the nation's highest court will rule on this aspect of school segregation some time this year.

Like the Supreme Court, Congress has confined its jurisdiction to situations of *de jure* school segregation. This was made clear when the Congress passed the aforementioned Civil Rights Act of 1964. In Section 407(a)(2) of that Act, Congress stated that "nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance." It should be noted that the use of the phrase "to achieve racial balance" in this Act is interpreted to mean "to end *de facto* segregation."

To summarize, at present there is no Federal law nor is there an interpretation of the Constitution by the Supreme Court which requires the elimination of *de facto* school segregation.

3. PROPOSED CONSTITUTIONAL AMENDMENT

In the last several years, so-called anti-busing constitutional amendments have been introduced both in the Senate and the House of Representatives. The proposal which presently is receiving the widest attention both in and out of Congress is that of Congressman Lent—House Joint Resolution 620. The Lent amendment states that "no public school student shall, because of his race, creed or color, be assigned to or required to attend a particular school."

I have given a great deal of study to this amendment and have concluded that, should it reach the House Floor, I shall oppose it. Two factors underlie this decision. First, I agree with our Vice President, Spiro Agnew, who stated on February 14, that a constitutional amendment "fuzzes and obfuscates the entire issue." Or, as Professor Alexander M. Bickel, a consultant to President Nixon, states, the Lent proposal would "trivialize" the Constitution.

Second, a close examination of this amendment reveals that it not only outlaws busing but every other means which could be used to assign students on the basis of race. Thus, *de jure* school segregation, which already has been struck down by Congress and the courts, could no longer be corrected. The impact of the Lent amendment, therefore, goes far beyond what it purports to accomplish.

4. LEGISLATIVE ATTENTION TO PROBLEMS OF EDUCATION

In my opinion, the legislative branch no longer can deal with educational problems in a piecemeal fashion, leaving much of the work of the courts. Congress must accept its responsibility and be a meaningful partner in solving the nation's educational problems. Consequently, I believe we should address ourselves, among other issues, to the question of what should be done with respect to *de facto* school segregation.

Because *de facto* school segregation must be analyzed on a case by case basis (community by community), Congress can only establish broad policy guidelines. To this end, I advocate Federal statutes embodying the following provisions:

First, HEW would be authorized to entertain citizen complaints (a) that neighborhood housing patterns have been involuntary due to past violations of their constitutionally-guaranteed rights by such means as job discrimination and restrictive housing practices; and (b) that the quality of education in their neighborhood is below community standards. (Here the fundamental question, of course, is whether public monies—Federal, state, and local—should be used to perpetuate the effects of involuntary housing segregation.)

Second, HEW would be granted the authority to investigate these allegations.

Third, if the allegations were confirmed, HEW would be permitted to require the state board of education to submit a plan which would achieve within a reasonable period of time (five years, for example) a desegregated quality educational system for the community.

Fourth, if the state plan involves busing, it would provide that such transportation be made available only when the time or distance of travel is not so great as to risk the health of the children or to impinge significantly on the educational process.

Fifth, Congress should estimate each year the cost of school desegregation programs and provide sufficient funds to the states and local school districts to cover all such costs.

Of course, the enactment of the above policies would not affect the jurisdiction already granted the Department of Justice and HEW under the 1964 Civil Rights Act.

5. CONCLUSION

As the foregoing suggests, busing is an extremely complex question. I felt, therefore, that the preceding background information is essential to an understanding of this issue.

In the light of these facts, the following is a summary of my views as they relate to busing.

First, I oppose any proposal whose effect is to repeal the Fourteenth Amendment and/or rescind the Civil Rights Act of 1964.

Second, I do not oppose busing when its objective is to:

A. Provide for the health and safety of school children (such as Ohio's 3-mile law);

B. Attain consolidation of school districts with its resultant economies;

C. End instances of deliberate (*de jure*) school segregation.

D. Improve the quality of education for those children who reside in involuntarily-established neighborhoods.

Third, I do oppose busing which, in seeking to achieve the above goals, does so in an unreasonable manner which endangers health or degrades the quality of education throughout the community.

Fourth, I favor Federal legislation which would:

A. Create procedures which would erase the educational inequities caused by the establishment of involuntarily segregated neighborhoods;

B. Delineate the parameters of "reasonable" (or "unreasonable") busing plans (for instance, busing children fifty miles in each direction is eminently unreasonable).

C. Provide funds to the state and local school boards to cover the costs of desegregation efforts.

In closing, I would like to reemphasize that busing is a means to an end. The end—educational quality for every child in this country—is one, I am sure, all Americans share. Let us then, on that common ground, work together to find the best means of insuring its fulfillment for future generations of children whatever their color and wherever they live.

STATEMENT OF THE CITIZENS ADVISORY COMMITTEE, CHERRY HILL SCHOOL DISTRICT, INKSTER, MICH., BY DOUGLAS A. MATHES, CHAIRMAN

I, Douglas Mathes, have the honor to represent the parents, students, and Board of Education of the Cherry Hill School District, Inkster, Michigan. It is our contention that busing across district lines for the sole purpose of achieving an arbitrary "racial balance" in the school system is a massive disservice to this and all future generations. The goal should be an equal, high-quality education, which is the right of every American. Busing cannot accomplish this goal.

To support our view that busing will not provide quality education, let's look at the various factors involved. Among these would be the irreversible effect on the students of today who will be the leaders of tomorrow. An example would be the loss of the extra-curricular activities to those students who are bused. While these activities are not a part of the basic educational program, they tend to round out an education through involvement in social and teamwork activities.

The students bused to another school are treated as "outsiders" because they have no other social contacts with the host group, thereby eliminating them from meaningful participation in school activities. Should the bused students desire to participate in sports, dramatics, music, journalism, or other clubs, it would be virtually impossible because of busing schedules.

The complexities of providing for the special educational needs of some students; i.e., remedial reading, speech therapy, etc., will be further compounded by the arbitrary allocation or assignment of students to specific schools on a court-ordered lottery basis.

These intangible effects can only result in the dilution of education. This is inconsistent with the desire for a high-quality education for all.

Other more tangible effects immediately recognized are the increased cost of implementing massive busing; such as, the cost of buses, drivers, mechanics, parking facilities, insurance, etc. This does not even touch on the safety aspect of transporting thousands of students twice daily. The complexities of mass movement of students by bus on our already overcrowded highways will inevitably disrupt school schedules because of traffic delays, weather problems, mechanical breakdowns, and the mere act of missing the bus causing the loss of an entire day of school.

In addition, the distances involved would make access to the school difficult, if not impossible, for many parents in the event their child should become ill or be involved in a classroom accident. These problems can only cause apprehension for the parents and children. What happens if the child misses the bus to return home?

The majority of people locate near a school of their choice and expect to become involved with the school's activities, pay their taxes to support the school, and approve millage and bond issues to enrich their local school programs. Parents would be understandably reluctant to have the same degree of participation in a school remote to their area and still continue to support the local school not attended by their children. For instance, in Michigan, the Attorney General's opinion is that the bonded indebtedness of the local school district would remain the obligation of the residents of that district. This can only make further millage and bond issue proposals impossible to pass, and result in deterioration of school facilities.

The elimination of local school districts could result in the creation of a "super" district as envisioned by some implemented and pending court rulings. The administration of these "super" school districts would be extremely complex because of the difficulty of communication, coordination, and accreditation. Local school administrators have a discipline problem now, which would be magnified with the influx of students from other areas not subject to local parental control.

These tangible problems brought about by busing can in no way enhance the educational level, but can only result in further dilution of education.

It is agreed that busing for the purpose of segregation is a violation of the Constitution. It does not necessarily follow that busing for the purpose of integration is constitutionally required or desired. In spite of this, the courts are ordering busing as a means of integrating the schools. This has the effect of the judicial branch performing the duties delegated to the legislative and executive branches of government.

The net effect of court-ordered busing for integration will surely increase racial polarization and can result in the complete breakdown of the public school system, as evidenced by the creation of so-called "freedom schools" and increased enrollment in private schools. It is also an insult to the rising black pride because, in effect, these rulings are saying that the black population of this country cannot get a quality education except in a heretofore "all-white" school.

In many small school districts such as ours, with little or no industrial tax base, there are fewer tax dollars behind each student than in many urban areas. For example, in our district there is less to offer than in the Detroit schools. We have no music, art, or physical education in the elementary schools and limited vocational educational classes in the secondary. This would indicate that a child is not guaranteed a better education because the school is located in the suburbs.

The use of busing for school integration can also be viewed as reverse discrimination in that those students selected by lottery, or other means, will not receive the same education afforded to the non-bused students. The lottery process, if used, will select at random certain students while leaving others in the home environment. This can be construed as a violation of the civil rights of either or both groups. Busing then becomes a social experience and, if to be truly meaningful, must include all students, not just those selected.

In conclusion, it is our belief that the goal must be to achieve an equal but high-quality education for all. This can be better achieved by clarification and enforcement of existing open-housing laws which will accomplish integration on a socio-economic level, improving educational standards in all areas, and utilizing the funds which would be wasted on busing to improve the quality of education. To accomplish this we feel that the courts must be redirected in their approach, so they will interpret the Constitution and not attempt to perform the duties of the Legislature. At the present time, the only sure approach is through the vehicle of an amendment to the Constitution prohibiting cross-district busing or assignment of any student to a particular school on the basis of race, color, or national origin.

DOUGLAS A. MATHES,
Citizens Advisory Committee,
Cherry Hill School District.

SCHOOLS ARE FOR EDUCATION, INC.,
West Palm Beach, Fla., February 25, 1972.

Hon. EMANUEL CELLER,
House Judiciary Committee,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: We have been informed by our State Representative Jack Poorbaugh of a United States House of Representative Bill

H.R. 10614 introduced by Senator John G. Schmitz of California. We feel that this would be an ideal solution to the artificial problem of forced busing.

We of S.A.F.E., who have response from and are in communication with families of three southern counties in Florida, feel that we want the Federal Court limited from jurisdiction over our schools.

We have notified the Florida Federation of Neighborhood Schools (who encompass five additional counties in north and central Florida) of this bill, and we feel that they will concur in a joint effort to expedite this bill out of committee for a vote.

As we all know an amendment to the Constitution is a very involved procedure and would take up valuable time. In addition, amendments become subject to reinterpretation, altering or destroying their intended meaning, which federal judges have given to earlier laws and Constitutional provisions.

Embodied in our Constitution is a specific and very important limit to the power of the courts. Article III, Section 2. This particular provision of the Constitution applies not only to the Supreme Court, but to all federal courts, since they are established under the same authority that prescribes the jurisdicion of the Supreme Court. The authority is a vote of Congress. Congress has, therefore, the power to specify the kinds of cases which may be heard in federal courts, and the kinds which may not be heard there.

We cannot stress strongly enough the need for decisive legislation. Our country cannot withstand the chaos and turmoil that it is being subjected to because of busing. The fate of American youth lies in your hands. America cannot take its rightful place among the leaders of the world if we continue to turn out graduating class after graduating class of ignoramuses.

Quality education has suddenly become synonymous with integration. Stop and think for a moment. The educational system in every other country in this world depends on three basic elements. Teachers, curriculum and physical facilities which we term plant facilities. The degree of quality education relates directly to the degree of excellence of these three basic elements. The solution to our national educational dilemma is not integration, which is merely a vehicle for disruption and chaos, but instead, strong and truly dedicated administrators and principals who will stand up to their respective school boards and see to it that their school receives what it needs to operate at a high level of efficiency and pupil and teacher productivity. Progressive education has turned the School Board's role into a nightmare. Instead of having to be concerned with the three basic elements for quality education, they must now contend with mentally unoriented students who don't know what school they will be in from year to year because of changing race ratios and so the student is bused to a new school the next term. No longer do they have the security of even having the same teacher for an entire school year because those teachers are subject to the whims and edicts of teacher race ratios and when H.E.W. speaks, we must obey. Curriculum is subject to change at the will of H.E.W. Schools must be closed and others must be forced to bulge at the seams because of H.E.W. dictates. School Boards, teachers, and pupils simply cannot function under the pressures that the Federal Courts have brought to bear upon them.

You have what is known as good schools and bad schools. A more accurate description would be sufficiently financed schools and poorly financed schools. Such a condition exists even in a rich county such as our Palm Beach County and this is due solely to politics in the administration. A principal must speak up for his particular school's budget. Consequently we have some very fine schools located in our predominantly black district as opposed to some very poorly financed and poorly equipped schools in our predominantly white districts. Busing has only helped to aggravate the situation. The schools which used to be predominantly black are way under capacity, 10 to 17 in a classroom and the schools in the predominantly white district are overflowing, 30 and upwards in a classroom.

Civil rights is the law of the land and we maintain that sacrificing public education for the sake of forcible integration of schools in the name of Civil Rights is in fact denying the civil rights of every child. How can our children possibly hope to qualify for employment if they have been denied their right to be educated? You cannot learn in an atmosphere of chaos and this is what prevails in our schools.

We respectfully urge you to consider H.R. 10614 for your immediate consideration.

Sincerely,

ROBERT F. MCDONALD,
President, S.A.F.E.

[From the Tampa Tribune, Feb. 28, 1972, submitted by George H. Stewart, Comdr., U.S. Navy (Retired)]

MESSAGE TO COURT: STOP THE BUSES

How do you stop Federal judges from using school buses not as transport vehicles but as racial homogenizers?

One way, apparently sanctioned by the Constitution, is to take away the judge's power to issue such an order.

This is the remedy surprisingly approved last week by the Senate of the United States, 43 to 40. It is not final. Another vote must be taken Wednesday, and the return of Senators who were away campaigning for the Presidency could switch the result.

But, this Friday vote was the lightning flash which warns of a storm. The issue of racial busing has moved like a thunderhead out of the South and into other regions.

Any proposal to deprive the Federal courts of jurisdiction on a pending issue will trouble a lover of the law. What precedent will be set for political interference with judicial process? How far might Congress go in curbing the courts in a time of high emotion?

Some Senators who believe busing to achieve "racial balance" is wrong in principle have doubts about the wisdom of attempting to strip the courts of jurisdiction by Congressional act.

But when the roll was called in the Senate, it wasn't only Southern voices which answered "yea". There was James Buckley of New York, there was William Proxmire of Wisconsin, there was Margaret Chase Smith of Maine, and Norris Cotton of New Hampshire, and Wallace Bennett of Utah, both Carl Curtis and Roman Hruska of Nebraska, and Colorado's Gordon Allott and Peter Dominick, among others—and of course Robert P. Griffin of Michigan, the sponsor.

All these—in a Senate which is more liberal than the House on civil rights measures and has consistently rejected proposals to move school buses beyond the reach of Federal judges.

Earlier in the week the Senate easily passed a so-called compromise measure forbidding Federal authorities to require busing which would risk a child's health or take him to a school inferior to that in his own neighborhood. The purpose of this bill, spliced together by Democratic leader Mike Mansfield and Republican leader Hugh Scott, was to divert support from stronger measures, especially a Constitutional amendment.

One proponent of a strong anti-busing measure, Senator Sam Ervin of North Carolina, called the Mansfield-Scott bill "legislative gobbledegook designed to conceal from the public that it does nothing whatsoever".

We're inclined to think Senator Ervin's analysis is right. The measure does not specifically deny jurisdiction to Federal courts. And it would be difficult to prove that a child's health or educational opportunity was being impaired by busing. Judicial autocrats capable of such decrees as that commanding Richmond, Va. and two suburban counties to combine their schools for "racial balance" would scorn the Mansfield-Scott restraint.

There is a question whether the Supreme Court would uphold the jurisdiction denial in busing cases voted by the Senate. Even though the Constitution gives Congress the right to say what jurisdiction Federal courts may exercise, opponents of the Griffin bill argue that school integration cases come under the 14th Amendment, therefore involve civil rights which cannot be removed from the court's protection. Under this theory only a Constitutional amendment can stop the buses.

Perhaps so. But there is another way much faster than the amendment process and more certain than a Congressional act. That is a retreat by the Supreme Court from earlier decisions giving lower courts almost unlimited authority to scramble schools and children.

The Supreme Court has two new and more conservative Justices. It also has ears to hear and eyes to see the spreading national resentment against racial busing. When 43 Senators vote to deny Federal courts judisdiction in what is considered a civil rights area, it is surely time for the Justices to reflect on what they have wrought.

That reflection ought to bring them to the sound principle of requiring nondiscrimination in schools but not forced homogenization—and recalling the wayward buses without an act of Congress.

SCHOOLS IN transition

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Busing In Louisiana

Since the massive desegregation orders of the 1969-70 school year, which saw more desegregation take place than in any other period of Louisiana history, busing has received heavy and apparently for Louisiana, undue attention.

For the most part, school systems throughout the south, already leading the country in the amount of desegregation, opened the 1971-72 school year with a minimum of disruption.

Louisiana was no exception. Five of her 66 systems opened the school year under new or amended court orders which called for additional busing—Jefferson, Rapides, Lincoln, Lafayette and Grant.

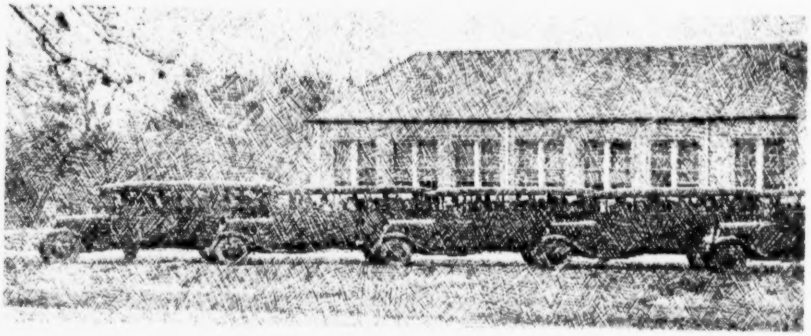
Of the five, only Jefferson was directly affected by the Swann Decision. Briefs have been filed with the U. S. Fifth Circuit Court of Appeals which could affect five other parishes but as of this date no ruling has been rendered.

U. S. District Court Judge Herbert Christenberry ordered a plan for Jefferson which provided that 3,000 children (90 per cent of whom are black) be transported by bus for the first time. Jefferson, under Swann, provides bus rides of from 7 to 14 miles, modest when compared to other more rural Louisiana parishes. Parish officials report that the system is running very smoothly and that despite upheavals prior to the opening of school there have been no incidents because of busing.

Parents in the parish indicate that their initial concern was the ultimate destination of the child, not the trip itself. Comments made by parents with children enrolled in parish schools point out that after two months under the new plan, both white and black parents, are satisfied that their children are getting a good education. A few parents have said that they feel the whole issue of busing in Jefferson had "become a political football."

In Grant, which has received almost as much publicity in past months as Jefferson, officials say that although parents and children are experiencing some inconvenience under the new plan, efforts are continuing to make it work as smoothly as possible for everyone. Because the plan was developed in such an inordinately short period of time, officials note that it has flaws, such as long meandering routes. They are confident they can be ironed out in time.

Rapides, under new orders which required changes in patterns, not in the number of students transported or miles traveled one-way daily, became 8 per cent more desegregated. Under the new plan more whites are attending black schools. One official noted that things appear to be calming down but added that comments from parents are bitter and emotional regarding busing. The Rapides plan affected only junior high and high school students.



Lafayette sources indicate that most of the initial conflict has subsided. Problems came from pairing two Lafayette city schools. Prior to this, only schools out of the city had been paired. A large percentage of Lafayette Parish students are bused and always have been. The new order brings 15 to 20 per cent of the black students into former all-white schools. Officials feel that current problems surrounding the busing issue no longer exist.

Lincoln Parish claims that most of the revisions to their transportation plan were just that. One official stated that the issue has proven to be a "tempest in a teapot." He noted that the parish did some revising and reshuffling but was transporting essentially the same number of students the same distance.

Busing became an emotion-laden issue last spring following the significant Swann v. Charlotte-Mecklenburg Board of Education decision in which the Supreme Court ruled that busing was an acceptable tool to use in desegregating schools. In rendering the decision, Chief Justice Burger wrote:

> "The scope of permissible transportation of students as an implement of a remedial decree has never been defined by this Court and by the very nature of the problem it cannot be defined with precision. No rigid guidelines as to student transportation can be given for application to the infinite variety of problems presented in thousands of situations. Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the nation's public school children, approximately 39 per cent, were transported to their schools by bus in 1969-70 in all parts of the country."

Although the ruling was directed at a southern school system, the knee-jerk reaction it elicited was clearly centered outside of the south.

Northern communities, unaccustomed to being singled out by desegregation orders, adopted busing as a cause celebre.

Scant attention was given the South as buses were burned, and schools boycotted in areas which had traditionally pointed accusing fingers at southern schools.

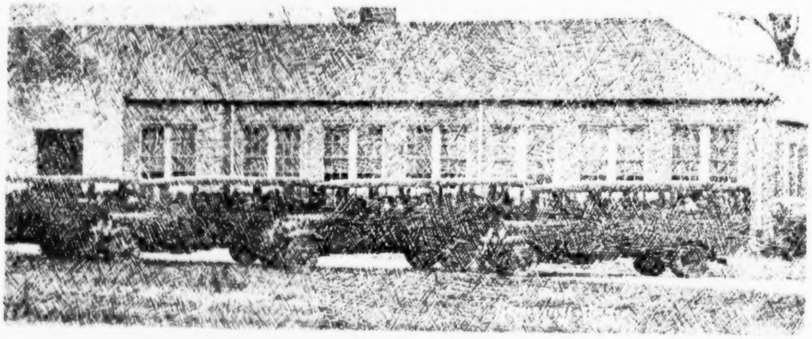
Perhaps the reason busing in Louisiana hasn't reached the emotional climax experienced in some parts of the country is because it has historically been an integral part of Louisiana education. The percentage of total enrollment bused to school has always been high.

In 1949 Louisiana was transporting 42.6 per cent of its schoolchildren from home to school and back again via the cumbersome yellow vehicles. In predominately rural parishes with barely a hint of the industry that was one day destined to line the banks of the Mississippi River, the yellow school bus was one way of insuring that everyone had the benefit of an education.

By 1953-54 the per cent bused had jumped to 49.1 and those who lived too far off the meandering bus routes either walked or hitched a ride with someone headed in the general direction of the schoolhouse. Some students were fortunate enough to ride with parents or have access to public transportation.

The furor over busing experienced today might be considered mild, compared with the one that would have erupted in those days if the state had curtailed free school buses.

Just ten years ago when the state had experienced little in the way of desegregation, 51.2 per cent of the total public school enrollment was riding buses. Last year that figure had slowly but steadily risen to 58.2 per cent, well above the national average of nearly 40 per cent. (It is interesting to note that nearly 40 per cent of the nation's elementary school children are bused to school for



reasons that have nothing to do with desegregation.) A recent survey of the 66 Louisiana systems indicates that this year's figure will not change noticeably.

A study of transportation in state systems over a 4-year period beginning in 1966 showed that a higher percentage of white students has always been bused than blacks, though the gap has been closing in recent years. The percentage of white students bused rose 1.5 percentage points over the 4-year period while transportation of black students increased by 5.4 percentage points as the following table shows.

One of the indicators used to measure the amount of transportation taking place within the state are miles traveled one-way daily. A major fear expressed by parents during all discussions related to busing is that children will be forced to ride excessively long routes.

The staff of the Information Center on School Desegregation (ICSD) conducted a survey among the state's school superintendents to obtain an up-to-date picture of the busing issue in each of the systems. Responses were obtained from all of the 66 systems. The survey found that although some routes within state systems are long, most have been so since before desegregation and affect students from isolated rural pockets. Systems that have experienced problems with routes as a result of desegregation expressed the feeling that routes will return closer to normal lengths when adjustments are made as the school year progresses.

Apparently the exact opposite of what was feared by busing opponents occurred as far as increases in mileage were concerned. Since 1966 the statewide total of miles traveled one-way daily has actually decreased. The ICSD survey found that no substantial changes in miles traveled one-way daily are expected to be recorded for 1971-72.

PUPIL REGISTRATION TRANSPORTED

Year	Per Cent
1965-66	53.0
1967-68	53.6
1968-69	53.6
1969-70	55.0
1970-71	58.2

PUPILS BUSED AS A PER CENT OF TOTAL ENROLLMENT

WHITE

Year	Total Enrollment	Pupils Transported	Pupils Bused as % Total Enrollment
1966-67	490,173	307,583	62.7
1967-68	504,961	314,546	62.3
1968-69	523,491	328,926	62.8
1969-70	506,068	323,586	63.9
1970-71	498,529	320,056	64.2
BLACK			
1966-67	320,860	141,299	44.0
1967-68	326,790	147,695	45.2
1968-69	334,277	148,060	44.3
1969-70	336,515	162,970	48.4
1970-71	338,182	167,128	49.4

School Bus Transportation in Louisiana

Parish	1966–67				1967–68				1968–69				1969–70				1970–71			
	White		Black		White		Black		White		Black		White		Black		White		Black	
	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported	ADM	Percent Transported
Acadia	8,907	61.1	2,655	26.0	8,531	68.4	665	25.0	8,822	66.2	2,738	29.9	8,735	73.2	2,751	15.7	8,707	71.1	2,721	46.2
Allen	4,203	60.1	1,363	46.9	4,128	61.8	706	51.8	4,293	60.7	1,520	50.9	4,407	64.4	1,468	82.7	4,425	61.8	1,501	67.2
Ascension	5,457	93.7	3,046	66.7	5,872	98.3	2,454	80.6	6,248	88.3	3,167	78.0	5,171	86.0	3,180	78.7	5,946	95.2	3,510	71.4
Assumption	2,747	88.9	2,150	*	2,628	*	2,404	*	2,716	*	2,499	84.3	2,993	96.9	2,468	*	3,077	82.6	2,527	98.9
Avoyelles	5,902	71.0	2,939	66.6	5,902	71.6	2,459	83.7	5,937	72.3	3,392	72.9	6,031	69.8	3,634	75.6	5,790	75.9	3,645	79.5
Beauregard	4,679	83.3	1,410	48.5	4,522	86.6	786	55.7	4,801	85.4	1,630	49.1	4,977	*	1,580	51.9	5,677	100.0	1,579	100.0
Bienville	1,747	61.3	2,471	79.6	1,848	62.1	1,921	77.7	1,961	61.9	2,598	74.6	1,907	84.9	2,545	70.0	1,722	77.4	2,494	74.5
Bossier	11,874	73.9	4,628	73.9	13,296	67.5	3,427	72.5	13,881	69.8	4,286	70.9	14,349	74.8	4,265	75.7	14,173	72.9	4,081	83.1
Caddo	31,961	30.5	25,614	25.0	33,332	30.3	7,099	30.1	33,822	29.7	26,132	26.1	31,289	30.8	26,065	25.6	27,454	60.0	26,140	25.4
Calcasieu	26,996	45.2	9,118	29.6	27,884	47.7	2,813	45.9	28,762	47.2	9,921	28.2	29,138	45.1	10,060	31.5	28,305	44.2	10,021	37.5
Caldwell	1,527	90.1	780	92.6	1,530	92.4	757	97.1	1,670	82.6	809	92.3	1,681	79.1	797	93.2	1,663	81.1	771	89.8
Cameron	1,647	95.0	123	*	1,747	94.6	138	*	1,835	89.7	140	96.7	2,058	82.3	152	92.1	2,036	87.8	167	90.4
Catahoula	2,236	79.6	1,280	61.8	2,308	73.7	809	63.2	2,299	77.0	1,277	61.0	2,315	80.8	1,206	60.6	2,240	79.0	1,167	47.8
Claiborne	1,737	65.7	2,638	69.5	1,753	61.9	2,053	77.8	1,882	62.9	2,648	75.3	1,832	60.2	2,893	71.1	1,196	73.5	2,675	89.3
Concordia	3,658	73.6	3,119	68.4	3,702	73.3	2,471	79.2	3,658	69.5	3,132	63.6	3,556	56.3	3,103	77.3	2,412	77.3	2,906	74.4
DeSoto	2,517	60.9	4,143	78.7	2,521	65.3	3,177	76.7	2,456	67.1	3,846	79.1	2,017	73.2	3,804	76.8	1,786	51.2	3,716	75.1
East Baton Rouge	36,800	61.4	22,346	28.1	36,393	53.4	6,847	30.6	40,048	55.3	23,420	29.6	40,847	56.1	24,210	36.0	39,492	[1]	24,575	[1]
East Carroll	1,520	83.0	2,654	58.9	1,477	82.3	1,517	57.2	1,469	82.8	2,567	58.7	885	97.6	2,419	50.1	727	86.1	2,410	82.3
East Feliciana	1,298	66.4	2,889	95.2	1,325	64.5	2,026	90.9	1,415	73.4	2,678	92.5	1,127	59.4	2,927	93.6	1,017	61.5	2,911	87.7
Evangeline	5,860	67.1	3,264	56.9	5,586	71.6	2,096	64.2	5,642	75.9	3,252	61.6	2,744	*	3,168	*	3,343	73.8	3,326	75.7
Franklin	3,979	83.0	3,440	76.9	3,963	84.0	2,890	84.0	3,997	84.8	334	*	3,992	84.0	3,206	92.2	3,631	87.7	3,058	94.6
Grant	2,498	84.9	1,076	58.1	2,507	85.3	558	51.9	2,690	86.2	1,128	53.9	2,774	83.7	1,082	57.9	2,865	84.0	1,080	58.0
Iberia	9,450	59.8	4,642	57.8	9,638	60.0	3,635	78.3	9,936	67.7	4,940	54.9	9,551	59.6	4,893	66.0	9,680	81.3	4,913	76.0
Iberville	3,415	81.1	4,752	78.3	3,461	89.6	3,095	92.0	3,437	91.8	5,010	80.1	2,879	86.8	5,363	90.6	2,636	92.5	4,960	90.9
Jackson	2,483	82.2	1,570	52.9	2,377	80.0	849	54.1	2,301	96.0	1,583	56.7	2,102	84.1	1,625	69.5	1,906	80.9	1,482	88.7
Jefferson	38,852	64.5	11,315	36.1	42,984	65.0	4,906	43.3	46,611	64.2	12,739	45.8	47,564	65.7	12,648	57.0	50,306	70.1	13,407	63.0
Jefferson Davis	5,470	48.6	2,164	31.1	5,093	48.7	580	28.9	6,041	53.9	1,927	28.2	5,682	53.2	2,099	72.5	5,587	57.2	2,058	90.2
Lafayette	17,108	52.8	6,034	58.2	18,003	64.8	3,764	62.4	20,191	65.0	6,645	61.2	21,057	65.9	6,732	65.0	21,106	69.6	6,800	83.6
Lafourche	12,766	96.6	2,253	93.2	13,547	90.2	2,344	*	14,825	87.3	2,566	*	15,839	69.7	2,708	*	15,819	91.8	3,118	94.0
LaSalle	2,897	81.8	521	63.1	2,826	87.4	289	55.5	2,791	83.8	505	62.2	2,805	87.9	519	48.4	2,996	90.0	516	50.0
Lincoln	3,409	75.5	3,023	67.5	3,592	72.0	2,116	70.0	3,653	71.2	3,179	69.9	3,498	73.0	3,138	77.0	3,059	70.3	3,988	63.9
Livingston	7,417	79.6	1,479	57.0	7,792	81.3	815	55.1	8,169	78.6	1,496	41.2	8,475	77.8	1,424	65.3	8,746	78.1	1,440	93.6
Madison	1,599	39.4	3,289	47.5	1,306	48.2	1,525	47.2	1,246	53.8	3,235	43.7	790	63.5	3,135	45.0	768	93.9	3,060	37.5
Morehouse	4,579	60.7	5,058	66.5	4,447	82.5	3,516	69.5	4,355	63.2	4,954	70.3	4,181	60.9	4,757	73.0	3,609	60.5	4,677	71.7
Natchitoches	4,436	83.1	4,406	73.6	4,628	79.7	3,460	77.7	4,650	80.6	4,629	80.2	4,229	77.5	4,469	86.7	3,948	80.9	4,463	84.9
Orleans	37,[illegible]	18.7	69,006	[1]	36,400	19.1	[1]	[1]	35,774	20.8	72,909	[1]	35,041	20.6	74,133	[1]	32,626	[1]	74,952	[1]
Ouachita	12,517	73.6	4,789	47.6	12,609	73.0	2,702	56.7	12,901	76.4	4,865	61.8	12,923	80.2	4,618	50.7	12,863	77.9	4,467	62.0
Plaquemines	2,294	98.4	1,582	*	2,268	99.6	1,735	*	2,971	*	2,110	53.2	2,678	81.5	1,946	92.0	3,653	76.1	1,996	94.5
Pointe Coupee	2,316	79.8	3,836	81.9	2,522	73.3	3,100	80.9	2,337	81.5	3,656	76.6	521	*	3,590	78.1	1,234	67.1	1,889	73.7
Rapides	16,960	73.0	8,945	40.2	17,651	70.2	4,038	48.1	18,785	80.7	9,737	41.1	18,623	70.3	9,558	47.3	18,226	73.0	9,611	42.2
Red River	1,254	86.5	1,387	84.3	1,257	96.3	1,164	83.9	1,216	84.8	1,275	87.2	1,254	82.5	1,235	96.6	893	81.3	1,198	80.6
Richland	3,301	89.0	3,581	89.0	3,266	88.9	2,994	84.1	3,352	81.7	3,383	86.9	3,226	76.7	3,187	74.1	3,116	91.8	3,278	90.0
Sabine	3,096	83.7	1,629	66.8	3,059	84.7	987	67.7	3,067	84.5	1,439	64.5	3,103	84.2	1,368	65.1	3,283	84.3	1,384	69.9
St. Bernard	10,015	82.3	713	*	10,448	50.7	756	*	11,073	80.5	724	*	12,409	84.9	786	97.1	12,457	65.5	811	94.2
St. Charles	5,131	91.8	2,078	78.8	5,283	99.2	1,719	82.7	5,561	90.5	2,458	79.3	5,617	92.8	2,573	93.7	5,427	87.8	2,849	92.8
St. Helena	1,050	91.3	1,871	90.1	1,099	86.1	1,786	95.5	1,064	97.1	199	*	914	*	1,997	*	867	86.6	2,108	90.5
St. James	2,458	96.0	2,947	65.0	2,139	*	2,189	74.3	2,426	92.4	2,798	84.4	2,022	77.3	3,140	93.2	1,979	83.2	3,360	92.7
St. John the Baptist	2,268	*	3,096	79.0	2,495	94.5	2,307	74.5	2,867	83.6	3,666	86.1	2,509	81.5	2,728	91.1	1,905	92.2	3,916	91.8
St. Landry	11,268	64.4	10,872	65.5	11,399	63.7	7,032	64.7	11,702	63.7	10,759	62.9	8,217	60.3	11,512	74.9	9,802	61.3	11,316	72.4
St. Martin	4,620	75.2	3,257	64.0	4,657	74.6	2,209	67.8	5,047	70.1	3,562	73.0	5,008	71.1	3,640	60.4	5,065	74.5	3,792	65.0
St. Mary	9,607	38.3	5,041	57.4	9,932	37.1	2,942	58.4	10,417	37.0	5,359	55.1	9,919	37.4	6,482	53.9	10,227	44.4	5,585	63.2
St. Tammany	10,929	62.9	3,580	63.1	11,375	60.4	2,580	71.9	11,796	58.2	4,041	62.2	11,658	60.0	4,037	64.4	11,830	69.8	3,926	75.1
Tangipahoa	9,397	75.2	7,254	74.2	9,391	75.3	5,519	76.1	9,802	74.8	7,487	77.3	7,474	86.2	7,326	73.7	7,361	86.5	7,111	86.0
Tensas	1,111	63.3	2,256	60.5	1,093	64.3	1,393	61.7	1,094	63.0	2,157	63.3	1,075	63.4	2,064	68.1	596	60.8	1,981	63.5
Terrebonne	14,780	90.4	3,597	84.8	15,555	85.8	3,426	95.2	16,342	90.2	3,944	67.3	16,457	87.0	3,982	98.4	16,328	86.6	3,995	92.0
Union	2,600	83.9	2,215	*	2,632	82.9	2,166	97.8	2,743	79.1	2,211	95.2	2,597	85.2	2,152	91.3	2,378	92.8	2,163	96.7
Vermilion	7,625	81.2	1,508	48.3	7,799	79.4	939	62.3	8,071	83.7	1,656	71.2	8,051	76.4	1,663	67.0	8,090	78.3	1,675	68.5
Vernon	6,751	84.1	881	29.1	6,938	81.9	284	32.2	7,051	85.5	1,033	29.9	7,389	81.5	1,066	76.3	7,357	36.7	1,098	39.0
Washington	3,560	85.6	2,778	78.1	3,402	89.6	2,224	80.1	3,228	91.5	2,706	83.5	2,596	93.3	2,589	*	2,767	87.7	2,549	89.5
Webster	6,622	60.4	3,923	47.4	6,576	60.8	1,789	45.6	6,453	62.9	3,922	49.8	6,235	65.4	4,112	48.2	5,903	58.4	3,906	56.9
West Baton Rouge	2,252	97.9	2,315	88.1	2,317	95.1	2,118	91.5	2,381	92.3	2,414	90.0	412	90.3	2,399	92.5	1,181	92.8	2,389	69.2
West Carroll	2,758	77.7	1,011	82.4	2,740	78.2	798	78.7	2,731	75.8	1,022	79.2	2,725	72.8	971	79.5	2,635	73.6	958	76.1
West Feliciana	847	84.9	1,862	94.7	802	80.7	1,737	93.8	717	99.4	1,740	100.0	679	*	1,674	99.9	563	96.0	1,566	95.8
Winn	2,414	71.9	1,574	50.1	2,427	71.5	702	44.6	2,401	89.5	1,496	47.4	2,490	75.5	1,497	45.7	2,272	75.3	1,449	53.0
City of Monroe	5,583	33.9	5,299	37.0	5,732	33.0	1,871	35.3	5,709	36.4	5,281	37.1	5,381	38.3	5,279	37.4	4,392	51.2	5,394	38.8
City of Bogalusa	3,982	47.0	2,287	24.7	4,124	45.4	558	24.6	3,738	56.8	2,309	23.4	3,169	69.5	2,189	50.5	3,164	45.7	2,187	56.9

*Percent transported listed larger than average daily membership (ADM) enrolled

[1] Parish does not break down by race

Source: State Department of Education

Distance Traveled One-Way Daily

Year	Miles
1966	133,887
1967	123,279
1968	134,965
1969	134,934
1970	133,405

State department of education figures indicate that the average one-way trip per bus was 20 miles in 1966. This figure had risen to 21.6 miles by 1970 and system officials do not expect it to rise this year. This, of course, does not indicate how long a portion of the average bus route each child rides.

One parish school official succinctly stated the attitude of those opposing new busing plans when he said "Five miles is not a long ride when you're going where you want to go, it only becomes long when you're sent where you don't want to go."

State totals in 1970-71 (the latest year for which complete data is available) indicate that there were 17,320 more blacks enrolled than in 1966 and the state was busing 25,829 more black students than in 1966.

The same period shows an increase in white enrollment of 8,356 while the total number of whites bused increased by 12,473. White enrollment and transportation increases were less than half of the enrollment and transportation increases of blacks.

The number of whites transported increased in 36 systems while in 30 the number transported decreased. Comparing the same two years, the number of blacks transported increased in 46 systems while in 20 the number decreased.

The ICSD survey of the 66 systems indicates that system officials feel that very few changes will be reflected in 1971-72 enrollment and transportation figures.

Most administrators believe that major transportation changes within the state occurred before busing became an issue. One rural superintendent said, "For us desegregation cut down on the time buses traveled greatly." Another added "We're thankful we have no problems like the cities have."

Survey of Systems, 1971-72

In the recent survey of the 66 Louisiana school systems conducted by the ICSD staff, the key findings for the current school year, 1971-72, were:

- Busing is not an issue among parents in 61 parishes.
- There has been no significant change in the amount or pattern of transportation in 58 systems since last year.
- Seven systems reported changes in the amount or pattern of busing. Of the seven, five are under court orders which require additional busing.
- Twelve parishes are under new or amended court orders while the remainder are operating under original court orders or HEW compliance agreements.

System officials for the most part when asked whether they expected additional desegregation orders involving busing felt that such orders would be unlikely in rural parishes. As one said, "Busing is volatile in urban not rural parishes."

Contrary to what is popularly expressed, most systems claim that long bus routes are not due to integration and cite examples of the fact that most were in operation long before the widespread desegregation orders of 1969-70.

The busing issue arose in only five Louisiana parishes this fall. Two months after schools opened, problems had either been resolved or opposition had died down to the point where one superintendent said, "We're really hoping educators are going to be allowed to settle down to the business of educating kids."

It has been all too obvious that the real issue is not transportation. The worry of what is at the end of the ride bothers both blacks and whites albeit for different reasons.

Where the issue has surfaced white parents have expressed fear for both the quality of their children's education as well as for their safety. Black parents, anxious to insure their children the best possible education, are hesitant at times about sending their children into unfamiliar school environments where they are not always certain to be welcome. Some blacks feel that the disruption of black neighborhood schools dilutes a source of community strength vital to blacks. Others answer the charges that new court orders destroy neighborhood schools by pointing out that the segregated school system hardly represented a neighborhood concept. The National Association for the Advancement of Colored People (NAACP) has been vocal in expressing the view that "you bused to segregate, so bus to integrate."

The issue although far from settled in the minds of parents is decided as far as the courts are concerned.

They have made themselves clear in respect to the responsibility school authorities have in their obligation to desegregate schools. In the Swann decision, Justice Burger wrote:

> "If school authorities fail in their affirmative obligations under these holdings [The Green Decision], judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district courts equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies. . Judicial authority enters only when local authority defaults.

In Swann's syllabus it was noted that:

> "The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not effectively dismantle the dual school system is supported by the record, and the remedial technique of requiring bus transportation as a tool of school desegregation was within that court's power to provide equitable relief."

The encouraging comment, "We've been real happy with the response of our parents," from a Louisiana school official characterizes a new mood of acceptance and leadership. Apparently busing is not the problem in Louisiana some would have us believe.

SCHOOL BUS
CHEVROLET

Furor Fades in Jefferson

One can say "busing" in Jefferson Parish these days without starting tirades and diatribes and hearing selected obscenities.

Two months ago, those who uttered "busing" usually did so with varying degrees of deregation. The faithful yellow animal, which for years had dutifully gobbled up children at street corners and regurgitated them unharmed on the school yard, had suddenly become a villain.

The buses went from public servant to ignominious scourge after Federal District Judge Herbert W. Christenberry ruled last August that busing was a legitimate desegregation device.

Buses, however, continued their appointed rounds without incident and are back in the good graces of the public, at least they are out of the light of nefarity.

The reason Jefferson Parish busing has been calm and uneventful is that the act of busing was like a blow on the head with a papier-mache hammer. It looked like it would hurt more than it did.

Another factor is that of the approximately 4,000 being bused out of their neighborhoods, 3,000 are black, and as black Jefferson civic leader Leon Williams put it, "It is a hardship on them. But if we want integration, we have to accept busing."

Embers Glowing

The embers of public outcry which were fanned into a short conflagration by politicians are barely glowing now, with only a few politicos blowing on the coals hoping to start the fires of dissent again.

Even in the midst of the controversy, both black and white alike could see the shadow of politics creep into the light of the issue.

Lionel Collins, a black attorney who helped file the motion which led to the busing decision, observed a couple of days before school started:

"It has become a political football. Busing couldn't be the problem. It is commonplace around here."

Frank M. Brown III of Metairie is white and the father of five children. "I believe the school board has purposely kept it alive to use it as a political football—so politicians can get publicity."

Last year 42,278 Jefferson students were bused and of that total 8,278 were black.

The parish school system this year is using about 400 buses, 25 more than last year.

Another reason that busing hasn't been the infirmity it was heralded to be, is that the longest ride is only 7.3 miles—from Bunche Village School to Jefferson Middle School.

That figure is embarrassed by the discursiveness of some of the rural school bus routes in other parishes.

Operation Bus Stop

The opposition to busing was concentrated in a movement called "Operation Bus Stop," and although its membership crossed racial lines, the vast majority were white.

The biggest howl went up over the plan to convert Bunche Village School from a predominately black to a predominately white school. Last year only 40 whites attended the school of 768 students. This year 992 whites and 194 blacks attend the school in Metairie.

The basic white fear that black school plants are intrinsically inferior to white school plants was attenuated by visits from white parents, and once school opened whites found they had little if anything to complain about.

Mr. and Mrs. George Bornside of Metairie visited the school and found no objection. "We don't really mind," said Bornside, who has one child at Bunche Village. "If all the schools are good, it doesn't matter where they go. If it is a well-run school and the teachers are good, it will be fine. My son was bused last year, so it really doesn't matter."

One East Jefferson mother contended that the image of Bunche as a black school was a handicap to some people and added, "If they changed the name to George C. Wallace Middle School then all those who are bickering would want to send their kids there."

Donald Rose, white principal of Bunche Village Middle School reports that PTA participation is as good or better than last year.

"Parents are concerned and this is a healthy situation," he said. "I think most parents have accepted it (the busing) and have tried to make the best of the situation. All in all they have been beautiful."

Mrs. Frank M. Brown III, 3709 Page Drive, Metairie, the mother of one child being bused to Bunche, said, "We're really proud of what Jefferson has done in face of what has happened in the North and other places. I don't think busing is the solution, but if it means an equal opportunity for all children then I think it is good."

She said she believed a change of attitude among parents occurred after the first week of school. "When children got on the buses and parents saw that they were being taken care of, it relieved a lot of the apprehensions. . ." Mrs. Brown said she believes most parents have accepted busing and are voicing no loud objections to their children attending Bunche. She said some parents are still concerned, however, because they feel Bunche does not have the facilities their children were accustomed to in their neighborhood schools. She said she knows of no one trying to take their child out of school.

One thing parents like about Bunche is that it is not platooned, she said.

Peaceful Year

"It has been a peaceful school year," she said of the first six weeks. "The League of Women Voters, the Parent-Teacher Association and other civic groups all are working to keep order. There just hasn't been any disorder."

Schools superintendent Peter C. Bertucci allayed some misgivings when he told a New Orleans States-Item reporter that court-ordered busing would not hurt education in the parish schools.

"With the help of our administrative personnel, we will make every effort to provide quality education," he said, adding that adjustments in the leveling of students would have to be made because of differences in student backgrounds.

Some black parents were anxious that some students from previously all black schools would have trouble keeping pace with students from formerly all white schools.

Bertucci however, pointed out that "under our system of continuous progress a child advances at his own level or speed. Our materials are designed to accomplish this. We level our children according to abilities."

Objections Voiced

Another objection voiced by anti-busing parents was that if the children became ill at school the children might have trouble getting home.

Bertucci answered this objection saying the school system would make every provision to get a child home if the parents were unable to get him.

The Jefferson Parish School Board and "Operation Bus Stop" unsuccessfully seeking a stay on the busing order, charged that Judge Christenberry had gone beyond Supreme Court mandates in ruling on de facto segregation. The board confined their rulings to de jure segregation, or that created by law.

School Board attorney Wallace LeBrun argued that the Jefferson School Board long ago gave up de jure segregation and that housing patterns (de facto) played a hand in the lack of desegregation in some areas where schools remained racially identifiable.

In the motion which led to the busing order, however, lawyers argued: "Is a man less dead when he is killed by lightning (de facto—accidentally) than when he commits suicide (de jure—intentional)?

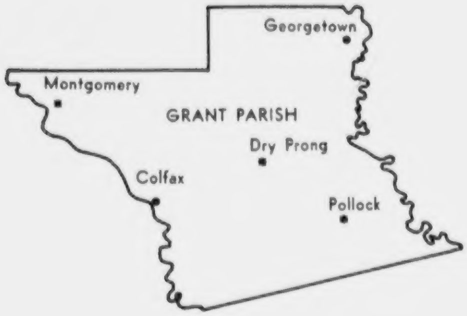
"Is a Negro child less deprived or does he feel less inferior from de facto segregation than from de jure segregation? We think not. . . ."

The Jefferson Parish school system has a Negro student population of about 20 per cent. Of 62,288 students enrolled last year, 49,509 were white and 12,799 were black. Enrollment figures have changed little for this year.

Some other parishes may be struggling in the throes of a busing dispute and some Northern cities like Detroit may be running up the red flag of rebellion, but it looks as if the storm clouds have moved away from Jefferson Parish.

SCHOOL BUS
STOP
ON SIGNAL
17454

The Grant Parish Story



Busing has been a way of life in Grant Parish since public transportation began.

With its people agriculturally oriented and its population scattered in clumps in tucked-away corners of the parish, Grant prior to this year had been supporting eight schools, grades kindergarten through twelve, without one major industry to draw tax money from.

Adding to the parish's problems was the fact the population is racially and ideologically segregated.

A band of blacks reside in a strip between the Red River and Colfax and onto the northwest corner of the parish into Montgomery in the rich bottomland of Grant. They had been attending school in Colfax and Montgomery. A previous attempt to bus them into Pollock failed after blacks, the only ones affected, refused to go. Appeals to the federal court were successful in letting them return to their own schools.

The parish is strongly divided east against west and any vote in a public body composed of members from both sides is almost guaranteed to be split. One official described the Grant Parish School Board as being so divided that the members cannot agree on one company to supply milk for the schools.

This year, however, busing has leaped into the spotlight and despite day-by-day efforts by school officials to alleviate the problems, parents are complaining that their children are having to get up before dawn and be on the highway waiting for the bus before they normally would be getting up.

They are also angry because the children, especially the young ones, are not arriving home from school until dark.

"It would tear your heart out to

see those little children riding that bus all day and crying for their mothers," one woman told a crowd gathered in the Prospect Community ball park to protest the school busing-consolidation issue.

The leaders of a "concerned citizens" group protesting the consolidation plan are quick to assure officials, however, that they are not really objecting to the busing issue in Grant, but are opposed—violently so—to the closing of the "neighborhood" schools and consolidating them into larger facilities.

U. S. District Court Judge Nauman Scott of Alexandria has said that the very people who are being bused the fartherest are the ones who have remained in school and have been in school from the first.

Busing Not Issue

"That just goes to show that busing is not the issue," he told a group of Grant women who cornered him after a speech he made in September at Louisiana College.

Judge Scott of the Western District of Louisiana, who signed the order in August, consolidated the schools making three high schools in the parish, leaving six schools for elementary and junior high school students.

Georgetown, because of its virtual isolation in the northeast corner of Grant was left out of the consolidation plan and its transportation system remained the same as in the past years.

Under the court order, Grades 9-12 in District A (Montgomery-Verda-Summerfield) attend Montgomery High School and grades 6-8 in the same area attend J. W. Gaines, the formerly all-black school at Montgomery. The elementary students are at Verda.

In District B, the high school students from Pollock, Colfax, Mary Graham (black) and Dry Prong were consolidated in Dry Prong. Elementary students remained at Colfax, Pollock and Mary Graham.

This consolidation meant that some children residing in the Little River or the Cotton Island section of the parish, who normally rode up to 32 miles one way to school each day are now possibly traveling 48 miles a trip.

However, the school board, in an effort to cut this mileage, is daily reshuffling bus routes to ease the hardship on the students.

"When we got the order to consolidate schools, we simply threw out what bus routes we already had and started drawing new ones. When we got one bus loaded, we stopped the route and put another bus on the same road. We had only five days to work out the original transportation plan for this school term," the superintendent said in explaining why it is being revised day to day.

Since the consolidation plan was ordered, total mileage a day has risen 487.8 each way. During the 1970-71 school year, bus drivers were traveling approximately 1,025.9 miles a day each way. They are traveling approximately 1,513.7 miles each way today.

Some drivers cover only 17 miles as the crow flies, but by the time they wind in and out of the country roads, the odometer shows 65 miles just one way.

"That is a net increase in cost to the state of $38,666, just for transportation," Supt. Tommy O. Harrison said. He pointed out, however, that consolidation of faculties brought about a reduction in staff members and therefore a reduction in state payments for teachers. "Consolidation saved the state $102,000 in teacher salaries in Grant," he said.

Takes Time

The biggest problem, and it is being ironed out with time, Harrison said, is that there are many children who are riding buses who have never done so before and they don't know the "procedures." Other problems which arose with the implementation of integrated bus routes have been worked out by the kids themselves.

In some areas, there are three buses where one normally passed, and some families are meeting two buses every day.

"Many kids are riding buses with lights on, but you have that in any rural area. People are moving out into far-out places around Iatt Lake, for instance, and they just, frankly, live far away from schools," Harrison said.

In an effort to cut down on the long rides in the Pollock area, school board officials have set up another plan where students ride their "old" (last year's) buses to school at Pollock, then transfer to another bus into Dry Prong for their classes. In the afternoon, they take their "new" (consolidated) buses home. This will save some of the children 30 minutes each morning.

"If that doesn't prove successful, we'll go back to something else," Harrison said, leafing through a stack of parish maps marked with red, yellow and blue ink showing bus stops.

Problems Arose

"When we drew up the routes in such a short time, we knew there would be flaws and bugs. It just takes a long time to set up a whole bus route. They are always changing anyway with people moving in and out," he said.

Prior to the consolidated schools, 272 of Montgomery's 353 students were transported to school; 112 out of 182 at J. W. Gaines (black); 129 of 232 at Verda; 442 of 607 at Colfax; 433 of 800 at Mary Graham (black); 675 of the 749 at Dry Prong and 641 of 684 at Pollock. Georgetown, which remains virtually the same, had 251 of its 312 students bused into school.

Prior to the consolidation order, J. W. Gaines and Mary Graham were all black and Verda, Dry Prong, Pollock and Georgetown were all white. Colfax had only 43 blacks and Montgomery, 32.

No official figures are available for the present school year. Projected enrollment figures have fallen short of attendance in some schools and are far ahead of head counts in others. Official figures will be released later this term, Supt. Harrison said.

What System Officials Are Saying About Busing

". . . our busing was done before it became an issue."

"Busing is volatile in urban not rural parishes."

"". . . have some fairly long routes, but not due to integration."

"We've been real happy with the response of our parents."

"Most elementary kids attend schools near their homes."

"Consolidation meant less riding for a lot of kids."

"For us its been a tempest in a teapot."

"None of our routes is long due to integration."

"Unfortunately the press and some individuals persist in keeping things stirred up."

"Thankfully, we have no problems like the cities have."

"Comments from our parents are bitter and emotional. There has never been a community more strongly against busing."

"For us desegregation cut down on the time buses traveled greatly."

"Five miles is not a long ride when you're going where you want to go."

"We're really hoping that educators are going to be allowed to settle down to the business of educating kids."

SCHOOLS IN
transsition

Schools in Transition *is published by the Information Center on School Desegregation under the direction of the Public Affairs Research Council.*

Members of the staff include Mrs. Pat Bowers, editor-researcher, William B. (Bill) McMahon, consultant-writer, and Miss Ruth A. Bailey, writer-researcher. Support services are provided by several members of the regular staff of the Public Affairs Research Council.

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Statement of Frank P. Anderson, Jr., M.D., of Augusta, Ga.

I am Frank P. Anderson, Jr. of Augusta, Georgia. I am a physician and am a Professor of Pediatrics and Community Medicine at the Medical College of Georgia. I am white.

My wife and I are Southerners and our families have lived in the South since before the American Revolution. We are both active in community affairs in Augusta, we believe in working within the system, and we definitely do not consider ourselves wild-eyed visionaries.

Testimony has already been presented to your committee by another Augusta resident, John M. Fleming, who is chairman of our Board of Education and who has taken a very active role in opposing implementation of the recent court order which called for clustered schools and busing. We wish to submit the following evidence, as parents of three children, all girls, who presently attend the public schools of Richmond County, for we feel that Mr. Fleming's views do not represent the thinking of all white Augustans.

Through the years since 1964, there has been reluctant integration of public schools in Richmond County, mostly through allowing black children in a neighborhood to attend the white school nearest them. White teachers have been assigned to black schools. All of this has been done by the Board of Education with the greatest reluctance and with no positive leadership from the Board or its administrative staff to see that there was a smooth transition. By the fall of 1971, we still had schools that were almost totally white or totally black by student population.

There were exceptions, however, for in the fall of 1970 three groups of elementary schools were "paired" in an effort to meet court orders. Our own children were assigned to one of the "paired" schools, and it was through this experience, primarily, that we learned for ourselves that separate schools in Richmond County had not been "equal" schools and probably never could be.

Our white school, an elementary school of long-standing reputation as one of the "better" schools in the system, had token integration for several years. The black school, only two blocks away, had no white students, and until recently had had no white teachers. The "pairing" took place without any encouragement or advance preparation for students, parents and teachers by the Board of Education. Grades one through three were assigned to the formerly white school and grades four through seven, to the black school.

As might be expected, many white parents withdrew their children from the public schools and enrolled them in private schools. None of the teachers from the white school "followed" their students to the black school and only two remained behind to teach in the "paired" situation in the original school. Black teachers from the black school remained in greater numbers.

Although anti-busing forces in Augusta have frequently told us that our schools were still neighborhood schools, we refute that because most white parents had never laid eyes on the black school. It is located in an all-black area through which whites traveled only when it was necessary to pick up maids or find yard-men. The two schools might as well have been located fifty miles apart, rather than a mere two blocks. White parents who remained with the public schools had real apprehension about sending their children into a totally new situation, with none of the former teachers going along. Black parents had the same fears about sending their children to the formerly white school, and also about what would happen when whites came to their school and "took over."

Without any help or advice from the Board of Education, the presidents of the two PTA organizations met together in late summer to iron out some of the problems which the pairing would create within their own organizational structure. Several white parents went to the formerly black school before school opened to meet the principal and teachers and to assure them that they wanted to make the pairing work as well as possible. We can't speak for the activity of black parents who took similar steps at the white school, but we suspect that some of this went on there also.

A quiet determination to "make it work" was characteristic of both schools during the first year of pairing. At the same time, it was obvious that for the formerly black school, certain things began to happen as the result of the enrollment of white students. As one black parent put it, "They didn't have to make any announcement that our school was going to have white students in the fall. I knew it when I saw the paint truck pull up to the front door."

Not only was a long-requested paint job for the school forthcoming when the white children arrived, but other improvements (also long requested by the black staff and parents) were made: a new dishwasher was installed in the kitchen, a porch was screened-in, a new heating system was installed, carpenters appeared to make other repairs, personnel were sent in to thoroughly clean the playground, removing bricks and other debris, a retainer wall was built for the playground; during the preceding spring, long needed shelves were built in the school library.

We understand that this kind of thing has happened elsewhere in the system whenever white students or teachers have been assigned to formerly all-black schools, particularly in regards to equipment and books. As might be expected, black educators and parents have accepted these changes with mixed feelings; in addition to a feeling of bitterness that it took the presence of whites to accomplish change, black principals have lost some respect of some of their black teachers who have gone over to white schools and principals and have seen what these schools have had to work with. This has been an unfair indictment of black principals, who have asked for years for the same kinds of advantages for their schools.

We do not feel that the dual standard has been applied with any malice toward black schools on the part of the Board of Education or its administration. Perhaps the same would hold true if whites were the minority group in Richmond County and a predominantly black school board existed. Our experience has convinced us that it is only when a school serves *all* children that the benefits of school taxes reach it fairly and completely. For this reason, if for no other, we can understand why busing as a means of breaking up a dual school system is important to our community and nation.

Like many other concerned white Augustans, we don't see an increase in busing as a permanent panacea. We realize that if we had had open housing in our city years ago there would not be so strong a need for the use of busing as a mechanism for creating a unitary school system. We feel that the current "crisis" over busing in our community need not have have occurred if our Board of Education and its administration had not spent so many years in dragging its feet and actively opposing the full integration of our schools.

In summary, we oppose a constitutional amendment prohibiting busing as a means of achieving racial balance in the public schools. Such an amendment would set us back in our efforts to eradicate the causes of some very serious problems—among them school drop-outs, unemployment, some crime and poverty—related at least in part to a continuing lack of adequate and equal educational opportunity for a significant portion of the less privileged—both white and black—in our community. We are prepared to send our children, as they grow older and attend secondary schools, on buses to formerly black high schools. And—quite aside from the real concern about integration—we must recognize that a large number of white children in our community are already being bused to secondary schools in our school system, the distances traveled are really not all that great, and "dawn to dusk" busing isn't really a major necessity.

We would like to add one thing more. To our surprise, the quality of the educational experiences our children have received in the paired schools has turned out to be better than that in the predominantly white school. This has happened over a two year period and has really been eye-opening. We attribute this to the fact that we really had to start with a completely new situation in each school. The black teachers who remained behind were dedicated to their jobs of teaching, and the mostly-new white teachers were young and willing to innovate. During the past year we have had one of four pilot programs in the Model Reading Program, and have seen a transformation in the classrooms of both schools. And all of this has happened in a school situation that has been approximately 70% black and 30% white.

The anti-busing group, and they are definitely in the majority in our community and well organized, are speaking mostly from fear of the unknown, and cite facts and figures from other communities. We feel that we speak from realistic experience, and we are absolutely convinced that where there is a positive attitude among students, staff and parents, there is no limit to what can be achieved in a unitary school system.

FRANK P. ANDERSON, Jr.

YALE LAW SCHOOL,
New Haven, Conn., March 2, 1972.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: The Black Law Students Union of Yale Law School, comprising virtually all the black students in this law school, have prepared a statement on the "anti-busing" proposals. A copy is enclosed. The statement strikes me as thoughtful, balanced and very persuasive. I interpret it as not suggesting that busing is per se desirable, but that it is one of several devices to be used in pursuing the objectives of eliminating racial segregation on the one hand and differentials in educational opportunity on the other.

Few supporters of the "anti-busing" proposals seem willing explicitly to abandon these objectives. It seems pointless to postpone efforts toward their realization. The difficulties are not going to become smaller, nor the issue less controversial. The general population may not be willing to face these facts, but surely Congress must realize that there is no point in either turning back or trying to put off the day of reconciliation.

Sincerely,

GEOFFREY C. HAZARD, JR.

Enclosure.

STATEMENT OF BLACK LAW STUDENTS UNION, YALE LAW SCHOOL, FEBRUARY 28, 1972

The Black Law Students Union has followed closely the debate over busing to achieve a racial balance in schools. It is clear to us, the rhetoric notwithstanding, that the real issue is what type and quality of education Black and other minority group children will receive in this country.

Senator Griffin's amendment is a declaration that this country cares only for its white citizens. He, like everyone else, seemingly agrees that the schools to which white children are being bused are "inferior" schools. Still, no one has seriously offered proposals for changing the alleged condition of these schools, or drafted legislation making funds available for their immediate improvement. The substance of the Griffin amendment is that the existence of inferior schools is all right if attended by Blacks, and not white children.

In practical terms there is no real difference between the Griffin and Scott-Mansfield amendments. Most of the nation's school districts already have financial problems. Without the use of Federal funds many simply will not be able to operate a busing program. In addition, the Scott-Mansfield amendment will discourage school districts from undertaking programs which would meet the spirit of *Brown* v. *Board of Education* and the goal of a quality education for all. It will encourage the bringing of litigation to thwart good faith attempts to desegregate school districts. This amendment requires that all appeals from court ordered busing be completely exhausted before federal funds could be used. In other words, a longer period of segregated schools would have to be endured. The Federal government is prohibited from participating in or encouraging efforts to achieve racial balance, while local school boards are made more vulnerable to attack for undertaking the programs. Many boards which welcomed government pressure before, would now have to shoulder alone the risk of initiating a controversial but necessary program.

The country's housing pattern assures segregated schools if busing is prohibited. And we must remember that this pattern was aided and partially financed by the Federal government. History has taught us that the communities which now oppose busing pursued policies, in the past, of neglect toward all Black schools, thereby creating the very conditions which they do not want for their children. No reason exists to believe these same policies will not be pursued again if busing is prohibited or curbed. Lest we forget, this country does have a history of busing children, but before it was Black children being bused and no one cared about busing's alleged ill effects.

The Griffin and Scott-Mansfield amendments both lead to the same end. And that is the end of the fight, by this country, to insure equally good education for its White and Black children. For this reason we are opposed to both and urge you to fight for their defeat.

HARRY M. SINGLETON, *Chairman.*

STATEMENT OF ELDON VAN STEENIS, CHAIRMAN, REDFORD TOWNSHIP'S FREEDOM OF CHOICE CHAPTER OF NATIONAL ACTION GROUP

We, the undersigned residents of Michigan, do hereby proclam that in the event that forced busing is initiated, we, the people, will use any and every means at our disposal to finally convince all concerned, that we will never allow our children to be bused away from their neighborhoods to achieve integration!

Furthermore, we are indignant that our constitutional rights have been violated in that our educational system is being mis-used, and because our children are being forced to receive an "Inter-Racial experience" instead of an education!

We are indignant because all of this has been attempted without even a vote of the people whose taxes will have to pay for our forced busing!

Therefore, we will not tolerate forced busing, and we will neither be harassed nor intimidated by threat of incarceration or fine!

This is our Country, our State, and our Children. Under no circumstances will we pay for or allow forced busing!

ELDON VAN STEENIS,
Chairman, Redford Township's Freedom of Choice Chapter of National Action Group.

STATEMENT OF HONORABLE SOL M. LINOWITZ, CHAIRMAN, THE NATIONAL URBAN COALITION

It is vital to the national interest and to our whole concept of an integrated society that the Senate promptly reverse the divisive action it took last Friday to prohibit Federal courts from ordering the busing of students.

Busing has become an overblown, emotional code word that camouflages the real issues involved in quality education for our children. The issue, and what should be the subject of our national debate, is not busing; it is what is at the end of the bus ride that is critical importance. No one, black or white, rich or poor, wants his or her child to attend an inferior school, whether it is across the street or across town.

There are already enough forces at work in this country to pull us apart without adding still another. We are committed to an integrated society, but as the recently published National Urban Coalition "Report on the State of the Cities" demonstrates, we are steadily becoming more divided, more separate, and more unequal.

This is reflected in the abandonment of our central cities to the minorities, the poor and the aged who have nowhere else to go. The others leave mainly because of the gradual decline in vital city services, including the quality of the schools. The result of a national policy based on the Senate's action last Friday would be a further deterioration of urban schools, and this would in turn further divide the cities and speed up the abandonment process.

We must break this cycle. In all areas—housing, employment, schools—we must discover and use mechanisms which will bring us together. Busing is one such mechanism. It is not the answer, or even an answer to the achievement of the integrated society we seek, but it is an extremely valuable adjunct to all the other things people of good will are trying to do.

It would be foolish and tragic to discard this mechanism. For more than 17 years this nation has followed its commitment to provide equal education for all children, including limited busing where necessary. The courts have been diligent in protecting this commitment.

In terms of education alone, almost every major educational institution has stated in one way or another that integration is a vital part of the total education of our youngsters. Without exception they have supported every reasonable device to accomplish this end, including busing when necessary. They realize, as should we all, that one cannot on the one hand favor racial integration of our public schools, and on the other be against busing.

That statement is also true of the integration of our total society. And that is the real issue that is hidden under the deliberate hysteria that envelops the busing controversy.

PUBLIC EDUCATION, RACIAL DISCRIMINATION AND THE BUSING ISSUE—SETTING THE RECORD STRAIGHT

(By Leonard Woodcock, President of UAW)

Plain talk about the problems of public education in this nation is long overdue. There has been too much heat and not enough light shed on vital, sensitive issues of public education—unfairly narrowed by some to what is commonly referred to as the "busing issue." My own words as well as those of others have been taken out of context, distorted and blown out of proportion. It is time now to put the issue properly into context.

The great debate should be over how we can best achieve, in the shortest possible time, non-discriminatory high quality education. In *Brown v. Board of Education*, the Supreme Court mandated the elimination of racially segregated schools. I reaffirm my strong belief in that decision—separate cannot be equal.

"Busing" has become a highly explosive and emotional word and it is, unquestionably, a "code" word exploited by some men in high places whose mission should be to pull this nation together, rather than to tear it apart. I hope we can persuade those who seek high public office to address themselves to real problems and to heal the nation's wounds, rather than to exacerbate our differences and to promote hate and fear.

It is, however, clear that certain senators, congressmen, state legislators and even those in more exalted political office seem determined to pursue the course of division in this matter. They press constitutional amendments, which, in my view, are unwise and unworthy, and they fan the fires of prejudice. They speak in careful terms but their hidden troops carry the message into the back alleys in more naked racist terms. These are the professional anti-bussers.

At the other end of the spectrum, there are those well-meaning liberals who take the bait and tragically do battle on the field and in the terms chosen by the professional anti-bussers.

Both groups do the community great disservice. They are engaged on the wrong issue, on the wrong terms, at the wrong time.

Immediate and massive bussing cannot solve problems born of generations of discrimination and insensitivity. It is, however, also wrong to eliminate any possibility of the use of some bussing as a tool and, instead, to use the concept to isolate and polarize both races in the hope of selfish political gain.

At this moment of relative affluence, it is nothing short of shocking to see inner-city schools shortchanged on funds, overcrowded, ill-equipped and poorly manned. Those who have been the victims of segregation, discrimination and societal oversight now see their children punished anew by the denial of a decent educational opportunity. I say these conditions are intolerable.

By the same token, we would be less than fair if we did not understand the feelings of those parents who, without regard to color, have made great sacrifices to move into areas where their children could attend better schools and who face the prospect of having those children bused back to inferior schools. That situation also is tragic.

Americans must recognize that past segregation as well as other forms of racial discrimination have left deep scars and have cast a pall on our system. There is no question but that every American must share the responsibility and the cost of erasing every vestige of discrimination in our society. In this respect, an important area of concern must be the public education system.

Our schools became bastions of segregation in two principal ways. Some localities, by law and conscious effort, operating under the discredited doctrine of "separate but equal," required segregated schools. In other sections of the country, segregated schools are the result of years of economic, social and housing discrimination which created ethnic and racial ghettos.

Segregated housing in the North was rarely a product of individual choice. Separate neighborhood patterns grew out of the poverty of many black families, restrictive zoning and land use, unconscionable practices of real estate dealers and mortgage lenders—all imposed by society.

Segregation in the public schools must be recognized as the direct result of years and years of racism in our society.

The bill that has become overdue is owed by every American. It cannot be paid in full by innocent young people. Society's past transgressions must be remedied by the whole body politic. It is neither realistic nor fair to insist that only one segment—school age children—bear the entire cost. I, for one, certainly sympathize with those parents whose children would be sent to inferior schools because of the errors and misdeeds of others.

Those of every race, creed and national origin, who really care about children and the future of our country, realize that the issue must be one of quality, equal education. Just as the isolated, misused "busing" issue is neither black nor white—as polls and surveys repeatedly show—neither is quality education a goal of only one race. It is that issue, quality education, around which we can rally.

What we most need now is a direct and concerted effort to achieve quality and equality in public education for all children in all schools. Neither black nor white children are served by being bused into inferior schools. That is the main issue—quality education—not busing.

We know enough about what quality education should be to know that for most Americans it does not now exist. The essential elements of quality education are, unfortunately, easier to list than to achieve, but identification of needs is the very first step. To obtain quality public school education in this nation we need, immediately, to make a massive commitment to the following goals:

1. More money and more equal financing, on a fairer and more progressive tax base.
2. More teachers, better qualified, trained and more dedicated—assigned on the basis of pupil need.
3. More and better guidance counselors and administrators.
4. Better, more modern school plants and equipment.
5. Curriculum improvements and use of more modern and experimental techniques.
6. More community, and especially parent, involvement.
7. More adequate security in terms of administrative and police protection.
8. Achievement of a fair, non-discriminatory system.

If we fail or delay in meeting our obligations to the children, future generations of Americans will pay the price. America cannot wait to make the proper commitment to quality and equality of education. As we move toward quality education, of necessity, we must also move toward desegregation. The slow process of integration of neighborhoods takes too long; but busing, and any other technique of integrating schools, might sensibly and rationally be used with the effort for quality education but not before it. In a democracy any ideal system of quality education must be non-discriminatory. Consequently, a total commitment to quality education, by definition, includes a commitment to desegregation. One necessarily includes the other. That is why we cannot support the effort to isolate one technique of achieving integration and outlaw it, even though those of little principle would go so far as to amend the United States Constitution. At the same time, while I refuse to discard any reasonable tool of desegregation, I recognize that premature moves aimed solely at racial balance can be counter-productive and harmful to quality education and racial peace.

It is against the national interest to isolate and emphasize busing as an issue. Busing is not an educational system; it is merely a means of transportation. More than 40 per cent of American children have traditionally bused to school.

In trying to suggest the lines of public debate on these great issues, I have avoided any discussion of pending court cases. It does not seem appropriate to me for the public or its leaders to debate such matters. Judges, I hope, are interested in framing their decrees on the basis of the law as they see it and not on the results of polls or the views of politicians and others. I do emphasize, however, my strong feeling that court decrees, in a system of law, must be respected. Of course, I also see it as perfectly proper in individual cases for appeals to be lodged and stays to be sought.

Finally, I would hope that not only would our political leaders emphasize real priorities and avoid destructive and emotional demagoguery, but that the media—press, radio and television—would also put this sensitive national problem in proper perspective.

In this context, I suggest that such questions as "Do you favor widespread busing?" do not serve a legitimate purpose. They are improper. To ask the question is to foreclose honest discussion. Instead, we must ask, "How can we best achieve quality, equal and integrated education?" That question *can* be answered. Let us hope that the leaders of public opinion will address themselves to that issue.

To play on black frustration and white fear is to play Russian Roulette with America's future.

For myself, I favor quality and equality of education, which, of course, includes desegregated schools.

STATEMENT OF HON. J. KENNETH ROBINSON, A U.S. REPRESENTATIVE FROM THE STATE OF VIRGINIA

I appreciate this opportunity, Mr. Chairman, to address myself to this distinguished Subcommittee with reference to H.J. Res. 620 and other resolutions proposing Constitutional amendments to prevent the busing of public school pupils out of their home neighborhoods solely for the purpose of achieving a racial balance in the schools.

I am not a lawyer, and I do not presume to advise this Subcommittee of learned lawyers as to the Constitutional considerations which are involved in the busing controversy, or how best to cure the discontent and abrasions which have resulted from decisions of the Supreme Court approving massive busing for a racial rather than for an educational purpose.

In coming before the Subcommittee, I seek to emphasize the breadth of public concern in this matter, and the expectation of the people that the Congress will respond to this concern in a meaningful way.

I hope and believe that my comments are offered in relative freedom from emotional overtones which might result from personal involvement in a specific busing situation. None of my own children are affected, and, to date, no public school authority in the 7th Congressional District of Virginia, which I have the honor to represent, is under court directive to institute busing of pupils on other than the basis customarily used—most reasonable accessibility, considering the location of the pupil's home and the location of schools providing instruction at the grade level of the pupil.

The concern is great, however, and it is a concern arising from sincere mystification and disbelief over what is regarded as an unrealistic and unconscionable preoccupation with numerical racial balance to the exclusion of common sense.

I find this sentiment general, Mr. Chairman, even in areas untouched by racial friction in which school integration has been accomplished without incident. Citizens are vehement in their demand that their elected representatives in the Congress find means of correcting what they regard as a grievous judicial wrong in which children are the victims.

Most of the citizens with whom I have talked and corresponded on this matter are laymen, like myself. They believe the Constitution is the heart of our body of law, and they recognize the Supreme Court as its interpreter. Most of them regret the apparent necessity of amending the Constitution in this instance.

What they are saying to me, however—and to this Congress as a whole—is simply this:

"We can't imagine that the authors of the Constitution intended that it would require school children to be transported past suitable schools relatively near their homes, in order to contribute to the racial balance of a more distant school. If, however, the Supreme Court insists that this is the case, then we must amend the Constitution, because any such requirement is nonsense and serves no proper public purpose."

I regret the necessity of the introduction of the resolutions under hearing, Mr. Chairman, but if, in the judgment of this Subcommittee, any statute which the Congress might enact for the purpose of prohibiting the busing of school children solely for the purpose of achieving racial balance in public schools would be struck down as unconstitutional, I must respectfully urge the Subcommittee that it resort to the only apparent remaining remedy—an appropriate Constitutional Amendment.

The school bus must be restored to its proper and simple purpose—to transport children to the nearest source of quality education, if it is too far to walk.

Our goal should be the provision of this quality education reasonably close to the homes of all children. Substandard schools should not be tolerated by the public conscience.

RESOLUTION OF THE CITY OF OKLAHOMA CITY

Whereas the problem of forced busing has touched the lives of every citizen in The City of Oklahoma City; and,

Whereas it has not been an effective tool in integration; and,

Whereas it has downgraded the quality of education: Now, therefore, be it

Resolved by the City Council of The City of Oklahoma City, That it is the Council's opinion that the people of Oklahoma City are in favor of legislation taking necessary steps to allow the neighborhood school concept to once again prevail, thereby allowing quality education to be the issue and not integration; and therefore the Council of The City of Oklahoma City requests the United States Congress to take the necessary steps to pass legislation to implement the above objectives.

Adopted by the Council and APPROVED by the Mayor of The City of Oklahoma City this 29th day of February, 1972.

PATIENCE LATTING, *Mayor.*

Attest:

E. RAYLOOG, *City Clerk.*

Approved as to form and legality this 29th day of February, 1972

JAMES R. FUSON,
Assistant Municipal Counselor.

Chairman CELLER. The committee will meet tomorrow morning at 10 o'clock.

(Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, March 9, 1972.)

○

SCHOOL BUSING

HEARINGS

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-SECOND CONGRESS

SECOND SESSION

ON

PROPOSED AMENDMENTS TO THE CONSTITUTION AND
LEGISLATION RELATING TO TRANSPORTATION AND
ASSIGNMENT OF PUBLIC SCHOOL PUPILS

Part 2

FEBRUARY 28, 29; MARCH 1, 2, 3, 6, 8, 9, 13, 15, 16; APRIL 12,
13, 26, 27; MAY 3, 4, 10, 18, AND 24, 1972

Serial No. 32

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Appendix A

SCHOOL BUSING

THURSDAY, MARCH 9, 1972

House of Representatives,
Subcommittee No. 5 of the Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler presiding.

Present: Representatives Celler, Brooks, Hungate, Jacobs, Abourezk, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel, Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman Celler. The meeting will come to order.

The Chair wishes to read a telegram which he received this morning, from Edwin L. Novak, president, Michigan State Board of Education, Lansing, Mich.

> We have been informed that James O'Neil, a member of the Michigan State Board of Education, is scheduled on Wednesday, March 8, 1972, to appear before your committee which is holding hearings on a constitutional amendment which would make mandatory busing of school children legal.
>
> The Michigan State Board of Education has labored diligently to comply with the Federal Court Order to provide odd busing method of desegregation in public schools while still appealing the Court decision.
>
> The Michigan State Board of Education is committed to quality and equality of education of all children in Michigan. In our deliberations there have been differing points of view on how best to achieve this goal.
>
> While not judging the right of our colleague to appear before your committee as a private citizea or as an informed public official, we feel compelled to inform you that his testimony has not been discussed with any member of the Michigan State Board of Education and does not necessarily reflect the views of the Board.
>
> The issue has been discussed with the majority of the members of the Board, including all officers, and I have been authorized to communicate our position to you.
>
> Edwin L. Novak, President, Michigan State Board of Education, Lansing, Michigan.

Our first witness this morning is Mr. Joseph H. Yeakel, chairman of the Concerned Citizens for Improved Schools, Nashville, Tenn.

Mr. Yeakel, we are glad to hear from you.

STATEMENT OF JOSEPH H. YEAKEL, CHAIRMAN, CONCERNED CITIZENS FOR IMPROVED SCHOOLS, NASHVILLE, TENN.

Mr. Yeakel. Mr. Chairman, members of the committee, my name is Joseph Yeakel. I am chairman of Concerned Citizens for Improved Schools, a biracial community organization in Nashville, Tenn.

In behalf of the membership of our organization, I would like to testify in opposition to all of the various constitutional amendments which have been proposed regarding school integration, busing, and pupil assignment.

Three years ago, a small number of black and white parents in Nashville joined together in an effort to prevent the Metropolitan Nashville-Davidson County school board from zoning a new junior high school in such a way that its enrollment would be all white. That effort at persuasion was successful, and our present organization, CCIS, was an outgrowth of it.

From a followup newspaper series in the Nashville Tennessean on the status of the Davidson County schools, 15 years after the Supreme Court decision, it seemed apparent that CCIS was the only citizens group in the community committed to the principle of a unitary school system.

Since then, CCIS has become the principal organization in Nashville advocating quality integrated education. Our membership has never been large—from 35 to 200 individuals—but we have been active and vocal in our advocacy of a unitary school system and have developed a supportive constituency that now includes nearly 2,200 parents in Nashville and Davidson County. We feel that we have made a positive contribution to the community.

Late in 1970, we published a set of principles and guidelines for equitable integration of the metro school system, and from then until the Federal district court ordered implementation of a desegregation plan prepared by the Department of Health, Education, and Welfare, we did everything in our power to familiarize the defendant school board, the plaintiffs, the court, and the community-at-large with our position paper.

The position paper clearly delineates the principles of the organization:

> . . . We feel that the ultimate goal of this school district must be the cultural and structural integration of all its staff and its children and their families into the school system.
>
> This country has always called upon its schools to provide training for citizenship and employment and to preserve the values and traditions of our society. The facts show us, however, that the schools have failed large segments of the population. The school system is the institution which has the responsibility of providing much, if not all, of the formal education of our children.
>
> We are firmly convinced, therefore, that the school system must use whatever means necessary to bring about total integration, without which truly equal educational opportunity for all will not be possible.

In addition to the principles and guidelines advocated by CCIS and the actual plan drawn up by HEW and subsequently adopted by the court, both the school board and the plaintiffs offered plans for desegregation of the Metro system. There were significant differences among all of these, but they had one thing in common: All of them required an increase in the number of students riding buses to school.

The public schools of Metropolitan Nashville-Davidson County have been segregated, both by race and by socioeconomic class. This segregation has given numerous advantages to the middle- and upper-class citizens, almost all of them white, who live in outlying suburban areas surrounding the city proper and it has forced a variety of disadvantages upon the low-income citizens, white as well as black, who live in and near the geographical center of the metropolitan area.

There is no way, Mr. Chairman—no way at all—to equalize the educational opportunities of all the school children in a district covering 427 square miles without using some form of transportation. Prior to the implementation of the court ordered desegregation plan in Nashville, some 34,000 of our children—more than one-third of the total enrollment—rode school buses daily.

Under the plan, some 48,000 children are eligible for bus transportation. In our city, the issue is not busing per se. All of the arguments against busing—inconvenience, early departure and late return, safety, the virtue of neighborhood schools—have been moot in Nashville for a long time. No one in our city complained about busing until the question of racial integration was introduced.

Mr. Chairman, our children have been cheated by segregation. The children of working-class parents, both white and black, have been confined to residences in the central city by economics and discrimination and thusly, have been cheated by poor quality facilities, second-hand equipment, and too many teachers who look upon them as uneducable or not worthy of a quality education.

The white children of suburbia have been cheated by an artificial introduction to life that bears no resemblance to the multiracial and multicultural realities. We are convinced that such racial and socioeconomic isolation is not only harmful to all these children—it is also inimical to the ideals and principles our forefathers engraved in the Constitution and Declaration of Independence two centuries ago.

We cannot hope to attack the inequalities in our public schools without using school buses, Mr. Chairman, and neither can most of the other school systems in this Nation.

You have before you now House Joint Resolution 620, a proposed amendment to the Constitution. On the surface, it appears to be couched in equalitarian language. "No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school."

We submit this amendment is not equalitarian at all. On the contrary, its intent is to prohibit the racial and socioeconomic integration of our public schools. While it could prevent deliberate racial integration of school children, it would not prevent a school system from assigning pupils or determining zones to achieve a balance on an economic basis, or on the basis of aptitude as measured by standardized tests.

This amendment would conflict sharply and irreconcilably with the 14th amendment, thus putting the Constitution at odds with itself.

Furthermore, in interpreting the amendment, the Supreme Court could and would look at the history of its passage in Congress and in the State legislature, and would seek to determine the intent of the resolution. There is no doubt about its intent—to seek to protect the questionable sacrosanct institution of the "neighborhood school."

Historically, the neighborhood school, as an organizational model for public education, was developed during a time in our past when it seemed the most workable and efficient model for providing education. However, as with any other social institution, the neighborhood school concept is not a given right, nor is it inviolable. If the schools are to meet the needs of today's society, they must look at society today, not 50 years ago, and assess what the most workable model is to equip all its children to realize their potential and to participate fully in American life.

Given the nature of most urban centers with concentrations of black and poor white populations at the center and predominantly white middle- and upper-class suburbs, it is quite obvious that the neighborhood school can be no other than socially and economically homogenous, or in other words, segregated. Thus the words, "neighborhood school," become a euphemism of segregation.

The effects of segregated (or neighborhood) schools are well-known to all of us. They have been documented by numerous studies and well-publicized by the U.S. Office of Education.

We proceed to record a number of these effects that have been documented and we would say that our experience in Nashville-Davidson County has affirmed all of the effects so recorded.

One of the things that does not show through, however, is the massive movement on the part of persons in a very positive way, citizens of Nashville-Davidson County in attempt to augment the process of integration and quality education, especially in the area of persons who have volunteered themselves and their time and their efforts. In this first year under Federal orders we have discovered that something in excess of 1,650 individuals are currently working within our school system in the classroom proper, an effort that was not accomplished prior to this particular year.

I think this evidences the willingness and efforts and intensity of the community to, in fact, guarantee the opportunity to give quality education to all of its children and to makeup for those areas wherein there has been an unequal experience for these children to the present time.

It is also interesting as far as we are concerned to point out that in the neighborhood in our experience it is not possible to have a dual system in which the schools are so-called separate but equal.

We wish to cite a quotation from Delbert Nowell, assistant superintendent of the Metro School System for Business Services.

> The parents of children from the suburbs demand much better school facilities than do parents of children from the inner city. So, when the judge (U.S. District Judge L. Clure Morton) ruled that many of these suburban children would have to be bused to inner city schools, the parents of these bused children demanded that these inner city schools be improved. These inner city schools needed more work to bring them up to par with the suburban schools. Additional painting crews were sent to these schools, and there was a strong effort to clean these buildings up, the walls and desks were sanded and cleaned; plumbing facilities were put in these schools, and water coolers were placed in many schools.

Finally, Mr. Chairman, this proposed amendment would be unenforceable, as much, if not more than, the liquor prohibition proved to be. How would it be determined whether a pupil's school assignment is based on race, creed, or color? Who would make such a determination? How could it be fairly decided when a bus ride is constitutional and when it is not? What would be the effect of this amendment upon many Southern school systems which have, in obedience to Federal court orders, eliminated their dual school systems with the aid of buses and pupil assignment?

The questions are virtually endless, and they are unanswerable. The literal meaning of the amendment—that no student shall be assigned to a school because of his race—can be interpreted as preventing forced integration, but it can also be interpreted as prohibiting voluntary integration.

In short, this amendment would turn the Nation away from its commitment to end racial and socioeconomic isolation and discrimination in the public schools.

We agree with the statement of Charles Silberman when he wrote:

> What has distinguished public education in the United States from education elsewhere has been precisely the expectation that the public school would create a sense of unity and national purpose in a society which otherwise might be racked by ethnic, religious and racial conflict. Never have we needed the schools to play this role more than now; never has their failure to do so been more ominous for American democracy.
>
> If the United States is to fulfill its promise of becoming a truly just and humane society, the schools will have to do an incomparably better job than they are now doing of educating youngsters from minority and lower-class homes—Negro Americans, Puerto Rican Americans, Mexican Americans, American Indians and poor whites in particular, and of educating all children in general.

Perhaps schools will be, in the future, the primary source of socialization for the child. In that case, the child realistically needs to be socialized regarding our entire society, not just one segment of society.

In our information-rich environment, it is unrealistic and self-defeating to teach a child responsibility to only one group of people. He will be, in fact, a member of many groups and share responsibilities with various members of his society.

We urge you, Mr. Chairman, and this committee, and the House of Representatives, and the entire Congress, to reject this proposed amendment. There are school systems in this country which are trying to make equal educational opportunity a reality. Some of them are doing it because the courts forced them to. Some are doing it because they are tired of the costs and the consequences of inequality. Some of them are doing it because they have come at last to the realization that it is just and democratic and right. You owe it to all of them to support their efforts by rejecting this discriminatory and undemocratic amendment.

I thank you, sir.

Chairman CELLER. Mr. Yeakel, tell us what is "Concerned Citizens for Improved Schools"? What kind of an organization is that?

Mr. YEAKEL. Concerned Citizens for Improved Schools is a biracial committee of citizens of Nashville and Davidson County.

We came into being a little over 3 years ago when a school, a primary school, elementary school to which many of our children were going, was about to be rezoned so that most of the minority community of a rather well-balanced school was to be zoned out of the new junior high school that was to be opened the following fall.

We discovered that our board of education was open to hearing us in this regard and did rezone the school to be more of an integrated and inclusive school.

About that time there was some temptation to say we had accomplished our concern and this was sufficient, and then we came to the realization that we were indeed using perhaps an unfair opportunity in behalf of our kids when the real issue was the educational opportunity for all of the children of the Nashville-Davidson County metropolitan area system.

Chairman CELLER. How many members are there?

Mr. Yeakel. We have had membership from 35 to 200 in its primary membership and supporting membership of about 2,200 parents who in one way or another have contributed.

Chairman Celler. Are you the head of that organization?

Mr. Yeakel. I am chairman.

Chairman Celler. What is your profession?

Mr. Yeakel. I am a clergyman. I am general secretary of the Board of Evangelism of the United Methodist Church.

However, I think, because of the response I have gotten in this regard, I should have on the record that I am testifying as a citizen and not out of my work and life in the church.

Chairman Celler. Thank you.

Mr. Hungate?

Mr. Hungate. Thank you, Mr. Chairman.

On page 3 of your testimony, the last paragraph, line 3, you say that central city children "have been cheated by poor quality facilities and secondhand equipment."

Do you have some specific examples of that?

Mr. Yeakel. Yes, sir. I think the quotation which I read from Delbert Nowell, the assistant secretary for business service, verifies what we have been saying. We do have documentation of that.

Mr. Hungate. Can you name a school that has such facilities? I am sure you can.

Mr. Yeakel. For instance, our Pearl High School was treated to a complete overhaul in terms of the opening of the school as we began this year under the forced order.

Mr. Hungate. This is a central city school?

Mr. Yeakel. This is a central city high school; yes.

Mr. Hungate. Continuing the same sentence, "Too many teachers look upon them as uneducable and not worthy of quality education."

Give me a specific example of teachers who have that attitude.

Mr. Yeakel. I do not have a direct personal quotation of this, sir. This has been expressed in various meetings that some of our members have participated in and these statements have been made.

Mr. Hungate. Do you think you might furnish that to the committee?

Mr. Yeakel. I think we could go back and attempt to do this, yes, if you request it.

Mr. Hungate. Certainly any teacher that would have that attitude should be subject to criticism, but I think it is a serious charge and it would be helpful if we have supporting evidence of some who have made such statements. Thank you, sir.

Mr. Yeakel. Thank you.

Chairman Celler. Counsel?

Mr. Zelenko. Mr. Yeakel, on October 6, 1971, Dr. Elbert D. Brooks, the superintendent of Nashville schools appeared before the Senate Select Committee on Equal Educational Opportunity, and he made the following statement:

> Inadequate transportation equipment and facilities and lack of funds to obtain them required extended scheduling of school opening time, 7 a.m. to 10 a.m., and extended distances that non-bused children must walk to school. These conditions require many students to leave or return home in darkness. Our inability to maintain the reserve fleet for current operation will result in serious interruptions of transportation service as we move into cold winter months.

The plea of Dr. Brooks was for additional financial assistance to acquire buses to make the depreciation plan work in Nashville. Can you tell the subcommittee what has been the experience since October 6, 1971, in Nashville?

Mr. YEAKEL. I think that Dr. Brooks' statement is an accurate statement which we would affirm. There has been no relief to the best of my knowledge made available in terms of dollars to provide extra buses or new buses. We do not have adequate buses to provide the transportation facilities so that all of the children might go to school and return home from school during daylight hours and the extended sessions have been continued. It has been discovered, however, that some modifications in that time schedule could be made and I think that it is fair to say that we have been blessed with a million-dollar winter. Had we had severe weather, I think his predictions that potential breakdown of the fleet, and so on, would have caused serious inconvenience.

We have been very fortunate. The few cold snaps that we have had did in fact produce some of this inconvenience but without this additional help, we have had a relatively fortunate year in that regard.

Mr. ZELENKO. Mr. Yeakel, Dr. Brooks also said at that Senate hearing in October 6, 1971:

> Unless immediate and substantial assistance can be obtained to alleviate our transportation problems, our school board will have no choice but to ask the federal court to modify the existing court plan for integration.

Has that come to pass? Has the school board asked for modification of the desegregation plan?

Mr. YEAKEL. I cannot answer that question exactly, sir. There has been no modification within this school year. It is my understanding that the plan is under constant review by order of the court and consequently the administration of the school board would be giving certain information back to the court for whatever modifications are necessary.

All of us anticipate that there will be some modifications. We would point out that in fact the court-ordered plan did not touch the entire school system. There are still major geographic areas that are left untouched because of their distances from the center city where the major concentration of unequal educational opportunities had been found.

This must yet be worked out, if in fact an understanding of the unitary system or the entire area is to be implemented.

Mr. ZELENKO. Finally, is the Nashville and Davidson County school system one that encompasses not only the city of Nashville but the surrounding suburban areas as well?

Mr. YEAKEL. The entire Davidson County is metropolitan government and therefore metropolitan school system. One system for the entire county.

Mr. ZELENKO. Thank you very much.

Chairman CELLER. Mr. Polk?

Mr. POLK. Mr. Yeakel, I have one question.

On page 5 of your statement in item 1, you refer to the achievement disparities between inner city schoolchildren and suburban schoolchildren.

I was wondering if you could testify as to what these school authorities do in a situation when it is found that the inner city child that was transferred to a suburban school is behind in achievement?

Mr. Yeakel. It is my temptation to say that there has been very little done except through the voluntary efforts of persons, realizing that we would be under considerable pressure as we went into this first year in an attempt to integrate and bring our schools into a much more favorable position for all of our children.

The faculties were mandatorily integrated the previous year and obviously there was considerable fallout from that operation, so that we are only beginning to settle out in terms of the integration of faculties and of the students within this particular year's experience.

There has been created an office of—I don't know the exact title—but what would amount to an office of volunteers or voluntary persons to move into the schools and I would say this has been the major factor in working at this.

We have had some programs, remedial programs all along, and these have proved to be tremendously inadequate. I personally know of no massive effort, perhaps because of lack of funding and personnel to get at this particular issue, so it has come from the community.

Mr. Polk. Mr. Yeakel, if a sixth-grade student from the inner city is transferred to a suburban school, is he put in the sixth grade or the fifth grade?

Mr. Yeakel. My understanding is that he would be put in the 6th grade.

Mr. Polk. Thank you.

Chairman Celler. We are grateful to you, sir.

Thank you very much.

Mr. Yeakel. Thank you, sir.

Chairman Celler. Our next witness is Mr. Don W. Mantooth, Marion County chairman, the American Party of Indiana.

STATEMENT OF DON W. MANTOOTH, MARION COUNTY CHAIRMAN, THE AMERICAN PARTY OF INDIANA

Mr. Mantooth. Thank you, Mr. Chairman. Thank you for the opportunity to appear here on behalf of the people of the good State of Indiana.

As I come before the committee I would like it known that I have been long active in opposing involuntary busing in my State and in certain ways in other States as well. I would therefore like to speak in favor of House Joint Resolution 620 and to convey the thoughts and feelings from the hearts and minds of the people in our area.

Much has gone on before on the subject of forced busing. My testimony certainly will be only one raindrop on a parched desert. But, I am here as an emissary for a people under seige and seeking relief for those that are suffering, and those destined to suffer, under the cruel, brutal heel of judicial tyranny which dictates that certain school-age children, and I say "certain" because it depends on whether their color makes them eligible, must give up their claim to life, liberty, and the pursuit of happiness and surrender themselves to being forcibly bused to some distant schoolhouse, where they are told they must go to find their "equal opportunity."

Well, people are continually asking me why their equal opportunity cannot be found nearer home, at the schoolhouse just down the street, with a concentration on quality education.

I might depart here to say in my early years, 4 years of high school, I was bused. I rode the bus from a country farm home to Salem, Ind., high school, which was 8 miles. At that time I thought it was one of the greatest privileges and I look back on it as one of the greatest privileges that a citizen of this country could have, to be able to have the opportunity to get an education. And all of this in a free country. But if someone had told me at that time that I could no longer go to Salem high school because I was white, that I would have to take the bus somewhere else, I don't think I would have looked back on it as a great privilege but something else instead.

We should all be aware by this time that the great social experiment of involuntary busing has failed. Busing rivals Vietnam as being the issue most savagely tearing our country apart. Yet, the more evidence of failure that comes to light on the issue of busing, the more we see Federal judges going against the written law and the will of the people, in expanding their orders to step up busing, in spite of proof that almost nobody wants busing.

Can't we take cognizance of certain facts here, first that people generally have peacefully accepted the precepts of *Brown* v. *Board of Education;* that title IV of the 1964 Civil Rights Act, passed by both Houses of Congress and signed by the President to become law, and should have settled the country and would have if it had not been for unconstitutional Federal courts unsettling it by taking their strange and unlawful course to try to rewrite the law to suit their own purposes.

Apparently the unconstitutional courts feel that they have been deputized by the Supreme Court to completely change our form of government by overshadowing agencies of local government, even State legislatures, with the harsh crackling of Federal court decrees.

This happened in the past session of our State legislature. The people elected by the citizens of our State were powerless to pass any local legislation affecting local educational matters at all because of warnings from the Federal judge in our area who said it would be useless for them to try to impose the will of the people on their own affairs.

People everywhere are recognizing all this as the cruel heel of oppression descending on them and decrying it all as a form of totalitarianism, creeping, inveigling its way into our land of the free—they cry for relief.

These are flesh-and-blood people. They are weary, and this includes the supposed beneficiaries, the minority peoples. They plead and pray for a prompt return to freedom. No one has really asked them what they wanted.

It is clearly obvious now that political pulling and tugging on the issue of busing will forever keep the country unsettled, until the matter is settled, for once and for all, with a clearly worded amendment to the Constitution.

Those that have been responsible for enforcing existing laws to restrain the Department of Education and Federal judges have never done so and obviously never intend to.

Congressional battles cover the same old ground and arrive at nowhere. It is clear that Congress never intends to exercise its power to curb the Federal courts it created.

It also should be crystal clear by now that the executive branch, the President of the United States, although he declares himself against forced busing, will not direct those agencies under him to enforce the laws that prohibit busing.

So, what are we to do? Busing continues its destruction of communities, of schools, of human relationships, of parent-teacher relations. Restoring the freedom of little children and their parents is the most important issue confronting the American people at this moment.

That is why I have brought the feelings of the people of my city, my State, to plead to this committee to save our schools. This committee has the chance to begin the righting of a great wrong in our country—a great unnecessary wrong.

We know, don't we, that if rulings such as Richmond is upheld by the Supreme Court, and ordered on a nationwide basis, as it certainly would be, the neighborhood school concept, or what's left of it, will be completely dead.

Outlandish rulings of this type claim that the immediate full-scale integration of all schools is the only important thing, and that nothing should stand in the way, not cost, not quality education, not people's desires—not anything.

But, I say to this committee, in the tradition of our great country, people are never better off than when they are free.

When people are free to choose, the record shows that they do not choose to send their children out of the community to faraway schools for the purpose of desegregation experiments. In Detroit, 62.9 percent of black community parents were opposed to it, and another example, black parents in New York have long had the option of freely busing their children away from their neighborhoods to schools of their own choice; less than 2 percent have done so.

And so it goes. At this late date, in the absence of proof that forced busing has ever helped anybody, it is time to return to sanity; it is time to bring about a full restoration of freedom for our Nation's schoolchildren by emancipating them from the threat of, and many from the actuality of, forced busing.

I pray that the deliberations of this subcommittee will culminate in the successful attachment of an amendment to the Constitution that will calm the country, end the baneful argument, and get us back on a course of reason, and progress, for the betterment of every single blessed schoolchild.

I thank the committee.

Chairman CELLER. In the recently decided case of *United States* v. *Board of School Commissioners, Indianapolis, Ind.*, the court asked this question: Did the school board—and this in the city of Indianapolis—operate a dual school system, or put another way, did it have a deliberate policy of segregating minority—Negro—students from majority—white—students in its schools on May 17, 1954?

And the court answered, it did.

Do you think that it was right for Indianapolis to continue that practice?

Mr. MANTOOTH. I think if they were guilty of assigning children and closing the schoolhouse door in children's faces because of their color previously, that the matter should be corrected.

However, this case I understand is under appeal by the school districts in Indianapolis and they are saying that the racial makeup of the schools have been as a result of housing patterns, rather than deliberate assignment to certain schools because of race. The outcome has not been decided as I understand it.

Chairman CELLER. How could you break down such a system? How could you break down all-white and all-black schools?

Mr. MANTOOTH. I think we will arrive at the time finally when we should let the people decide which schools the children should go to.

Chairman CELLER. Speak louder, sir. I can't hear you.

Mr. MANTOOTH. I believe that the people, given a choice in Indianapolis, would cause the makeup of the school to turn out to their satisfaction.

I might relay an experience that we had in Indianapolis, if I may.

One of the main schools under this thing in Indianapolis, has been Crispus Attucks high school, which was predominantly black and was a high school used as an example of being set up as an all-black high school.

About 2 years ago, the board of education, which had a meeting to vote whether to close Crispus Attucks and also Shortridge high school which had a successful outcome of integration, they had integrated Shortridge high school and it was a perfect model of an integrated high school.

Yet, the school board was to decide on this particular Tuesday evening whether to shut down Crispus Attucks altogether and bus the students somewhere else and also to do the same thing with Shortridge high school.

My wife and I stood before the doorway of that building for an hour and a half before it opened on that Tuesday evening with about 300 or 400 people, students from Crispus Attucks and Shortridge High School, which was 95 percent black in its makeup.

These students looked at us strangely because we were the only adults there and certainly the only white adults, and one of them finally came over and said, "Why are you here? Whose side are you on?" And I said, "I am on the side of whoever it is that is against closing these schools and busing the children all over."

And they said, "Man, you are on our side." So we stood with them and we made our way into the doorway when the board of education opened and when they voted to close Shortridge and Crispus Attucks High Schools, you never saw so many tearms in your lives rolling down the cheecks of these student faces and they rolled down my face and my wife's face as well because we could not believe that a thing like this would happen, that no one had ever asked these people what they wanted. They wanted to keep their school because they were proud of it. It was a great high school. Whether it was white or black, these were people and they wanted to keep it and they wanted to be recognized as people, not black people or white people, because we are all of the same race, the human race.

These are flesh and blood people and they are appealing to you. I have talked with them and walked with them, with everyone that is concerned with these problems in our area, and we want to get the country settled and get down to matters of good schools and good relations between the Government agencies and people in the education department, and this is what we want to do, just settle down to the business of improvement.

Chairman **Celler.** In the historic *Brown* case, the Supreme Court said there should be integration "with all deliberate speed." Do you think the method that you have adopted involves all deliberate speed?

Mr. **Mantooth.** As to integration? I think if people were left to decide, that integration might proceed at a slower pace, but I think it would be more satisfying to all people involved. It would be a smooth process where at present it is disorderly and it is disturbing to the very people we are trying to help here.

It is hard to tell people that when they wonder where their equal opportunity is when they have to be prodded somewhere else to find it. I don't think there is anyone, not too many people nowadays that are steadfast against integration.

At first possibly, like in Indianapolis, Judge Hugh Dillon called all parties involved in and suggested a voluntary busing of the blacks only to the suburbs. This did not disturb the suburban people at all. They said, great, as long as we don't have to bus our children at least they were satisfied, but the people in the inner city, they were the ones that were disturbed about sending their children out.

It is a matter of removal of the children from the environment of the home and the community that they are familiar with.

Chairman **Celler.** Congressman Abourezk.

Mr. **Abourezk.** Mr. Mantooth, on page 2 of your statement you say that it is crystal clear that the President has declared himself against forced busing but yet he refuses to order the agencies under him to enforce the laws that prohibit busing.

I was under the impression that he had taken the position that he would do so after the Florida primary.

Do you have any other information on that?

Mr. **Mantooth.** Only the public statements that he has made that the President himself is not in favor, well, I think he has made statements in favor of the neighborhood school concept.

I don't think he has taken any official actions other than his own statements.

Mr. **Abourezk.** Maybe I have been misreading what he has been saying. What has he said about the statement that he will make after the Florida primary?

Mr. **Mantooth.** Well, I am not too familiar what he intends to do after the Florida primary.

I understand that he is deliberating with his committee that he formed whether or not to support some legislation or even this amendment.

Mr. **Abourezk.** I see. Thank you.

Chairman CELLER. Mr. Hutchinson?

Mr. HUTCHINSON. Thank you, Mr. Chairman.

In your statement you refer to "unconstitutional courts." You are not suggesting that the courts themselves are unconstitutional, are you?

Mr. MANTOOTH. What I meant there was that the courts that are making all of the interpretations and rulings, controlling local government agencies and even citizens themselves, in my interpretation were not organized or established by any constitution.

Not a Federal constitution or any State constitution. They were as I understand it a creature of the Congress over which Congress retained the control.

Mr. HUTCHINSON. Well, the fact is that the Constitution authorizes Congress to establish courts. The Congress established those courts, but that does not make them unconstitutional courts, does it?

Mr. MANTOOTH. Well, it gives the Congress the power to establish the courts as they saw fit. I think there may be a question in the constitutionality of some of their court orders. They may be unconstitutional in that regard as they conflict with the same agency that brings about other legislation such as the 1964 Civil Rights Act. They are in conflict with the same thing that created it.

Mr. HUTCHINSON. Are you saying in effect that the courts are not unconstitutionally created but that perhaps some of their interpretations of the Constitution may be at variance with what you believe they should be?

Mr. MANTOOTH. Since they conflict with other legislation by the same body.

Mr. HUTCHINSON. You say that it is important once and for all to settle this issue with a clearly worded amendment to the Constitution.

Might I suggest to you that whenever we put words into the Constitution, what we are doing is providing tools for the courts. Whenever we put words into the Constitution, we transfer the control of the matter out of the legislative branch and into the judicial branch of the Government.

If you put something in the Constitution, it is only the courts that can interpret it. If you have a feeling of insecurity so far as the courts are concerned at the present time, I am wondering why you would feel comfortable with new words in the Constitution.

Mr. MANTOOTH. I would only feel comfortable if there was no loophole in the amendment that would give the courts an opportunity to give an interpretation other than what was intended.

Mr. HUTCHINSON. I don't want to pursue this unduly, and I will accept your answer, but I think that we have to recognize that if we look at our own history some constitutional provisions mean something quite different today from what they meant to the framers of the Constitution or even to those who wrote the constitutional amendments.

So we have come to the realization, as one of the great justices of the Supreme Court once said as an offhand remark, the Constitution means whatever the Supreme Court says it means.

Since they interpret the Constitution, I don't know how you can be sure that you will ever write something that could not be reinterpreted or misinterpreted in the future.

I would think that you would be here asking this Congress to enact meaningful statutory language which you would expect the court to respect. If the court should turn down one statute, why the Congress can try again. But the Congress would keep the matter within the control of the legislative branch instead of simply abdicating the whole problem to the courts.

Mr. MANTOOTH. May I respond briefly?

Mr. HUTCHINSON. Yes.

Mr. MANTOOTH. I understand that the Congress already has the authority to make null and void any appellate decisions of the Supreme Court.

Mr. HUTCHINSON. I don't believe I would agree with you at all. I don't think that we have any power to nullify any particular decision of the Supreme Court based upon an interpretation of the Constitution. I think that our power lies along this line. When the Supreme Court hands down a decision which interprets a statute different from the way the Congress wants it to be interpreted, that the Congress can pass a new law to clarify the congressional intent. That is a very simple thing so long as we are dealing with statutes.

But when the Court undertakes to interpret the Constitution, of course, the Congress cannot amend the Constitution, you see. And so there again, I just think that a better course of action would be for us to write statutory language which we can hold within legislative control.

Chairman CELLER. Mr. McClory?

Mr. MCCLORY. No questions.

Chairman CELLER. Mr. Hungate?

Mr. HUNGATE. Thank you, Mr. Chairman.

Mr. Mantooth, you don't question the fact that all people are basically equal as people, do you?

Mr. MANTOOTH. Will you define the question a little better?

Mr. HUNGATE. Well, there is no inherent inferiority in one race or another, is there? The blacks would not be inherently inferior to the whites and you would not assert that whites are inherently inferior to blacks, would you?

Mr. MANTOOTH. I don't believe that is the case; no.

Mr. HUNGATE. You would favor desegregation of the public schools as ordered in the *Brown* decision of 1954?

Or perhaps you don't agree with that case.

Mr. MANTOOTH. I believe that if the people felt it was to their advantage. Have we seen a proof that forcibly desegregating the people from where they want to travel or to conduct their educational pursuits, have we seen that when they do this voluntarily as their own desire?

Now, if they are being forced——

Mr. HUNGATE. Let me interrupt you right there because some of your testimony is somewhat persuasive to me. You rode the bus and it didn't hurt you?

Mr. MANTOOTH. Not a bit.

Mr. HUNGATE. It did you some good?

Mr. MANTOOTH. Yes.

Mr. HUNGATE. It is not the busing that hurts us. It is something else. It is some right and freedom that you feel is being governmentally imposed by a nonelected body. Would that be a fair statement?

Mr. MANTOOTH. Yes; freedom is the issue as I see it.

Mr. HUNGATE. Thank you.

Chairman CELLER. Mr. Brooks?

Mr. BROOKS. No questions.

Chairman CELLER. We are very grateful to you, sir.

Thank you.

(The Indianapolis school desegregation decision referred to follows:)

UNITED STATES OF AMERICA, PLAINTIFF,

v.

THE BOARD OF SCHOOL COMMISSIONERS OF THE CITY OF INDIANAPOLIS, INDIANA, ET AL., DEFENDANTS.

(No. IP 68-C-225.)

UNITED STATES DISTRICT COURT, S.D. INDIANA, INDIANAPOLIS DIVISION, AUGUST 18, 1971

School desegregation action brought by United States against common school corporation which controlled area of former city that had been consolidated with county into metropolitan government under statute which expressly provided that no school corporation should be affected. The District Court, Dillin, J., held that where it appeared that common school corporation was confined to area in central part of consolidated city, United States would be ordered to prepare and file appropriate proceedings to secure joinder of other municipal corporations and school corporations in county and state's Attorney General so that it could be determined whether the statute providing for consolidated government, but excluding school districts, was unconstitutional as tending to cause segregation or inhibit desegregation.

Accordingly.

1. Schools and School Districts 🔑13

All states have duty to desegregate public schools as were practicing de jure segregation of pupils as of May 17, 1954.

2. Schools and School Districts 🔑13

In school desegregation action by United States, government had burden of proving that defendant school board had deliberate policy of segregating minority students from majority students in its schools on date of the first Brown decision in which United States Supreme Court held that segregation of children in public schools on basis of race is unconstitutional and government had burden of proving that defendant had not changed its policy on date suit was instituted so as to eliminate de jure segregation. U.S.C.A. Const. Amend. 14.

3. Schools and School Districts 🔑13

Conditions in public schools with respect to desegregation as of date of trial of government's desegregation case are not controlling, in view of fact that complaints and proof must relate to conditions as of date of filing and voluntary compliance in advance of trial would not deprive court of jurisdiction to insure continuation of such compliance by appropriate orders. U.S.C.A. Const. Amend. 14.

4. Schools and School Districts 🔑11

Ultimate responsibility for public schools in Indiana and duty to provide general and uniform system of common schools is upon the state and not the local boards. Const. Ind. art. 8, § 1.

5. Courts 🔑282.2(11), 284

Pursuant to Fourteenth Amendment and Civil Rights Act of 1964, federal district court had jurisdiction to hear and decide all issues concerning alleged racial discrimination in public school system, including defendant school board's policies with respect to assignment and transfer of students, allocation of faculty and staff, location and construction of schools, transportation of students, and general educational structure and process. 28 U.S.C.A. § 1345; Civil Rights Act of 1964, § 407(a, b), 42 U.S.C.A. § 2000e-6(a, b); U.S.C.A. Const. Amend. 14.

6. Schools and School Districts 🔑13

Where school board on date of Supreme Court decision requiring desegregation of public schools, on date desegregation action was brought by government and as of date of trial was operating a system in which segregation was imposed and enforced by operation of law, school board was clearly charged with affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated. 28 U.S.C.A. 1345; U.S.C.A. Const. Amend. 14.

7. Schools and School District 🔑13

All provisions of federal, state or local law requiring or permitting racial discrimination in public education must yield to principle that such discrimination is unconstitutional. U.S.C.A.Const. Amend. 14.

8. Schools and School Districts 🔑13

Federal district court in school desegregation case had continuing jurisdiction to make and enforce such decrees in equity as were necessary to convert dual school system to unitary system. 28 U.S.C.A. § 1345; Civil Rights Act of 1964, § 407, 42 U.S.C.A. § 2000c–6.

9. Courts 🔑262

Once a right and a violation have been shown, scope of district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.

10. States 🔑84

State has power to abolish, consolidate, eliminate or create new governmental corporations.

11. Schools and School Districts 🔑13

In school desegregation case brought by United States, wherein it appeared that city was consolidated into metropolitan government under statute which expressly provided that no school corporation should be affected, so that common school corporation of former city was confined to area in central part of consolidated city, United States would be ordered to prepare and file appropriate proceedings to secure joinder of other municipal corporations and school corporations in county and state's Attorney General so that it could be determined whether the statute providing for consolidated government but excluding school districts was unconstitutional as tending to cause segregation or inhibit desegregation. Civil Rights Act of 1964, § 407(a, b), 42 U.S.C.A. § 2000c–6(a, b); U.S.C.A.Const. Amend. 14.

John D. Leshy, Civil Rights Division, Office of Attorney General, Department of Justice, Washington, D.C., Stanley B. Miller, U.S. Atty., Indianapolis, Ind., for plaintiff.

G. R. Redding, Stephen W. Terry, Jr., E. C. Ulen, Jr., Baker & Daniels, Indianapolis, Ind., for defendants.

Harold E. Hutson, Indianapolis, Ind., amicus curiae.

Memorandum of Decision

Dillin, District Judge. This action, filed May 31, 1968, was tried by the Court on July 12–21, 1971. The Court has considered the voluminous testimony, the more than 200 exhibits, the post-trial briefs, has taken judicial notice of certain historical facts believed to be matters of common knowledge, and now files its findings of fact and conclusions of law in the form of this memorandum. Rule 52(a), Federal Rules of Civil Procedure.

I. General

This is a school desegregation action brought by the United States pursuant to Section 407(a) and (b) of the Civil Rights Act of 1964, 42 U.S.C. § 2000c–6(a) and (b). The defendants are The Board of School Commissioners of Indianapolis, Indiana (hereinafter "School Board" or "Board"), the members of the Board, and its appointed Superintendent of Schools.

The defendant School Board is a common school corporation organized and existing under the laws of the State of Indiana. It is situated within Marion

County, Indiana, and governs, manages, and controls all of the public elementary and high schools within a geographical area known as the School City of Indianapolis (hereinafter "School City"), all as required by Indiana law. The shape of the School City resembles that of a trussed fowl, with its head to the north, its bound feet to the south, and its flapping wings extending east and west. The east-west wingspread, at its greatest, is about 16 miles. The north-south dimension of the School City is about 13 miles.

During the 1970–71 school year, the School Board operated 110 elementary schools. The usual (but not invariable) grade structure of the elementary schools was a kindergarten-through-eighth-grade structure. Among these 110 schools were 6 junior high schools. During the 1970–71 school year, two of the elementary schools were devoted entirely to the education of mentally retarded children, and one of the elementary schools was devoted entirely to the education of physically handicapped children and children having both physical and mental handicaps.

During the 1970–71 school year, the School Board operated 11 high schools. With the exceptions hereinafter noted, each of these high schools housed students in grades 9 through 12 who had attended one of the "feeder schools" regularly assigned to the particular high school. The exceptions to these general statements are that Crispus Attucks High School (hereinafter "Crispus Attucks") housed students in grades 10 through 12 only, its 9th grade class having been divided between the newly acquired Cold Spring Campus and Northwest High School (hereinafter "Northwest") and that Shortridge High School (hereinafter "Shortridge") housed a 9th grade made up of students from assigned "feeder schools" and 3 classes of students who were attending Shortridge under "the Shortridge Plan." Also, a comparatively small number of students were transferred to high schools other than those to which originally assigned, pursuant to the transfer policies of the Board.

The total enrollment in the elementary schools at the close of the 1970–71 school year was 77,658 students (excluding special education students). Negro students constituted 37.4% of that total. The total enrollment in the high schools at that time was 22,487 students. Negro students constituted 33.6% of that total There were approximately 4,379 faculty members, of whom 976 (22%) were Negro.

Of the seven persons currently serving as members of the School Board three are Negroes (Mrs. Cary D. Jacobs, The Reverend Landrum E. Shields, and Mr. Robert D. DeFrantz). Mr. Shields served as President of the School Board from the date of the Board's first meeting in July, 1970, until July 13, 1971, on which latter date Mr. DeFrantz was elected to the Presidency, in which position he presently serves. The Board does not appear to be polarized along racial lines, and the personnel of central administration, operating under the direction of the Superintendent, likewise reflects a reasonable racial balance.

On February 6, 1970, an Indiana not for-profit corporation, Citizens of Indianapolis for Quality Schools, Inc., attempted to intervene herein as a party defendant, asserting that its membership consisted exclusively of parents of students in the Indianapolis public schools who possessed a legally cognizable interest in the proceeding on such account. The motion to intervene was accompanied by petitions executed by some 5,000, more or less, parents who requested such intervention. The petition to intervene was denied by the Court, for the reason that the corporation did not appear to have an interest sufficient to permit intervention as of right pursuant to Rule 24(a)(2), F.R.C.P. Hobson v. Hansen, D.C. Dist., 1968, 269 F. Supp. 401; Blocker v. Board of Education of Manhasset, New York, E.D.N.Y., 1964, 229 F.Supp. 714. Permissive intervention was also denied However, Mr. Harold E. Hutson, attorney for the petitioner, was permitted to appear as amicus curiae, and in such capacity he attended the trial, was furnished with copies of all exhibits, and participated in the argument and post-trial briefing.

II. THE ISSUES

There are but two ultimate factual issues in this case, and two critical dates. The two dates are May 17, 1954, the date of the decision of the Supreme Court of the United States in Brown v. Board of Education of Topeka ("*Brown I*"), 347 U.S. 483, 74 S. Ct. 686, 98 L.Ed. 873, 38 A.L.R.2d 1180, and May 31, 1968, the date on which this suit was filed.

[1] *Brown I*, of course, held that in the field of public education the doctrine of "separate but equal" has no place, and that segregation of children in public schools by operation of law solely on the basis of race, even though the physical

facilities and other "tangible" factors may be equal, deprives the children of the minority group of equal educational opportunities and hence of the equal protection of the laws guaranteed by the Fourteenth Amendment. Approximately one year later, in the same case ("*Brown II*"), 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083, the Court ordered the District Courts involved in *Brown* and its companion cases "to take such proceedings and enter such orders and decrees * * * as are necessary and proper to admit to public schools on a racially nondiscriminatory basis with all deliberate speed the parties to these cases." It thereupon became the duty of all of the States, operating through their various agents, i.e., boards of school commissioners and the like, such as the defendant Board, to desegregate such school corporations as were practicing *de jure* segregation of their pupils as of May 17, 1954.

The two ultimate issues herein may therefore be stated as follows:

1. Did the School Board operate a dual school system, or, put another way, did it have a deliberate policy of segregating minority (Negro) students from majority (white) students in its schools on May 17, 1954?

2. If the answer to the first question is in the affirmative, had the Board changed its policy so as to eliminate such *de jure* segregation on or before May 31, 1968?

[2] The plaintiff United States of America has the burden of proving the affirmative of the first issue and, if proved, the negative of the second. The defendants deny *de jure* segregation on either of the critical dates, and further urge that a third critical date must be considered: the date of trial. Their argument in the latter connection is that no matter what may have gone before, if the Board is operating a unitary system as of the date of trial there is no justification for judicial intervention or for the granting of relief in equity.

[3] As will be set out in more detail hereafter, the Court finds for the plaintiff on each of the ultimate issues of fact. The argument that conditions as of the date of trial should control the action is rejected, first for the legal reason that complaints, and the proof of same, must relate to conditions as of the date of filing: plaintiff is always entitled to judgment, if only for costs, if it proves the essential elements of its compalint as of such time. It is true that the initiation of a legal action may, and frequently does motivate the defendant to grant all or part of the relief sought prior to trial, thus rendering the action moot in whole or in part. In a simple action such as a suit on account where the only relief sought is money, it is obvious that payment in full by the defendant before trial would effectively render the action moot for all time, save for payment of costs. Where the relief sought is equitable, however, particularly in a complex case such as this where the equitable relief sought is affirmative rather than being limited to a negative injunction, voluntary compliance in advance of trial would not deprive the Court of jurisdiction to insure the continuation of such compliance by appropriate orders. In any event, however, the Court finds that the Board had not, as of the date of trial, effectively desegregated its school system to the extent required by *Brown II*.

III. History

Perhaps one of the greatest public misunderstandings as to the operation of the public schools of the State of Indiana is that the responsibility for the conduct of such schools is purely local. It is not difficult to understand the basis for such misconception as the schools are, as a practical matter, operated by local boards, locally elected, subject only to the general oversight of the Indiana State Board of Education and the State Superintendent of Public Instruction. They are paid for to a large extent by funds derived from local property taxes. That part of the property tax allocated to the funding of the public school system constitutes by far the largest portion of the taxes levied in every taxing unit of the State. (The 1971–72 budget adopted by defendant Board is in excess of $82,000,000.)

(4) Nevertheless, the fact remains that the ultimate responsibility for the public schools, and the duty to provide a "general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all" is placed squarely upon the State.[1] It has therefore been held in numerous cases that the State school system is a State institution, and that school corporations organized under, or by virtue, of, the laws of the State are but the agents

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[1] Constitution of the State of Indiana, 1851, Art. 8, § 1.

of the State.[2] Therefore, in reviewing briefly the events leading up and contributing to the education plight of the Negro in Indianapolis in 1954, 1968, and at present, it is necessary and proper to consider historic policies of the State and various of its agencies, as well as the acts and omissions of the Board itself.

A. TERRITORIAL ATTITUDES

The first twenty Africans who lived within the boundaries of what later became the original thirteen States landed at Jamestown, Virginia, in 1619, thus predating by a year the more highly publicized landfall at Plymouth Rock. In early Virginia, as in other colonies, the first Negro settlers were free, and accumulated land, voted, testified in court and mingled with whites on a basis of equality.[3] Unfortunately for them and their progeny, in the 1660's Virginia, Maryland and other states enacted the first of a series of laws which later led to the establishment of slavery on the basis of race, with results which are known.

Virginia and Virginians played major roles in the early history of Indiana. At one time Kentucky was merely a county of that Commonwealth, which also claimed all of the lands north and west of the Ohio River, east of the Mississippi and south of Canada. Many of the earliest white settlers of Indiana were Virginians and they, together with persons of similar background from Kentucky and the Carolinas, all States where slavery was practiced, made up the majority. When Virginia ceded the Northwest Territory in 1784, it was pursuant to a reservation of land to be donated to General George Rogers Clark and members of his Virginia regiment for services rendered in the Revolutionary War,[4] and such grants were made—many for tracts in Indiana. The first territorial governor of the Indiana Territory, following its establishment in 1800, was William Henry Harrison, another Virginian. The son of an influential Virginia planter, he could scarcely have avoided the culture of the southern country gentleman.[5]

The racial attitude of Harrison and the early settlers of the Territory (which also included, among other land, all of present day Illinois) quickly became apparent. Although Article 6 of the Ordinance of 1787, providing for the government of the Northwest Territory, prohibited slavery and involuntary servitude in the Territory,[6] which provision was carried forward to the Indiana Territory,[7] they set about immediately to secure the repeal or suspension of Article 6.[8] When the Congress failed to act favorably upon their repeated requests, Harrison and the territorial judges, acting in their legislative capacity, went so far as to adopt a law in 1803 providing that Negroes and mulattoes brought into the territory must perform the service due their masters and that contracts between master and servant were assignable.[9] Another such law provided that slaves purchased outside Indiana and brought within the territory had the Hobson's choice of agreeing to being bound to service, or of being taken out of the territory (presumably for resale).[10] Some Negroes were bound to service under indentures for a long as ninety-nine years.[11]

B. STATEHOOD: GENERAL POLICIES

Statehood brought no immediate change. Although slavery was once again prohibited, it is noteworthy that of 1,326 Negroes counted in the 1820 census, 503 were candidly listed as slaves.[12] Discrimination became the official policy of the State, as evidenced by the successive Constitutions of 1816 and 1851, and by the laws enacted by the General Assembly. For example, both Constitutions limited the right to vote [13] and to serve in the militia [14] to white males; these restrictions were not removed until the adoption of constitutional amendments in 1881 and 1936, respectively. A statute of 1818, similar to one enacted during the territorial period, declared that no person with a fourth or more of Negro blood could give testimony in court in a case involving a white party.[15]

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[2] Ratcliff v. Dick Johnson School Twp., 1933, 204 Ind. 525, 185 N.E. 143; Greathouse v. Board of School Com'rs, 1926, 198 Ind. 95, 151 N.E. 411; Ehle v. State ex rel. Wissler, 1922, 191 Ind. 502, 133 N.E. 748; School Town of Windfall City v. Somerville, 1914, 181 Ind. 463, 104 N.E. 859; Jordan v. Logansport, 1912, 178 Ind. 629, 99 N.E. 1060; State ex rel. Warren v. Ogan, 1902, 159, 63 N.E. 227; Freel v. School City of Crawfordsville, 1895, 142 Ind. 27, 41 N.E. 312.

[3] L. Bennett, Jr., Before the Mayflower, 29–36 (3rd Ed. 1966).

[4] Act of Virginia, December 20, 1783, 1 Burns Ind. Stat. Ann. 369 (1955 Repl.).

[5] J. Barnhart & D. Riker, Indiana to 1816, at 315 (1971) (hereinafter "Barnhart & Riker").

[6] 1 Burns Ind.Stat.Ann. 376 (1955 Repl.).

[7] Act of May 7, 1800, 1 Burns Ind.Stat.Ann. 380 (1955 Repl.).

[8] See generally Barnhart & Riker, 334–335, 347–354.

[9] Philbrick (ed.), Laws of Indiana Territory, 1801–1809, at 42–46.

[10] Ibid., 136–139.

[11] E. Thornbrough, Since Emancipation, 1 (1963) (hereinafter "Thornbrough").

[12] W. Heiss (ed.), 1820 Federal Census For Indiana (1966).

Intermarriage between whites and persons of Negro blood was likewise prohibited in 1818.[16] Subsequently, the Act was clarified so as to extend the prohibition to a person having one-eighth part or more of Negro blood, and made violation a felony punishable by a fine and imprisonment for from one to ten years. Such statute, as it existed in 1871, was unanimously held constitutional by the Supreme Court of Indiana,[17] notwithstanding the adoption in 1868 of the Fourteenth Amendment to the Federal Constitution. The last reenactment of such law [18] was not repealed until 1965. Similarly, an 1852 act [19] declared such marriages to be void, thus creating obvious limitations on the right of inheritance and other legal benefits upon the death of a spouse.[20] This law, too, was not repealed until 1965.

The most striking evidence of the hostility of the white majority was shown in efforts to exclude Negroes from the state and to persuade those already in the state to leave. A law of 1831, which was seldom enforced, required Negroes coming into the state to post bond as a guarantee against becoming a public charge and as a pledge of good behavior. More drastic was Article 13 of the Constitution of 1851 which flatly prohibited Negroes and mulattoes from coming into the state and which provided for penalties for persons who encouraged them to come. Closely linked to the exclusion movement was the colonization movement, which sought to preserve the soil of Indiana for white men by sending Negro residents to Africa. A state colonization society, affiliated with the American Colonization Society, had been organized in 1829 but had never accomplished much. Article 13 of the Constitution of 1851 contained a section encouraging colonization. For several years the state legislature appropriated money for a colonization fund and paid the salary of a State Agent who was supposed to encourage Negroes to emigrate to Africa.[21] Article 13 was held to be null and void in 1866.[22]

In 1885, the General Assembly passed a civil rights law providing that all persons within the jurisdiction of the State were entitled to full and equal enjoyment of the accommodations of "inns, restaurants, eating-houses, barber shops, public conveyances on land and water, theaters, and all other places of public accommodation and amusement;" such law also prohibited discrimination because of race or color in the selection of jurors.[23] It is common knowledge that until the past decade, many parts of this law were more honored in their breach than in their observance, particularly as to the first four categories, often with an assist from the judicial arm of the State.[24] Negroes were rarely admitted, save on a segregated basis, to theatres,[25] public parks, and the like, including State parks operated by the Indiana Department of Conservation, until after World War II. They were confined to segregated wards in public hospitals supported by tax funds, and as we shall see, largely attended segregated schools.[26]

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[13] Constitution of 1816, Art. 6 § 1; Constitution of 1851, Art. 2 § 2.

[14] Constitution of 1816, Art. 7 § 1; Constitution of 1851, Art. 12 § 1.

[15] Acts 1818, Ch. 3, § 52, p. 39.

[16] Acts 1818, Ch. 5, § 59, p. 94.

[17] State v. Gibson, 1871, 36 Ind. 389.

[18] Acts 1905, Ch. 169, §§ 638, 639, p. 584.

[19] 1 R.S. 1852, Ch. 67, § 2, p. 361.

[20] As recently as 1940 the 1852 Act was raised in defense of a claim for death benefits under the Indiana Workmen's Compensation Act, the contention being that the widow, a Negro, could not have been married to the decedent because he was white. The Appellate Court held the defense good as a matter of law, if proved, but affirmed the Industrial Board's award to the widow on the interesting ground that the decedent, a Mexican, had not been proved to be "white." Inland Steel Co. v. Barcena, 1942, 110 Ind. App. 551, 39 N.E.2d 800.

[21] Thornbrough, p. 2.

[22] Smith v. Moody, et al., 1866, 26 Ind. 299.

[23] Acts 1885, Ch. 47, p. 76.

[24] See, for example, the ingenuous decision in Chochos, et al., v. Burden, et al., 1920, 74 Ind.App. 242, 128 N.E. 696, wherein two Negro women refused service in a Greek candy kitchen selling ice cream, soda water, etc., for consumption on the premises had their judgments for nominal damages reversed on the ground that such an establishment did not constitute an "eating-house."

[25] In 1932, when an Indianapolis movie house opened its doors free to Butler University students in celebration of a football victory, Negro students were barred. Thornbrough, p. 88. (Presumably, however, the celebrants all marched to the tune of *Butler Will Shine Tonight*, the school cheer song written, when a student, by Noble Sissle, an Indianapolis Negro. Sissle went on to national fame as a musician, composer, orchestra leader, and writer/producer of successful Broadway musicials.)

C. HOUSING POLICY

Before turning attention to the schools, however, another area of segregation needs mention, and that is in the matter of housing. Just as was the case in Virginia, so in Indianapolis persons of African descent were present from the beginning. It has been recorded that on the very mission which resulted in the location of the new state capitol on the banks of Fall Creek, Governor Jennings was accompanied by a Negro boy known to history only as Bill.[27] More to the point, Ephriam Ensaw, a freed man who worked for wages, settled in the new town, along with various white settlers, even before the surveyors had finished staking the lots.[28] However, by the time the first German and Irish immigrants had been imported in 1836 to work on the Central Canal, most Negroes were to be found in "Colored Town," on the outskirts of the mile square,[29] and were later concentrated in the area around Indiana Avenue.

Segregation in the housing of Negroes in Indianapolis has persisted at least until the date of the filing of this action.[30] As the evidence in this case discloses without conflict, Negroes were discouraged from purchasing homes in predominantly "white" neighborhoods by various methods: white realtors refused to show such homes to Negroes (and no Negro real estate broker was permitted to become a member of the Indianapolis Real Estate Association until 1962), a two-price system was used; a realistic market price to whites and a ridiculously inflated price to Negroes, lending institutions refused to finance homes sought to be purchased by Negroes in "white" areas. Those pioneering Negroes who nevertheless overcame all obstacles and succeeded in purchasing such a home were then harassed by such devices as threatening and obscene telephone calls, stones hurled through windows, neighborhood ostracism, etc.[31] Certain streets and other landmarks, such as Fall Creek, White River, certain railroad tracks, etc., were regarded at different times as barriers to be hurdled by Negroes at their peril.

In addition to pressures of the foregoing type, applied by individual whites, residential segregation was also enforced by law, in many instances. Perhaps the best known method was by means of the racial covenant which, when inserted into a deed or plat of a real estate subdivision, limited ownership of the lot to persons of the white race. As may be noted from a cursory observation of plats recorded in the plat books kept in the office of the recorder of Marion County, many of the better known subdivisions, such as Williams Creek Estates, Broadmoor Estates, Meridian Hills, Highwoods Addition, Forest Hills, Wellington Estates, Fall Creek Highlands, Greenslopes, Wynedale, Ellenberger Plaza, and Meridian-Kessler Terrace, contained such covenants, which were routinely enforced until held unconstitutional in 1948.[32]

As shown by the evidence herein, the City of Indianapolis took official action to enforce segregation in 1926 when the City Council, with only one dissenting vote,[33] adopted General Ordinance No. 15, making it unlawful for any Negro "to establish a home-residence on any property located in a white community or portion of the municipality inhabited principally by white people * * *," or for a white person to commit the same act in a Negro community. The ordinance imposed a fine and imprisonment for violation, and further provided that each seven days maintenance of such a residence would be deemed a separate offense.[34] Passage of the ordinance was noted by The Indianapolis News, then and now one of Indiana's leading newspapers, which stated that "Sincere convictions are represented in the ordinance * * *" and "Patience and forbearance are called for." [35] When the Marion Circuit Court held the ordinance unconstitutional a short time later, The Indianapolis News had a plan of action. "One thing should be done as soon as possible." It editorialized, "and that is to pave the streets in colored neighborhoods, and make them so attractive that there will be no desire to get out of them * * *. The surroundings should be made as good as those in white sections, so that there may be no reason for leaving them." [36] As recently as July 4, 1963, the major Indianapolis newspapers, in their real estate want ad columns, used the designation "for colored," or "col." in describing residential property in certain sections of the city.

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[26] For an extended discussion of these and similar examples of State imposed or tolerated segregation, see Thornbrough, pp. 86-93.

[27] Leary, Indianapolis The Story of a City (1970), p. 8 (hereinafter "Leary").

[28] Ibid., p. 13.

[29] Ibid., p. 50.

[30] The Civil Rights Act of 1968, Pub.L. 90-284, 82 Stat. 81, 42 U.S.C. §§ 3601 et seq. was not fully effective until December 31, 1969, and its effects have barely begun to be felt.

[31] One who received such treatment was Mr. Grant Hawkins, a graduate of Indiana University, successful businessman, and first Negro member of the School Board. For a more detailed discussion, see Thornbrough, pp. 22-29.

[32] The plats of Kessler Park and Crippin's River Park Addition were recorded with racial covenants in 1949, after they had already been held unconstitutional by the Supreme Court in Hurd v. Hodge, 1948, 334 U.S. 24, 68 S.Ct. 847, 92 L.Ed. 1187.

[33] The Honorable Edward B. Raub voted in the negative.

[34] The Mayor and most members of the City Council of this period (not including Raub) had been elected with the support of the Ku Klux Klan. For a short summary of the Klan era see Leary, Ch. 23.

It is common knowledge that in many small towns and a few larger ones in Indiana the custom that Negroes were not allowed to stay overnight was so inavoidable that it had the force of law and was actually enforced by local officials.[37] Thus today it is noticeabe that almost no Negroes are to be found in communities adjoining the School City of Indianapolis. Marion County has three municipalities other than Indianapolis, all contiguous to the School City. Beech Grove, an industrial community of 13,432, has a Negro population of 19. Speedway City, a similar type community, has 68 Negroes out of a total population of 14,951, while Lawrence has 216 Negroes out of a total population of 18,397. Of Marion County's 792,299 residents, 134,474 or 17% are Negro. Of these, approximately 122,086, or 98.5% are confined to the central area served by the defendant School Board.[38]

The Bureau of the Census recognizes approximately 250 standard metropolitan statistical areas in the 1970 census.[39] Such an area is a county or group of contiguous counties which contains at least one city of 50,000 or more inhabitants and which according to certain criteria, are socially and economically integrated with the central city. The Indianapolis Metropolitan Statistical Area has 1,109,882 inhabitants and includes, in addition to Marion County, the contiguous counties of Boone, Hamilton, Hancock, Hendricks, Johnson, Morgan, and Shelby. The 1970 census figures reflect a total of 2,849 Negroes out of a total population of 317,583 residing in these seven suburban counties, a percentage of 0.897.

D. SCHOOL POLICIES TO 1949

In early Indiana, as has been seen, the Negro lacked many of the rights which are the ordinary attributes of citizenship. The plain fact is that, although entitled to certain rights under Indiana law, such as the right to own property and the right to personal liberty, Negroes were not considered to be citizens of the State until the adoption of the Fourteenth Amendment to the Constitution of the United States.[40] For this reason, many of the rights conferred upon citizens by the successive Indiana Constitutions were construed as not applying to Negroes.

Thus in an early case it was held that Negro children could not attend school with white children over the protest of a white parent, even if they paid their own tuition.[41] A statute in force in 1861 barred Negroes, mulattoes and the children of mulattoes from admission to the common schools.[42] After the adoption of the Fourteenth Amendment, the General Assembly in 1869 enacted a law providing, for the first time, for the education of Negro children, but providing also for them to be organized into separate schools. The statute provided that if there were not a sufficient number of such children within attending distance to form a school in one district, several districts could be consolidated; and if there were not enough to be consolidated within a reasonable distance, "the trustee * * * shall provide such other means of education for said children as shall use their proportion, according to members, of school revenue to the best advantage." [43]

The case of Cory et al. v. Carter [44] was commenced by Carter, a Negro parent of school age children, against the school officials of Lawrence Township, Marion County, to compel them to accept his children as pupils in the "white" district school, such officials having failed to provide any school in that or any adjoining district near enough for his children to attend, whereby they were denied the right to attend any school at all. He secured an order of mandate from the Marion

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[35] The Indianapolis News, editorial, March 16, 1926.
[36] Ibid., November 24, 1926.
[37] Thornbrough, p. 21.
[38] All statistics are based upon the 1970 census.
[39] Bureau of the Budget, Standard Metropolitan Statistical Areas (1967, as supplemented).
[40] Cory, et al. v. Carter, 1874, 48 Ind. 327.
[41] Lewis v. Henley, et al., 1850, 2 Ind. 332.
[42] Draper, Trustee, et al. v. Cambridge, 1863, 20 Ind. 268.
[43] Acts 1869, Ch. 16, § 3, p. 41.
[44] Note 40, *supra*.

Superior Court, but the Supreme Court reversed, holding that under the 1869 Act Negro children were not entitled to admission in common schools provided for the education of white students. This holding was reaffirmed in subsequent cases.[45]

In about 1868 Indianapolis erected a new school house and, anticipating the 1869 legislation, assigned the old building on Market Street for the education of Negro children.[46] A separate elementary school was opened there in the fall of 1869. Thus at the very inception of public education for the Indianapolis Negro child, he was segregated by virtue of State law. As will be demonstrated later, *de jure* segregation in the elementary schools continued virtually without change until this action was filed, one hundred years later. The situation with respect to high schools has taken a more erratic course.

Indianapolis's first high school was Shortridge, followed by Emmerich Manual Training and Arsenal Technical. For more than fifty years no separate high school for Negro students was established, and after 1877 school children of both races were permitted to select the high school of their choice, attending on an integrated basis.[47] However, with impetus provided by a petition from the Indianapolis Chamber of Commerce, the School Board on December 22, 1922, adopted a resolution authorizing the construction of a "Colored High School." When such school, Crispus Attucks, was opened in September, 1927, all Negro high school students were forthwith compelled to attend it, regardless of their place of residence in the city. In 1935, Ch. 16 of the Acts of 1869 was further amended to require the Board to provide transportation for Negro students required to travel more than a certain distance by reason of its segregation policies.[48] Thus was instituted the policy of tax-paid transportation of school children (bussing).

Another Act of the 1935 General Assembly is instructive. A law enacted in 1907 had directed township trustees to abandon all schools under their charge at which the average daily attendance had been twelve or fewer pupils. The 1935 act[49] added the following proviso: "Provided, further, that nothing in this act, or in the act to which it is amendatory, shall authorize the discontinuance of any school exclusively for colored pupils where such school is the only school for colored pupils in such school corporation, and any such school heretofore discontinued by the operation of such act shall be re-established." (In sum, trustees were ordered by the State to furnish a separate school building and teacher for the instruction of, for example, one Negro child attending primary school, rather than permit that child to attend a white school).

In 1947, two bills were introduced in the General Assembly, each of which had as its purpose the elimination of segregation based on race, color, creed, etc., in the public school system. In due time, a public hearing was held on one of the bills by the House Committee on Education, at which time the then Superintendent of Schools of defendant Board, pursuant to its authorization, appeared and spoke in opposition. Neither bill passed. However, in 1949 an Act was passed which required desegregation, on a phased basis.[50] Thus ended, at least for a time (see Part VII), the official State policy of segregation.

IV. Board Policies, 1949–1954

As has been shown, the official policy of the State of Indiana and of its agent, the defendant School Board, was one of *de jure* separation of its Negro and white students prior to 1949. During the 1948–49 school year only 614 out of a total of 11,304 Negro students (5.4%) attended regular elementary schools of racially mixed population. The other 10,690 pupils attended sixteen all-Negro elementary schools and all-Negro Crispus Attucks High School. The faculty and staff of each school was completely segregated, and the Superintendent's administrative staff was all white. Generally, Negro schools were built in Negro residential areas and white schools in white areas, and when residential patterns were mixed, Negro and white attendance zones overlapped. Grade structures were altered to achieve segregation in some instances. Negro students in the elementary grades were required to walk, or were transported to all-Negro schools when there were schools, serving only white students, closer to their homes. None of these facts are denied by the defendants.

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[45] Greathouse v. Board of School Com'rs, 1926, 198 Ind. 95, 151 N.E. 411; State ex rel. Mitchell v. Gray, et al., School Trustees, 1883, 93 Ind. 303; State ex rel. Oliver, et al. v. Grubb, Trustee, 1882, 85 Ind. 213.

[46] Leary, p. 118.

[47] Acts 1877, Ch. 81, § 1, p. 124, had amended Ch. 16 of the Acts of 1869 to require admission of Negro students to white schools, if no separate school of comparable grade was provided for Negroes.

[48] Acts 1935, Ch. 296, § 1, p. 1457.

[49] Acts 1935, Ch. 77, § 1, p. 231.

[50] Acts 1949, Ch. 186, p. 603; Burns Ind. Stat. Ann. §§ 28-6106 to 28-6112 (1970), as amended I.C.1971, 20-4-1-7 to 20-4-1-13.

The 1949 Act which abolished segregation in the public schools, required segregated districts to begin desegregating a grade a year by permitting those students enrolling for the first time in kindergarten, the first elementary grade, and the first junior and senior high school grades to enroll in the school nearest their homes. Accordingly, the Board adopted a policy which, on its face, generally followed the provisions of the statute.[51]

In some instances where desegregation would have resulted if children had been assigned to the closest school, they were assigned to segregated schools farther from their homes. The Board's construction policies during the period 1949–53 minimized the amount of desegregation that occurred. The formerly "colored" elementary schools generally remained all-Negro. Likewise, though specific student assignments were made for all high schools, Crispus Attucks remained all-Negro. With one exception, students attending the all-Negro elementary schools, some of which were nearer and more accessible to other high schools, were either assigned exclusively or given an option to attend Attucks; partly as a result of administrative suggestion, the option was usually exercised in favor of Attucks. Further, the transfer policies adopted by the Board facilitated the maintenance of segregated high schools.[52]

At the close of the 1952–53 school year the Board drew fixed boundary lines for all elementary schools.[53] These boundary lines were drawn with knowledge of racial residential patterns and the housing discrimination underlying it. Not only did the Board not attempt to promote desegregation, but the boundary lines tended to cement in the segregated character of the elementary schools. In some instances segregation was promoted by drawing boundary lines which did not follow natural boundaries or were not equidistant between schools.[54] In some instances optional attendance zones between white and Negro schools were adopted in racially integrated neighborhoods. From 1949 to 1953 the high school assignments were maintained in the same segregatory pattern and the creation of the predominantly white Harry E. Wood High School on the Manual High School campus helped perpetuate the segregation of nearby Crispus Attucks.

At the time of the Supreme Court decision in *Brown I* in May, 1954, the situation was as follows: Of the sixteen "colored schools" as of 1949, two were closed, one was converted to an all-white school,[55] one was subsequently considered part of the Crispus Attucks "Junior Division," and the other twelve were 97.5% or more Negro. Of 2,787 Negro high school students, 1,618 attended Crispus Attucks, and faculty desegregation was minimal. The Board thus began the post-*Brown I* era in May, 1954, in substantially the same position that it ended the official segregation era in 1949. The schools were still segregated by operation of law, by virtue of the acts and omissions of the Board done in defiance of the new requirements of Indiana law.

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[51] There were, however, exceptions to this policy. School 19, serving grades 1–6 in 1948–49, did not enroll first grade pupils in 1949–50. Since it was a Negro school in a predominantly white neighborhood, white students in that neighborhood would have been required to enroll in that school under the April, 1949 policy. Negro first graders who would have attended School 19, enrolled at School 64, a nearby all-Negro school, while white students in the School 19 area attended white School 20.

[52] One reason for transfers to be given "special consideration" was if a pupil had an older sibling attending the preferred high school. This operated as a grandfather clause permitting white students to escape Attucks, and remained in effect through March, 1970. Furthermore, proximity per se was not a legitimate reason for transfer, unless a student lived more than two miles from the assigned high school; this prevented Negro students who lived within two miles of Attucks from transferring to other high schools which were closer to their residences.

[53] Negro students were, nevertheless, bussed to Negro schools outside their attendance zones from racially mixed areas in at least two cases.

[54] For example, the common boundary between Schools 36 (99.3% Negro in 1953–54) and 60 (11.6% Negro) was within one block of School 36 and some eight to ten blocks from School 60. The boundary between Schools 42 (100% Negro) and 44 (1.2% Negro) required Negro students in one area south of School 42 to cross a canal, a parkway, and two railroad tracks to get to School 42; no such impediment stood between this area and School 44. The School 26 (99.8% Negro) common boundary with School 10 (9.7% Negro) required Negro students in the western one to three blocks of the School 26 zone to cross five railroad tracks to get to School 26; no such impediment existed between this area and School 10.

[55] School 19 was converted from an all-Negro nonneighborhood school to an all-white nonneighborhood school in September, 1953. Almost all the Negro pupils who had attended School 19 were assigned to School 64, as School 64's attendance zone was redrawn to include almost all the Negro students in the area. School 19 served, in 1953–54, two noncontiguous white areas and was located in neither of them.

V. Board Policies, 1954–1968

From the date of *Brown I* to the date of this action, the Board continued the student and faculty assignment policies of the previous era without change.

Since 1954, the most notable nonracial characteristic of the school system has been growth. The total number of elementary pupils rose from 53,352 in 1954–55 to 82,853 in 1967–68, while the number of schools rose from 87 regular elementary and junior high schools and eight regular high schools in 1954–55 to 113 regular elementary and junior high schools and eleven regular high schools in 1967–68. This growth caused overcrowding problems in many schools at one time or another, and the Board had available, and employed, various techniques to deal with this overcrowding.

Among these techniques were attendance zone boundary changes, the construction of additions, the construction of new schools, the provision of transportation or the adjustment of the existing transportation, alteration in grade structures, and the location or relocation of special education classes in elementary schools. Often these techniques were combined; e.g., in the construction of an additional and a simultaneous boundary change to relieve overcrowding at two contiguous schools.

The defendant Board has constructed numerous additions to schools since 1954; more often than not the capacity thus created has been used to promote segregation. It has built additions at Negro schools and then zoned Negro students into them from predominantly white schools;[56] it has built additions at white schools for white children attending Negro schools; it has generally failed to reduce overcrowding at schools of one race by assigning students to use newly built capacity at schools of the opposite race.[57] The Board has also constructed simultaneous additions at contiguous predominantly white and Negro schools,[58] and has installed portable classrooms at schools of one race with no adjustment of boundaries between it and neighboring schools of the opposite race.

The Board has also constructed additions to large, predominantly Negro elementary schools when desegregation would have resulted from adding classrooms to nearby, smaller predominantly white schools.[59] These large schools have often had inadequate sites.[60] Of the four largest elementary schools in the system, all are more than 90% Negro, and three have had large additions constructed within the last ten years. For example, an eight classroom addition was completed at School 41 in January, 1962, when it was 99.5% Negro, and had a site of 2.7 acres. For the 1970–71 year this school enrolled 1,404 pupils, 99.7% Negro.

An eight classroom addition was completed at School 64 (99.3% Negro) in September, 1962. Nearby Schools 111 (100% white) and 112 (97.9% white) were purchased after annexation and opened that same month. The children from these ltater schools in grades 7 and 8 were transported to School 82 even though School 64 was closer to most of these pupils.[61] This continued through the 1965–66 school year. None of these schools other than 64 was more than 4.5% Negro during such years, while 64 was never less than 99.3% Negro. Further, the faculty at School 64 was 96.4% Negro in 1965–66; the faculties at 82, 111 and 112 were all white that same year.

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[56] For example, the Board, after hearing complaints about the number of Negroes at School 60, completed the construction of twelve classrooms at School 36 (99.9% Negro) in September, 1959, and zoned some 180 students, predominantly Negro, from School 60 into School 36. Other students, predominantly white, were assigned to School 60 from School 76.

[57] In 1954–55 School 37 (100% Negro) was 104 students over capacity; neighboring School 51 (100% white) was 74 students over capacity. An eight room addition was completed at School 37 in February, 1956. No boundary adjustment was made between 37 and 51, however, and overcrowding at 51 persisted so that by 1958–59, it was 121 students over capacity (and only 1.7% Negro). Finally, in September, 1960, a six classroom addition was completed at School 73 and the boundary between School 51 (5.1% Negro) and School 73 (10.7% Negro) was adjusted so that approximately 75 pupils were sent to School 73 from 51.

[58] For example, in January, 1957, nine classrooms were added to School 64's neighbor, School 21; in August, 1957, six classrooms were added to School 64. In 1956–57 and 1957–58, School 21 was 99.22% and 98.23% white, and School 64 was 99.08% and 99.77% Negro. As another example, Schools 27, 29 and 45 are within six blocks of one another. From 1954 to 1957 each received additions of four to eight rooms. At the time of construction, School 29 was 85.3% Negro, while 27 and 45 were 96.5% and 95.4% white.

[59] In April, 1961, a survey of elementary principals was taken by the Board, requesting a "professional opinion" as to maximum, ideal, and minimum school sizes. For a K–8 school, the median ideal size designated by the ninety principals returning the questionnaire was 600; for a K–6 school, 500.

[60] The State Superintendent of Public Instruction has established minimum acreage requirements of seven acres for the first 200 students and one acre for each additional 100 students.

[61] The January, 1967, housing facility study noted that School 82 was "quite crowded during those 4 years" that junior high students were transported to 82 from 111 and 112.

The failure to assign white children to Attucks had important consequences for the Indianapolis elementary schools. Negro students who formerly had been required to attend Attucks regardless of residence were now permitted, in some cases, to attend high schools closer to their homes. Because there was no offsetting assignment of whites to Attucks, through the arrangement of optional zones and nonneighborhood feeder assignments, the Attucks enrollment dropped substantially during the 1950's while the predominantly white high schools increased in enrollment.

Attucks thus had available space during this period, and could, and did, accommodate elementary students from overcrowded Negro elementary schools. At various times since 1954 the following schools, none of which have ever been less than 96.5% Negro, have been assigned to the Crispus Attucks campus: 63, 17, 23, 24, 40, and 4. Several hundred of these pupils attended school in the Crispus Attucks building during the 1950's. The assignment of students from these elementary schools to Attucks should be contrasted with the assignment of other students, predominantly white, from nearby elementary schools to Arsenal Technical High School during this same period.

During the post-1954 period, the Board perpetuated segregation through the use of optional attendance zones. Specifically, in areas of racially mixed residential patterns students were given options between predominantly Negro and predominantly white elementary schools, and where entire elementary districts covered both Negro and white neighborhoods, graduates were given options between predominantly Negro and predominantly white high schools.[62] Students in Negro elementary schools were given options to Cripus Attucks when other predominantly white high schools were closer and more accessible. White students in optional zones almost always attended white schools.

The Board has perpetuated segregation through the construction of new schools. Specifically, new elementary schools to be attended by students of predominantly one race have been constructed adjacent to schools attended primarily by students of the opposite race,[63] new middle schools have been constructed to enroll the students of one race adjacent to schools attended by students of the opposite race,[64] and new high schools have been located and constructed where they have served predominantly white student populations.[65]

The Board has perpetuated segregation by transporting students from overcrowded schools of one race to schools of the same race rather than to available nearby schools of the opposite race. In contrast to the current local and national hullabaloo about bussing, the Board's minutes record no citizen protests to the bussing of white students to white schools.

The Board has also perpetuated segregation in the assignment of special education classes. Specifically, it has maintained predominantly Negro and predominantly white special education departments at contiguous Negro and white schools and has shifted special education classes between schools with a resultant increase in segregation.[66]

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[62] School 32 was assigned to Shortridge until September, 1952. At that time, when 32 was 52% Negro, it was given an option to Attucks. By September, 1964, when it was 94% Negro with a 100% Negro faculty, the option was ended and School 32 was assigned solely to Attucks. Similarly, School 44 was assigned to Shortridge until September, 1955, when it was 4.1% Negro. At that time it was given an option to George Washington and Attucks as well as Shortridge. As the percentage of Negroes continued to rise, both the Shortridge and Washington options were dropped and the students were assigned solely to Crispus Attucks.

[63] In March, 1968, a new School 19 building was completed on a site several blocks from the previous School 19. This school was 96.3% white in 1968–69. Its attendance zone is still not justifiable by neighborhood standards, and its construction insured that School 64 (99.5% Negro in 1968–69) would remain virtually all Negro, as it in fact has. A new School 2 (90.4% white in 1958–59) was completed in October, 1958, containing twenty classrooms, while nearby School 40 was all Negro.

[64] Of the various types and sizes of multidistrict junior high schools established in the system since 1954, only one has involved the assignment of Negro majority and white majority schools to the same junior high school.

[65] The two most recently constructed high schools in the city (John Marshall and Northwest) have been built on the extreme northeastern and northwestern areas of the city, where the Board knew they would serve virtually all-white areas. Both of these schools have in fact reinforced the growing racial isolation of the inner city.

[66] An all-Negro special education department was maintained at Attucks while an integrated department was maintained at Wood through most of this period since Wood was established in 1953. All-Negro and all-white departments have coexisted in virtually all-Negro School 64 and neighboring predominantly white School 21 almost continuously since September, 1957. Predominantly Negro special education classes exist on the west side at predominantly Negro Schools 63, 52, and 75, while predominantly white classes are housed at nearby predominantly white Schools 50 and 16.

Special education classes often enroll students from a wider area than the normal attendance zone. Thus they can be shifted between several schools in that wider area to relieve overcrowding where necessary. The Board has shifted these classes in some instances and failed to shift them in other instances, always with a resulting increase in racial segregation.

During the 1960's the Board adopted a "Shortridge plan" to prevent Shortridge High School from becoming an all-Negro school. This plan had the immediate effect of reducing the number of Negro students in Shortridge, many of whom subsequently attended Attucks. No steps were taken prior to the filing of this suit, however, to desegregate Crispus Attucks, and an addition to Attucks in 1966 coupled with the effect of the Shortridge plan insured the continuation of segregation at Attucks.[67]

Some of the Board's 1954–1968 segregation practices are evident in simple boundary changes. For example, in 1962–63, School 69 was 57.95% Negro and School 11, its northern neighbor, was 100% white. A housing facility study in February, 1963, noted that, with respect to School 69:

"Census figures for the district indicate a slight decrease during the next five years. The nature of the district is changing considerably, which may cause a further increase; however, serious overcrowding is not anticipated in this district in the next five years."

Despite this assessment, the School 69–School 11 boundary was altered three months later and an all-white area in the School 69 district north of 38th Street was transferred to all-white School 11.[68] School 69's Negro percentage immediately rose to 72.9.

According to the evidence, there have been approximately 350 boundary changes in the system since 1954. More than 90% of these promoted segregation.

The results of all of the foregoing policies, coupled with the restrictive housing policies of the entire Metropolitan Area, are clear: since 1954 the percentage of Negro students in the system has increased from 20 to 36, and the segregation has likewise increased. The number of 90% or more Negro schools has risen from thirteen to twenty-five. In 1954–55, 85.9% of the Negro elementary students were in majority Negro schools; in 1968–69, the percentage had risen to 88.2. In 1968–69 Crispus Attucks was 99.8% Negro.[69] Faculty and staff were assigned on a racially segregated basis, meaning that Negro schools had all-Negro, or virtually all-Negro faculties, and vice versa. In short, nothing really changed during the 1954–1968 period, and the Indianapolis school system on the date this suit was filed remained segregated by operation of law.

VI. BOARD POLICIES SINCE MAY 31, 1968

In May, 1968, after the Board received notification of the plaintiff's intention to file suit if deficiencies were not corrected,[70] it contracted with Indiana University to study elementary school boundaries "for the purpose of determining the best method of achieving maximum desegregation of all schools * * * under the neighborhood concept." [71] A "Special Study Committee" of independent consultants was formed, which issued its report in April, 1969, making no recommendations for the promotion of integration through boundary changes. The activities of this Committee may best be characterized as farcical, since according to the testimony of one of its members, it was not furnished with data as to the racial composition of the students or faculty at any school.

In February, 1969, the Board requested a study of, and recommendations for, the desegregation of the Indianapolis schools in a letter to the Office of Education, United States Department of Health, Education and Welfare (hereinafter "HEW"). A team of six educators from HEW visited the system for four days in March, 1969, and prepared a series of recommendations for both the elementary and high schools in the system.[72] These recommendations were presented to the Board on April 18, 1969. On June 17, 1969, the Board rejected the HEW recommendations, finding that they were not a "satisfactory or workable solution to the integration problem of the schools." [73]

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[67] Because of the small size of the Attucks site (8.4 acres), a waiver had to be secured from the State Board of Education. This waiver was obtained, with the proviso that no more than 2,200 students attend Attucks; nevertheless, in 1967–68 Attucks enrolled 2,394 students, 2,393 Negro and one white.

[68] In a letter to parents in this area, an Assistant Superintendent justified the boundary change because of "crowded conditions" at School 69.

[69] The first white attended that school in 1967–68, when one white student was enrolled.

[70] This was a "notice letter" under Title IV of the Civil Rights Act of 1964; 42 U.S.C. § 2000c–6.

[71] The so-called "neighborhood concept" was not adopted as a formal policy until 1965 and, as has been demonstrated, has proved meaningless in practice. Its principal use is as a slogan for those opposed to busing across racial lines.

In the same statement rejecting the HEW recommendations, the Board called for the appointment of a community-based committee to recommend programs to improve integration, with the first priority directed toward secondary schools.[74] The committee was formed and in October, 1969, filed majority and minority reports. The majority recommended the construction of a new Crispus Attucks (presumably, although not explicity stated, racially desegregated) and also recommended free transfers for high school students regardless of assignment.[75]

Soon after this report, the Superintendent established a staff committee to treat the problem of the desegregation of Attucks. This committee recommended the construction of a new Attucks and the phase-out of the present Shortridge and Attucks. The Board ultimately rejected the proposed phase-out of Shortridge, but directed the Superintendent to search for a site for the new Attucks; no new site has been found.

During the 1970–71 school year, ninth graders assigned to Attucks under a revised feeder system (which desegregated this ninth grade class) attended school at Northwest High School and the Tudor Hall School.[76] Because no site has been found available for a new Attucks, the defendants plan to assign desegregated freshman and sophomore classes to the present Attucks campus in September, 1971. Grades 11 and 12 will remain virtually all Negro, and if this grade-a-year plan is continued, Attucks will remain partially segregated until September, 1973.

During the 1967–68 school year, the School Board decided to establish a middle school (to be known as the Forest Manor Middle School) housing grades 6, 7, and 8 and serving an area comprising the attendance zones of Schools 1, 71, and 73, each of which elementary schools was then, and is now, severely overcrowded. The building of the Forest Manor Middle School was not begun in 1968, as planned, but the project has been revived, and the School Board is on the point of awarding contracts for the construction of the Forest Manor Middle School. The Board's plans for the utilization of this middle school are being reconsidered, because of plaintiff's objections to its proposed use and location. During the 1970–71 school year the percentage of Negro students at Schools 1, 71, and 73 was 91.4, 92.6, and 69.6, respectively, and the proposed location of the Forest Manor school is in a predominantly Negro residential area. It is apparent that, as matters stand, the proposed school would tend to perpetuate segregation.

The Board adopted a majority-to-minority transfer provision on June 30, 1970. For the 1970–71 school year approximately 400 high school and 50 elementary school students transferred under this provision, and at the time of trial 300 students had applied for such transfers for the 1971–72 school year.[77]

Since this suit was filed the Board has provided various school services on a nondiscriminatory basis.[78] Transfer policies have been administered so as not to increase segregation. A black history curriculum has been developed. Efforts have been made to recruit additional Negro faculty members, and Negro professional employees have been promoted to responsible positions in the central administrative office. A resolution adopted December 8, 1970, commits the Board to a program for the integration of administrative staffs (including the coaching staff) in each high school.

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[72] Mr. Johnson, the leader of this team, testified that he recognized that time was too limited to draw a comprehensive plan; therefore, the recommendations of the team were threefold: (a) to study the possibility of grade reorganization to desegregate the system; (b) the submission of a series of specific reorganizations for specific schools to be implemented by September, 1969, as examples of methods of desegregation and as an act of good faith by the Board; and (c) general recommendations for the amelioration of segregation at Crispus Attucks.

[73] However, a study of the feasibility of the HEW recommendations undertaken by the Board had concluded that, with respect to the elementary schools, all were feasible except for an alternate plan to desegregate School 64 and the plan to desegregate Schools 43 and 66.

[74] Specifically, the committee was to recommend solutions to "the problem presented by Crispus Attucks High School as it now exists."

[75] The minority recommended enrichment of the educational program at Attucks and free choice in high school student assignment. The committee submitted no further reports, and did not consider elementary school desegregation.

[76] The Tudor Hall School was purchased by the Board for eventual use as a special education facility. The State Superintendent objected to more than 650 students being housed on that site, so part of the Attucks desegregated freshman class was assigned to Northwest High School.

[77] Under this provision, students can transfer from a school in which their race is in a majority to a school in which their race is a minority. The transfers are contingent, under the terms of the policy, on the availabality of space, and no transportation is provided. No transfers are accepted under this provision after school has been in session two weeks in September.

[78] Among these have been special and social services, lunch programs, libraries, and a program to combat dropouts.

In October, 1970, the Board entered into a contract with the Office of Education, HEW, under which the latter provided funds for it to employ "advisory specialists" to prepare desegregation plans and in-service training programs for the Indianapolis system. Two such advisory specialists were employed,[79] and presented four plans to the Board on April 1, 1971. Three of these plans treated only eleven all-black, or virtually all-black schools, while the fourth, and recommended plan desegregated every school in the system. On May 25, 1971, the Board rejected all plans, noting that the trial in this cause was to commence July 12, 1971. It thus appears that the Board, having taken some steps toward rectifying its previous failure to comply with *Brown II*, is unwilling to proceed further unless directed to do so by the Court.

VII. External Problems Facing the Board

Despite the fact that the Board, through the years, has consistently employed policies and practices causing and maintaining racial segregation in the School System under its control, it is only fair to say that various factors not of its own making have contributed to that result.

A. CHANGES IN RACIAL CHARACTERISTICS OF SCHOOL CITY

The racial characteristics of the School City changed significantly during the period 1954 through 1970. The number of Negroes residing in the School City increased rapidly, both absolutely and proportionately to the entire population of the School City. The number of areas of the School City in which significantly large groups of Negroes resided increased similarly. The pattern of the change in the location of black residential areas was one of expansion from the center of the School City toward its boundaries. While the Negro population was increasing within the School City, the white population within the School City was decreasing rapidly; and concurrently, the white population in Marion County outside the School City was increasing rapidly.[80]

In 1960, the population of Center Township (all of which, except a small part in Beech Grove, lies within the School City) was 333,351, of which 243,448 (73%) were white and 84,439 (26.8%) were Negro; in 1970, the population of Center Township had declined to 273,598, of which 166,622 (61.2%) were white and 106,112 (38.8%) were Negro.

In 1960, the population of Marion County excluding Center Township was 364,216, of which 353,659 (97%) were white and 10,473 (2.9%) were Negro. In 1970, the population of Marion County excluding Center Township was 518,701, of which 488,538 (94%) were white and 28,342 (5.4%) were Negro. The data also show that, whereas 59% of the white population of Marion County lived outside Center Township in 1960, about 74.5% of that group lived outside Center Township in 1970.

The areas of the School City in which the change in racial composition has been significant in the last ten year period include:

(1) An area bounded, generally, by 38th Street on the North, Arlington Avenue on the east, 21st Street on the south, and Boulevard Place on the west. The eastern part of this area is often referred to as "the Forest Manor area." The change in the racial composition throughout the area is reflected in the changes in the racial

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[79] Both of these specialists were already employees of the Indianapolis system; one was a former principal and consultant, while the other was a former teacher and had held an administrative position in the central office.

[80] As found in Section III-C, *supra*, discrimination against Negroes in the matter of housing, enforced or condoned by the City and State has been a major factor in confining the Negro to a compact central area.

composition of several of the elementary schools which serve the area, which changes are shown in the table below:

School No.	Negro students (percent of total)—	
	In 1960-61	In 1970-71
1	0.16	91.4
11	0	32.5
51	5.09	78.7
53	.21	32.6
63	44.55	99.6
66	.44	86.1
69	31.31	98.5
71	2.92	92.6
73	10.73	69.6
76	53.61	99.0
83	(1)	41.7
99	0	79.3
110	(1)	98.4

[1] Not open.

(2) An area bounded on the north by 63d Street (Broad Ripple Avenue), on the east by the tracks of the Monon Railroad, on the south by 38th Street, and on the west by the Indianapolis Water Company canal, where similar changes are shown in the table below:

School No.	Negro students (percent of total)—	
	In 1960-61	In 1970-71
55	0	8.5
66	.44	86.1
70	0	28.1
84	0	2.2
86	12.36	53.5

(3) Scattered areas, in each of which the population shift is reflected by a similar sharp change in the racial composition of elementary school population, which changes are shown in the table below:

School No.	Negro students (percent of, total)—	
	In 1960-61	In 1970-71
27	45.20	87.3
38	38.63	91.90
45	28.19	98.00
75	24.82	77.50

At the beginning of the 1970-71 school year, the number of students enrolled in the elementary schools was 79,587, excluding students enrolled in the special education schools. During the 1970-71 school year, that total enrollment was reduced to 77,658; the difference of 1,929 between the October and June enrollment totals is the net result of a departure of 2,122 white students from the elementary schools and an inflow of 193 Negro students to the elementary schools. Of the 110 elementary schools, 13 showed gains, and 81 showed losses, in the number of white students enrolled during the 1970-71 school year.

B. LOW-RENT HOUSING PROJECTS

Low-rent housing projects within the School City have significantly affected the racial composition of the schools. A project typical of this kind is constructed at the periphery of an established Negro residential area and, for that reason among others, attracts a Negro occupancy, which is eventually reflected in the racial composition of the school that serves the area in which the project is situated.

Such an effect is to be seen in several elementary schools, including: School 67, in which Negroes constituted 4% of the student body in 1968–69 and 30.9% in 1970–71, owing to the opening of Eagle Creek Village at Tibbs Avenue and Cossell Road; School 112, in which Negroes constituted 13.7% of the student body in 1968–69 and 42.9% in 1970–71, owing to the opening of Raymond Villa, at Raymond Avenue and Perkins Street; School 71, in which Negroes constituted 10.8% of the student body in 1965–66 and 92.6% in 1970–71, owing to the opening of Hawthorne Place at 32nd Street and Emerson Avenue; and School 99, in which there were no Negro students in 1968–69 and in which Negroes constituted 33.9% of the student body at the end of the 1970–71 school year, owing to the opening of Beechwood Gardens at 30th Street and Graham Avenue.

Housing projects of the kind just described not only have racial consequences for the schools; each of them tends to represent, as well, a demand for a significant amount of school space. Eagle Creek Village, Raymond Villa, and Beechwood Gardens necessitated additions to Schools 67, 112, and 99, respectively, each of which cost about $1,300,000. Salem Village, at 30th Street and Baltimore Avenue, necessitated the construction of a complete school (School 110), which has served a virtually all-black student body since it was opened in 1966.[61]

C. NONCOOPERATION OF LOCAL OFFICIALS

Some of the reasons why no new site for Attucks has been acquired are directly attributable to action or inaction on the part of certain agencies of the civil government of the City of Indianapolis. One possible site is a 54 acre, undeveloped tract at the southwest corner of the intresection of 38th Street and White River. Although a part of the land is low, there is more than adequate high ground for buildings, and the low ground is protected by a levee. This tract is owned by the City of Indianapolis, which could presumably make it available to the School City free under Indiana law,[62] or in any event make the transfer for a nominal price.[63] However, the City has declined to consider parting with the 54 acres, on the ground that it is needed for use as a nursery for the Department of Parks and Recreation. The City's sense of priorities strikes the Court as curious.[64]

Another likely site for the new Attucks was determined to be a tract at 30th Street and Guion Road, and the Board acquired an option to purchase the tract. It then filed an application to have the land rezoned for school use, only to have its application denied by The Metropolitan Development Commission of Marion County, which asserts the right to control the use of all land in the county, including that proposed to be dedicated for public purposes.

D. LEGISLATIVE ACTION SINCE 1949

As noted briefly above, the State's long time policy of *de jure* segregation obstensibly ended in 1949 with the passage of Chapter 186 of the Acts of that year.[65] The new policy of the State, as set out in the first section of the Act, was stated to be as follows:

"It is hereby declared to be the public policy of the State of Indiana to provide, furnish, and make available equal, nonsegregated, nondiscriminatory educational opportunities and facilities for all regardless of race, creed, national origin, color or sex; to provide and furnish public schools and common schools equally open to all and prohibited and denied to none because of race, creed, color, or national origin; to reaffirm the principles of our Bill of Rights, Civil Rights and our Constitution and to provide for the State of Indiana and its citizens a uniform democratic system of common and public school education;

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[61] The plaintiff United States of America, which of course sponsors federally supported housing projects, has suggested a finding that the locations of six of the ten projects opened in the School City since 1965 have tended to promote integration in those instances. There is insufficient evidence to support such a finding.

[62] See Acts 1957, Ch. 229, p. 501, as amended; Burns Ind.Stat.Ann. §§ 53–405, 53–404, IC 1971, 5–18–1–1, 5–18–1–2.

[63] The Court estimates that the cost of a school site in an appropriate location, if purchased on the open market would run from at least $12,500 to $17,500 per acre.

[64] In addition to the fact that use of the White River tract as a nursery does not appear to be its highest and best use, it is also instructive to note that the Department has available for nursery purposes various parts of the 2,650 acre non-reservoir portion of its virtually undeveloped Eagle Creek Park. Note also that approximately half of the 54 acres would meet State per-pupil minimum land requirements (Footnote 60, *supra*), leaving the balance available for planting to trees and shrubs.

[65] Note 50, *supra*.

and to abolish, eliminate and prohibit segregated and separate schools or school districts on the basis of race, creed or color; and to eliminate and prohibit segregation, separation and discrimination on the basis of race, color or creed in the public kindergartens, common schools, public schools, colleges and universities of the state."

Note that the State completely anticipated and completely adopted the holding in *Brown I* by a full five years. Because of *Brown I*, moreover, it is impossible for the State legally to change its professed policy, because that policy has now assumed the stature of a Constitutional imperative, far above the power of the State to detract therefrom. With these principles in mind, the Court examines certain post-1949 legislation enacted by the General Assembly.

Historically, it was well established by the common law of the State that whenever an incorporated city or town expanded its corporate limits, the school city or town succeeded to the powers and duties of the township trustee with respect to the administration of the public schools. In other words, the boundaries of a school city and of a civil city were coterminous.[86] This rule was recognized in a 1931 Act, pertaining to the defendant School Board, as follows: "In each civil city of this State having * * * more than three hundred thousand [300,000] inhabitants there shall be a common school corporation hereinafter called the 'school city' whose duties and powers shall be coextensive with the corporate boundaries of such civil city. * * *"[87] When such Act was amended in 1955 in order to increase the size of the Board, among other things, such provision remained unchanged.[88]

However, in 1961 the General Assembly crippled this policy by an Act which provided that, with respect only to Marion County, the extension of the boundaries of a civil city by a civil annexation would work only a prima facie extension of the boundaries of the school city, and render such school city extension subject to a separate remonstrance by the losing school corporation.[89] Thus, for the first time, it became possible for the School City of Indianapolis, alone among the major school cities of the State, to have jurisdiction over a lesser territorial area than the corresponding civil city.

Even more grave in import are Chapters 52 and 173 of the Acts of the 1969 General Assembly. Section 3 of Chapter 52 amended Chapter 186 of the Acts of 1961 to abolish the concept that the school and civil cities in counties having a city of the first class[90] would have coterminous boundaries, and limited the School City of Indianapolis to enlarging its territory by one of the two methods authorized in the 1961 Act in addition to automatic prima facie extension on enlargement of the civil city: (1) by agreement with the school corporation losing territory, or (2) by unilateral annexation by the School City of all or part of the territory of another school corporation.[91] Both procedures are subject to remonstrance. Further, said Section repealed Section 9 of Chapter 186 of the Acts of 1961 as to all enlargements of the School City claimed to have been made pursuant to civil city annexations and not yet finally effective. I.e., in cases where remonstrances and/or court actions were pending against School City annexations pursuant to Section 9 of the 1961 Act, the annexations were simply canceled by legislative fiat.

Chapter 173[92] is formally titled the "Consolidated First Class Cities and Counties Act," and is hereafter referred to by its more familiar name, "Uni-Gov." This Act purports, in general, to consolidate the civil governments of the former City of Indianapolis and of Marion County into a unified, metropolitan, city government, with certain exceptions,[93] which expanded or consolidated city continues to be known as the City of Indianapolis.

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[86] Board of School Com'rs v. Center Twp., 1896, 143 Ind. 391, 42 N.E. 808; School Twp. of Allen v. School Town of Macy, 1887, 109 Ind. 559, 10 N.E. 578; School Town of Leesburgh v. Plain School Twp., 1877, 86 Ind. 582; State ex rel. Mt. Carmel School Corp. v. Shields, 1877, 56 Ind. 521; Carson v. State, to Use of Town of Hanover, 1867, 27 Ind 465.

[87] Acts 1931, Ch. 94, § 1, p. 291; Burns Ind.Stat.Ann. § 28–2301 (1948 Repl.), I.C.1971, 20–3–11–1.

[88] Acts 1955, Ch. 123, § 1, p. 291; Burns Ind.Stat.Ann. § 28–2301 (1968 Cum. Supp.).

[89] Acts 1961, Ch. 186, §§ 1, 9, 10; Burns Ind.Stat.Ann. §§ 28–2338, 28–2346, 28–2347 (1968) Cum.Supp.), I.C.1971, 20–3–14–1, 20–3–14–10.

[90] Indianapolis is the only city of the first class in Indiana.

[91] Acts 1969, Ch. 52, § 3, p. 57; Burns Ind.Stat.Ann. § 28–2346a (1970 Cum. Supp.), I.C. 1971, 20–3–14–9.

[92] Acts 1969, Ch. 173, p. 357; Burns Ind.Stat.Ann. §§ 48–9101–48–9507 (1970 Cum. Supp.), I.C.1971, 18–4–1–1 to 18–4–5–4.

[93] The cities of Beech Grove and Lawrence ("excluded cities") and the incorporated town of Speedway City ("excluded town") are permitted to carry on as separate municipal corporations within the territory of the consolidated city, but the voters of these communities are entitled to vote for candidates for the offices of mayor and city-county councilman of the consolidated city, as well as for the corresponding officials of their respective excluded city or town.

The Uni-Gov. Act provides expressly that "any school corporation, all or a part of the territory of which is in the consolidated city or county" shall not be affected by the Act.[94] Thus Uni-Gov leaves the defendant School City exactly where it found it: confined to an area in the central part of the consolidated City of Indianapolis, where it is surrounded by eight township school systems operating independently within the purportedly unified City, and by two additional independent school corporations operated by Beech Grove and Speedway City (hereinafter, in the aggregate, "outside school corporations"). For the 1969–70 school year these outside school corporations together had 73,205 students enrolled, of whom 2.62% were Negro, and together employed 3,037 teachers, of whom 15, or 0.49%, were Negro.

The outside school corporations compete effectively with the School Board for teachers. Since the filing of this action, some white teachers employed by the Board and requested to transfer to integrated schools have declined transfer and found havens in the outside schools. The outside schools have likewise contributed to the exodus of white students from the School City by accepting them for transfer, on payment of tuition.

Considering the history of segregation of the Negro in Indiana and in Indianapolis, the racial complexion of the outside school corporations and of the adjoining counties in the Indianapolis Metropolitan Area, the ongoing flight to the suburbs by the white population of the School City, and the various other factors above set out, the effect of the 1961 and 1969 Acts of the General Assembly referred to in this section may well have been to retard desegregation and to promote segregation. In other words, under previous Indiana law, which still applies to all cities except Indianapolis, civil annexation would automatically carry school annexation with it, and the chances of successful remonstrance against logical annexation by an expanding municipality, carrying with it the usual municipal services, would be virtually nil. Under the present law, if valid, the ability of the Board to expand its jurisdiction coterminous with the consolidated city, or for that matter to expand it at all, is likewise virtually nil, as a practical matter.

E. THE TIPPING FACTOR

The undisputed evidence in this case, agreed to by plaintiff's expert from the Office of Education, is that when the percentage of Negro pupils in a given school approaches 40, more or less, the white exodus becomes accelerated and irreversible. Therefore, resegregation rapidly occurs, and the entire central core of the involved city develops into a virtually all-Negro city within a city when, as in Indianapolis, the Negro residential area is largely confined to a portion of the central city in the first place.

During the trial, this Court repeatedly attempted to cause the plaintiff United States of America to produce statistics from HEW showing comparative racial statistics for the school systems of the larger school cities of the nation before and after active desegregation efforts were commenced. The Court was advised that no such statistics were available, incomprehensible as that might seem considering that such Department is the Federal agency directly concerned with the problem.

However, according to HEW's news release of June 18, 1971, in evidence, the percentage of Negro students in certain public school systems as of fall, 1970 was as follows (in order according to total pupils in system): New York 34.5; Chicago 54.8; Detroit 63.8; Philadelphia 60.5; Houston 35.6; Baltimore City, Maryland 67.1; Cleveland 57.6; Washington, D.C. 94.6; Memphis 51.5; St. Louis 65.6; Orleans Parish (New Orleans), Louisiana 69.5; Atlanta 68.7; Birmingham 54.6; Caddo Parish (Shreveport), Louisiana 49.0; Louisville 48.3; Richmond, Virginia 64.2; Gary 64.7; and Compton, California 82.0. In some of these cities an additional sizable percentage of the student population belongs to another minority group which historically has been, and still is subject to racial discrimination: those with Spanish surnames, presumably of Mexican or Puerto Rican descent. When these percentages are added, the total minority race percentage of pupils in such cities is as follows: New York 60.2; Chicago 64.6; Houston 50.0; and Compton, California 91.4. All of these school cities, as well as others which could be named,[95] appear to be completely beyond hope of meaningful desegregation, absent some dramatic change in their boundaries.

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[94] Acts 1969, Ch. 173, § 314, p. 357; Burns Ind.Stat.Ann. § 48–9213 (1970 Cum.Supp), I.C 1971, 18–4–3–14.

[95] Strangely, the HEW release failed to list Newark, New Jersey, where the combined minority percentage is known to be at least 70.

In the absence of HEW statistics to the contrary, the Court infers that desegregation efforts have had much to do with the current figures as above quoted.

The brutal truth as to what may happen when a court and a school board undertake in good faith to apply across-the-board desegregation in situations when racial balances reach the tipping point is well illustrated in the rather poignant opinion of the United States District Court for the Northern District of Georgia, Atlanta Division. Calhoun et al. v. Cook et al.—F. Supp.—, handed down on July 28, 1971. Pointing out that Atlanta in 1961–62 was one of the first major southern cities officially abandoning the dual school system, it noted that in the ten year interim the balance has shifted from 70%–30% white to 70%–30% Negro, and that the remaining 30% whites were themselves confined to two areas. The court declined to order further enforced measures, as being futile.

VIII. Conclusions of Law

1. This Court has jurisdiction of the parties and the subject matter of this action under Section 407 of the Civil Rights Act of 1964 (42 U.S.C. § 2000c–6) and under 28 U.S.C. § 1345.

[5] 2. Pursuant to the Fourteenth Amendment and Title IV of the Civil Rights Act of 1964 this Court has jurisdiction to hear and to decide all issues concerning alleged racial discrimination in public education in the Indianapolis School System, including the defendant Board's policies with respect to assignment and transfer of students, the allocation of faculty and staff, the location and construction of schools, the transportation of students, and the general educational structure and process. United States v. School District 151, N.D. Ill., 1968, 286 F.Supp. 786, aff'd 7 Cir., 1968, 404 F.2d 1125.

[6] 3. The Court having found for the plaintiff that the defendant School Board was on May 17, 1954, May 31, 1968, and as of the date of trial operating a segregated school system wherein segregation was imposed and enforced by operation of law, the law is with the plaintiff. Therefore, the Board is "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination (will) be eliminated root and branch." Brown v. Board of Education (*Brown II*), 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083; Green v. County School Board, 1968, 391 U.S. 430, 88 S.Ct. 1689, 20 L.Ed.2d 716.

[7] 4. All provisions of federal, state or local law requiring or permitting racial discrimination in public education must yield to the principle that such discrimination is unconstitutional; revisions of local laws and regulations and revision of school districts may be necessary to solve the problem. *Brown II.*

[8, 9] 5. This Court has continuing jurisdiction to make and enforce such decrees in equity as are necessary to accomplish the above mentioned objective. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies. Swann v. Charlotte-Mecklenburg Bd. of Ed. ("*Swann*"), 402 U.S. 1, 91 S.Ct. 1267, 28 L.Ed.2d 554.

IX. Further Parties and Proceedings

As noted herein, the percentage of Negro elementary pupils within the School City had reached 37.4 as of the past school year, and was slowly rising. Fortunately, the change has not yet become a rout, and the Court recognizes that a substantial part of the increase during the past fifteen years has been caused by immigration from the Southern States, which has virtually ceased. The Court is further of the opinion that the white citizens of this community are less likely than those of certain of the cities listed in part VII hereof to succumb to the enslavement of unreasoning racial fears, and recognizes that there are many good reasons for moving to the suburbs which have nothing to do with this case.

Nevertheless, it is obvious that something more than a routine, computerized approach to the problem of desegregation is required of this Court, lest the tipping point be reached and passed beyond retrieve.[100] This is particularly true in the light of the dictum in *Swann* to the effect that "neither school authorities nor district courts are constitutionally required to make year-by-year adjustments of the racial composition of student bodies once the affirmative duty to desegregate has been accomplished and racial discrimination through official action is eliminated from the system." Put another way, the easy way out for this Court and for the Board would be to order a massive "fruit basket" scrambling of students within the School City during the coming school year, to achieve exact racial balancing, and then to go on to other things. The power to do so is undoubted. There is just one thing wrong with this simplistic solution: in the long haul, it won't work.

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[100] The plight of the Negro citizen, still striving for equality 352 years after Jamestown, recalls the familiar words of the Red Queen to Alice: "Now here, you see, it takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!" L. Carroll, Through the Looking-Glass.

With due regard for the opinions of the many other courts which have grappled with the problems here involved, and with full knowledge of the countless hours of research, heartache, and soul searching which have doubtless gone into them, this Court is compelled to say that the common characteristic of most of them is tunnel vision. In interpreting the mandate of *Green* "to come forward with a plan that promises realistically to work, and promises realistically to work *now*," they have tended to stress the same word stressed by the Supreme Court, and in doing so have focused exclusively on the school board defendant. If the school system involved is already at or near the tipping point, nothing is accomplished save the unfortunate results noted above in various of our major cities. As to the *Green* command, this Court prefers to stress its major thrust: promises realistically to *work*. (This Court's emphasis.)

Realistically, it is clear that the tipping point/resegregation problem would pale into insignificance if the Board's jurisdiction were coterminous with that of Uni-Gov. It would be minimized still further if extended to Lawrence, Beech Grove and Speedway City, and to certain parts of the adjoining counties practically indistinguishable from the City of Indianapolis, such as the Carmel area of Hamilton County and the Greenwood area of Johnson County. Certain legal questions immediately spring to mind which cannot, or at least should not be answered without the joinder of additional parties to this action.

Some of these questions are as follows:

1. Are Chapter 186 of the Acts of 1961, Chapter 52 of the Acts of 1969, and Chapter 173 of the Acts of 1969, or any of them, unconstitutional as tending to cause segregation or to inhibit desegregation of the Indianapolis School System?

2. If the answer to Question 1 is in the affirmative, did passage of the Uni-Gov Act automatically extend the boundaries of the School City coterminous with the boundaries of the Civil City, as provided generally by Indiana law?

3. If both of the foregoing questions are answered in the affirmative, are Lawrence, Beech Grove, and Speedway City presently under the jurisdiction of the defendant Board, or does Uni-Gov merely have the effect of annexing the eight township school corporations?

[10, 11] 4. Regardless of the answer to the first three questions, should the General Assembly, by appropriate legislation, provide for the creation of a metropolitan school district embracing all of Marion County, together with all or some substantial part of the other counties going to comprise the Indianapolis Metropolitan Statistical Area, in order to purge the State of its role in contributing to *de jure* segregation in the Indianapolis School System?[97]

5. If the answer to Question 4 is in the affirmative, and the General Assembly fails to act within a reasonable time, or in a reasonable way, does this Court have the power to create such a metropolitan school district by judicial decree?[98]

Other questions likewise require an answer:

6. Does the Metropolitan Development Commission of Marion County have the power to deny the School Board its choice of sites for Crispus Attucks or other new schools? Put another way, does this Court have the power to override such Commission if it finds that its rulings interfere with desegregation?

7. Does this Court have the power to override rulings of the said Development Commission or of any other involved agencies with regard to the location of low-rent housing projects, if it finds that the locations of such projects interfere with desegregation, or tend to cause resegregation?

The plaintiff is ordered to proceed forthwith to prepare and file appropriate pleadings to secure the joinder herein as parties defendant of the necessary municipal corporations and school corporations which would have an interest in questions 1–5, inclusive, and to seek such relief as to the plaintiff seems justified. The defendant is ordered to proceed similiarly as to those agencies which would appear to have an interest in questions 6 and 7, joining them as third party defendants. Because of the interest of the State of Indiana in the constitutionality of its laws, its Attorney General should also be served by the plaintiff.

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[97] The State has the undoubted power to abolish, consolidate, eliminate, or create new governmental corporations. Woerner v. City of Indianapolis, 1961, 242 Ind. 253, 177 N.E. 2d 34.

[98] Is there, for example an analogy between the power of the Court in desegregation cases, and the power of the Court in cases involving legislative or congressional redistricting, both of which arise out of the equal protection clause of the Fourteenth Amendment? cf. Baker v. Carr, 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663; Reynolds v. Sims, 377 U.S. 533, 84 S. Ct. 1362, 12 L. Ed. 2d 506.

Nothing herein should be construed as limiting the parties to consideration of the seven questions above suggested. Other questions may well occur to them which would involve additional parties, and if so they should feel free to proceed accordingly and to seek whatever relief seems appropriate.

Further, it may be that the opinions herein expressed, the questions herein propounded, and the orders herein made will cause individuals or bodies politic to desire to intervene herein. Petitions for intervention will be given careful consideration.

X. ORDER OF THE COURT

Finally, what is to be done pending decision of the questions above set out? The order of the Court in this regard is as follows:

It is hereby ordered that the defendants, their successors in office, officers, agents, employees and all those in active concert or participation with them, are permanently enjoined from discriminating on the basis of race in the operation of the Indianapolis School System.

It is further ordered that the defendants take, at a minimum, the following specified actions to fulfill their affirmative duty to achieve a nondiscriminatory school system:

(1) Immediately take steps to assign faculty and staff so that no school is racially identifiable from the racial composition of its faculty or staff. Mandatory assignments or reassignments are to be made if necessary, and the assignments to achieve full desegregation will be made prior to or with the opening of schools in September, 1971. This Court further notes that the evidence adduced in this cause shows that, in faculty and staff reassignment heretofore effected, these reassignments have tended to result in more experienced Negro faculty and staff being transferred and/or assigned to schools attended predominantly by white students and more inexperienced white faculty and staff being transferred and/or assigned to schools attended predominantly by Negro students. Defendants should, accordingly, redress or tend to redress this situation in making whatever assignments or reassignments that are necessary to comply with this order.

(2) Immediately continue with their plans to desegregate and relocate Crispus Attucks High School.

(3) Immediately amend the "majority-to-minority" transfer policy to conform to the requirements enunciated by the Supreme Court in *Swann*, so that such transfers are not to be dependent upon availability of space in the receiving school and so that transportation will be provided, upon request, to students making such transfers. Provided, however, that the Board may request authority to designate the transferee school or schools in the event that extreme diffusion of requests presents practical problems of transportation, or in the event that extreme concentration of requests threatens the racial stability of a given school, i.e., the tipping point factor.

(4) Immediately give all possible publicity to students and parents of students who may be eligible for transfer under (3), regarding the new policy.

(5) Immediately attempt to negotiate with the outside school corporations for possible transfer of minority race students to such outside schools, including high schools, for the coming school year.[99]

(6) Immediately resurvey the probable racial make-up of all schools for the 1971–72 school year, and take appropriate action to prevent schools, including high schools, now having a reasonable white-black ratio from reaching the tipping point. Transportation of students into or out of such schools shall be resorted to as required.[100]

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[99] If the outside school corporations have the capacity to accept transfer of white students, they have the capacity to accept minority race students. Further, the Board has available many portable classrooms and could, with a little imagination, "lend-lease" teachers, if necessary.

[100] This Court regards the outcry made in some quarters against "bussing" as ridiculous, in this age of the automobile. Most students in the outside school corporations have been bussed for years, with never a complaint against bussing per se. Students required to be bussed could be required to walk to their former schools for ease of pick-up and speed in delivery.

(7) Immediately cease and desist from going forward with construction of the Forest Manor School until the Court hears further evidence on this subject.

It is recognized that the orders thus far made will not result in significant desegregation of majority-black schools immediately, unless the voluntary transfer and outside school corporation transfer policies are unusually successful. It is also recognized that mandatory transfers to maintain stability pursuant to subparagraph (6) may largely involve Negro students, as is certain with regard to transfers to the outside school corporations. Neither of these facts seems "fair" in a theoretical sense, and have caused the Court a great deal of concern. However, there is a limit to what can be accomplished at one time, and final plans cannot be made until answers are found to the seven legal questions posed. Determination of such questions will be expedited to the utmost degree consistent with due process.

Meanwhile, the defendants are directed to file, on or before September 3, 1971, the plans they propose for the 1971–72 school year pursuant to the within order and on their own initiative, with the usual copies to counsel and amicus curiae, who shall have the right to object thereto and/or to make their own suggestions within ten days thereafter. Such plans shall include their current proposals regarding the site of and assignment of pupils to the proposed Forest Manor Middle School.

It is finally considered and adjudged that the defendant School Board pay the costs of this action.

Chairman CELLER. Our next witness is Mr. Harry Golden, editor, Carolina Israelite, Charlotte, N.C.

Mr. Golden, your excellent reputation has preceded you. We all have been entertained by your writings, and we expect that we will get some worthwhile testimony from you consistent with your philosophy that is always contained behind the humorous stories that you have given us.

STATEMENT OF HARRY GOLDEN, EDITOR, CAROLINA ISRAELITE, CHARLOTTE, N.C.

Mr. GOLDEN. Thank you very much, Mr. Celler.

The House Joint Resolution 620 proposing amendment to the Constitution with respect to transportation and assignment of public school pupils should really be known as the back to the Jim Crow amendment.

Busing is not the issue at all. Segregation is the issue. Busing is a fact of life. For example, in Charlotte, N.C., where the Concerned Parents Association has created a mass psychosis concerning busing, three out of every five children in North Carolina were riding buses to school every day for years, and no one protested.

For years, hundreds of Negro pupils were bused past the white schools to their segregated Negro school and no one protested. So the issue is not whether the pupils would be bused but which schools they would attend.

The fear of busing has taken the place of "Do you want your sister to marry a Negro?"

The courts did not order busing. They ordered only complete desegregation and left it up to the local school boards to effect this result.

The interesting aspect about busing is that folks who are against it always start their argument with, "I am not a racist, but * * *." The simple truth they cannot utter is that they do not want their children in school with black children.

Hundreds and hundreds of private schools have been established throughout the South, a bitter irony because there was a time when it was the blacks who went to private schools and the whites went to the free public schools.

There are literally thousands of Negro teachers and clergymen today, those over 50 years of age, who never spent a single day in a tax-supported school. There were hundreds of private schools throughout the South, each of them under the auspices of a local church, supported by the pennies of sharecroppers and domestics. The white superiors were going to the free though segregated public schools, and the Negro inferiors were going to the private schools because the segregated black public schools were no schools at all.

We must remember that the black man never challenged "separate," but only "equal." While Earl Warren was still Governor of California, it was the Kentuckian Chief Justice Fred Vinson who set the direction for the revolution of the American Negro. While the Negro sued for "equal" in the *Sweatt* and *McLaurin* cases, the Vinson Court said "separate" itself was inherently "unequal," therefore unconstitutional.

The Vinson court decided that the Negro law school in Texas was not equal to the law school of the University of Texas, not because of its facilities but because the reputation of the faculty was unequal; the status of the alumni was unequal; the prestige of the university the size of its library, and the ability to communicate with other students, all were unequal.

But most important of all, the Negro law students were being denied the right to communicate with other students.

We are what we are because of the classmates we had in school. We copy patterns of behavior and speech from our classmates.

The Jews were in the ghettoes of Europe for over a thousand years, and they survived, even produced some Talmudists and Biblical scholars.

But it was only after the walls of the ghetto came down and they had an opportunity to exchange ideas with the people around them, that they produced Mendelssohn and Heine, and Disraeli and Brandeis and Einstein and Jonas Salk.

But the resistance continues, not only in the Deep South but in our large cities. It continues only because we feel we need a caste system. "In the North," says the Negro, "the white man says, 'Go as high as you can but don't come close'; in the South the white man says, 'Come as close as you can but don't go up.' "

Proust notes in "Remembrance of Things Past" that: "The hatred of Captain Dreyfuss opened the doors of the aristocrats to the bourgeoise—I'm not a letter carrier, I'm an anti-Dreyfussard."

Of course, it is better to be an aristocratic white man than a millhand or a letter carrier. But the millhand and the letter carrier have this in common with the Southern aristocrats, all are better than the black man. Even the Southern "boardinghouse" aristocrat is better than the black man. And hating that schoolbus makes the poor white a plantation owner retroactively.

What is the solution? Law is the solution. The South has overcome much more volatile controversies than busing. I remember a Southern Governor warning that: "Blood will flow in the streets if the schools were desegregated." The schools are desegregated and no blood has flooded the streets.

The resistance of the sit-ins of early 1960 was more severe than busing. But it was accepted.

And the law, the courts did it. In all the years since the 1954 Supreme Court decision, there hasn't been a single solitary voluntary act on the part of a single Southerner.

At no time did a Southern Governor, mayor, member of the city council get up and announce that tomorrow we'll desegregate the swimming pool, for instance. Not a single, solitary voluntary act. It all came about through law. Law doesn't change the hearts of men, but it changes their practices. Morals follow the law.

Another controversy centers on Joint Resolution 191 which the Congress may soon pass. This resolution revises the first amendment to the Constitution and provides for "voluntary prayers" in the school room.

It has caused much concern, not only among constitutional lawyers who fear the resolution is so loosely worded as to pose a real danger to the freedom of religion section in that honored and revered document, but to ministers, too.

Many clergymen have argued that this proposed amendment was a buckpassing instrument, a way of relieving the American Christian parent of any guilt engendered because the family ignores prayer.

Consider busing, another of the crucial issues of the day. The folks in the nice places don't want their children bused and the courts do.

Why not amend the Constitution to permit prayers on the bus instead of the classroom?

We could have praying buses and nonpraying buses. The constitutional lawyers will be happy and the ministers, because religion will not be invading the classroom, it will be invading the highways—where it can do most good—and the intransigent parents will of course commit their kiddies to the buses because the kiddies will get a longer time to pray.

For the life of me I cannot see what is wrong with this plan, it is not only gradual enough to satisfy Southerners, but it will reinvigorate the parishes.

Chairman CELLER. I would like to get your views an Disraeli's accomplishments and Einstein's accomplishments. They went to separate schools, yet they attained greatness. Why was that?

Mr. GOLDEN. They went to separate schools.

Chairman CELLER. It wasn't the separate schools that caused their greatness. It was their innate genius, I suppose. But was it helped by their being in separate schools?

Mr. GOLDEN. No, it wasn't helped.

Chairman CELLER. What is the basis for it?

Mr. GOLDEN. The complete integration of the society, the English society. That was the thing that did it. The complete integration.

Chairman CELLER. Would they have achieved even greater distinction had there been equality of schooling?

Mr. GOLDEN. Probably. Although the English society was completely integrated as far as Disraeli was concerned. He had communication with miners, with sheepherders in Hebrides and he had communication with the entire society and this is what does it.

Chairman CELLER. Suppose the Negro, unlike the Jew, had no long history of study which has been inbred in Jews for centuries. Could they have undertaken to study even though they had to do it privately or in secret?

Mr. GOLDEN. The Jew came from an urban society. The early Christian church put them in the ghetto as punishment. They didn't realize they were giving it just a 150-year start on how to live in the 20th century.

Mr. ZELENKO. Proponents of the constitutional amendment say that present efforts to desegregate schools by transporting pupils tend to reinforce a feeling of racial superiority in whites; tend to demean blacks, and tend to be patrionizing and condescending to blacks. For these reasons it is asserted that such efforts should not be encouraged.

Mr. GOLDEN. I don't believe that at all, sir.

Mr. ZELENKO. Why not?

Mr. GOLDEN. I have vast communication with the black people of America and they are all for integration and busing except a small minority. But this minority always exists because the homogeneous society is a fortress as much as it is a prison. When Jews left the ghettoes there were rabbis who were against it. They said we will lose our religion if we integrate with the rest of the civilization. But integrate they did and this is what did it for them.

Mr. ZELENKO. It is also asserted, Mr. Golden, that if it was wrong to assign children on the basis of race to segregate them, it is also wrong to assign children on the basis of race to desegregate them.

Do you have any reaction to that assertion?

Mr. GOLDEN. We are not segregating the races at all with busing.

Mr. ZELENKO. But the charge is made that if it was wrong before 1954 to assign students on the basis of race to segregate them, it is also morally reprehensible to assign on the basis of race even if your announced goal is to desegregate those students.

Do you have any comment to that charge?

Mr. GOLDEN. I don't think it is a charge at all. I think it is begging the issue.

Chairman CELLER. Would you say that most of the people, not all, but most of the people who are opposed to busing are in favor of so-called separate but equal schools?

Mr. GOLDEN. I think so.

Chairman CELLER. Would you say that most of the people who are opposed to busing are opposed to integration?

Mr. GOLDEN. That is right.

Chairman CELLER. Would you say that most of the people who are opposed to busing are opposed to mixture of races?

Mr. GOLDEN. That is right.

Chairman CELLER. And that, as Dr. Hesburgh says, it all depends on what happens at the end of the bus ride.

Mr. GOLDEN. That is right.

Chairman CELLER. Any other questions?

We are very grateful to you, Mr. Golden.

Thank you very much.

Mr. GOLDEN. Thank you.

Chairman CELLER. Our next witness is Mrs. Richard P. Holmes, president, City Council of Parent-Teacher Association, Richardson, Tex.

STATEMENT OF MRS. RICHARD P. HOLMES, PRESIDENT, CITY COUNCIL OF PARENT-TEACHER ASSOCIATION, RICHARDSON, TEX.

Mrs. HOLMES. Mr. Chairman, I wish to thank you and the members of the committee for the opportunity of presenting my views concerning House Joint Resolution 620.

As you are undoubtedly aware, I speak as a representative of the PTA but more particularly as a parent and I believe that my views are in agreement with the views of the vast majority of parents of this Nation.

In order that you might understand my position in regard to pupil assignment and the possible transportation of pupils, I wish to explain my understanding of parent-school relationships.

Man, like all other members of the animal species, has the responsibility of the rearing of offspring. It was determined early in the history of this country that each individual could not perform the parental responsibility of education and/or training necessary in the even then complex society in which this country developed.

The formation of free public schools was the outcome of this decision. I believe that the free public schools of this Nation have had more influence in the development of the highest standard of living that the world has ever known than any other one factor. As I believe that the schools operate as an extension of a parental function, I also believe that the farther apart the school and the parent are moved, the more difficult it is to maintain the relationship between parent and school that is necessary in order that each pupil develop to his fullest potential.

I am aware that you gentlemen are much more familiar with the Constitution of the United States than I am, but as a parent I find free public education three places in the Constitution: First, in the promote the general welfare clause of the preamble; secondly, in the 10th amendment wherein those powers not delegated by the Constitution to the U.S. Government are reserved to the States or the people; and in the equal protection clause of the 14th amendment. I believe, as stated before, that the free public schools have certainly promoted the general welfare.

Second, I believe that laws passed by the legislative processes and applicable court rulings have certainly upheld the contention that free public education is reserved for the States and the people as long as other constitutional laws are not violated.

I am in agreement with the findings of *Brown* versus *Board of Education* that in effect ruled that separate but equal schools did not meet the equal protection clause of the Constitution, and I also find it equally difficult to believe that the equal protection clause would allow any assignment of a pupil to a school based on color, race, or national origin.

More specifically, I respectfully submit the following facts and/or opinions as a parent concerning the effect of arbitrary assignment of pupils on the basis of race, color, or national origin.

One of the objects of the PTA is to bring into closer relation the home and the school that parents and teachers may cooperate intelligently in the training of the child. It will prove very difficult for parent-teacher associations to pursue a course that will bring into a closer relationship the school and the home if the children must be transported great distances.

Many parents could not make the effort necessary to actively participate in the activities of parent-teacher groups if they had to drive great distances to a child's school, and the effectiveness of our organization, even the organization itself, would cease to exist. This difficulty would be compounded if one had more than one child in school, and there might be instances where a parent could have children in three separate schools, each widely scattered across a city.

My school district could conceivably find itself in a consolidation situation similar to the case in Richmond, Va. All the districts situated in Dallas County, Tex., encompass approximately 933.09 square miles while our own district is made up of only 38.52 square miles. In a relatively small district of 38.52 square miles it would not be too difficult to ask a neighbor to pick up a sick child if the mother was at work. One could not ask a neighbor to drive across a busy city to pick up a child.

The emotional needs of children and youth must also be considered. The artificial separation of people based solely on their race is wrong in schools or otherwise. The current trend of sending minority children to white schools even across school district lines accomplishes little but ill will.

It reinforces in white children any racial superiority feelings they may have, and it says to the minority children they are somehow improved by the presence of white schoolmates. Add to these thoughts the emotional impact of a child being stranded on some school ground because of having missed a bus and the fear that a child in a distant school could receive a serious injury that might require emergency surgery, and you have a few of the reasons that lead to further hostilities.

When children must travel long distances to school, they have much less time to relax or play after school. They also do not have the experience of playing with the children with whom they attend school after the school day is over so their companionship must be limited to the children in their own neighborhoods anyway.

The transportation of students long distances during peak traffic hours on busy city streets is also hazardous, particularly during periods of inclement weather. A child attending a school in our community is within safe walking distance of that school at the elementary level. This also means that in addition to fewer traffic hazards, they have more time to sleep and do homework, and they participate in any activities that involve after-school time.

While extracurricular activities may not appear important to some persons, it has been an established thought that the well-developed individual has much to contribute to society; therefore, what happens in the molding and development of young people when they are deprived of many of the activities such as choral music, band rehearsals, drama activities, other club activities, or reporting for the school newspaper, serving on yearbook staffs? Students who must be transported by buses cannot participate in these activities unless a parent can transport them. This is certainly not always feasible; therefore, experiences are confined to classroom activities.

In the meantime, where is quality education for all children and youth? The money spent for transporting students could well be spent on the development of programs and the hiring of gifted and dedicated teachers to improve the lot of the impoverished and deprived child, whether it be black, brown, or white.

Costly new innovations in disadvantaged neighborhood schools would be a much better way of improving the educational capabilities of children in disadvantaged areas. An experiment in remedial reading was conducted in New York City some years ago, and when it was really supported, ghetto third-graders were reading at a level equal to the national average. Imagine what could be done in those learning centers if the parents could be brought in for special classes and for learning experiences with their children that would help them develop a sense of pride and well-being.

The PTA is a totally integrated group dedicated to the cause of improving the educational advantages of all children. We are not opposed to total desegregation but we are opposed to the idea that minority children can only be improved educationally by exposure to, or the presence of white children in the classroom.

We believe that the schools are being used to bring about social changes in a social order that began 100 or more years ago, and we believe that the school children are being victimized if the quality of education for all children is not the primary goal.

We do realize the necessity for educational reform to prepare children and young people for productive and rewarding lives, but we do not believe that the indescriminate transporting of children to fulfill a numerical balance is the way. In November 1971, the voting body of the Texas PTA, representing some 600,000 memberships in Texas, debated and passed a resolution that pledged support to the necessity of a constitutional amendment against the indescriminate transporting of students.

It would appear that open housing and improvements in the educational programs would be better solutions to the inequities in our existing educational system rather than the forced long-range transportation of students across cities, across counties, and across school district boundaries.

It is for these reasons, and not objections to integration, that we strongly support the Lent amendment.

Chairman Celler. I noticed on the last page of your statement you say: "We are not opposed to total desegregation."

Are you opposed to some desegregation but not total desegregation?

Mrs. Holmes. No. I think that this was left in, Mr. Chairman, to emphasize the fact that we do not want the dual school system. This is not what we want. We believe that everyone should have an equal opportunity for a good education.

Chairman Celler. The statement is:

> We are not opposed to total desegregation, but we are opposed to the idea that minority children can only be improved educationally by exposure to or presence of white children in their classroom.

What does that mean?

Mrs. Holmes. Let me explain this to you, Mr. Celler.

The neighborhood school concept is the point that could answer this. In areas where minority groups still live predominantly, you could have schools that have minority students with perhaps a few white children sprinkled in. In those schools you would certainly hope to find completely dedicated teachers of all races if they were available.

Does that answer your question, Mr. Chairman?

Chairman CELLER. You are agreeable to the so-called *Brown* decision I understand?

Mrs. HOLMES. Yes, we are not opposed to a unitary school system.

Chairman CELLER. What is your understanding of the *Brown* decision?

Mrs. HOLMES. Not having a legal mind, but just having the knewledge of what we have read. I think it would be necessary for me to conclude that you would have to consider the areas where this would apply. This in my own community would not be as applicable as it would in some others where we have a community that is made up primarily of white people because of the fact that the minority people have not moved in as readily. They are beginning to. I think that you don't improve or make equal education simply on the basis of racial mixture. There are other factors necessary for the improvement of educational opportunities for all people.

Chairman CELLER. Would you say that in your city you are carrying out the spirit of the *Brown* decision?

Mrs. HOLMES. We are under a court ordered plan whereby the neighborhood school concept on the elementary level was left to us. We have one school that is made up predominantly of black children. They have a predominantly white faculty in that school. The neighborhood is an isolated area bound by a busy freeway, a railroad track, and an industrial complex and the people in that neighborhood would like very much to keep that school and they do not want their younger children bused out and they do not believe that we should want our children bused in.

This has been a situation that has worked beautifully. We cooperate with the people in that area and we work with them but we do have the neighborhood school concept in our own school district.

The junior high and senior high students are sent to the junior and senior high schools in their areas and we are operating under this plan.

Chairman CELLER. Are there any questions?

Mr. BROOKS. Mr. Chairman, I would like to say we want to welcome you here, Mrs. Holmes, and we appreciate your contribution to the testimony. You were very gracious to come up and testify.

Mrs. HOLMES. Thank you, Mr. Brooks.

Mr. MCCLORY. Mr. Chairman I want to observe that you have provided a very illuminating statement, very frank and forthright. I interpret your view of the crux of the problem as being the distance and the time involved in busing. You indicate the difficulty that parents have in participating in activities with teachers and students and that the parental involvement is made difficult when the school is a long distance away.

I am wondering whether we might not have an adequate answer to the problem that you pose by a legislative approach which would place some limit on time or distance in transporting a child from the home to school? Would that satisfy the main part of the problem?

Mrs. **Holmes**. It would certainly be my opinion that any workable solution through the legislative process would be acceptable. As pointed out in the testimony, my own school district is faced with a possible court decision that would involve consolidation of the countrywide school district. So this of course is the major concern of our area now.

Mr. **McClory**. You are really not concerned about some plan that would integrate children or desegregate them from schools they are attending now providing that there would not be too great distances for the children to travel?

Mrs. **Holmes**. This would be the major objection and certainly at the elementary level, when the children are within walking distance of school, a mother doesn't have to worry about what is going to happen to them on the way because our system is set up in such a manner.

Mr. **McClory**. Thank you.

Chairman **Celler**. Thank you very much, Mrs. Holmes.

You have been a very enlightening witness and you are a gracious lady.

Mrs. **Holmes**. Thank you for the privilege of being here.

Chairman **Celler**. The next witness is Mrs. Edna Wade, president, Unified Concerned Citizens of Alabama, Mobile.

STATEMENT OF MRS. EDNA WADE, PRESIDENT, UNIFIED CONCERNED CITIZENS OF ALABAMA, INC., MOBILE

Mrs. **Wade**. Mr. Chairman, before I give my opening statement I would like to issue a very special thanks to three people that work with the Judiciary Committee, that being Mr. Zelenko, Mr. Hoffman, and Mr. Vance. They have been most gracious to me for the past 2 weeks and I appreciate it.

Mr. Chairman and members of the committee, I am Edna Wade, president of the Unified Concerned Citizens of Alabama. I live in Mobile and am the mother of three wonderful children.

On behalf of the many concerned citizens of Alabama, I extend our thanks and sincere appreciation for the privilege of appearing before this committee.

For 2 weeks I have heard the testimony of many distinguished and learned people. I have followed their testimony with keen interest, and heard charges of emotional hysteria, but, gentlemen, it is much easier to stand on the outside looking in and make so-called rational statements.

I am not a distinguished or learned lawyer, but a simple layman who can speak from the voice of experience. All my life I have been taught that "experience is the best teacher." Therefore, I respectfully submit the following testimony.

I am here in support of House Joint Resolution 620, Steed-Lent amendment. Among the developments in law and government during this century, none more completely defies human reasoning than the position of our Federal Government regarding public schools.

In the famous *Brown* case, 18 years ago, the Supreme Court ruled that the U.S. Constitution did not permit forcible separation of children in public schools on the basis of race. Now the Supreme Court holds that the Constitution requires forcible mixing of children in public schools on the basis of race.

It was to be supposed that what the Supreme Court meant in 1954 was that assigning children to public schools was not to be affected by race, or shaped according to race. Indeed, in my opinion that is what the Court said. It decided that the public schools should be operated "on a non-racial basis."

Yet the command of the same high court is now exactly the opposite. It decrees that children shall be excluded from schools because of their race and shall be assigned to schools because of their race, and moved around among the schools according to their race. It directs that race shall be a controlling factor. Its mandate now is that schools shall be operated on a racial basis.

In determining what school a child shall be required to attend, school authorities must first look to the color of his skin and that shall prevail over other considerations whatsoever.

To the best of my simple ability in law and government of our Nation, there has never arisen a more monumental inconsistency than this.

Moreover this inconsistency deprives the individual of fundamental liberty.

Thus, American children are today herded here and there by their government, according to race, all considerations of personal liberty to the contrary notwithstanding. What started out 18 years ago as a guarantee of freedom without regard to race has become transformed into a vast governmental compulsion based solely on race.

The deepest irony of this regime is that it is claimed to be required and compelled by our Constitution. It seems incredible that the Supreme Court should interpret our very charter of freedom as a document which deprives people of freedom and on the grounds of race alone.

Against such interpretation it would appear that the only sure remedy is to write into the Constitution an explicit provision to the contrary—such as House Joint Resolution 620.

We have heard testimony about school zones in the shape of pie wedges. I really don't know exactly what zones this referred to, but our zones may be pie shaped but the pie is splattered over the map.

For example, gentlemen, before you, you see copies of the elementary section of the metropolitan area of Mobile County. Here you will see a little A, B, C, D, E, and F sections, with the D section here being bused to way over here, with the F section here being bused clear here, with these children over here being bused out here.

Mr. ZELENKO. Excuse me, for the benefit of members of the subcommittee, and for the record, can you indicate the respective distances?

Mrs. WADE. Yes, sir, I can. I would like to give you a better example on the next map of the distances though. The next map of course shows the same areas but with different schools because they are middle schools.

In this school here, as you saw on the previous map, which was located here and that was an 8-mile school.

Mr. ZELENKO. Could you identify the area?

Mrs. WADE. The area here is called the Trinity Garden area. Here the other school which services this portion was an 8-mile school. This school also in the past, gentlemen, has serviced the rural sector of our county. Understand these maps represent only the metropolitan portion of Mobile County school district. These children are still compelled to go to this school for grade 6 through 8 because this is a school that still resides within their district. These children live many many miles and were originally brought into 8-mile school because it was the closest school available to them.

These children now are bused. If you bring the bus straight down with no regard at all for bus routes, so forth and so on, which I am sure we are all familiar with, but if you bring them down straight down Highway 45 which is the major thoroughfare servicing this area, they will be bused a total of 25 miles one way.

These other children that you saw over in area to be bused down here, as you can see, involves quite a number of miles.

Mr. HUNGATE. Could you name the district so when we look at the map we can find it?

Mrs. WADE. I would like to leave the map. I have three maps. I have all three maps of our school system and I would like to leave the maps with the committee.

Mr. JACOBS. Give us your best guess of the distance between the middle area you pointed to and the area you pointed to down here.

Mrs. WADE. This here would be approximately in the neighborhood of 15 to 20 miles one way.

Mr. JACOBS. Thank you.

Mrs. WADE. And I would like to submit these maps to the committee for further study.

Chairman CELLER. Those will be accepted for the files.

Mrs. WADE. Thank you.

The third map which I did not show includes the high schools, gentlemen.

It has been the cry of proponents of busing that children were bused past schools with grades for them. This certainly should not be, Mr. Chairman, but it is in fact still being done just for so-called mathematical racial balance. Children who live across the street from the school are no longer allowed to attend that school because their skin is either white or black.

Forced busing has caused many good schools throughout our State to be closed. In Alabama alone, by January 26, 1970, school properties valued in excess of $100 million were closed or abandoned by orders of Federal courts. Gentlemen, this is a conservative figure and we have experienced the closing of even more schools since then.

At this time I would like to submit the Congressional Record of January 26, 1970, and in it is a statement of Senator Allen from the State of Alabama.

Chairman CELLER. That will be accepted.

(The statement in the Record referred to follows:)

[From the Congressional Record, Jan. 26, 1970]

Mr. ALLEN. Mr. President, I ask unanimous consent that I be permitted to proceed for 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, I am proud to sponsor jointly with the able and distinguished Senator from Mississippi (Mr. Eastland) two bills, both of which are recommended by considerations of simple justice. The first bill provides for compensating State and local authorities for replacement cost of hundreds of schools which have been closed throughout the Nation primarily on the initiative of U.S. courts and Federal agencies. The second bill removes a court imposed, punitive, and discriminatory impediment placed on donations to private schools.

Mr. President, with reference to the first mentioned bill, conservative estimates indicate that school properties in Alhambra valued in excess of $100 million have been closed or abandoned by orders of Federal courts.

We do not know the total value of similar properties lost to use of the people in other States. However, on the basis of tentative inquiries it is estimated that the depreciated value of such properties exceed $1 billion and that replacement cost will amount to much more.

One of the truly appalling aspects of this situation is that many of the school buildings ordered closed are relatively new and modern. They were built in the last decade which, in the South, has witnessed a phenomenal increase in appropriations for education and great strides in improving educational opportunities for all children regardless of race. These improvements were made possible only by reason of dedicated education leadership and loyal public support.

Many of these closed schools were paid for from proceeds of bond issues authorized by State legislatures. Others were constructed on local initiative. The people of separate communities voluntarily assumed increased ad valorem levies on their homes and farms in order to provide their children with better educational opportunities. Thus, the people are doubly burdened with State and local taxes to pay the cost of schools ordered abandoned by Federal authorities. Their children are ordered bused to schools in distant communities which are frequently overcrowded and inadequate while their own local schools lie idle, vacant, and deteriorating. Can it be imagined public support of education can be maintained under such circumstances?

Mr. President, while there remains some question concerning the total monetary value of properties involved, there is no question but that a grave injustice has been done. This injustice calls for redress. The bill that the Senator from Mississippi and I have introduced will provide that redress.

Both bills are quite simple. One provides that the United States shall compensate States and local education agencies in an amount equal to the replacement cost of all public school buildings and facilities owned by any such State or agency which have been or will be closed or abandoned by any such agency as a result of: First, any order issued by any court of the United States; second, compliance with any plan, guideline, regulation, recommendation, or order of the Department of Health, Education, and Welfare; or, third, actions taken by any such State or agency in good-faith efforts to comply with the decisions of the U.S. Supreme Court requiring desegregation of public schools.

Mr. President, no effort will be made at this time to present legal arguments in support of this bill. I think it sufficient to point out that if it can be said that the U.S. Constitution requires closing public schools, it can be said, with more compelling reason, that the Constitution also requires compensation for financial losses incurred by reason of such closing. If the property were taken to make room for a Federal highway, compensation would be provided. Is there any valid reason public school properties taken by Federal Government from local school authorities pursuant to Federal programs and policies should not be compensated for?

Let me mention another reason why these local school authorities should be compensated for the loss of use of schools closed and abandoned on initiative.

It has been 15 years since the Supreme Court handed down its original decision declaring racially segregated schools unconstitutional. Every State in the United States which had school segregation laws repealed them or struck them from State constitutions. Most adopted "freedom of choice" plans for assignment of children on the basis of the first definitive judicial interpretation of the Supreme Court Brown decision. In this interpretive decision the district court said, in effect, that the Constitution forbade racial segregation in schools but that it did not compel integration. That interpretation was made in one of the original cases on remand from the Supreme Court. The Supreme Court let that decision stand. It denied certiorari. State and local school authorities had a right to believe that "freedom of choice" as practiced throughout the United States was constitutionally permissible in the South.

Nevertheless, the Supreme Court has backtracked and confused the issues by continued use of undefined legal concepts in relation to the meaning of the Brown decision. Nobody knows precisely the meaning of such words and phrases as "segregation," "desegregation," "discrimination," "equal protection," "unitary school system," "system," "integration," "root and branch," and others. Sheer confusion reigns in U.S. district courts. Confusion compounded by the fact that the Supreme Court denies certiorari in cases decided on conflicting interpretations of the Supreme Court meaning of such terms.

There is no authoritative answer to simple questions like these: When is a school desegregated? What are the conditions of a unitary school system? These and many other questions are constantly raised by district judges and local school officials. Despite these unanswered questions, local school authorities are being compelled to close schools and bus children to achieve what a HEW official thinks the Supreme Court meant in the desegregation decision.

In some instances, Federal officials insist that Federal courts issue orders which local school boards are simply powerless to comply with.

For example, on December 30, 1969 a U.S. district court judge in a case involving Norfolk, Va., schools complained that the U.S. Attorney General had insisted on a plan to establish a 'unitary school system" which contemplated closing 17 public schools and massive cross bussing which in turn would require a capital investment of $4 million for new buses and $800,000 a year in increased busing costs. The school board simply could not comply. The judge in this instance did not issue the order requested by the Attorney General but countless other judges in the South have done so. The fact is that the Attorney General of the United States and the Department of Health, Education, and Welfare continue to insist that the Supreme Court requires imposition of such plans and insists on implementation under the equity powers of district courts.

Mr. President, some of the things done today under equity powers of U.S. district courts are almost unbelievable. It is hard to realize that in the United States equity powers of district courts can be used to create "affirmative" duties of elected legislative bodies; that they can be used to subordinate the health, safety, morals, and welfare of children to arbitrary ratios; to effect sociological experimentations involving millions of schoolchildren; to issue orders impossible of implementation and to take property without compensation—all of this and more.

Mr. President, from the standpoint of powers in government, seldom in history has there been a more potent and dangerous concentration of powers than that represented by equity powers in the Federal court when distorted into a tool to effect revolutionary reforms, coupled with the use of mandatory injunctions, enforced under powers to punish for contempt by imposing confiscatory fines and imprisonment without benefit of trial by jury.

Obviously, the present bill to compensate local school authorities and the bill to preserve in the law the right to deduct from taxable income contributions made to certain nonprofit educational institutions will not remedy the chaos which has been inflicted upon the South.

It is our intention to press on every front until "freedom of choice" is just as lawful in the South as it is in every other section of the United States.

Mr. President, I wish it were possible to convey to all Senators a sense of the magnitude of these problems. I say as sincerely as I know how that the handwriting is on the wall and that no school system in the United States is going to escape the effects of the social theories now being expounded and implemented in school decisions from the South. To think of this as a sectional issue is to miss the point.

Let me mention one of the sociological theories which is being implemented by some U.S. district court judges. In a recent case, a Department of Health, Education and Welfare expert sociologist contended that the Supreme Court Brown decision required "integration" and not "desegregation" which the expert said was merely "mixing bodies." "Integration," on the other hand, means a balance of "social classes" in the schools, according to this professor and his interpretation of the meaning of the Brown decision.

If this social class mix theory prevails—and it is being pushed by Federal authorities—it will mean that children must be assigned to schools on the basis of computerized data on the incomes, education, employment, religion, and other personal information gathered on the parents of all children in a city or community. It will mean that children will be distributed according to the social status of their parents throughout every school in the community. Such a distribution according to plan can be accomplished not alone by bussing but also by regulated housing, job assignments, creation of school parks, and perhaps by a scheme of "population distribution" referred to by President Nixon in his Executive order creating the Rural Community Development Commission.

Mr. President, it is no secret that the Department of Health, Education, and Welfare is studying the feasibility of invoking equity powers of Federal courts to levy taxes to implement some of these far-reaching sociological experiments with our children. Authority for such a proposition is cited in one of the recent published studies by the Commission on Civil Rights on the general subject.

Is it coming to that? Taxation by injunction?

Mr. President, the Federal courts of this Nation are in a quagmire—the problem can no longer be ignored. The welfare of 43,353,567 schoolchildren is involved; billions of dollars in public funds are involved; public support of education is endangered. It is my earnest belief that the situation is so bad that the Senate should undertake an inquiry to determine what can be done to restore order and legality to the mess created by departures from the law of the Constitution.

It is my hope, Mr. President, that the Senate Judiciary Committee will accept the important responsibility and that it might unravel the confusion that exists in school decisions, and help resolve the conflict of authorities respecting the social theories advanced in district courts for implementation. I hope that the competence of so-called education experts employed by the Department of Health, Education, and Welfare to formulate school plans for submission to courts will be evaluated along with the justification of "windshield" inspections of school facilities as a basis for recommending abandonment of schools.

Someone must question the rationality of racial ratios or social class ratios as overriding criteria for the assignment of pupils and teachers.

I would hope that the committee would also examine the implications of a "dual Constitution" and question the novel and dangerous extension of equity powers of courts with a particular reference to a proper power in Federal courts to levy taxes.

These are but a few of many aspects of a monumental problem that needs thorough review and evaluation by competent authorities.

It is my opinion that the Supreme Court needs help. I hope the committee will give the Court his needed help.

Mrs. Wade. We do not know the total value of similar properties lost to use of the people in other States. However, on the basis of tentative inquiries, it is estimated that the depreciated value of such properties exceeds $1 billion, and that replacement cost will amount to much more (1970).

Following are seven points that I believe this committee will find well taken as to why busing is not conducive to education:

(1) Funds spent on busing children are wasted because the real goal of public schools is to educate all children, black and white. Money wasted on busing should be spent on critical educational needs, such as: obtaining more instructional materials, reducing the teacher-pupil ratio, and improving teachers' salaries, to mention just a few. Reordering the spending priorities will insure our children's right to an excellent public education, which in turn will prepare them for the obligations we all must shoulder in our society.

(2) Busing completely eliminates one of the most important phases of our school program. Extracurricular activities are a vital and essential part of a child's education. They have been and continue to be our greatest motivation in working with our children.

Busing denies the total development of a child, because our children now cannot participate in athletics, musical programs, drama, art, theater, Boy Scouts, Girl Scouts, and many, many other activities that develop leadership, responsibility, and child respect within the group.

(3) This kind of busing discourages the interest of parents in participating in school activities with their child and teacher. Parents are far removed from their child's school, and in today's society no greater

need exists than that for parents, teacher, and child to work on a team basis.

(4) Children have now become numbers to teachers, and this completely terminates the custom of teacher visits to a child's home.

(5) The school is no longer the community center where the various groups have the communality of the education of their children. These various religious groups, social and financial stratas, have in the past assembled in their local school with the common purpose of the support of public education in the interest of their respective children.

(6) One readily realizes that today our superhighways and city thoroughfares are being constantly improved for the purpose of speeding traffic and the constant increase in the number of vehicles. Where is the safety?

(7) We speak of accountability. How can there be accountability on the part of those in the teaching profession when there is no way for parents and the taxpayer to be involved?

Our school system in Mobile County, Ala., the largest in the State, has spent $616,604.18 for transportation this year, compared with $20,822.72 for textbooks. Gentlemen, this is not the total cost, because we had already bought 82 school buses and on February 16, 1972, our school board ordered 60 more. Where does it all stop?

During the 1966-67 school year, 7,116 children were bused in the metropolitan area, mainly because of court orders. In 1967-68 our bus transportation increased to 207 buses, with 22,094 students being bused mainly because of court orders. In 1969-70 school term our public school enrollment dropped from 82,000 to about 73,500.

By the opening of 1971-72 school year, it dropped to 62,000, with the busing of more than 27,000 and a bus fleet of about 315—and an additional 60 units being ordered.

Since 1969 private schools have sprung up like weeds. We now have them by the score throughout our county, and, gentlemen, I would like to bring to your attention that not all of these schools are white. There are several black private schools in our county also.

While I have nothing against private schools, the withering away of a good public school system is a tragedy. This committee can help stop the demise of public schools by supporting House Joint Resolution 620.

In the past 2 weeks, I have heard testimony that violence and turmoil within the school system are on the decline. This is not true. We have disruption, rape, student riots, knifings, robbery, teacher attacks, bomb threats, fire bombings, vandalism, murder, children blinded and severly beaten. This does not sound like a decline to me.

And gentlemen, upon my arrival back home I would furnish this committee with the police and board of education facts substantiating these statements.

Our schools have been subjected to a police state, if not by regular policemen, then by parent patrols at the request of our school board. During many of the riots the number of policemen required to quiet them left the balance of our county in dire need of protection.

Many such riots have resulted because of the bitterness of the student body because their school was closed and they were thrust into another school which they did not wish to attend. These children had pride in their schools and rebelled the only way they knew how. They issued the cry, "Reopen our school."

Not only has the forced busing and forced closing of schools caused this, but also it has been the spawning grounds for people who would like to see the fall of public education and also the fall of the American way of life.

Many who receive Federal grants could not do so unless there are disruptions within our schools. I charge that this money would be more wisely spent if put into the schools themselves. I also charge that the reason many school superintendents protested the banning of the use of Federal funds for busing was that they simply would be unable to afford the busing imposed on them otherwise.

The effect of busing orders in Alabama. Widespread busing orders have created havoc in public education in Alabama.

Approximately 27 cities instituted transportation systems in Alabama since 1967. The total cost of these transportation systems runs into several millions of dollars. This money was diverted from other vital programs. Many of these programs are now operating at bare subsistence levels of operation as a result of this diversion of funds.

Court ordered busing has resulted in the closing of many schools throughout the State. The State department of education estimates that 278 schools have been closed in Alabama since 1968, primarily because of court orders, and that the valuation of these schools exceeds \$2½ million.

The students who were displaced from these schools were reassigned, in many instances, to schools that are terribly overcrowded. It is not unusual for some schools to have 40 to 50 pupils in a single class as a result of this overcrowding.

Many thousands of children, both black and white, are leaving the public schools for private schools. These children, for the most part, are from families of middle- and upper-income levels.

The parents in this financial group have generally been recognized as the leading advocates of more taxation for better public education. Many of these parents have ceased to work on behalf of improving public education as a direct result of their lack of confidence in the public education system. This loss of confidence was brought about by the chaotic conditions which court orders have created.

Many community systems in Alabama have been completely destroyed as a result of court ordered busing. One Alabama system was ordered to buy buses to comply or close up its schools. This system, the Pleasant Grove school system, was financially unable to buy buses and reported this fact to the U.S. district court in Birmingham which was hearing the case. This court then ordered the Pleasant Grove system to close its doors. The court then ordered a neighboring system to enroll the pupils who found themselves without a school.

Hobson City, Ala., is the oldest predominately black community in Alabama. The city was incorporated in 1899. Hobson City had a school in which its citizens took great pride. This school served as a hub for many community activities.

Most of the pupils attending this school lived within walking distance of the school. The bureaucrats who think they know what is best for Hobson City filed a plan to "pair" the Hobson City School with another school in another separate school system. The U.S. court ordered such pairing and the Hobson City School was paired with one at Oxford, Ala. As a result of this "pairing" two communities have lost their sense of pride that they had in their local school.

These systems will suffer an inevitable loss of financial support from these communities. Private schools have already opened in this area. Several more private schools are in the planning stage in the Hobson City-Oxford area.

How can we talk out of both sides of our mouths at the same time and say that children are not bused to reach racial balance, but for desegregation? What is the difference between the two? There are children who are actually fed breakfast on the bus or through a free breakfast program at school.

Gentlemen, in my opinion there is no way you can take the rights of some away and give them to others and call it equality. Therefore, the only sure way to guarantee the rights of all children is through a constitutional amendment.

It has been said that not one of the court orders has been imposed to reach a "racial balance" as an unavoidable obligation of the school system, but, gentlemen, try telling this to school boards who have been instructed by courts to reach a 60–40 percent ratio of teachers and students, and who have been faced with a $10,000 fine and an additional fine of $1,000 a day thereafter.

I might add that somebody has been straining at gnats to say that the court has not ordered busing. Understand, gentlemen, I am a lady not a lawyer.

I will read from the *Davis* versus *Board of Education of Mobile County:*

> * * * nearly all Negro schools rather than those as projected by Court of Appeals. These figures are derived from report of school board in district court. This was brought to our attention in supplemental brief for petitioners filed October 10, 1970, and has not been challenged by respondents, as it has been held neighborhood school zoning, which based strictly on home-to-school distance are on unified geographic zones. It is not a constitutionally permissible remedy nor is it per se adequate to meet the remedial responsibilities of local boards.
>
> Having once found violation, a district judge or school board should make every effort to reach greatest degree of actual desegregation, taking into account the particularities of the situation.
>
> A district court may and should consider the use of all available techniques, including restructuring of attendance zones and both contiguous and noncontiguous attendance zones.

There is an insert.

> On the record before us, it is clear that the Court of Appeals felt constrained to treat the eastern part of metropolitan Mobile in isolation from the rest of the school system and that inadequate consideration was given to possible use of bus transportation and split zoning.
>
> For these reasons we reverse the judgment of the Court of Appeals as to the parts dealing with student assignment and remand that case for development of a decree that realistically works and promises to work now.

In my opinion there, gentlemen, they did order our school board to bus.

Gentlemen, the course of grave injustices is very clear and the only way to right these injustices is to adopt the constitutional amendment, House Joint Resolution 620. This amendment would restore local control of the neighborhood school. It would guarantee parents the right to choose what they feel to be best for their children. Without that right, we become mere puppets of a Federal dictatorship and judicial tyranny.

Thank you again for the opportunity to appear today and present our views.

Chairman Celler. I am in receipt of a communication from Dr. Glenn Edgerton, Presbyterian Church of Auburn, Ala. Among other things he says the following:

> It is apparent to me that such an amendment—

The amendment that you speak of—

> would be a major setback for what many of us have been working for in the South for a long time; namely, a society our children can help shape—less marked by the inequities of racial prejudice.
>
> While I can understand, and sympathize with, the desire to have children go to school in their own neighborhoods, so long as neighborhoods continue to be racially exclusive, and so long as white people keep running into ever more distant enclaves simply to escape black people, then so long it seems to me necessary to try to free children, black and white, from the ghettos of which they live and suffer deprivation.
>
> While I can speak about the merit of busing to alleviate black deprivation, I want most of all to speak about white deprivation. I simply do not want my sons (John, age 8; George, age 9) to be educated in a white ghetto.
>
> Education is much more than excellent graded learning of language and math skills, in my judgment. It is education for human intercourse in the world. My children would have no possibility to share in their most formative years with some beautiful black children in learning and growing experiences. The public schools occupy so many of their waking hours and experiences that I could never adequately, in their non-school hours, provide these experiences.
>
> My neighborhood is, sadly, segregated. The only way I know for our neighborhood to become fully integrated will be when my neighbors have had enough contact with black people in PTA, on school project committees, and by sharing their children's pleasure as other children of another color, that it begins to dawn upon them that black neighbors would be a joy and an enrichment of life.
>
> To stop busing would be to end all of those emerging possibilities as well as damage my own white children who need their present experience so much, now and for the days ahead.
>
> Some day when we can move to a society in which, in my neighborhood there is such diversity of color and variety of experience that a school in the neighborhood would contain all the ingredients for the education my child needs, we can do away with busing—and probably with the forms of school we have now, too—but until then, busing is essential, not only for black children but for my children, George and John.
>
> For my wife and myself and what I am sure are larger groups of people in the South as well as elsewhere, I would be glad to testify.

Mr. Counsel, I would like you to put in the record some information about the State of Alabama.

Mr. Zelenko. Mr. Chairman, a response from HEW was just received by the committee yesterday and we are endeavoring to get copies made for each member of the subcommittee on pupil desegregation and transportation data.

In referring to the material the Department of Health, Education, and Welfare has sent to the subcommittee, I should read in the following:

> That in 1967–68 in the State of Alabama, 50.5 percent of the student population was transported by bus. In the school year 1970–71, 47.6 percent was transported.

Also, for Mobile, Ala., the figures submitted by the Department show that out of a school enrollment of approximately 69,000 students in Mobile County, Ala., in 1970, 26 percent of the pupils enrolled were transported at public expense. For 1971, 39.5 percent were transported.

We also have figures, Mr. Chairman, through 1970 (no figures were available from HEW thus far for 1971), showing the amount of desegregation in the Mobile school system. That data show that approximately 10 percent of the black student population was enrolled in 100-percent minority schools, approximately 54 percent were enrolled in schools which had 80 to 100 percent minority students, and approximately 18 percent were enrolled in schools in which black students were in the minority less than 50 percent. This data will be placed in the record.

School desegregation data for Mobile, Alabama, furnished by the Department of Health, Education, and Welfare, (which subsequently was amended to include information for the 1971–72 school year) follow:

TABLE 1.—*Office for Civil Rights—Special survey for the State of Alabama*

1967–68:	
Average daily attendance	787, 714
Pupils transportation	397, 754
Percent pupils transportation	50. 5
1968–69:	
Average daily attendance	786, 218
Pupils transportation	394, 864
Percent pupils transportation	50. 2
1969–70:	
Average daily attendance	777, 123
Pupils transportation	360, 087
Percent pupils transportation	45. 6
1970–71:	
Average daily attendance	754, 014
Pupils transportation	359, 486
Percent pupils transportation	47. 6
1971–72:	
Average daily attendance	------
Pupils transportation	------
Percent pupils transportation	------

TABLE 2. –100 LARGEST (1970) SCHOOL DISTRICTS PUPILS TRANSPORTED AT PUBLIC EXPENSE (FALL 1970 AND 1971 UNEDITED DATA)

	A	B		C	
	Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A	Number	Percent
Mobile County, Ala.:[1]					
1970	69, 791	18, 147	26. 0	83	100
1971	66, 593	26, 285	39. 5	82	100

[1] District implementing a court-ordered desegregation plan.

TABLE 3.—100 LARGEST (1970) SCHOOL DISTRICTS—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS, FALL 1968, 1969, 1970, AND 1971

	A	B		C		D		E		F	
						Black pupils attending schools which are—					
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 percent minority		80 to 100 percent minority		100 percent minority	
District		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Mobile County, Ala.:[1]											
1968	75,464	31,441	41.7	31,441	41.7	3,442	10.9	27,519	87.5	18,832	59.9
1969	73,504	30,884	42.0	30,884	42.0	6,776	21.9	22,796	73.8	15,125	49.0
1970	69,791	31,114	44.6	31,034	44.5	5,658	18.2	16,888	54.4	3,141	10.1
1971	66,593	41,045	46.6	30,958	45.9	11,081	35.8	12,764	44.2	4,727	15.3

[1] District implementing a court-ordered desegregation plan.

Note: Nationwide school attendance and transportation data furnished by the Department of Health, Education, and Welfare may be found at pages ——.

Mr. **Poff.** Mr. Chairman, may I say something at this point?

Chairman **Celler.** Yes.

Mr. **Poff.** Mr. Chairman, I think the material the counsel has belongs appropriately in the record. I think it might also help to clarify the interpretation of those data if the map which the witness displayed before the committee a moment ago could be made a formal part of the transcript.

I hope that the witness will understand that it is impossible to include all of the exhibits in the formal transcript, and it may be physically impracticable to include this map in a legible form.

However, Mr. Chairman, if it is possible to have a foldout reproduction of the map included in the formal transcript, I believe it would be useful in analyzing these data.

Chairman **Celler.** I think that that is correct, that there should be an interpretation in the record of the map itself, rather than putting the map in the record.

Mr. **Poff.** A foldout map I believe would bear upon the question.

Mrs. **Wade.** Gentlemen, I might be of some help here. Our newspaper at home has run copies of these maps which have already been brought down, and could very easily be inserted in the record.

I would, upon my arrival, and I do intend to go back to Mobile, Ala., tomorrow, secure copies from the Mobile Press Register not only of this map but also of the maps that are pertaining to the balance of our system, and submit them back with all immediate speed to this committee.

Mr. **Poff.** Would the witness also make reference in her formal testimony to other information she expected to accumulate when she returned?

I don't know the nature of that, but I assume you would want that included in the transcript as well.

Mrs. **Wade.** That was pertaining to the balance.

Chairman **Celler.** The witness has permission to place any other material she desires in the record.

Mrs. **Wade.** Yes, sir.

Also, I have newspaper Thermofax copies that show the inconsistency of the court orders that the Mobile County public school system has suffered since.

Chairman **Celler.** That will be retained in the committee file.

Mrs. **Wade.** That is fine. I would like to submit them for your approval and for your supervision, and also for you to study.

Also, I have heard very aptly in the past 2 weeks any number of people testify before this committee, and, as I told Mr. Zelenko yesterday, I have found myself in many instances, even though the people opposed are on opposite teams, things that I could agree with.

Also, I would like to bring something to the attention of this committee, that while Mr. Coleman very aptly represented NAACP Legal Defense Fund, I would also like to inform this committee that they charged that they are for the quality education of children, and that alone, but, gentlemen, the local NAACP defense attorney in Mobile, Ala., has demanded a quarter of a million dollars as attorney fees from our school board. Now, this, to me, is not conducive to the quality education of our schoolchildren, and this is a matter of public record. You do not have to take my statement on that.

Mr. McCulloch. Mr. Chairman, I should like to ask a question there.

Over how long a period have the services been performed for which he is making such a charge against the board?

Mrs. Wade. This lawyer has not performed any services for our school board, Mr. McCulloch. He has performed services for the plaintiff, and this is as pertaining to the *Charlotte-Mecklenburg* decision.

Mr. McCulloch. How many hours has he worked on that case?

Mrs. Wade. He has presented none, to the best of my knowledge. He has presented no estimate of hours. This was brought out in an article in our newspaper, and our school board did concede that they would give him a hundred thousand.

They have protested the amount. They did concede they would give him a hundred thousand, but he said, "No, that is not enough. I won't settle for less than a quarter of a million dollars."

Mr. McCulloch. You furnish me whatever evidence you have of the services performed.

Mrs. Wade. Yes, sir; I will be glad to.

Mr. Hungate. Mr. Chairman, may I interject a moment here before you go ahead?

Chairman Celler. Yes.

Mr. Hungate. You have a vast amount of people wanting to be heard on this issue. I appreciate the necessity that on occasions we must receive statements when people don't appear themselves, as with the minister whose letter you read and with HEW, but for my own part, I would like to say whenever possible, I think it is very helpful to the committee that people who offer testimony also subject themselves to the questioning of the committee. I would say that particularly with reference to HEW.

Mrs. Wade. Me, too. I would firmly agree with that, Mr. Hungate, because I don't think HEW has had the full basic concept of what should be the main portion of this problem, and that is the education of our children.

I think maybe not all of the Department of HEW has this opinion, but certainly the ones we have seen in our portion of the country have presented this point of view to us.

Understand, gentlemen, we are now operating under a court-approved plan, and also to give you another instance on HEW, our plan also included even the social activities in the school.

Well, this was good enough for the court, but HEW people came in, and they went to the schools and did so-called record and factfinding, and they were very disappointed as to what was going on.

While the court is not disappointed, HEW is disappointed, and, gentlemen, our school board and our children and our community cannot serve two such persons. We cannot serve two gods. In other words, gentlemen, we have got to have a choice between one or the other which we are going to serve, and which we are not going to serve.

Gentlemen, I would like to state for the record, I don't believe in enforced anything. I think people should have the right to choose what is best, and I think people are not being defiant for defiance's sake, but for the rights that should be guaranteed to us all.

I think we really are guaranteed all of these rights by the Constitution, but undoubtedly it has been seen fit to misconstrue these mean-ings. Also it may have been that the lower courts also have misconstrued the rulings meant by Supreme Court Justice Burger.

I am not saying that this cannot be. But without the committee actually conducting a thorough investigation into all of these fields, we will never know, gentlemen.

And I appreciate, too, that this is the first time that has been offered before the United States of America the benefit to hear both sides, gentlemen. I think this is conducive to the whole program, to hear both sides.

But I also would like to state that on October 18, I carried petitions asking for a constitutional amendment, and placed them on the executive desk of the President of the United States. These were people I had come in contact with on a trip to Washington. I had placed there approximately 30,000 signatures, and, gentlemen, I am very proud to say, out of these 30,000, there were approximately one-third of these signatures that were black.

Not only has this been true, but we have also had black parents enter suit against such forced things in our county in Mobile, Ala. These people are saying they want the right to choose.

Chairman CELLER. We admire your work, and we appreciate the contribution you have made this morning. We are very grateful to you, and the committee will place in the record any materials that will help us in this problem.

We have one other witness to hear and an impending quorum call.

Mr. JACOBS. I thank you for your testimony.

I read one phrase in your testimony that puzzled me. You said there were black private schools?

Mrs. WADE. Yes, sir; there are.

Mr. JACOBS. One wonders, are those segregated black schools?

Mrs. WADE. Yes, sir.

I don't know whether it is the policy of the schools not to permit whites to them, but the fact is they are all black, and the fact also is that some of the so-called white private schools are not all white, that they have a policy of allowing black children to come in.

Mr. JACOBS. Is that generaly true of the white schools, also, they do permit blacks to enter, as far as you know?

Mrs. WADE. Yes, but this has happened just this year in some of them.

I would like to bring out the fact that these black private schools did not exist prior to court orders in 1969. There was just one of them.

Mr. JACOBS. It has been the policy of neither private school to exclude either race?

Mrs. WADE. I cannot state the policy on the black schools, only the policy on some of the white schools. I could not speak for all of the private schools.

I am concerned, Mr. Jacobs, with public education.

Chairman CELLER. Thank you very much.

Our next and final witness is Mr. Mario Diaz, president, Board of Education, Southgate Community School District, Southgate, Mich., who comes here at the suggestion of our distinguished member from Michigan, Mr. Dingell.

STATEMENT OF MARIO DIAZ, PRESIDENT, BOARD OF EDUCATION, SOUTHGATE COMMUNITY SCHOOL DISTRICT, SOUTHGATE, MICH., ACCOMPANIED BY GEORGE McCORMICK, SUPERINTENDENT OF SCHOOLS

Mr. DIAZ. Mr. Chairman and members of the committee, I would like to introduce Mr. George McCormick, superintendent of schools for the Southgate School District.

Chairman CELLER. We welcome you both.

Mr. DIAZ. After listening to the lengthy testimony of many witnesses, my official statement appears to be adequate to the lunch hour and brief, and I thought that maybe my statement should have been a little longer, but I think the timing is beautiful.

Mr. Chairman and members of the committee, it is indeed a privilege to be permitted an audience with this committee, which is so concerned with the issue that is of such paramount importance to so many people.

My name is Mario Diaz, and I am the president of the Board of Education in the City of Southgate, Mich. This community is in the Detroit metropolitan area, and comprises approximately 8 square miles. The school system enrolls nearly 10,000 students in grades K–12. There are two high schools, one junior high, one middle school, and 11 elementary schools.

I realize that this committee will spend many hours in hearings and will gather a great deal of data, and I do not expect that my testimony will reveal anything new concerning the issue of mandatory cross-district student transportation.

What I hope to do is to convey to you the heartfelt beliefs of practically the entire population of the Southgate Community School District, and the several hundred thousand citizens in our immediate area.

Our board of education has, with the assistance of its constituents, taken great pains to establish schools throughout the district in such a manner that even small children are able to walk to their schools with ease and safety.

We have always believed that the school is an extremely important part of the child's life. By the time that they are 3 years old, they begin to look forward to going to school. They know where the school is and probably have been taken there for some activity.

They tend to identify so much with their school that the board of education has adopted a policy that enables a child to continue in his neighborhood school and not be subject to transfer except in case of extreme emergency.

The district presently owns three sites that have been purchased in anticipation of increased enrollments. These sites are situated in locations that will permit children in attendance to walk not over one-half mile to their school.

In summary, our philosophy is that the school is an integral part of the neighborhood, and the child's life, whether he be 5 years old or a young adult. We do not feel that the best interests of school students will be served, whether they reside in Southgate or some other city, by a mandate to put an abrupt end to a concept that has proved to be beneficial to millions of schoolchildren.

The city of Southgate is not against integration. We are against busing of our children from within our community to any other community, for that matter.

In fact, to make a specific point as to the quality of citizens we have in our own community, and to indicate to you that we are not prejudiced, we have different minority groups in town, and the smallest minority group within the community happens to be the Cuban community, of which I happen to be a member, and there is only one Cuban in the community, and I happen to be the president of the school board. So that point I make because I am truly proud of the action of our citizens.

We are strongly against the busing of children to other districts, because, in fact, I moved into that particular community because I wanted my children to be able to walk to school in safety, to be connected with the school, closely to the homes, and in order for parents and teachers to work out some of the individual problems that each child may have.

We are strongly against the busing, and I hope, quoting the distinguished chairman of this committee, Mr. Celler, at the beginning of these hearing he made a statement that, "I will seek the most efficacious answer to this complex social and legal problem for the benefit of all Americans."

I sincerely hope that this committee will find a solution to this grave problem.

As an immigrant, I came to this country in 1949. I don't have to tell you that for an immigrant to become a citizen is a long struggle. In fact, I loved this country before I even came here. I looked to America as a great horizon, the land of opportunity, the land of freedom, the land of choice, and a land in which the people can live and guide the lives of their children as they wish to.

I believe that if we are forced to mandate to our citizens here, "We don't care what your choice is in regard to where your children should go to school. We are going to send them over there across 15 or 20 or 30 miles," I think that we are depriving that particular citizen of his freedom of choice.

I love this country greatly, but the day that we in America lose the freedom of choice, then that is the time for the people to start making some changes.

Gentlemen, it is a great privilege to be here, for many reasons.

Mr. Celler represents to me a great inspiration in many ways. He is a man that I heard about and I read about for many years, even when I was back in my own country.

So I believe that the opportunity you have offered me, and this committee has offered me is a great privilege.

I thank you.

Mr. Celler. I must thank you for those kind words.

That is the bell calling us to the House for a quorum.

We are grateful to you for your testimony.

Mr. Diaz. Thank you.

Mr. Hungate. Mr. Chairman, I would like to ask that a statement of the Committee for the Preservation of Local School Districts, Florissant, Mo., be placed in the record at this point.

Chairman Celler. Without objection, the statement referred to will be placed in the record.

(The statement follows:)

Statement of the Committee for the Preservation of Local School Districts, Florissant, Mo., Pertaining to Proposed Constitutional Amendments and Other Legislation Respecting the Transportation and Assignment of Public School Students

Mr. Chairman, as a brief introduction to the concerns of The Committee for the Preservation of Local School Districts and to our position regarding the forced busing of public school children, allow us to establish the local situation in St. Louis County, Missouri.

On Sept. 3, 1971 the U.S. Justice Department filed a suit in U.S. District Court charging several local school districts with perpetuating illegal segregation in a neighboring, predominantly Negro, school district. The federal allegations also include the illegal denial of equal protection of the law in violation of the fourteenth amendment to the U.S. Constitution and Title IV of the Civil Rights Act of 1964, in that State and local school authorities have failed and refused to take the necessary steps to provide equal educational opportunities for the students in the predominantly black district. These allegations are not true and will be successfully refuted in court.

We see in this pending federal court action the seeds of destruction for the public schools of St. Louis County. If, however, the Justice Department, through legal manipulation, should prevail, then the presiding federal judge may choose to prescribe the busing of students by court order.

Since forced busing has become an issue because of the federal government's attempt to force integration and to eliminate segregation, perhaps a closer look at these fundamental terms is in order.

Integration—"to form into a whole; to unite, or become united." When applied to racial, ethnic or religious groups, integration is generally agreed to by an overwhelming number of Americans. Who in good conscience can disagree? The only question is, how do we achieve this goal? Will it be integration by the desires of the people, achieved peaceably with lasting results, or will be integration by force of law—and as every lawmaker knows, law is force.

If our course is set on achieving integration by force of law, then who decides the ratios? How are these ratios to be achieved? How are these laws to be enforced? And the ultimate question, will integration be successfully achieved?

We are all aware of the civil rights movement of recent years, the bus boycotts, sits-ins, marches, demonstrations, violence, etc.; tactics that catapulted the ostensible goal of integration onto the front pages of our newspapers. These visible, and highly emotional tactics also succeeded in pressuring our federal government into the business of integration—integration by force of law! This pressure was manifested in federal civil rights commissions, anti-discrimnation laws, civil rights laws, new social interpretations of our constitutions, more civil rights laws, pyramiding governmental agencies and finally, the war on poverty, all generally conceived to force integration.

Have these efforts met success? We think not. In fact, we can only conclude that governmental efforts to force integration has resulted in increasing racial friction and hatred. Ponder for a moment the governmental force that has been used, with the billions of taxpayers dollars that have been expended, all to force integration, resulting in failure so broad across our land that the proponents of these past schemes now propose to bus school children against the will of their parents!

California Congressman, John Schmitz, said it well recently when he said: "Thus racism appears in a new form, as a vital aspect of an intolerant, totalitarian elitism which moves other peoples children around vast metropolitan areas like pawns on a chessboard, to obtain the sociological mix most satisfying to the dominant academic and bureaucratic cliques of the moment. That is the real meaning and importance of the nationwide controversy over bussing school children according to race. * * *"

Government can't solve social problems; it only imposes tyranny on all the people.

Segregation, * * * to cut off from others or from the general mass, to isolate or seclude.

Obviously, to isolate or seclude an individual or group would require force. In our Constitutional Republic, the legal use of force is restricted to government, * * * to law. (There are exceptions, of course.) When law, and its necessary agent force, is used to segregate people or groups, then law has been perverted and is being misused. It is then clearly the job of our legislators to rectify this misuse so as to preserve the peace and to restore the liberty of all. But, are such perversions, tagged de-jure segregation, widespread today? We think not. Instead of being broad in scope they are rather the exception in our land. If the above observation is correct, what do we then have that we *call* segregation. Do we have people living together because of similar racial or ethnic backgrounds, similar cultural tastes? Do we have people living together because of similar economic status, similar religious principles? What we actually have has been mis-named defacto segregation. It's not segregation at all, and it is certainly not immoral or illegal.

General Thomas Lane in his nationally syndicated column has said:

"* * * if people through individual choice elect to associate chiefly with members of their own race, government has no authority whatsoever, in law or equity to force upon them patterns of association deemed desirable by politicians and educators."

We subscribe enthusiastically to that assertion.

To say that great confusion exists because of the activity of government to regulate the social structure of public education is to grossly understate the point.

Congress has enacted prohibitions on at least seven occasions against the federal government requiring the forced transportation of school children to achieve predetermined levels of attendance with regard to race, creed, or color within individual schools.

Section 401(b) of the Civil Rights Act of 1964 states:

"Desegregation shall not mean the assignment of students to schools in order to overcome racial imbalance."

Other legislation which expresses Congressional hostility to busing includes the Elementary and Secondary Education Act of 1965, as amended in 1966, which forbids "any department, agency, officer or employee of the United States—to require the assignment or transportation of students or teachers to overcome racial imbalance."

While mentioning the above legislation it is necessary to state that, on other grounds, both of these laws are blatantly un-Constitutional, since there is no authorization whatsoever in the Constitution for the federal government to meddle in the fields of social relations or education.

Now comes the Supreme Court. The Warren Court's 1954 decision (Brown vs. Board of Education) specifically precluded race as a factor in assigning students to, or barring them from, public schools. But, the Burger Court's "Swann" decision actually makes race the chief criterion for assigning children to the schools affected.

President Nixon has repeatedly denounced school busing to eliminate racial imbalance, yet, on the other hand the President approved a court appeal by the Justice Department from a federal judge's ruling in the Austin, Texas school desegregation case because that ruling provided for *too little* bussing. The Department of Health, Education & Welfare pushes bussing, even offering to reimburse the local agencies from federal funds.

So if you want to obey the law of the land, what do you do? Congress has passed laws which ban bussing, but the Courts and the Executive have issued edicts compelling bussing!

Confusion reigns supreme as our Supreme Court moves us further away from constitutional government. Are Supreme Court decisions the law of the land? Or does Congress, with the authority of the Constitution, make the law?

If decisions of the Supreme Court are indeed the law of the land, where is the legal authorization for the Court's legislative activity? The first section of the first article of the Constitution states:

"All legislative powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and House of Representatives." Further along, the Supremacy Clause (Article VI, Section 2) asserts: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the law of the land * * *".

Treaties. Laws of Congress. The Constitution itself. All are mentioned as being factors which combine as the supreme law of the land. But nothing is said about Supreme Court edicts.

In his excellent book, "Your American Yardstick," the noted Constitutional authority Hamilton A. Long explains:

"Supreme Court decisions *do not* constitute the supreme law of the land. Its decision in a case is limited by the facts involved and constitutes only the law of the case, binding merely the parties to the case. This is true as to all cases and all courts, including the Supreme Court. Even in a case involving consideration of the Constitution, therefore, the Supreme Court's decision, involving a mixture of legal rules and principles as applied to the facts involved, cannot and does not constitute a part of the supreme law of the land."

Our Supreme Court, which has un-Constitutionally legislated us into the forced bussing business, must be restrained. This restraint must be and can be furnished by Congress. If Congress allows government to remain in the hands of the eminent tribunal, then the people will have ceased to be their own rulers.

The purpose of these Judiciary Committee hearings is to furnish the Members of the House with a reasonable appraisal of proposed laws pertaining to the bussing of public school students to eliminate racial imbalance. Since this issue has given rise to a multitude of proposed laws including Amendments to the Constitution, perhaps a fundamental look at the function and substance of "law" itself is in order.

The following words are those of Frederic Bastiat, a French economist, statesman and author. His essay entitled "The Law", first published in 1850, contains eternal truths that will still be valid when another century has passed. His ideas deserve a serious hearing in our troubled times.

"*Law is force.* It is the substitution of a common force for individual force. And this common force is to do only what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the rights of each, and to cause justice to reign over us all."

"When law and force keep a person within the bounds of justice, they impose nothing but a mere negation, they violate neither his personality nor his liberty They safeguard all of these. They are defensive, they defend *equally* the rights of all. But when the law, by means of its necessary agent, force, imposes upon men a regulation of social or economic relationship, then the law is no longer negative. It is then acting positively upon people. It substitutes the will of the legislator for their own wills; the initiative of the legislator for their own initiatives."

And eventually the tyranny of dictatorship for the freedom of the individual.

"*Law is organized justice.* When justice is organized by law—that is, by force—this *excludes* the idea of using law (force) to organize any human activity whatever, whether it be labor, charity, agriculture, commerce, industry, education, art, or religion. The organizing by law of any of these would inevitably destroy the essential organization—*justice.* For truly, how can we imagine force being used against the liberty of citizens without it also being used against justice, and thus acting against its proper function."

The purpose of forced bussing, we are told, is to produce quality education. The idea seems to be that if one child can be forced to sit next to another child who has a different color in his skin, the result will be quality education. What we are not told, however, is how this education by osmosis works.

Another benefit that supposedly results from forced bussing is harmony, even brotherly love, between the races and between children of divergent economic and cultural backgrounds. Quite the contrary seems to be true. When you mix children from different neighborhoods, presumably from different racial, economic, or cultural backgrounds, when force is used to achieve this artificial condition, only one thing is created—*hostility.* Why? Students are transported to unfamiliar neighborhoods, sometimes even to hostile and unsafe areas. Students and parents that are content with their neighborhood school are hostile because their rights are not respected. They are hostile because they are unwillingly subjected to an unnecessary, time consuming, and expensive bus ride that cannot possibly add to the quality of their education. They have been reduced to nothing more than a computer number and a color.

When kids from the poorer environments, wearing recycled duds from the Salavation Army, are thrust into schools of relatively affluent neighborhoods, their economic differences suddenly achieve unrealistic proportions. They are understandibly envious and even resentful, their envy turns to frustration and these frustrations create hostility, fear and chaos.

If forced bussing is desirable in theory, moral and legal, as our liberal educators and politicians claim, then is distance and time a factor? If a thirty minute bus ride to a neighboring school is beneficial, who can deny that a slightly longer trip across a county or state line is not also benefiicial? Would not time, distance, and existing political boundaries prove to be surmountable technicalities? The obvious decadence of our system of law is feeding on ridiculous technicalities such as these.

It is very interesting to note that the liberals and the assorted variety of one world collectivists that have created this bussing Frankenstein are also in favor of Senate ratification of the Genocide Convention. These toilers for tyranny must not be aware that this treaty itself, defines genocide, in part, as follows; "forceably transferring children of the group to another group."

In our opinion the proposals before these Hearings of the House Judiciary Committee range from evil and ludicrous to those of seemingly good intent.

On the evil end of this spectrum we would place the bills offered by Mr. Griffin (H.R. 159), Mr. Abbitt (H.R. 5670) and Mr. Abernethy (H.R. 65). We reject these bills as evil because they are designed as amendments to the blatantly unconstitutional Civil rights act of 1964. We cannot accept amendments to existing legislation that has consistantly demonstrated the inherent failures of governmental interference in social matters.

Mr. Flynt offers a bill (H.R. 1295) that proposes to further legitimize the legislative usurpations of the federal courts. He asks that court orders effecting "desegregation," apply uniformly to *all* public schools across our land. His desire to spread injustice uniformly is not commendable. What is almost commendable in Mr. Flynt's proposal is that he would not allow forced bussing to commence in midterm, but would postpone injustice until the beginning of a school term. These "benevolant" proposals surely guarantee the destruction of public education.

Mr. Sikes comes forward with his resolution (H.R. 135). After recognizing the chaos, disruption and confusion that now exists in our school because of previous federal court decrees, Mr. Sikes asks that the courts render their decisions on "segregation" at the earliest possible date in order to furnish our Nations school systems with guidelines to effect an orderly transition in the coming year. It is ludicrous indeed to ask a speed up in the very process of legislative usurpation that has plunged us to the depths of the present crisis in education. Perhaps Mr. Sikes will answer this question :—Transition to what?

A number of proposed Amendments to our Constitution have been offered. The intent of these Amendments, and of their sponsors, is apparently honorable and well meaning in that they are designed to prevent the forced bussing of students. The only question is—do we need an Amendment to the Constitution to correct the injustice of forced bussing? We believe not. We believe instead that our Constitution has *already* provided us with the means to correct the problem.

Our system of checks and balances based upon the diffusion of power between the Executive, Judicial and Legislative branches of government has suffered extensive damage at the hands of the federal courts. This is the primary reason for the existence of the present crisis. That the Executive branch has promoted, or at least has not seen fit to challenge these usurpations cannot, however, be denied.

Why not then limit or restrain the power of the federal courts, including the Supreme Court? This power is granted to the Congress by authority of Article III, Section 1 of the Constitution, which gives Congress full power to regulate or eliminate the jurisdiction of the Federal Courts in specific areas.

Since our federal courts seem to be on a fast toboggan ride as far as forced busing edicts are concerned, it seems prudent to choose a swift remedy so as to subject as few school districts as possible to these edicts.

Mr. Schmitz has proposed a bill (H.R. 10614) that states:

"The Supreme Court shall not have jurisdiction to review * * * any case arising out of any State statute, ordinance, rule, regulation, or part thereof, or arising out of any Act interpreting, applying, or enforcing a State Statute * * * which relates to assigning or requiring any public school student to attend a particular school because of his race, color, or creed."

This proposed bill further states:

"* * * the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review".

In simpler language Mr. Schmitz would deprive *all* federal courts of jurisdiction over cases involving the assignment of school children to schools on the basis of race, creed, or color. This proposal also recognizes that the assignment of students to public schools is not a matter of federal concern but is reserved to the states and to the people as authorized by the Tenth Amendment to the U.S. Constitution.

Mr. Schmitz is definitely on target with his proposal. *This bill deserves the opportunity of a complete hearing in the Halls of Congress.*

In closing we would like to quote from President Nixon's recent State of the Union Message.

"The leadership of America is here today, in this chamber—the Supreme Court, the Cabinet, the Senate, the House of Representatives. Together we hold the *future of the nation*, and the *conscience of the nation*, in our hands." (emphasis added.)

If indeed our future and our conscience are to be determined by government then we have gone far down the road to totalitarianism.

We hope history will show that government never becomes the master.

Respectfully submitted.

ARTHUR J. BENKELMAN,
DONALD R. GRIFFIN, *Cochairman.*

COMMITTEE FOR THE PRESERVATION OF LOCAL SCHOOL DISTRICTS

Since the Federal government has issued an ultimatum to the Berkeley, Ferguson-Florissant and Kinloch School Districts *demanding* the dissolving of the Kinloch School District and a subsequent consolidation of all or parts of the districts involved, we believe it necessary to adopt the following position.

1. We favor the preservation of local control of school districts. Local control of school districts, as heretofor maintained by the parents and taxpayers of the respective districts, definitely includes the fundamental right to exist and certainly includes the right to retain/determine district boundaries and to determine the merits of any possible consolidation, free from the coercive efforts of any higher level of government.

2. We oppose any ultimatum issued by any level of government that would violate this principle of local control. We oppose any edict imposed by higher government that would compel our school districts to act contrary to the legal and proper mandates of the local communities.

3. We are unaware of any spontaneous desire on the part of the parents and taxpayers of any of the three school districts that would indicate that this federal ultimatum is founded on local sentiment.

4. We believe that local school districts exist for the sole purpose of administering to the educational needs and desires of the respective communities. We do not believe that this purpose can be subordinated to the socio-economic planning of the federal government without first abandoning this fundamental purpose.

5. We do not oppose co-operation between adjacent school districts that would result in mutual educational advantages for our children. If this co-operation takes the form of consolidation and the affected communities agree on the desirability of such action—free from the pressures of threatened federal suit—then we have no objection.

Adopted July 23, 1971.

DONALD GRIFFIN, *Berkeley School District.*
WILLIE HEAD, *Kinloch School District.*
LARRY MARLER, *Ferguson-Florissant School District.*

Chairman CELLER. The committee will adjourn until Monday morning. We also will meet on Wednesday and Thursday next.

(Whereupon, at 12:15 p.m., the subcommittee adjourned, to reconvene Monday, March 13, 1972.)

SCHOOL BUSING

MONDAY, MARCH 13, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler presiding.

Present: Representatives Celler, Brooks, Hungate, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel, Franklin G. Polk, associate counsel, and Herbert E. Hoffman, counsel.

Mr. Hungate (presiding). The committee will be in order. We will resume hearings on House Joint Resolution 620 and related measures, proposing an amendment to the Constitution of the United States relative to neighborhood schools.

We are pleased to have with us our colleague from Michigan, Mr. Dingell, who has offered some legislation on this subject. I understand he will introduce our first witness this morning.

STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. Dingell. Mr. Chairman and members of the committee, my name is John D. Dingell, a Member of Congress from the 16th Congressional District of Michigan. I want to express thanks to the committee on my own behalf and on behalf of Congressman William D. Ford for the courtesy of this committee in making available to us the opportunity of having our constituents and friends in the Legislature of the State of Michigan here to testify this morning.

It is a pleasure for me to introduce these distinguished representatives, Representative Joyce Symons, Representative Arthur Law, Representative Richard Young, and Representative William Huffman, all from the State of Michigan State Legislature.

Congressman Ford had hoped to be with us this morning but he is out in the West attending a funeral. I understand he has been detained getting back here.

Not to take the time of the committee, I will commend to this committee these able representatives of the people back home and I am sure they will have something useful and worthwhile to say to the committee today.

Mr. Hungate. Thank you very much, Congressman Dingell. The legislation you have offered on this point certainly has considerable merit. As you know, it is under serious study by the committee. We

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are very pleased to have fellow legislators with us from the State of Michigan. We know you have had firsthand opportunities to observe and study this problem and we welcome your testimony today. Which of you would choose to proceed first?

STATEMENT OF HON. JOYCE SYMONS, MICHIGAN STATE REPRESENTATIVE, ACCOMPANIED BY THE FOLLOWING MICHIGAN STATE REPRESENTATIVES: HON. BILL S. HUFFMAN, HON. ARTHUR J. LAW, AND HON. RICHARD A. YOUNG

Mrs. SYMONS. I am Joyce Symons, representing the 30th District of the State of Michigan. I am also cochairman of an ad hoc committee of 72 people from the Michigan House of Representatives, the committee established to preserve the neighborhood school concept. So, in effect, all of our group here today are with this particular committee.

I particularly urge and support the concept of amending the U.S. Constitution to prohibit the forced busing of schoolchildren on the basis of race, color, religion, or national origin for many, many reasons.

I believe that our judicial system is usurping the legislative process through the widespread practice of judges making laws, rather than interpreting laws. A prime example of this practice may be seen in Michigan, whereby Judge Stephen Roth has ordered our State board of education to determine a method of obtaining racial balance in our school system.

I believe that Congress is losing its legislative prerogative to reflect the wishes of the people by allowing judges who are not responsible to the electorate to enforce any plan for court-ordered busing in order to achieve racial desegregation.

Assigning students to our schools on the basis of race, color, or creed is just as unconstitutional as any other form of discrimination. In fact, it is more dangerous and damaging because it jeopardizes the essence of our democracy—freedom of choice.

Further, I believe that court-ordered discrimination will lead to increased tensions, violence, and major social upheaval which will disrupt our schools and our society.

I realize that many legislators have introduced proposals to prevent forced busing, however, the courts will only overturn this kind of legislation and, for this reason, I believe that a constitutional amendment ratified by the States is the only solution to this problem.

I also believe that this is a subject of such magnitude that immediate action is necessary, just as we undertook with regard to the 18-year-old vote. Any unnecessary delay will only create larger problems.

I speak to you not only as a State representative, but as a mother of three children who has personally experienced the problems involved in busing schoolchildren. I am opposed to any busing without the voluntary consent of each parent or guardian.

In certain instances, such as special schools for the retarded, I realize that busing is necessary, however, in these instances a parent would willingly approve busing.

However, I feel that it is unfair to children to bus them beyond their own neighborhood except in those instances wherein a parent would willingly approve such busing. The safety, health, and welfare of children are my primary concerns.

Having lived with busing for many years, just because the boundaries of our school district were set many years ago along farm community lines and are hopelessly inadequate for our new suburban community; the boundaries were set in Michigan in 1847, and Allen Park, the city in which I live, became a city in 1959.

Mr. HUNGATE. I am familiar with Allen Park and had the privilege of working on a criminal justice survey there in 1956. I hope they still have the high quality of law enforcement they had then.

Mrs. SYMONS. We do have. It is a very fine community. We have three school districts within a city of 40,000 people in Allen Park and so the southern school district boundary was what we then called the Heintzen school district. Children lived in Allen Park, but were bused to Southgate to school 3 miles from home.

Of course, this was a case of a realtor telling us when we bought our home, because every parent when they are looking for a home first looks for the school, the churches, and the shopping areas before they invest their money in a house, and, of course, the realtor said to us that your children will go to school right across the field, one block from home; but we were misled and our children were bused from Allen Park to this Heintzen school district.

Through this system I considered that my children and most of the parents, 94 percent of the families that I first petitioned to transfer children to Allen Park, 94 percent of these people felt strongly enough to sign a petition so we would have our children transferred into the Allen Park school district. We felt that education consists of more than reading, writing, and arithmetic, and our children were being deprived of what educators consider a total education.

Extracurricular activities, particularly from junior high school on up, are not within the reach of the bused child. There is no football, baseball, basketball, school club, or school play for the bused child, simply because if he misses that bus home, there is no other transportation available between his school and his home.

It is impossible for these children to stay after school without mother having a second car in order to go and pick these children up who have to stay to make up work. So the bused child is totally deprived of an education.

They can not participate in half of what actually goes on in the school. Realizing this, in the early 1960's I petitioned door-to-door and made two trips to Lansing to appear before the State board of education. We were thrown out the first time on a technicality that this mother who had started the petition drive, being myself, had not had an appeal signed at the same time that I had my petition signed and I had to start all over again, and I did this, going back to Lansing, and finally after all of this time, the petition drive resulted in transfer of these children, 135 homes, into the Allen Park school district.

I would like to point out here that the courts seem to be making this a racial issue; it is not. Both of these districts were all white. There was no racial question involved. It was merely the fact that these children were deprived of what we consider a total education in today's society, therefore, I have been on record as opposed to busing for many years.

It is my sincere hope that this committee in its good judgment will report House Joint Resolution 620 to the floor of the U.S. House of limit my concern to House Joint Resolution 620. I believe that if you

Representatives with a recommendation that it be passed. I don't have another vehicle that you would like to use to amend our Constitution, that as long as we get the job done as rapidly as possible so that we can prevent all of the social upheavals and problems that we will have unless we do that. Certainly I am not limited to House Joint Resolution 620, but I have been informed about House Joint Resolution 620.

The people in my community are working very strongly to ask for your support in this matter. The problem of racial desegregation should not be the responsibility of the schoolchildren in this fashion. I believe that it is wrong for us to use our children as pawns in a social experiment and I think this is exactly what we are doing when we place the problem of integration on the schoolchild.

The answer lies in providing a fundamental concept of equal opportunity for quality education for each child. We must provide a K–16 or kindergarten through college system of free public education that will bring equal opportunity for quality education to every youth and adult.

The prohibitive cost of busing would certainly be better applied to insuring this opportunity for all children so that every child, whether he is college oriented or not, can have an opportunity to have a career goal throughout his education, whether it be vocational education or college education, and each child would want to handle his own career.

Certainly I would appreciate your support in this constitutional amendment so that we can solve this problem. Thank you very much for hearing me today.

Mr. HUNGATE. Thank you, Representative Symons, for your statement. Mr. Law?

Mr. LAW. I am Representative Arthur Law, a representative of the 62d District of the Michigan Legislature which comprises the city of Pontiac. I appear here as a member of the legislature protesting court-ordered busing for the purpose of integration, and second, as a representative of my city, which I think is being treated unfairly as a result of court orders.

I don't know of any way that I could do better than to quickly read the statement I have here but if you have the record copy which we sent in Thursday, I would like to note that there are a couple of typographical errors I would like corrected for the record.

Mr. HUNGATE. We would appreciate it if you would.

Mr. LAW. I will read them out. Gentlemen, I wish to thank you for the privilege of appearing before you to present my opinions and that of many of the citizens of Pontiac, Mich., whom I have represented in the Michigan Legislature for 14 years.

From 1942 to 1954, I served my city as a city commissioner. Six of those years, I was mayor of Pontiac. From 1925 until 1947 I was a factory worker in the Fisher body plant located in Pontiac, except for 2 years during World War II, when I was a labor representative in the WPB and OPA.

As the son of a union coal miner, I knew the experience of extreme poverty, hunger, and oppression. So it was inevitable that I should help to give birth to and nurture the growth of the United Automobile Workers Union to eliminate the abuses in that industry.

I was first president of the Fisher Local Union in 1933 and several times afterward. Our goal was to make improvements in wages, hours, working, and living conditions, with seniority rights that would enable us to be stable and loyal citizens of our community.

As we grew stronger, we insisted upon the secured contracts to eliminate discrimination in hiring and employment. To secure these equal benefits, we walked the picket lines together, white and black, men and women.

Hunger, poverty, and insecurity were our common denominators at that time and caused our union to grow and succeed dramatically. They also caused us to join the Democratic Party, which offered the greatest hope to people of many different backgrounds, whether of race, religion, ethnic, or geographical origins for the elimination of these cancers.

We believed that we could have the freedoms promised and still be ourselves racially, ethnically, and religiously. In the belief that one man's freedom ends where another man's begins, we never expected to be punished because of race. We are today.

A Supreme Court that rightfully ruled in 1954 to eliminate discrimination in schools and public facilities forbade the assignment of pupils in our public schools because of race. Since the Kerner report, the Supreme Court, obsessed with the idea that integration is the cure-all, is allowing Federal district courts to order the assignment to schools because of race.

This Supreme Court would throw out any law governing the lives and welfare of our citizens, that was enacted by a State legislature or by Congress without definite guidelines and leaving the guidelines to the individual opinions, whims, or latent hatreds of individual judges.

Such action by our Supreme Court, which has usurped the prerogative of making such a law, compels us to protest and come to you for relief and assistance in constitutionally barring such whimsical decisions as the one ordered in my city by a judge, who in 1965, as a member of our Civil Rights Commission, upon the allegations of four citizens and without investigation as to validity thereof, stated that "obviously there is a mess in Pontiac that needs to be cleaned up."

Later, as a Federal district judge who sends his children to a private school, he ordered massive busing of schoolchildren in Pontiac at the cost of $733,000 with a continuing cost of $500,000.

Mr. ZELENKO. Does the figure of $733,000 cover the total cost of busing, both for desegregation and for purposes unrelated to desegregation?

Mr. LAW. I have the statement from Dr. Dana P. Whitmer here which I will submit to the committee in regard to that.

Mr. ZELENKO. I want to know, sir, whether the figure you cite to the committee is the cost of busing to effect desegregation, or does it also include the cost of busing for other reasons. There was busing before the court order in Pontiac, was there not?

Mr. LAW. There was busing of children a mile and a half outside of the city limits. There was busing of children for the purpose of getting to the nearest school that served the purpose.

Mr. ZELENKO. I asked whether the figure cited on page 2 of your statement is the total cost of pupil busing for the Pontiac school system.

Mr. LAW. I will have to submit that to you.

Mr. HUNGATE. I think there would be one cost figure before the court order and a different figure after. He is asking if this is the total figure.

Mr. LAW. This is from Dr. Dana Whitmer, superintendent of public schools in Pontiac, stating why they need greater assistance and why they are having to ask the people to vote a $5.5 million levy to make up for the deficit they are going to face.

It says the cost of the busing program has increased financial problems of the school district. Total estimated cost attributed to a busing program, $733,000, of which approximately $500,000 is budgeted to the general fund.

The deficit will range from $3,153,224 in 1972–73 budget to $4,492,670 in 1974–75. So cost of busing program represents one-sixth to one-eighth of total financial problem facing the school district in the next 3 years.

Mr. HUNGATE. That would seem to be the total cost of the busing, that includes operating costs and cost of new buses?

Mr. LAW. $500,000 a year continuing cost. To substantiate that but not particularly for that purpose, I inquired of the Department of Education, State of Michigan, as to the cost for busing of the program that is already in existence and had been for years in existence to take children to the nearest school, whether public or parochial. We do both in Michigan, but they must live a mile and a half from school.

Mr. HUNGATE. In the interest of time, I apologize for us taking some of your time, if you would supply to us the difference, in other words, the cost of the busing before the court order and the cost after. There would be a difference between those two figures resulting in a different percentage of the budget before the court order and after.

Mr. LAW. Superintendent Whitmer did not furnish me with the difference in there.

Mr. HUNGATE. Would it be possible for you to supply that for the record within 2 weeks?

Mr. LAW. I will try to do so.

Mr. HUNGATE. Without objection, we will include that information in the record. The Chair's problem is that we have a number of distinguished witnesses here and we have a 12 noon deadline, more or less. Thank you.

Mr. LAW. I will submit to the clerk the material that I have and supply the other on your request.

I might say, Mr. Chairman, that the State of Michigan in 1970–71 budget spent $45 million at per pupil cost of $56.29. Since there were 8,000 additional pupils budgeted as a result of this court order, that itself explains the probable cost of this thing, but it is estimated it will cost around $500 per year.

I would like to say that I am not so much interested in a constitutional amendment as to have our Supreme Court get itself back into the frame of mind it had in 1954 when they said children could not be bused or would not be assigned to schools because of race.

I think that was a just decision. I wish they would continue with the same theory and philosophy instead of the one they have now because we don't have guidelines but to leave it all up to the judges. I think my city was unjustly treated as I noted in my prepared statement. With that, I will end my statement.

(The prepared statement and materials subsequently submitted follow:)

STATEMENT OF REPRESENTATIVE ARTHUR LAW, MICHIGAN HOUSE OF REPRESENTATIVES

Gentlemen, I wish to thank you for the privilege of appearing before you to present my opinions and that of many of the citizens of Pontiac, Michigan, whom I have represented in the Michigan Legislature for fourteen years. From 1942–1954, I served my city as a city commissioner. Six of those years, I was Mayor of Pontiac. From 1925 until 1947, I was a factory worker in the Fisher Body Plant located in Pontiac, except for two years during World War II, when I was a Labor Representative in the W.P.B. and O.P.A.

As the son of a union coal miner, I knew the experience of extreme poverty, hunger and oppression. So it was inevitable that I should help to give birth to and nurture the growth of the United Automobile Workers Union to eliminate the abuses in that industry. I was the first President of the Fisher Local Union in 1933 and several times afterward. Our goal was to make improvement in wages, hours, working and living conditions, with seniority rights that would enable us to be stable and loyal citizens of our community. As we grew stronger, we insisted upon and secured contracts to eliminate discrimination in hiring and employment. To secure these equal benefits, we walked the picket lines together, white and black, men and women.

Hunger, poverty and insecurity were our common denominators at that time and caused our union to grow and succeed dramatically. They also caused us to join the Democratic Party, which offered the greatest hope to people of many different backgrounds, whether of race, religion, ethnic or geographical origins for the elimination of these cancers of society. We believed that we could have the freedoms promised and still be ourselves racially, ethnically, and religiously. In the belief that one man's freedom ends where another man's begins, we never expected to be punished because of race. We are today! A Supreme Court that rightfully ruled in 1954 to eliminate discrimination in schools and public facilities forbade the assignment of pupils in our public schools because of race. Since the Koerner report, the Supreme Court, obsessed with the idea that integration is the cure-all, is allowing Federal district courts to order the assignment to schools because of race.

This Supreme Court would throw out any law governing the lives and welfare of our citizens, that was enacted by a State legislature or by Congress without definite guidelines and leaving the guidelines to the individual opinions, whims or latent hatreds of individual judges.

Such action by our Supreme Court, which has usurped the prerogative of making such a law, compels us to protest and come to you for relief and assistance in constitutionally barring such whimsical decisions as the one ordered in my city by a judge, who in 1965, as a member of our civil rights commission upon the allegations of four citizens and without investigation as to the validity thereof, stated that "obviously there is a mess in Pontiac that needs to be cleaned up." Later, as a Federal district judge who sends his children to a private school, he ordered massive busing of school children in Pontiac at the cost of $733,000 with a continuing cost of $500,000. This according to a letter I received from Dr. Dana Whitmer, Superintendent of Pontaic schools, asking for help because of the district's financial plight, represents ⅙th to ¼th of the total financial problem of our schools. Does this represent a sensible solution to quality education, or does it represent purely a social experiment or appeasement? The sensible blacks of our country will and do recognize the fallacy of such programs that remove them farther away from any control or parental participation in the schools their children attend.

The people of my city, my State and I believe that most of the people of our country do not appreciate the hyprocrisy of a Judge Keith or a judge in Virginia who orders massive busing, while at the same time, because of the liberal salary he receives as a Federal judge, he sends his children to a private school. According to a newspaper quote, he justifies his hypocrisy by saying that while on the bench he is a judge, at home he is a father

Nor do we appreciate the hypocrisy of Congressmen who refuse to live in Washington, D.C., where the children can derive the benefits of a totally integrated school system, but choose to live in Virginia or miles away in the beautiful Maryland suburbs where their children can attend private schools or almost totally segregated schools.

Nor do we in Michigan appreciate a senator who is wealthy enough to send his children to private or parochial schools and in pious platitude tells us back home that forced busing to achieve racial integration is good for us. Nor do we appreciate the hypocrisy of a former governor, whose church is outstanding in its discrimination against Negroes, trying to force integrated housing upon communities solely because of an obsession with integration.

I would prefer a return to sanity and consistency by our Supreme Court to that of a Constitutional Amendment. But the fear that I have and that voiced to me by many others, is that the frustration of those who wish to continue to flagellate and punish the citizens of our country will within a very short time cause this same Supreme Court to mandate that all sales of homes, new or old, can only be made to establish a racial balance.

We do not and should not have these edicts mandated by our Courts or by Congress.

We in Pontiac and in Michigan have an open housing law. To make that law workable for those who desire a different school or neighborhood, we have a high annual income for our factory workers as a result of the Union movement. This has allowed or will allow the purchase of a home in all but the most wealthy neighborhoods. Few of us, either white or black can afford that and I for one could care less.

At the time of Judge Keith's order, we had blacks living in every precinct in our city. We have had non-discriminatory school enrollment since the Civil War. We were the first city in Michigan, if not in the United States to embark on a Public Housing Program for the relief of our citizens.

We were the first city in Michigan to enact a Fair Employment Practices Act for the citizens of our City. We implemented it in City Government. I know these things as they happened while I was in City Government and as the Mayor.

Since 1938 we have elected Negroes to our city council and to our school board, although most of the time they constituted only 10–15% of our population. They are now about ⅜ of our population. In the last general election, we gave Richard Austin (a Negro) an overwhelming vote for Secretary of the State of Michigan.

I cite these facts to show that the citizens of my city do not deserve the treatment they are having to endure.

In closing gentlemen, I wish to quote the words of John Adams, "The patrons of these acts allow that consent is necessary; they only contend for a consent by construction, by interpretation, a virtual consent. But this is only deluding men with a shadow instead of substance. Construction has made treasons, where the law has made none . . . arbitrary distinctions . . . have always been the instruments of arbitrary power, the means of lulling and ensnaring men into their own servitude. For whenever we leave principles and clear positive laws and wander after constructions, one construction or consequence is piled upon another until we get an immense distance from fact and truth and nature, lost in the wild regions of imagination and possibility where arbitrary power sits upon her brazen throne and governs with an iron sceptre."

Gentlemen: Tyranny was distasteful then—it is just as distasteful today, whether by a President, a Congress or as in this instance by a Supreme Court.

STATE OF MICHIGAN,
DEPARTMENT OF EDUCATION,
Lansing, Mich., March 9, 1972.

Hon. ARTHUR J. LAW,
House of Representatives,
Capitol Building, Lansing, Mich.

DEAR MR. LAW: Several days ago, you asked for information concerning per pupil transportation cost and per mile transportation cost. Attached is a tabulation that provides this and some other transportation information for the last four complete fiscal years.

The column entitled "Total Qualification" indicates the total amount of transportation reimbursement that school districts were eligible for in each of the fiscal years. The next column entitled "Legislative Appropriation" indicates the level of the state appropriation. You will note that only in 1970–71 was the formula paid out in full.

If you have questions concerning this tabulation, please feel free to contact me.

Sincerely yours,

ROBERT N. MCKERR,
Associate Superintendent, Business and Finance.

SOURCE OF REVENUE	THE SCHOOL OPERATION (PROGRAM)
1. School District Property Taxes	*All New School Construction, Major Rehabilitation, and Purchase of School Sites.* This is the *Building and Site Fund.* The School Board sells bonds to get the money for construction, and pays it back over a period of years from property tax receipts.
1. Oakland County Property Tax 2. State Grants	*Special Education.*[1] All special education programs and services that are provided in the school. Oakland Schools (Intermediate District) determines how much special education the schools of Pontiac get each year.
1. School District Property Tax 2. State Grants	*Vocational Education.*[1] These are the vocational classes which are taught in the junior and senior high schools.
1. Oakland County Property Tax 2. State Grants	*North East Oakland Vocational Education Center.*[1] (NEOVEC) The Center gives vocational and technical training to students from Pontiac, Avondale, Rochester, Lake Orion, and Oxford.
1. Federal Grants	*Federal Categorical Aid Programs.* These educational programs are for a specific purpose and are controlled by Federal guidelines. ESEA, Title I, II, III—COP Bilingual Education—ST^{3}P Head Start—Urban Corps Teen Mothers—ESAP Adult Basic Education—CCEM Vocational Guidance—NDEA, Title III
1. State Grants	*State Categorical Aid Programs.* The major program is in Section 3 of the State Aid Act. It offers special instruction in reading and mathematics for children who are educationally disadvantaged.
1. Federal Grants 2. State Grants 3. Student Fees	*Adult Education.*[1] The adult program includes high school credit courses, basic education, non-credit courses, and vocational courses.
	Projects Growth and Caddy
1. General State Aid 2. Student Fees	*Summer School.*[1] These are all classes or courses taught in the summer.
1. Student Fees 2. Federal and State Grants	*Food Service Program.* All food served to children.

Analysis of Revenues and Expenditures, 1972–1975

This analysis summarizes revenue and expenditure projections for the next three fiscal years, 1972 to 1975. It compares total anticipated revenues and expenditures for each year, thus giving an estimate of annual deficits and increased millages which would be required to balance each year's budget.

The Board of Education *does not control the major factors which determine revenues or expenditures each year* as shown in the box below.

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[1] These school operations (programs) appear in the School District Operating Budget each year.

REVENUES

Source of revenue	*Determined by*
State aid	the Legislature
Valuation of the school district	the local assessors and the County Equalization Board
The school tax rate	the County Tax Allocation Board plus added millages which citizens have voted

EXPENDITURES

Classification of expenditure	*Determined by*
Pay scales and fringe benefits (89% of the total budget)	Collective bargaining with employee groups
Integration plan costs	Federal Court Order
Free materials and supplies	State Supreme Court decision
Some special programs and services	State Department of Education

Because the Board of Education does not control revenues and expenditures, the financial projections for the next three years must be based on *assumptions* as to what will happen. The assumptions which have been made and used for these projections are summarized below:

Revenues—Assumptions

1. The present way of financing public education will be continued from 1972 to 1975.

2. The state equalized valuation (SEV) of the School District will be
1972–73, $660,000,000
1973–74, 682,000,000
1974–75, 694,000,000

3. The variable tax relief of 1.4 mills that has been allocated for more than 20 years will not be available beginning with 1972–73. The tax rate for 1971–72 was as follows:

	City of Pontiac	Outside the city
Allocated	8.13	8.13
Variable	1.40	
Voted 1964	8.75	8.75
Voted 1968	6.25	6.25
Total	24.53	23.13

The tax rate in the next three years will be 23.13 mills for the City of Pontiac and the area outside the city.

4. The general State Aid formula for 1971–72 will be continued for three years, however with two adjustments: (1) The "grandfather clause" will pay out at 77%, and (2) there will be a 6% improvement factor added each year.

5. Section 3 funds will continue to finance the special reading teacher program.

Expenditures—assumptions

1. The level of School District programs and services which were financed from the general fund in 1970–71, with adjustments to 1969–70 levels in certain specific items, will be the standard used for the next three years.

2. The following increases in the consumer price index (C.P.I.) will occur.
1972–73, 3.0%.
1973–74, 3.5%.
1974–75, 4.0%.

3. Salary and fringe benefit costs will increase approximately the same as the C.P.I.

4. Enrollments will continue at the approximate 1971–72 level of 21,327.

5. New costs generated because of the opening of the new PCHS have been included in 1973–74, and 1974–75 estimates.

PROJECTION I. BASED ON THE 1970–71 LEVELS OF SERVICES AND PROGRAMS WITH ADJUSTMENT TO 1969–70 LEVELS

This level might be thought of as the "normal" level of programs which had developed over the years—a full day program for all students; library, music, physical education, counselling and consultants; instructional supplies; operation and maintenance—all at reasonable levels.

	1971–72 budget	Projections		
		1972–73	1973–74	1974–75
Projections of expenditures, 1972–75:				
1000 Instruction	$15,745,764	$17,461,078	$18,145,324	$18,939,233
2100 Administration	841,967	875,740	908,895	948,010
2200 Attendance	45,495	47,859	49,575	51,578
2300 Health	133,438	142,113	147,735	154,308
2400 Transportation	681,581	723,264	751,546	784,665
2500 Plant operation	2,407,217	2,519,252	2,663,775	2,779,370
2600 Plant maintenance	760,318	910,070	952,522	992,440
2700 Fixed charges	794,964	868,050	913,090	944,710
2800 Capital outlay	168,410	230,145	235,680	241,290
2900 Community	33,928	54,855	57,045	59,605
3000 Food services	1,700	1,540	1,590	1,650
3200 Student body activity	28,112	29,100	30,260	31,620
Total	21,642,894	23,863,066	24,857,037	25,928,479
Projections of revenues, 1972–75:				
Local taxes	15,678,248	15,265,800	15,786,225	16,052,220
State aid	4,876,675	4,368,376	4,204,550	4,264,487
Other	565,234	1,075,666	1,089,234	1,119,082
Total	21,120,157	20,709,842	21,080,009	21,435,789
Balances or deficits, 1972–75:				
Deficit	522,737	3,153,224	3,777,028	4,492,690
Explanation	(1)	(2)	(3)	(4)

[1] Deficit covered by an operating balance June 30, 1971 of $723,297.
[2] SEV $660MM. Added rate to balance 4.78 mills.
[3] SEV $682MM. Added rate to balance 5.54 mills.
[4] SEV $694MM. Added rate to balance 6.47 mills.

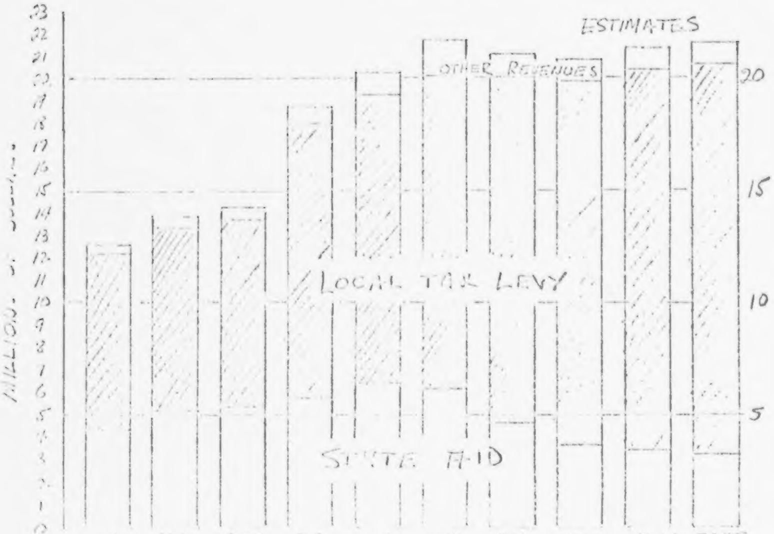
PROJECTION II. BASED ON THE 1971–72 LEVELS OF SERVICES AND PROGRAMS OR THE CUT BUDGET

This level might be thought of as the "reduced" level of programs and services in 1971–72—a 5 hour day for junior highs; sharp reductions in library, music, physical education, counseling and consultant services; ⅓ cut in instructional supplies; reduction in plant maintenance and operation activities.

	1971–72 budget[1]	Projected		
		1972–73[2]	1973–74[3]	1974–75[4]
Revenue	$21,120,157	$29,709,842	$21,080,009	$21,435,789
Expenditures	21,642,894	22,417,167	23,364,561	24,365,300
Deficit	522,737	1,707,325	2,284,552	2,929,511

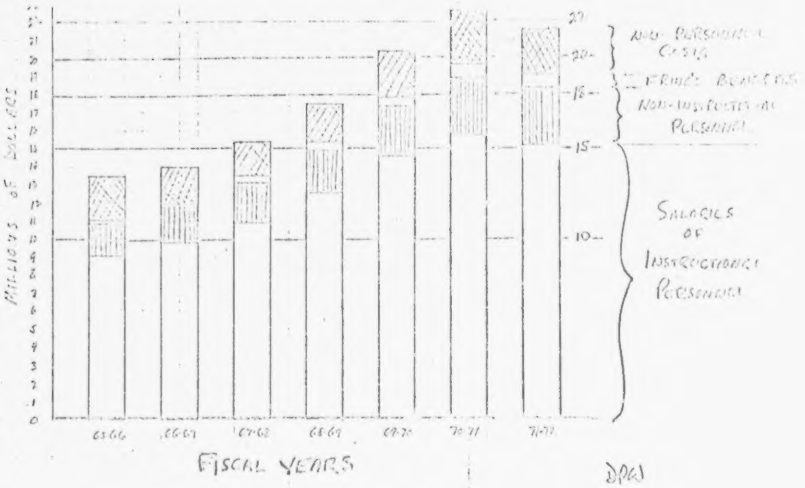
[1] Deficit covered by an operating balance June 30, 1971, of $723,297.
[2] Added rate to balance 2.59 mills.
[3] Added rate to balance 3.35 mills.
[4] Added rate to balance 4.22 mills.

General Fund Revenues
1965 - 1974



DPW
1/28/72

General Fund Expenditures
1965 — 1972



DPW
1/28/72

TRANSPORTATION DATA

	1967-68	1986-69	1969-70	1970-71
Total expended	$34,625,724.00	$35,899,948.00	$36,422,671.00	$43,139,356.00
Total qualification	21,824,366.00	24,135,221.00	26,254,559.00	28,267,927.00
Legislative appropriation	18,500,000.00	22,000,000.00	26,000,000.00	29,000,000.00
Per-pupil cost	[1]52.45	[1]50.92	[1]47.89	[1]56.29
Per-pupil allowance	[1]33.97	[1]34.97	[1]35.94	[1]37.94
Per-mile cost (cents)	43.3	36.3	39.7	45.6
Per-mile allowance (cents)	28.12	25.0	29.8	30.7
Total miles traveled	72,291,125	88,484,471	80,214,797	84,022,869
Total pupils	727,033	764,832	802,394	812,060

[1] Based on number of eligible students transported on school-owned buses exclusive of special-education children.

Source: Summary of transportation reports.

SCHOOL DISTRICT ADMINISTRATION BUILDING,
Pontiac, Mich., March 6, 1972.

Hon. ARTHUR J. LAW,
House of Representatives,
Capitol Building, Lansing, Mich.

DEAR REPRESENTATIVE LAW: Enclosed with this letter is a financial study of what lies ahead for the School District of the City of Pontiac, 1972–1975. We thought the situation faced by the Pontiac Schools and the facts in the study would be of interest to you and perhaps of some use as various legislative matters pertaining to the financing of the public schools are debated.

There are several conclusions which can be drawn from this report that, in our judgment, have special significance. They are outlined below:

1. General State Aid to the Pontiac Schools has declined by approximately $2,000,000 since 1969–70. Projections for the next three years indicate a continued decline. This is one major reason for the financial problem faced by the schools.

   Revenues from local property taxes have increased comparably to the increase in school costs since 1965. Projected increases in local property tax revenues for the next three years will also keep pace.

2. The increase in expenditures for current expenses since 1965 are confined almost exclusively to the costs of personnel—salaries, wages, and fringe benefits. In a real sense, these sharp increases in costs are a product of P.A. 379, Collective Bargaining for School Employees.

3. The costs of the busing program has increased the financial problems of the school district. The total estimated costs of the busing program is $733,000 of which approximately $500,000 is budgeted to the General Fund. The anticipated deficits which appear on page 6 of the report range from $3,153,224 in 1972–73 to $4,492,690 in 1974–75, so the costs of the busing program represent from ⅙ to ⅛ of the total financial problem faced by the school district in the next three years.

The data in the report make it clear that the School District needs a stable level of State Aid. The decline of gross revenues and per pupil revenues from State Aid which has occurred in the past few years is hurting Pontiac. We hope that you can give strong support to maintenance of the "grandfather clause" in the Act which will prevent further erosion of State Aid for Pontiac.

If there are questions about this report or additional information that might be helpful to you, we would be happy to furnish it. From time to time I'll try to send you materials that give information about the Pontiac School District.

Very cordially yours,

DANA P. WHITMER,
Superintendent.

THE SCHOOL DISTRICT OF THE CITY OF PONTIAC

To: The members of the board of education.
From: Dana P. Whitmer.
Subject: Analysis of Projected General Fund Revenues and Expenditures for 1972–1975 with a Proposal to Increase Revenues.

Introduction: Where does the money come from to pay for schools? The answer is very complicated. So, the table below was prepared to answer this question. The money (revenue) for various school operations comes from seven different sources:

1. School District Property Taxes.
2. Oakland County Property Tax.
3. General State Aid.
4. State Grants.
5. Federal Grants.
6. Fees.
7. Miscellaneous sources.

Generally speaking, revenues that the School District receives can be used *only* for specific purposes which are spelled out in laws. So, it is possible to be short of money for certain operations while other operations have sufficient money—but money cannot be shifted around to balance things out.

SOURCE OF REVENUE	THE SCHOOL OPERATION (PROGRAM)
1. School District Property Taxes 2. General State Aid 3. Other	**Current Expenses for the Regular Day School.* This is called the *General Fund.* The regular day school operation includes the activities listed below for Kindergarten through Grade 12. Instruction Administration Health Services Attendance Services Transportation Plant Operation Plant Maintenance Fixed Charges Capital Outlay Miscellaneous The financial problem faced by the School District is entirely in the General Fund, or in financing the regular K–12 day school program. The General Fund is the biggest part of all school costs; it is over $20,000,000 this year.

Chairman Celler (presiding). Any questions?

Mr. McCulloch. I would like to ask one question, Mr. Chairman.

If you have black pupils residing within a city, how are they going to get to school except by busing when the distance to school is beyond ordinary walking distance?

Mr. Law. I did not understand your question clearly, sir, but we do have a policy in Michigan established by the legislature and board of education that any child who lives a mile and a half or more from the school that he is supposed to go to, is provided with bus transportation.

This does not apply within city limits or has not in the past. It has been left up to the children within a city to get to their own school upon the theory that no school was more than a mile and a half from the child.

Mr. McCulloch. If they do not have the money with which to pay for transportation to school, how are they provided that transportation?

Mr. Law. I would say, sir, that under the plan that Michigan had, any child was within a mile and a half and it was considered that this was reasonable distance for them to walk to school. Walking is not a bad habit, and the money was provided——

Mr. McCulloch. I should like to interrupt, if I may. Does that walking likewise apply to white children?

Mr. Law. It has never been a racial issue in Michigan. We have had open schools in Michigan and no segregation of schools since the Civil War, and that was typical of my city.

Mr. McCulloch. I thank you very much, and I asked that question particularly because there are many parents and some students who think walking up to a mile and a half to school is far too great a distance.

Mr. Law. Well, I don't agree with them. I am a father of four children raised and educated in the Pontiac schools, that were born there, who attended Pontiac public schools, and they walked until they had to go to high school, and dad provided busfare for them to go at that time.

Mr. McCulloch. We see eye to eye on the desirability of requiring children to walk a reasonable distance to school provided that it does not harm either whites or blacks.

Mr. Law. That, sir, has never been a policy in Michigan, to determine whether a child is white or black to have the privilege of busing. I am sure both avail themselves under the present setup and have been for years depending upon where they live and the distance from school.

Mr. McClory. Mr. Chairman, may I ask one question?

Chairman Celler. Yes.

Mr. McClory. I want to ask Representative Symons this question: You stated that the problem as far as Allen Park is concerned was not a racial question because both school districts were all-white. You have indicated support for House Joint Resolution 620, which would limit the right to assign pupils because of their race or color. However, it seems to me that you have suggested that there should be a limit on busing, even though there was no racial or color question involved at all. So it would seem you were supporting another type of constitutional amendment, which would limit the right to bus even though there is no color or race question involved. Isn't that right?

Mrs. Symons. Sir, the point that I wanted to make is that busing is unfair to all children regardless of color. That I would like to see a constitutional amendment to prohibit busing beyond the neighborhood school without the prior written approval of the parent or guardian.

In other words, I would like the Constitution amended, and this is why I said that I am not limited to House Joint Resolution 620, but I would support a constitutional amendment that would prohibit forced busing of schoolchildren beyond their neighborhood school.

If you want to amend House Joint Resolution 620 or use another vehicle——

Mr. McClory. I just wanted to have an understanding.

Mrs. Symons. The reason I mentioned that this was two all-white school districts was that I was pointing out the fact that busing is unfair to all children, whether they be black or white.

Mr. McClory. I wanted to have a clear understanding of your position. Very good.

Mrs. Symons. Thank you, sir.

Chairman Celler. The next witness will be Mr. Young.

Mr. Young. Thank you, Mr. Chairman.

Chairman Celler. Do you want to place your statement in the record?

Mr. YOUNG. My statement will be very short inasmuch as all of you have my written statement.

Chairman CELLER. We will place your full statement in the record, and you may make an additional statement.

(The statement follows:)

STATEMENT OF MICHIGAN STATE REPRESENTATIVE RICHARD A. YOUNG

Mr. Chairman and Members of Subcommittee No. 5 of the House Judiciary Committee, my name is Richard A. Young and I am a member of the Michgian House of Representatives, serving my fourth two-year term. I am a member of the Ad Hoc Committee of the House of Representatives that was elected by members of that body for determining an effective program to defeat the busing of school children from their present school districts.

REASON FOR MY APPEARANCE BEFORE YOUR COMMITTEE

In October of 1971 Federal District Court Judge Stephen J. Roth made a finding that de jure segregation existed in the Detroit Public Schools.[1] In short, the court found the State of Michigan, through its elected officers, had violated the rule of the United States Supreme Court's decision commonly referred to as the Brown Decision of 1954, wherein the Supreme Court stated that discrimination resulted in inequitable distribution of educational resources such as to deny black children the proper resources for proper schooling.

Judge Roth's decision was issued and was applicable to the State of Michigan, a state which has always been known to be liberal and progressive—a state that has three black state senators and thirteen black members of the House of Representatives—a state where up until Judge Roth's decision never had any legislation introduced by the black members of the Legislature or any liberal members of the Legislature which would propose any type of remedy comparable to the types of remedies that Judge Roth apparently is now considering—a state which did pass, within the last 2 to 3 years, statutes that called for the decentralization of the Detroit School System, and this legislation was brought about by the urging of black members of the Legislature, who stated that their purpose was to allow people from their districts to more fully participate in the educational policies of their community and to allow parents to become more involved in the education of their children—a state that enacted legislation which was aimed at identifying educational problems and providing remedies to solve these problems:

1. A statewide assessment program was set up which provided for testing of all fourth and seventh graders attending public schools in the State of Michigan.
2. A compensatory education program was provided that called for the expenditure of 22½ million dollars for school districts having a high concentration of low-achieving students and for students who came from a poor socio-economic background. (See Exhibit I—approximately 8 million to Detroit.)
3. There was $55 million spent for *special educational* programs which again called for large sums of money to be spent in a majority of cases within the black communtiy.
4. There was $20 million appropriated to high-tax districts, which again called for large sums of finance to be attributed to the Detroit School District.

All of these facts are evidence of the fact that the Michigan Legislature is concerned with the Detroit School District and with its large black population and the problems that are presented within that urban area.

In 1967 Michigan was a state that did not levy a state income tax, but with the advent of these new programs an individual and corporate income tax was levied which was again increased last year and which now calls for the payment of 3.9 per cent to be levied against individual incomes and 7.8 per cent to be levied against corporate incomes.

In short, I want to bring to the Committee's attention that the Michigan Legislature did realize the problem of the black student and was attempting to bring about reasonable solutions. During the current session this trend has continued and in my opinion will do so in the future. The Roth decision came as a surprise and was felt with anguish by many of the members of the current Legislature, who has taken active roles in the past to assist in this great social problem. We, on the Ad Hoc Committee, wish to bring that to your attention.

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[1] The case is Bradley vs. Milliken, 1971, Judge Stephen J. Roth, United States District Court, Eastern District of Michigan, South Division.

THE COURT DECISION AS IT AFFECTS MY CONSTITUENT DISTRICT

The district I represent is in western Wayne County and borders the City of Detroit. In 1960 there were approximately 35,000 people residing in the City of Dearborn Heights, which comprises the largest area of my district. Today there are 85,000 citizens residing in that community, and since 1960 the number of schools has tripled in that area. The residents of the city indebted themselves by selling school bonds to raise the necessary revenue to construct the proper facilities for the education of their children, and these bonds will not be paid until sometime beyond the year 2000. The Attorney General of our state has rendered an opinion that if these districts were to merge into a Metropolitan District, the landowners would still be responsible for paying off the bonding and their properties are so encumbered.

The average homeowner in the district pays approximately $700 in total property taxes for city, county, and school assessments. The income of the average homeowner can be classified as that of middle income. The City of Dearborn Heights has relatively no industry, and all public operating expenses are paid for by the resident homeowner, for this area can be properly classified as a "bedroom community."

Upon hearing the decision of the Federal District Court, the reaction in the suburban areas of Greater Detroit was one of complete outrage. Eighty-six school districts were considered as being possibly involved in a Metropolitan Detroit School Busing Program. I can honestly state that at least 90 per cent of these school districts were in complete disagreement with the decision and the remedies that were being advocated to relieve the conditions that the court had found to exist. I am certain that many of your colleagues from our state have testified to that fact, either formally before this committee or in private conversations that existed among members of the Congress.

I am certain that no public issue has caused such a vast public protest in the State of Michigan during the past 20 years. Detroit was selected as the first large metropolitan area in the north as a test case for those citizens who advocate busing as a cure to the educational problems confronting all large urban areas of our nation. Perhaps the strategy was to bring such a case in a community where it would be more readily accepted, because Detroit has always been the headquarters for some of our greatest labor unions and has been the resident area of such leaders as Walter Reuther, and his successor Leonard Woodcock, Henry Ford, and United States Senator Philip A. Hart. All of these men have done much to help the low-income groups that exist in our nation. In this instance, however, I am here to testify that the people from the area that I represent are with great unanimity opposed to a program that calls for the mass busing of school children. In October and November, shortly after the Court had announced its decision, there was great mass meetings of citizens demanding that public officials react and do something constructive to stop the threat of the proposed busing remedy. The Governor of our State, the Attorney General, the State Board of Education, the Congressmen—all were deluged with correspondence, phone calls, and public contact in an effort to make them take a stand as being opposed to this contemplated measure.

THE STATUS OF THE SITUATION SINCE THE ROTH DECISION

Judge Roth, after rendering his decision, ordered the State Board of Education on November 5, 1971, to study various means by which the Detroit public schools could be desegregated by a metropolitan plan. The State Board of Education in February of 1972, acting in compliance with that order, submitted six plans to the Court for its consideration. As a preamble to the submission of these plans the State Board stated that the Court does a disservice to black children by assuming an automatic improvement in black children performance in integrated schools. Furthermore, the State Board pointed out that black people performance in integrated schools has not been satisfactory as measured against white students.

All of the plans that the State Board of Education submitted to the Federal District Judge called for the busing of students from neighborhood schools to points elsewhere in the Detroit Metropolitan area. I would suggest that these types of programs are completely contrary to the best interests of children, especially that group up to 12 years of age. It has been my experience, and I am certain that each one of you can recall also, that up to that age the most important persons and motivating factor in your life were your parents. Most children would do anything to please their parents and this applicable to their performance in the classroom. If we are to remove the children from the neighborhood schools and send them to a distant place, the likelihood of the parent participating in school programs is more remote, and so is the result—instead of encouraging motivation on the part of the parent, the busing program actually detracts from this concept.

I would like to bring to the Committee's attention that in Taylor, Michigan, there is presently a program whereby counsellors begin to work at 1:00 p.m. in the afternoon and spend two to three hours counselling children in the classes K–8. The rest of the time is spent visiting the homes of these children to find out what kind of atmosphere exists and to attempt to encourage the parent to participate in the education of his child. The counsellors actually attempt to classify the home and to communicate the atmosphere to the classroom teacher so that the teacher, in turn, might know what conditions do exist and attempt to set up a program that is specialized for that particular, individual student. It would seem to me that these are the types of programs that should be encouraged by the Congress and the State Legislatures, if we are really to do anything in creating an improved education for children in this country.

As we sit here today we are not certain as to what Judge Roth will order within the next few months. I am certain that he is aware of the attitude of the community toward this most controversial case, and I would presume that he will act with caution and to the best interests of the community.

The people that I represent are certainly reluctant to have the Constitution of the United States amended in any way so as to regress in the field of civil rights, but at the same time we are faced with the situation that leaves us very little in the way of alternatives, and for this reason I am certain that there has been pressure put on the Congress to discharge House Joint Resolution No. 620. I am certain that there will be people here before your Committee to testify how well busing is working out in particular localities, but I want to reemphasize the fact that if we are to encourage parents to become involved, then we must do those things that will lead to the strengthening of community and neighborhood schools. This will mean better and more modern school plants and equipment; it will mean more and better guidance counsellors and administrators; and I submit that the people of the State of Michigan stand ready to fulfill their duties toward their fellowman and to provide these facilities. I am certain that if Judge Roth does order mass cross-district busing this Congress will receive pressure from Michigan to amend the Constitution, and if there are more cases started in other great industrial cities, that on each and every occasion there will be the same type of reaction that is occurring in Michigan. Ultimately it is my belief that the Constitution will be amended and that possibly the progress that has been made in the field of civil rights will be lost.

I can cite as an example the parochial issue that existed in our state until two or three years ago. Each year the Michigan Legislature had seen fit to in some way attempt to encourage and assist private education, and then in 1970 a full program of assistance was given to the private schools. The reaction on the part of the general public was to amend the Constitution to prohibit this assistance, and though I thought it was wrong for the people of Michigan to do this, nevertheless the resentment that was building up over the years finally matured into adopting such an amendment. I can foresee the same thing existing in the civil rights field, and I would hope that this Congress would direct its attention toward solving this problem that is now before us and, if necessary, discharge House Joint Resolution No. 620 in order to make certain that the neighborhood school which has done the job in the past will be able to perform the same task in the future.

I thank you for your kind attention and hope that you will review the exhibits that are attached to this statement, which reflect some of the major financial problems with which the Michigan State Legislature is confronted.

Thank you for the opportunity of allowing me to appear here today.

ALLOCATIONS TO SCHOOL DISTRICTS IN WAYNE, OAKLAND AND MACOMB COUNTIES

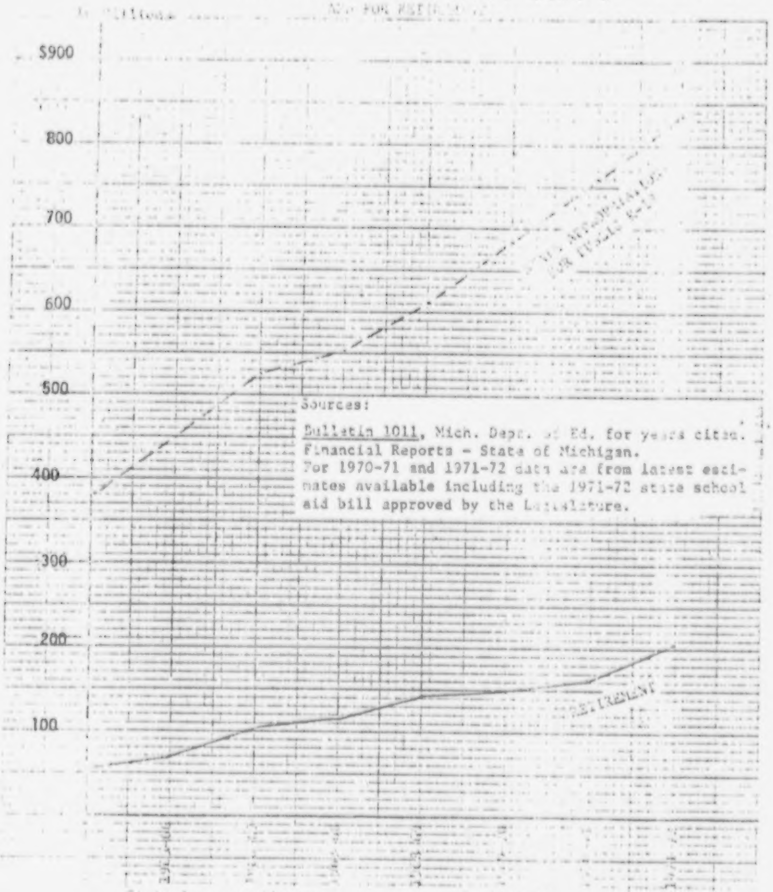
Section 3—1970–71

Mount Clemens	$49, 658	Highland Park	$271, 879
New Haven	56, 481	Inkster	104, 853
Ferndale	31, 114	River Rouge	106, 163
Oak Park	19, 041	Romulus	39, 669
Pontiac	343, 037	Van Buren	15, 992
Waterford	39, 807	Wayne Community	65, 867
Ecorse	108, 764	Westwood	78, 246
Hamtramck	50, 205	Detroit	7, 738, 097

For the year 1971–72, $22.5 million has been appropriated for section 3.

EXHIBIT II

STATE APPROPRIATIONS FOR PUBLIC SCHOOL EDUCATION
AND FOR RETIREMENT



Sources:

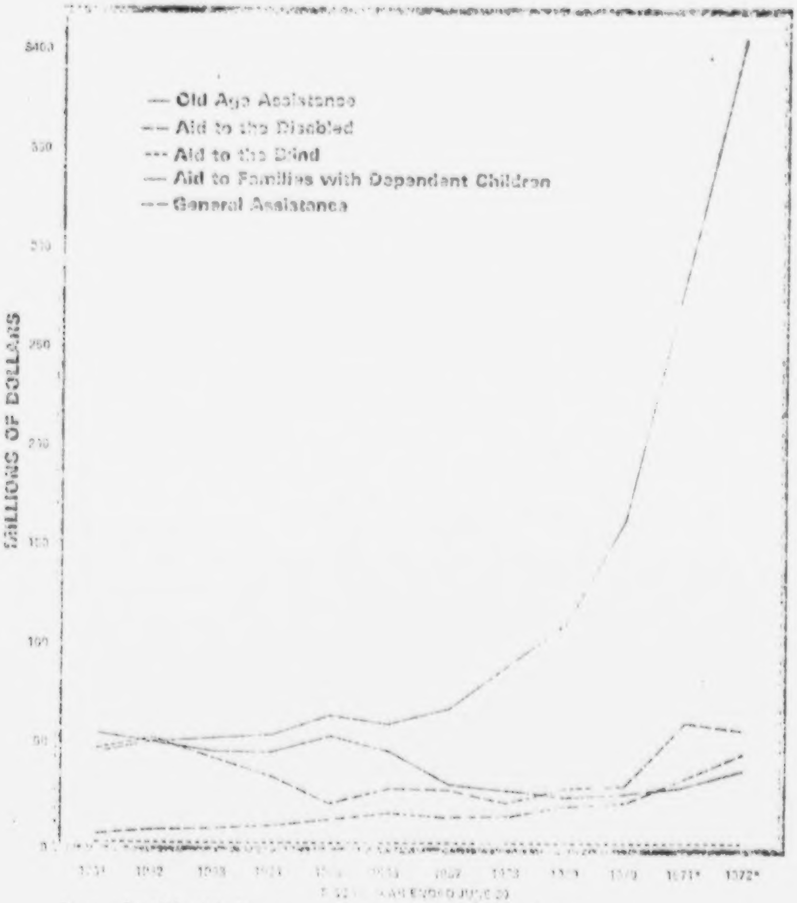
Bulletin 1011, Mich. Dept. of Ed. for years cited.
Financial Reports - State of Michigan.
For 1970-71 and 1971-72 data are from latest estimates available including the 1971-72 state school aid bill approved by the Legislature.

State Appropriations*		Retirement
1971-72 -	$837,606,000	$209,100,000
1970-71 -	762,714,759	163,375,000
1969-70 -	684,627,844	149,530,000
1968-69 -	610,972,480	146,731,000
1967-68 -	554,838,410	116,555,000
1966-67 -	524,927,684	102,918,000
1965-66 -	446,761,050	68,846,000
1964-65 -	383,357,421	53,217,000

*(including specials)

Public Assistance Cost Trends
Fiscal Years 1961 to 1972

EXHIBIT III



[illegible] Fiscal 1971 and 1972 [illegible] Department [illegible]

STATE AID COMPARISONS

[In millions]

Section and purpose	1970–71	1971–72
SEV in millions	$38,545.666	$41,637.616
Computation:		
Formula A [1]	530.50–14	559.50–14
Formula B [1]	623.50–20	661.50–20
2—Intermediate	4.500	5.500
3—Compensatory	16.325	22.5
Perform cont	.250	.500
5—Vocational education		3.00
8—Formula	628.913	686.98
8—Grandfather	12.973	10.00
10—Tuition	.150	0
11—Transportation	29.00	32.6
12—Special education	48.80	55.00
12—Remedial reading	5.00	3.40
12—Court wards	2.00	2.00
12—Pregnant students		.30
16a—Data proces[illegible]		.40
16a—Education [illegible]		.10
17—High tax	20.00	20.00
18—Bankrupt distribution	.826	.826
Parochiaid	8.10	0
Retirement	163.375	209.10
Pupil membership	2,178,745	2,214,000

[1] Formual A applies to schools with a per pupil SEV of $17,000 or more; formula B applies to schools with a per pupil SEV of $17,000 or less.

Mr. Young. Thank you, Mr. Chairman.

My name is Richard Young. I am a member of the Michigan House of Representatives, and I have been a member of that legislative body for 8 years.

In October of 1971 Judge Roth made the finding that de jure segregation existed in the Detroit public school system, and in short he found that the State of Michigan, through its elected officers, had violated the rules of the U.S. Supreme Court commonly referred to as the *Brown* decision of 1954 wherein the Supreme Court stated that discrimination resulted in an inequitable distribution of educational resources such as to deny black children the proper resources for a proper schooling.

Judge Roth found this decision applicable to the State of Michigan, and I want to point out the makeup of our legislature. We have three black senators, and we have 13 black members of the State house of representatives. Prior to this decision, not one of these members or any liberal within our body had ever suggested anything such as Judge Roth is suggesting as a remedy to cure this situation that he found existed in Michigan.

There has never been a bill introduced that would propose what he is now proposing. I want to point out to the committee that the State of Michigan is very aware of the fact that the black children in Detroit are having an educational problem. In the State of Michigan all children from fourth to seventh grades are tested throughout the entire State, and this came about about 3 or 4 years ago. We are trying to find out those people who are having a difficult time in achieving, and so today in Michigan we know we can pinpoint exactly in what school districts they are not coming up to reasonable standards.

We have spent $22½ million in the current budget for what we call section 3, and that is to help low-achieving students.

If we are going to bus, these children are going to be dispersed throughout the entire State. I don't know how we are going to manage that funding of money into the various school districts. We are going to have that problem. We spent $55 million in the current budget for special education, and we spent another $20 million for high-tax districts and, of course, again the money is going to Detroit.

All of these facts I give to you because they are evidence of the fact that the Michigan Legislature is concerned with the Detroit school system and with its large black population.

In 1966, we did not have a State income tax. Today in Michigan we have an income tax, and we are levying 3.9 on individuals and 7.8 on corporations, and this has just been in the last 4 years. Most of this money is going into education and to help the student in districts that are underachieving.

In my little community, Dearborn Heights, which is adjacent to Detroit, in 1960 we had approximately 35,000 people living in that area. Today it is double.

In 1960 we had for every school we had there, now we have about five schools, and these schools were only built by the fact that people voted and they sold bonds and became indebted. The attorney general of our State has ruled that if we are to merge our school districts, that, nevertheless, the taxpayers will still be subjected to this bonded indebtedness, so if they merge Detroit, if Judge Roth decides to merge Detroit with the suburbs, we are still going to have to pay that bonded indebtedness, and the people in our area, which is really a bedroom community, we have no industry, we have less valuation behind each child than Detroit, we levy 33 mills for operation of our schools where Detroit levies 22 mills. We have taken the burden of taxation on ourselves and if the judge decides that we are going to have to merge, these people are still going to have to pay for these neighborhood schools and still their children are not going to be able to attend.

I also want to point out to the committee that the Congress of the United States has done a very commendable job in setting up various programs to try to help the low-achieving student, and one of these programs is counseling. We have a school district in our State, Taylor, where counseling is going at 1 o'clock, and they counsel until 8 o'clock. About one-fourth of their time is spent with children and half of their time is spent with parents and they try to find out what makes that child tick.

I think it is this kind of program we need. If we are going to help these children achieve, we are going to have to find out what goes on in that house, and busing is contrary to that concept.

If you are going to take a child 20 miles away from his home, how are you going to get parents to participate in his education? The likelihood of them going to that school is far less than if the child is right there in the neighborhood. The parents will participate, and to me this is contrary to all logic to send a child that far away from his home and then expect the parent to participate in his education. It just is not going to work.

All of you were the age of 12 at one time, and, if you stop and think back, your mother and father were the motivating force in your life. You would do more to please them than anyone else. That is true today in our Nation, and it is true throughout the country, and these children will react to their parents, and if parents could participate in the schooling and the parents are taught the fact that their child has a great opportunity in the school, then I am almost certain that the child will receive something of benefit.

I submitted some financial statistics in the back of my statement to show you how much money we are spending in Michigan, and to show you some of the other problems we have, namely welfare, ADC has gone up nine times in the last 6 years. We are spending $50 million today.

I want to thank you for your attention, and I am very appreciative of the fact that you have given me the opportunity to appear today.

Chairman CELLER. I noticed this statement in the opinion of Judge Roth:

> The Board in the operation of its transportation to relieve overcrowding policy, has admittedly bused black pupils past or away from closer white schools with available space to black schools. The practice has continued in several instances in recent years despite the Board's avowed policy, adopted in 1967, to increase integration.

Do you have any comment to make on that admission made by the local school board?

Mr. YOUNG. I would have to say that conclusion is very damaging to all of us, and I don't think there is any one of us at this table that could answer to that because that is strictly within the city of Detroit, and that is a decision that was made by the school board within the city of Detroit, and there is not one of us who represents that city here as we sit here today. So we can't, at least I cannot reply to that.

Mr. ZELENKO. Mr. Chairman, there is one other relevant point from Judge Roth's decision on which no remedy has yet come down from the court. This statement made by the court:

> Throughout the last decade (and presently) school attendance zones of opposite racial composition have been separated by north-south boundary lines, despite the Board's awareness (since at least 1962) that drawing boundary lines in an east-west direction would result in significant integration.

Mr. Chairman, I ask that the decision of Judge Roth in *Bradley* v. *Milliken* be placed in the record at this point.

Chairman CELLER. It will be placed in the record.

(The decision referred to follows:)

RONALD BRADLEY ET AL., PLAINTIFFS,

v.

WILLIAM G. MILLIKEN ET AL., DEFENDANTS

DETROIT FEDERATION OF TEACHERS, LOCAL #231, AMERICAN FEDERATION OF TEACHERS, AFL-CIO, DEFENDANT-INTERVENOR

and

DENISE MAGDOWSKI ET AL., DEFENDANTS-INTERVENORS

(Civ. A. No. 35257)

United States District Court, E.D. Michigan, S.D., Sept. 27, 1971

School segregation case. The case was remanded by the Court of Appeals, 433 F.2d. 897, when plaintiffs appealed from denial of preliminary injunction and, subsequently, 438 F.2d 945, when the appellate court refused to pass on merits of a plan. The District Court, Roth, J., held that having determined that circumstances of case required judicial intervention and equitable relief against de jure segregation in Detroit public schools, it would have been improper for court to act on motion to join contiguous "suburban" school districts until other parties to action had had opportunity to submit their proposals for desegregation and, accordingly, motion (which if considered as a plan for desegregation was lacking in specificity and framed in broadest general terms) would not presently be ruled upon.

Order accordingly.

1. *Schools and School Districts* (*13*).—To constitute de jure segregation, (1) segregation must currently exist, (2) state, through its officers and agencies, must have taken some action with purpose of segregating and (3) such action must have created or aggravated segregation in schools in question.

2. *Schools and School Districts* (*13*).—Evidence established de jure segregation in Detroit public schools. M.C. L.A. § 388.171 et seq.

3. *Constitutional Law* (*215*).—Motive, ill will and bad faith are not required in order for racial discrimination to be violative of Fourteenth Amendment. U.S.C.A. Const. Amend. 14; M.C.L.A. Const. art. 8, §§ 1–3.

4. *Schools and School Districts* (*13*).—School districts are accountable for natural, probable and forseeable consequences of their policies and practices, and where racially identifiable schools are result of such policies, school authorities bear burden of showing that such policies are based on educationally required, nonracial considerations.

5. *Schools and School Districts* (*13*).—In determining whether constitutional violation has occurred, proof that pattern of racially segregated schools has existed for considerable period of time amounts to showing of racial classification by state and its agencies, which must be justified by clear and convincing evidence.

6. *Constitutional Law* (*220*).—Board's practice of shaping school attendance zones on north-south rather than east-west orientation, with result that zoned boundaries conformed to racial residential dividing lines, violated Fourteenth Amendment. U.S.C.A.Const. Amend. 14; M.C.L.A.Const. art. 8, §§ 1–3.

7. *Schools and School Districts* (*154*).—Board had affirmative obligation to adopt and implement pupil assignment practices and policies which would compensate for and avoid incorporation into school system of efforts of residential racial segregation.

8. *Constitutional Law* (*220*).—Board's policy of selective optional attendance zones, to extent that it facilitated separation of pupils on basis of race, was in violation of Fourteenth Amendment. U.S.C.A.Const. Amend. 14; M.C.L.A.Const. art. 8, §§ 1–3.

9. *Schools and School Districts* (*159½*).—Practice of transporting black students from overcrowded black schools to other identifiably black schools, while passing closer identifiably white schools which could have accepted those pupils, amounted to act of segregation by school authorities.

10. *Constitutional Law* (*220*).—Where manner in which board formulated and modified attendance zones for elementary schools had natural and predictable effect of perpetuating racial segregation of students, such conduct was an act of de jure discrimination in violation of the Fourteenth Amendment. U.S.C.A. Const. Amend. 14; M.C.L.A. Const. art. 8, §§ 1–3.

11. *Schools and School Districts* (*13*).—School board may not, consistent with Fourteenth Amendment, maintain segregated elementary schools or permit educational choices to be influenced by community sentiments or wishes of majority of voters. U.S.C.A.Const. Amend. 14; M.C.L.A.Const. art. 8, §§ 1–3.

12. *Schools and School Districts*(*11*).—Under Constitution of United States and Constitution and laws of state of Michigan, responsibility of providing educational opportunity to all children on constitutional terms is ultimately that of state. U.S.C.A.Const. Amend. 14; M.C.L.A.Const. art. 8, §§ 1–3.

13. *Schools and School Districts* (*11*).—That state's form of government may delegate power of daily administration of public schools to officials with less than statewide jurisdiction does not dispel obligation of those who have broader control to use authority they have consistently with Constitution and, in such instances, constitutional obligation toward individual school children is a shared one.

14. *Schools and School Districts* (*13*).—Having determined that circumstances of case required judicial intervention and equitable relief against de jure segregation in Detroit public schools, it would have been improper for court to act on motion to join contiguous "suburban" school districts until other parties to action had had opportunity to submit their proposals for desegregation; and, accordingly, motion (which if considered as plan for desegregation was lacking in specificity and framed in broadest general terms) would not be ruled upon when presented.

Louis R. Lucas, William E. Caldwell, Ratner, Sugarmon & Lucas, Memphis, Tenn., for plaintiffs.

Eugene Krasicky, Asst. Atty. Gen., State of Mich., Lansing, Mich., for Frank J. Kelley, Atty. Gen. of Mich.

George E. Bushnell, Jr.,* Miller, Canfield, Paddock & Stone, Detroit, Mich., for Detroit Bd. of Ed.

Theodore Sachs, Rothe, Marston, Mazey, Sach & O'Connell, P. C., Detroit, Mich., for defendant-intervenor Detroit Federation of Teachers, etc.

Alexander B. Ritchie, Fenton, Nederlander, Dodge & Barris, P. C., Detroit, Mich., for defendants-intervenors Magdowski and others.

Ruling on Issue of Segregation

ROTH, District Judge.

This action was commenced August 18, 1970, by plaintiffs, the Detroit Branch of the National Association for the Advancement of Colored People[1] and individual parents and students, on behalf of a class later defined by order of the Court dated February 16, 1971, to include "all school children of the City of Detroit and all Detroit resident parents who have children of school age." Defendants are the Board of Education of the City of Detroit, its members and its former superintendent of schools, Dr. Norman A. Drachler, the Governor, Attorney General, State Board of Education and State Superintendent of Public Instruction of the State of Michigan. In their complaint, plaintiffs attacked a statute of the State of Michigan known as Act 48 of the 1970 Legislature on the ground that it put the State of Michigan in the position of unconstitutionally interfering with the execution and operation of a voluntary plan of partial high school desegregation (known as the April 7, 1970 Plan) which had been adopted by the Detroit Board of Education to be effective beginning with the fall 1970 semester. Plaintiffs also alleged that the Detroit Public School System was and is segregated on the basis of race as a result of the official policies and actions of the defendants and their predecessors in office.

Additional parties have intervened in the litigation since it was commenced. The Detroit Federation of Teachers (DFT) which represents a majority of Detroit Public school teachers in collective bargaining negotiations with the defendant Board of Education, has intervened as a defendant, and a group of parents has intervened as defendants.

Initially the matter was tried on plaintiffs' motion for preliminary injunction to restrain the enforcement of Act 48 so as to permit the April 7 Plan to be implemented. On that issue, this Court ruled that plaintiffs were not entitled to a preliminary injunction since there had been no proof that Detroit has a segregated school system. The Court of Appeals found that the "implementation of the April 7 Plan was thwarted by State action in the form of the Act of the Legislature of Michigan," (433 F.2d 897, 902), and that such action could not be interposed to delay, obstruct or nullify steps lawfully taken for the purpose of protecting rights guaranteed by the Fourteenth Amendment.

The plaintiffs then sought to have this Court direct the defendant Detroit Board to implement the April 7 Plan by the start of the second semester (February, 1971) in order to remedy the deprivation of constitutional rights wrought by the unconstitutional statute. In response to an order of the Court, defendant Board suggested two other plans, along with the April 7 Plan, and noted priorities, with top priority assigned to the so-called "Magnet Plan." The Court acceded to the wishes of the Board and approved the Manget Plan. Again, plaintiffs appealed but the appellate court refused to pass on the merits of the plan. Instead, the case was remanded with instructions to proceed immediately to a trial on the merits of plaintiffs' substantive allegations about the Detroit School System. 438 F.2d 945 (6th Cir. 1971).

Trial, limited to the issue of segregation, began April 6, 1971 and concluded on July 22, 1971, consuming 41 trial days, interspersed by several brief recesses necessitated by other demands upon the time of Court and counsel. Plaintiffs introduced substantial evidence in support of their contentions, including expert and factual testimony, demonstrative exhibits and school board documents. At the close of plaintiffs' case, in chief, the Court ruled that they had presented a prima facie case of state imposed segregation in the Detroit Public Schools; accordingly, the Court enjoined (with certain exceptions) all further school construction in Detroit pending the outcome of the litigation.

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*Mr. Bushnell was replaced 12–6–71 by George Roumell, Jr., and Louis D. Beer, Riley & Roumell, Detroit, Mich. A substitution of attorneys for the Detroit Board of Education was formally entered on that date.

[1] The standing of the NAACP as a proper party plaintiff was not contested by the original defendants and the Court expresses no opinion on the matter.

The State defendants urged motions to dismiss as to them. These were denied by the Court.

At the close of proofs intervening parent defendants (Denise Hagdowski, et al.) filed a motion to join, as parties 85 contiguous "suburban" school districts—all within the so-called Larger Detroit Metropolitan area. This motion was taken under advisement pending the determination of the issue of segregation.

It should be noted that, in accordance with earlier rulings of the Court, proofs submitted at previous hearings in the cause, were to be and are considered as part of the proofs of the hearing on the merits.

In considering the present racial complexion of the City of Detroit and its public school system we must first look to the past and view in perspective what has happened in the last half century. In 1920 Detroit was a predominantly white city—91%—and its population younger than in more recent times. By the year 1960 the largest segment of the city's white population was in the age range of 35 to 50 years, while its black population was younger and of childbearing age. The population of 0–15 years of age constituted 30% of the total population of which 60% were white and 40% were black. In 1970 the white population was principally aging—45 years—while the black population was younger and of childbearing age. Childbearing blacks equaled or exceeded the total white population. As older white families with out children of school age leave the city they are replaced by younger black families with school age children, resulting in a doubling of enrollment in the local neighborhood school and a complete change in students population from white to black. As black inner city residents move out of the core city they "leap-frog" the residential areas nearest their former homes and move to areas recently occupied by whites.

The population of the City of Detroit reached its highest point in 1950 and has been declining by approximately 169,500 per decade since then. In 1950, the city population constituted 61% of the total population of the standard metropolitan area and in 1970 it was but 36% of the metropolitan area population. The suburban population has increased by 1,978,000 since 1940. There has been a steady out-migration of the Detroit population since 1940. Detroit today is principally a conglomerate of poor black and white plus the aged. Of the aged, 80% are white.

If the population trends evidenced in the federal decennial census for the years 1940 through 1970 continue, the total black population in the City of Detroit in 1980 will be approximately 840,000, or 53.6% of the total. The total population of the city in 1970 is 1,511,000 and, if past trends continue, will be 1,338,000 in 1980. In school year 1960–61, there were 285,512 students in the Detroit Public Schools of which 130,765 were black. In school year 1966–67, there were 297,035 students, of which 168,299 were black. In school year 1970–71 there were 289,743 students of which 184,194 were black. The percentage of black students in the Detroit Public Schools in 1975–76 will be 72.0%, in 1980–81 will be 80.7% and in 1992 it will be virtually 100% if the present trends continue. In 1960, the non-white population, ages 0 years to 19 years, was as follows:

	Percent
0 to 4 years	42
5 to 9 years	36
10 to 14 years	28
15 to 19 years	18

In 1970 the non-white population, ages 0 to 19 years, was as follows:

	Percent
0 to 4 years	48
5 to 9 years	50
10 to 14 years	50
15 to 19 years	40

The black population as a percentage of the total population in the City of Detroit was:

		Percent
(a)	1900	1.4
(b)	1910	1.2
(c)	1920	4.1
(d)	1930	7.7
(e)	1940	9.2
(f)	1950	16.2
(g)	1960	28.9
(h)	1970	43.9

The black population as a percentage of total student population of the Detroit Public Schools was as follows:

		Percent
(a)	1961	45.8
(b)	1963	51.3
(c)	1964	53.0
(d)	1965	54.8
(e)	1966	56.7
(f)	1967	58.2
(g)	1968	59.4
(h)	1969	61.5
(i)	1970	63.8

For the years indicated the housing characteristics in the City of Detroit were as follows:

(a) 1960 total supply of housing units was 553,000.

(b) 1970 total support of housing units was 530,770.

The percenage decline in the white students in the Detroit Public Schools during the period 1961–1970 (53.6% in 1960; 34.8% in 1970) has been greater than the percentage decline in the white population in the City of Detroit during the same period (70.8% in 1960; 55.21% in 1970), and correlatively, the percentage increase in black students in the Detroit Public Schools during the nine-year period 1961–1970 (45.8% in 1961; 63.8% in 1970) has been greater than the percentage increase in the black population of the City of Detroit during the ten-year period 1960–1970 (28.9% in 1960; 43.9% in 1970). In 1961 there were eight schools in the system without white pupils and 73 schools with no Negro pupils. In 1970 there were 30 schools with no white pupils and 11 schools with no Negro pupils, an increase in the number of schools without white pupils of 21 and a decrease in the number of schools without Negro pupils of 62 in this ten-year period. Between 1968 and 1970 Detroit experienced the largest increase in percentage of black students in the student population of any major northern school district. The percentage increase in Detroit was 4.7% as contrasted with

	Percent
New York	2.0
Los Angeles	1.5
Chicago	1.9
Philadelphia	1.7
Cleveland	1.7
Milwaukee	2.6
St. Louis	2.6
Columbus	1.4
Indianapolis	2.6
Denver	1.1
Boston	3.2
San Francisco	1.5
Seattle	2.4

In 1960, there were 266 schools in the Detroit School System. In 1970, there were 319 schools in the Detroit School System.

In the Western Northwestern, Northern, Murray, Northeastern, Kettering, King and Southeastern high school service areas, the following conditions exist at a level significantly higher than the city average:

(a) Poverty in children
(b) Family income below poverty level
(c) Rate of homicides per population
(d) Number of households headed by females
(e) Infant mortality rate
(f) Surviving infants with neurological defects
(g) Tuberculosis cases per 1,000 population
(h) High pupil turnover in schools

The City of Detroit is a community generally divided by racial lines. Residential segregation within the city and throughout the larger metropolitan area is substantial, pervasive and of long standing. Black citizens are located in separate and distinct areas within the city and are not generally to be found in the suburbs. While the racially unrestricted choice of black persons and economic factors may have played some part in the development of this pattern of residential segregation, it is, in the main, the result of past and present practices and customs of racial discrimination, both public and private, which have and do restrict the housing opportunities of black people. On the record there can be no other finding.

Govermental actions and inaction at all levels, federal, state and local, have combined, with those of private organizations, such as loaning institutions and real estate associations and brokerage firms, to establish and to maintain the pattern of residential segregation throughout the Detroit metropolitan area. It is no answer to say that restricted practices grew gradually (as the black population in the area increased between 1920 and 1970), or that since 1948 racial restrictions on the ownership of real property have been removed. The policies pursued by both government and private persons and agencies have a continuing and present effect upon the complexion of the community—as we know, the choice of a residence is a relatively infrequent affair. For many years FHA and VA openly advised and advocated the maintenance of "harmonious" neighborhoods, i.e., racially and economically harmonious. The conditions created continue. While it would be unfair to charge the present defendants with what other governmental officers or agencies have done, it can be said that the actions or the failure to act by the responsible school authorities, both city and state, were linked to that of these other governmental units. When we speak of governmental action we should not view the different agencies as a collection of unrelated units. Perhaps the most that can be said is that all of them, including the school authorities, are, in part, responsible for the segregated condition which exists. And we note that just as there is an interaction between residential patterns and the racial composition of the schools, so there is a corresponding effect on the residential pattern by the racial composition of the schools.

Turning now to the specific and pertinent (for our purposes) history of the Detroit school system so far as it involves both the local school authorities and the state school authorities, we find the following:

During the decade beginning in 1950 the Board created and maintained optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions. In 1959 there were eight basic optional attendance areas affecting 21 schools. Optional attendance areas provided pupils living within certain elementary areas a choice of attendance at one of two high schools. In addition there was at least one optional area either created or existing in 1960 between two junior high schools of opposite predominant racial components. All of the high school optional areas, except two, were in neighborhoods undergoing racial transition (from white to black) during the 1950s. The two exceptions were: (1) the option between Southwestern (61.6% black in 1960) and Western (15.3% black); (2) the option between Denby (0% black) and Southeastern (30.9% black). With the exception of the Denby-Southeastern option (just noted) all of the options were between high schools of opposite predominant racial compositions. The Southwestern-Western and Denby-Southeastern optional areas are all white on the 1950, 1960 and 1970 census maps. Both Southwestern and Southeastern, however, had substantial white pupil populations, and the option allowed whites to escape integration. The natural, probable, foreseeable and actual effect of these optional zones was to allow white youngsters to escape identifiably "black" schools. There had also been an optional zone (eliminated between 1956 and 1959) created in "an attempt . . . to separate Jews and Gentiles within the system," the effect of which was that Jewish youngsters went to Mumford High School and Gentile youngsters went to Cooley. Although many of these optional areas had served their purpose by 1960 due to the fact that most of the areas had become predominantly black, one optional area (Southwestern-Western affecting Wilson Junior High graduates) continued until the present school year (and will continue to effect 11th and 12th grade white youngsters who elected to escape from predominantly black Southwestern to predominantly white Western High School). Mr. Henrickson, the Board's general fact witness, who was employed in 1959 to, *inter alia*, eliminate optional areas, noted in 1967 that: "In operation Western appears to be still the school to which white students escape from predominantly Negro surrounding schools." The effect of eliminating this optional area (which affected only 10th graders for the 1970–71 school year) was to decrease Southwestern from 86.7% black in 1969 to 74.3% black in 1970.

The Board, in the operation of its transportation to relieve overcrowding policy, has admittedly bused black pupils past or away from closer white schools with available space to black schools. This practice has continued in several instances in recent years despite the Board's avowed policy, adopted in 1967, to utilize transportation to increase integration.

With one exception (necessitated by the burning of a white school), defendant Board has never bused white children to predominantly black schools. The Board has not bused white pupils to black schools despite the enormous amount of space available in inner-city schools. There were 22,961 vacant seats in schools 90% or more black.

The Board has created and altered attendance zones, maintained and altered grade structures and created and altered feeder school patterns in a manner which has had the natural, probable and actual effect of continuing black and white pupils in racially segregated schools. The Board admits at least one instance where it purposefully and intentionally built and maintained a school and its attendance zone to contain black students. Throughout the last decade (and presently) school attendance zones of opposite racial compositions have been separated by north-south boundary lines, despite the Board's awareness (since at least 1962 that drawing boundary lines in an east-west direction would result in significant integration. The natural and actual effect of these acts and failures to act has been the creation and perpetuation of school segregation. There has never been a feeder pattern or zoning change which placed a predominantly white residential area into a predominantly black school zone or feeder pattern. Every school which was 90% or more black in 1960, and which is still in use today, remains 90% or more black. Whereas 65.8% of Detroit's black students attended 90% or more black schools in 1960, 74.9% of the black students attended 90% or more black schools during the 1970–71 school year.

The public schools operated by defendant Board are thus segregated on a a racial basis. This racial segregation is in part the result of the discriminatory acts and omissions of defendant Board.

In 1966 the defendant State Board of Education and Michigan Civil Rights Commission issued a Joint Policy Statement on Equality of Educational Opportunity, requiring that—

> "Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new schoolsites, expansion of present facilites . . . Each of these situations presents an opportunity for integration."

Defendant State Board's "School Plant Planning Handbook" requires that

> "Care in site locations must be taken if a serious transportation problem exists or if housing patterns in an area would result in a school largely segregated on racial, ethnic, or socio-economic lines."

The defendant City Board has paid little heed to these statements and guidelines. The State defendants have similarly failed to take any action to effectuate these policies. Exhibit NN reflects construction (new or additional) at 14 schools which opened for use in 1970–71; of these 14 schools, 11 opened over 90% black and one opened less than 10% black. School construction costing $9,222,000 is opening at Northwestern High School which is 99.9% black, and new construction opens at Brooks Junior High, which is 1.5% black, at a cost of $2,500,000. The construction at Brooks Junior High plays a dual segregatory role: not only is the construction segregated, it will result in a feeder pattern change which will remove the last majority white school from the already almost all-black Mackenzie High School attendance area.

Since 1959 the Board has constructed at least 13 small primary schools with capacities of from 300 to 400 pupils. This practice negates opportunities to integrate "contains" the black population and perpetuates and compounds school segregation.

The State and its agencies, in addition to their general responsibility for and supervision of public education, have acted directly to control and maintain the pattern of segregation in the Detroit schools. The State refused, until this session of the legislature, to provide authorization or funds for the transportation of pupils within Detroit regardless of their poverty or distance from the school to which they were assigned, while providing in many neighboring, mostly white, suburban districts the full range of state supported transportation. This and other financial limitations, such as those on bonding and the working of the state aid formula whereby suburban districts were able to make far larger per pupil expenditures despite less tax effort, have created and perpetuated systematic educational inequalities.

The State, exercising what Michigan courts have held to be is "plenary power" which includes power "to use a statutory scheme, to create, alter, reorganize or even dissolve a school district, despite any desire of the school district, its board, or the inhabitants thereof," acted to reorganize the school district of the City of Detroit.

The State acted through Act 48 to impede, delay and minimize racial integration in Detroit schools. The first sentence of Sec. 12 of the Act was directly related to the April 7, 1970 desegregation plan. The remainder of the section sought to prescribe for each school in the eight districts criterion of "free choice" (open enrollment) and "neighborhood schools" ("nearest school priority acceptance"), which had as their purpose and effect the maintenance of segregation.

In view of our findings of fact already noted we think it unnecessary to parse in detail the activities of the local board and the state authorities in the area of school construction and the furnishing of school facilities. It is our conclusion that these activities were in keeping, generally, with the discriminatory practices which advanced or perpetuated racial segregation in these schools.

It would be unfair for us not to recognize the many fine steps the Board has taken to advance the cause of quality education for all in terms of racial integration and human relations. The most obvious of these is in the field of faculty integration.

Plaintiffs urge the Court to consider allegedly discriminatory practices of the Board with respect to the hiring, assignment and transfer of teachers and school administrators during a period reaching back more than 15 years. The short answer to that must be that black teachers and school administrative personnel were not readily available in that period. The Board and the intervening defendant union have followed a most advanced and exemplary course in adopting and carrying out what is called the "balanced staff concept"—which seeks to balance faculties in each school with respect to race, sex and experience, with primary emphasis on race. More particularly, we find:

1. With the exception of affirmative policies designed to achieve racial balance in instructional staff, no teacher in the Detroit Public Schools is hired, promoted or assigned to any school by reason of his race.

2. In 1956, the Detroit Board of Education adopted the rules and regulations of the Fair Employment Practices Act as its hiring and promotion policy and has adhered to this policy to date.

3. The Board has actively and affirmatively sought out and hired minority employees, particularly teachers and administrators, during the past decade.

4. Between 1960 and 1970, the Detroit Board of Education has increased black representation among its teachers from 23.3% to 42.1%, and among its administrators from 4.5% to 37.8%.

5. Detroit has a higher proportion of black administrators than any other city in the country.

6. Detroit ranked second to Cleveland in 1968 among the 20 largest northern city school districts in the percentage of blacks among the teaching faculty and in 1970 surpassed Cleveland by several percentage points.

7. The Detroit Board of Education currently employs black teachers in a greater percentage than the percentage of adult black persons in the City of Detroit.

8. Since 1967, more blacks than whites have been placed in high administrative posts with the Detroit Board of Education.

9. The allegation that the Board assigns black teachers to black schools is not supported by the record.

10. Teacher transfers are not granted in the Detroit Public Schools unless they conform with the balanced staff concept.

11. Between 1960 and 1970, the Detroit Board of Education reduced the percentage of schools without black faculty from 36.3% to 1.2%, and of the four schools currently without black faculty, three are specialized trade schools where minority faculty cannot easily be secured.

12. In 1968, of the 20 largest northern city school districts, Detroit ranked fourth in the percentage of schools having one or more black teachers and third in the percentage of schools having three or more black teachers.

13. In 1970, the Board held open 240 positions in schools with less than 25% black, rejecting white applicants for these positions until qualified black applicants could be found and assigned.

14. In recent years, the Board has come under pressure from large segments of the black community to assign male black administrators to predominantly black schools to serve as male role models for students, but such assignments have been made only where consistent with the balanced staff concept.

15. The numbers and percentages of black teachers in Detroit increased from 2,275 and 21.6%, respectively, in February, 1961, to 5,106 and 41.6%, respectively, in October, 1970.

16. The number of schools by percent black of staffs changed from October, 1963 to October, 1970 as follows:

Number of schools without black teachers—decreased from 41, to 4.

Number of schools with more than 0%, but less than 10% black teachers—decreased from 58, to 8.

Total number of schools with less than 10% black teachers—decreased from 99, to 12.

Number of schools with 50% or more black teachers—increased from 72, to 124.

17. The number of schools by percent black of staffs changed from October, 1969 to October, 1970, as follows:

Number of schools without black teachers—decreased from 6, to 4.

Number of schools with more than 0%, but less than 10% black teachers—decreased from 41, to 8.

Total number of schools with less than 10% black teachers—decreased from 47, to 12.

Number of schools with 50% or more black teachers—increased from 120, to 124.

18. The total number of transfers necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, and ignoring all other elements is, as of 1970, 1,826.

19. If account is taken of other elements necessary to assure quality integrated education, including qualifications to teach the subject area and grade level, balance of experience, and balance of sex, and further account is taken of the uneven distribution of black teachers by subject taught and sex, the total number of transfers which would be necessary to achieve a faculty racial quota in each school corresponding to the system-wide ratio, if attainable at all, would be infinitely greater.

20. Balancing of staff by qualifications for subject and grade level, then by race, experience and sex, is educationally desirable and important.

21. It is important for students to have a successful role model, especially black students in certain schools, and at certain grade levels.

22. A quota of racial balance for faculty in each school which is equivalent to the system-wide ratio and without more is educationally undesirable and arbitrary.

23. A severe teacher shortage in the 1950s and 1960s impeded integration-of-faculty opportunities.

24. Disadvantageous teaching conditions in Detroit in the 1960s—salaries, pupil mobility and transiency, class size, building conditions, distance from teacher residence, shortage of teacher substitutes, etc.—made teacher recruitment and placement difficult.

25. The Board did not segregate faculty by race, but rather attempted to fill vacancies with certified and qualified teachers who would take offered assignments.

26. Teacher seniority in the Detroit system, although measured by system-wide service, has been applied consistently to protect against involuntary transfers and "bumping" in given schools.

27. Involuntary transfers of teachers have occurred only because of unsatisfactory ratings or because of decrease of teacher services in a school, and then only in accordance with balanced staff concept.

28. There is no evidence in the record that Detroit teacher seniority rights had other than equitable purpose or effect.

29. Substantial racial integration of staff can be achieved, without disruption of seniority and stable teaching relationships, by application of the balanced staff concept to naturally occurring vacancies and increases and reductions of teacher services.

30. The Detroit Board of Education has entered into successive collective bargaining contracts with the Detroit Federation of Teachers, which contracts have included provisions promoting integration of staff and students.

The Detroit School Board has, in many other instances and in many other respects, undertaken to lessen the impact of the forces of segregation and attempted to advance the cause of integration. Perhaps the most obvious one was the adoption of the April 7 Plan. Among other things, it has denied the use of its facilities to groups which practice racial discrimination; it does not permit the use of its facilities for discriminatory apprentice training programs; it has opposed state legislation which would have the effect of segregating the district; it has worked to place black students in craft positions in industry and the building trades; it has brought about a substantial increase in the percentage of black students in manufacturing and construction trade apprenticeship classes; it became the first public agency in Michigan to adopt and implement a policy requiring affirmative act of contractors with which it deals to insure equal employment opportunities in their work force; it has been a leader in pioneering the use of multi-ethnic instructional material, and in so doing has had an impact on publishers specializing in producing school texts and instructional materials; and it has taken other noteworthy pioneering steps to advance relations between the white and black races.

[1, 2] In conclusion, however, we find that both the State of Michigan and the Detroit Board of Education have committed acts which have been causal factors in the segregated condition of the public schools of the City of Detroit. As we assay the principles essential to a finding of de jure segregation, as outlined in rulings of the United States Supreme Court, they are:

1. The State, through its officers and agencies, and usually, the school administration, must have taken some action or actions with a purpose of segregation.
2. This action or these actions must have created or aggravated segregation in the schools in question.
3. A current condition of segregation exists.

We find these tests to have been met in this case. We recognize that causation in the case before us is both several and comparative. The principal causes undeniably have been population movement and housing patterns, but state and local governmental actions, including school board actions, have played a substantial role in promoting segregation. It is, the Court believes, unfortunate that we cannot deal with public school segregation on a no-fault basis, for if racial segregation in our public schools is an evil, then it should make no difference whether we classify it de jure or de facto. Our objective, logically, it seems to us, should be to remedy a condition which we believe needs correction. In the most realistic sense, if fault or blame must be found it is that of the community as a whole, including, of course, the black components. We need not minimize the effect of the actions of federal, state and local governmental officers and agencies, and the actions of loaning institutions and real estate firms, in the establishment and maintenance of segregated residential patterns—which lead to school segregation—to observe that blacks, like ethnic groups in the past, have tended to separate from the larger group and associate together. The ghetto is at once both a place of confinement and a refuge. There is enough blame for everyone to share.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter of this action under 28 U.S.C. §§ 1331(a), 1343 (3) and (4), 2201 and 2202; 42 U.S.C. §§ 1983, 1988, and 2000d.

[3] 2. In considering the evidence and in applying legal standards it is not necessary that the Court find that the policies and practices, which it has found to be discriminatory, have as their motivating forces any evil intent or motive. Keyes v. Sch. Dist. #1, Denver, D.C., 303 F.Supp. 279. Motive, ill will and bad faith have long ago been rejected as a requirement to invoke the protection of

the Fourteenth Amendment against racial discrimination. Sims v. Georgia, 389 U.S. 404–408, 88 S.Ct. 523, 19 L.Ed.2d 634.

[4] 3. School districts are accountable for the natural, probable and foreseeable consequences of their policies and practices, and where racially identifiable schools are the result of such policies, the school authorities bear the burden of showing that such policies are based on educationally required, non-racial considerations. Keyes v. Sch Dist. *supra*, and Davis v. Sch. Dist. of Pontiac, D.C., 309 F.Supp. 734, and 6 Cir., 443 F.2d 573.

[5] 4. In determining whether a constitutional violation has occurred, proof that a pattern of racially segregated schools has existed for a considerable period of time amounts to a showing of racial classification by the state and its agencies, which must be justified by clear and convincing evidence. State of Alabama v. United States, 5 Cir., 304 F.2d 583.

[6] 5. The Board's practice of shaping school attendance zones on a north-south rather than an east-west orientation, with the result that zone boundaries conformed to racial residential dividing lines, violated the Fourteenth Amendment. Northcross v. Bd. of Ed. of Memphis, 6 Cir., 333 F.2d 661.

[7] 6. Pupil racial segregation in the Detroit Public School System and the residential racial segregation resulting primarily from public and private racial discrimination are interdependent phenomena. The affirmative obligation of the defendant Board has been and is to adopt and implement pupil assignment practices and policies that compensate for and avoid incorporation into the school system the effects of residential racial segregation. The Board's building upon housing segregation violates the Fourteenth Amendment. See, Davis v. Sch. Dist. of Pontiac, *supra*, and authorities there noted.

[8] 7. The Board's policy of selective optional attendance zones, to the extent that it facilitated the separation of pupils on the basis of race, was in violation of the Fourteenth Amendment. Hobson v. Hansen, D.C., 269 F.Supp. 401, aff'd sub nom., Smuck v. Hobson, 132 U.S. App.D.C. 372, 408 F.2d 175.

[9] 8. The practice of the Board of transporting black students from overcrowded black schools to other identifiably black schools, while passing closer identifiably white schools, which could have accepted these pupils, amounted to an act of segregation by the school authorities. Spangler v. Pasadena City Bd. of Ed., D.C., 311 F.Supp. 501.

[10] 9. The manner in which the Board formulated and modified attendance zones for elementary schools had the natural and predictable effect of perpetuating racial segregation of students. Such conduct is an act of de jure discrimination in violation of the Fourteenth Amendment. United States v. School District 151, D.C., 286 F.Supp. 786; Brewer v. School Board of City of Norfolk, 4 Cir., 397 F.2d 37.

[11] 10. A school board may not, consistent with the Fourteenth Amendment, maintain segregated elementary schools or permit educational choices to be influenced by community sentiment or the wishes of a majority of voters. Cooper v. Aaron, 358 U.S. 1, 12–13, 15–16, 78 S.Ct. 1401, 3 L.Ed.2d 5.

> "A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be." Lucas v. 44th Gen'l Assembly of Colorado, 377 U.S. 713, 736–737, 84 S.Ct. 1459, 1474, 12 L.Ed.2d 632.

[12] 11. Under the Constitution of the United States and the constitution and laws of the State of Michigan, the responsibility for providing educational opportunity to all children on constitutional terms is ultimately that of the state. Turner v. Warren County Board of Education, D.C., 313 F.Supp. 380; Art. VIII, §§ 1 and 2, Mich. Constitution; Daszkkiewicz v. Detroit Bd. of Ed. City of Detroit, 301 Mich. 212, 3 N.W.2d 71.

[13] 12. That a state's form of government may delegate the power of daily administration of public schools to officials with less than state-wide jurisdiction does not dispel the obligation of those who have broader control to use the authority they have consistently with the constitution. In such instances the constitutional obligation toward the individual school children is a shared one. Bradley v. Sch. Bd. of City of Richmond, D.C., 51 F.R.D. 139, 143.

13. Leadership and general supervision over all public education is vested in the State Board of Education. Art. VIII, § 3, Mich. Constitution of 1963. The duties of the State Board and superintendent include, but are not limited to, specifying the number of hours necessary to constitute a school day; approved until 1962 of school sites; approval of school construction plans; accreditation of schools; approval of loans based on state aid funds; review of suspensions and expulsions of individual students for misconduct [Op.Atty.Gen., July 7, 1970, No. 4705]; authority over transportation routes and disbursement of transpor-

tation funds; teacher certification and the like. M.S.A. 15.1023(1), M.C.L.A. § 388.1001. State law provides review procedures from actions of local or intermediate districts (see M.S.A. 15.3442, M.C.L.A. § 340.442), with authority in the State Board to ratify, reject, amend or modify the actions of these inferior state agencies. See M.S.A. 15.3467; 15.1919(61); 15.1919(68b); 15.2299(1); 15.1961; 15.3402, M.C.L.A. §§ 340.467, 388.621, 388.628(a), 388.681, 388.851, 340.402; Bridgehampton School District No. 2 Fractional of Carsonville, Mich. v. Supt. of Public Instruction, 323 Mich. 615, 36 N.W.2d 166. In general, the state superintendent is given the duty "[t]o do all things necessary to promote the welfare of the public schools and public educational instructions and provide proper educational facilities for the youth of the state." M.S.A. 15.3252, M.C.L.A. § 340.252. See also M.S.A. 15.2299(57), M.C.L.A. § 388.717, providing in certain instances for reorganization of school districts.

14. State officials, including all of the defendants, are charged under the Michigan constitution with the duty of providing pupils an education without discrimination with respect to race. Art. VIII, § 2, Mich. Constitution of 1963. Art. I, § 2, of the constitution provides:

> "No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation."

15. The State Department of Education has recently established an Equal Educational Opportunities section having responsibility to identify racially imbalanced school districts and develop desegregation plans. M.S.A. 15.3355, M.C.L.A. § 340.355, provides that no *school* or department shall be kept for any person or persons on account of race or color.

16. The state further provides special funds to local districts for compensatory education which are administered on a per school basis under direct review of the State Board. All other state aid is subject to fiscal review and accounting by the state. M.S.A. 15.1919. See also M.S.A. 15.1919(68b), providing for special supplements to merged districts "for the purpose of bringing about uniformity of educational opportunity for all the pupils of the district." The general consolidation law M.S.A. 15.3401, M.C.L.A. § 340.401 authorizes annexation for even noncontiguous school districts upon approval of the superintendent of public instruction and electors, as provided by law. Op.Atty.Gen., Feb. 5, 1964, No. 4193. Consolidation with respect to so-called "first class" districts, *i.e.*, Detroit, is generally treated as an annexation with the first class district being the surviving entity. The law provides procedures covering all necessary considerations. M.S.A. 15.3184, 15.3186, M.C.L.A. §§ 340.184, 240.186.

17. Where a pattern of violation of constitutional rights is established the affirmative obligation under the Fourteenth Amendment is imposed on not only individual school districts, but upon the State defendants in this case. Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401, 3 L.Ed. 2d 5; Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256; U.S. v. State of Georgia, Civ. No. 12972 (N.D. Ga., December 17, 1970), rev'd on other grounds, 5 Cir., 428 F.2d 377; Godwin v. Johnston County Board of Education, D.C., 301 F.Supp. 1339; Lee v. Macon County Board of Education, 267 F.Supp. 458 (M.D. Ala.), aff'd sub. nom., Wallace v. United States, 389 U.S. 215, 88 S.Ct. 415, 19 L.Ed. 2d 422; Franklin v. Quitman County Board of Education, D.C., 288 F.Supp. 509; Smith v. North Carolina State Board of Education, 444 F.2d 6 (4th Cir., 1971).

The foregoing constitutes our findings of fact and conclusions of law on the issue of segregation in the public schools of the City of Detroit.

[14] Having found a de jure segregated public school system in operation in the City of Detroit, our first step, in considering what judicial remedial steps must be taken, is the consideration of intervening parent defendants' motion to add as parties defendant a great number of Michigan school districts located out county in Wayne County, and in Macomb and Oakland Counties, on the principal premise or ground that effective relief cannot be achieved or ordered in their absence. Plaintiffs have opposed the motion to join the additional school districts, arguing that the presence of the State defendants is sufficient and all that is required, even if, in shaping a remedy, the affairs of these other districts will be affected.

In considering the motion to add the listed school districts we pause to note that the proposed action has to do with relief. Having determined that the circumstances of the case require judicial intervention and equitable relief, it would be improper for us to act on this motion until the other parties to the action have had an opportunity to submit their proposals for desegregation. Accordingly, we shall not rule on the motion to add parties at this time. Considered as a plan for desegregation the motion is lacking in specificity and is framed in the broadest general terms. The moving party may wish to amend its proposal and resubmit it as a comprehensive plan of desegregation.

Chairman CELLER. Any questions?

Are there any other members who would like to speak?

Mr. Huffman?

Mr. HUFFMAN. Mr. Chairman, in the interest of time I did not submit a written statement, but I was in concurrence with the three members here.

My name is Bill Huffman. I represent District 66 in the State of Michigan. The four members here today are representative of 73 members of the Michigan House that comprise Republicans, Democrats, liberals, and conservatives.

I would also point out that three members of this committee here are members of the Appropriations Committee in the majority party, and we intend to appropriate $1½ billion in the field of education this year in the State of Michigan.

This number 73 that we are representative of, I would point out to you, is representative of two-thirds of the members of 110.

Thank you, Mr. Chairman.

Chairman CELLER. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, I understand now that all members of the committee and legislative delegation have spoken, and before they leave the podium, I simply want to state on the record my appreciation as a member of this subcommittee for their appearance.

As Mr. Huffman has just stated, the total membership of the Michigan House of Representatives is 110. Seventy-three of them have formed an ad hoc committee on this busing issue. That is a very substantial majority of the Michigan House.

I have no doubt but what the feelings are of a similar majority of people in the State of Michigan, although this delegation here this morning represents only some districts in southeastern Michigan, the total membership of the committee being 73, statewide and, as pointed out, bipartisan.

I think that their appearance here this morning, Mr. Chairman, underscores the crisis into which this country is being thrown relative to school busing. Most people very obviously want to have their children educated close to home, at least their young children, and the arguments that are being made in support of that in my opinion are very persuasive.

I want to thank each of you for coming.

Mr. HUNGATE. Mr. Young, what schools do children in the Hastings Street area attend at this time?

Mr. YOUNG. The Detroit school system.

Mr. HUNGATE. That would be operated separate from the system you have in Wayne County, is that correct?

Mr. YOUNG. We have 570 school districts in the State of Michigan. Detroit is the biggest district in the State. The judge is now talking about taking 86 school districts in three counties and combining them in cross-district busing.

Mr. HUNGATE. What would those counties be?

Mr. **Young.** Wayne, Oakland, and McCone.

Mr. **Hungate.** What about the State senators and representatives in the Wayne County area?

Mr. **Young.** Joyce and I are from Wayne County, and Mr. Huffman and Mr. Law are from Oakland County.

Mr. **Hungate.** The legislators from the city of Detroit, are any of those among the 73?

Mr. **Young.** Yes.

Mr. **Hungate.** Thank you all.

Chairman **Celler.** Unless there are further questions, we are very grateful to this panel for coming from Michigan to testify. We thank you all.

Mr. **McCulloch.** Mr. Chairman, I should like to inquire whether this group or any individual member thereof has made a study of how quality education will be brought to blacks as well as whites. If so, I would like to see that statement submitted in writing.

Mr. **Law.** Could I say something on that?

That is a question that is difficult to answer, but the State of Michigan spends almost half again or more on its education and Detroit and the metropolitan area gets a very sizable share of that, and money has been given as much as $1,900 per pupil to students. So that as far as getting quality education, the thing that we can't equate is where compulsory integration is synonymous with quality education. We are providing all we can.

Mr. **McCulloch.** Mr. Chairman, I should like to say that if you people have an answer to the problem for which we are at least partially responsible, we would like to have it. So that you might not think that I was from the ghettos of any city in Ohio, I am a country man from Ohio, and the blacks comprise 1 percent of the total population in my congressional district, but I am interested in this problem because it so seriously affects the future course of this great Nation.

Mrs. **Symons.** Mr. Chairman, may I add perhaps it would be wise if we sent a copy of our State educational appropriations bill that we adopt each and every year so that we can show you where we make——

Mr. **McCulloch.** I would be glad to have that, but I am interested in your emotional reply to my question. We have had similar education bills in Ohio. I was an Ohio legislator before I came here, and I was speaker of the Ohio House for a long time. I am trying to solve a problem that desperately needs to be solved.

Mrs. **Symons.** We appreciate that, sir, and Mr. Young in his written statement has many of the facts and figures and what we have done in Michigan so that we can offer equal educational opportunity. We have come a long way over the past years and hope to continually improve the equal educational opportunities.

Thank you very much for hearing us today.

Mr. **Young.** Mr. Celler, I would like to say all of us really appreciate the opportunity to appear before you. We have heard your name many times, and it is the first time we have ever seen you face to face and, as a Democrat, I appreciate appearing before you.

Chairman **Celler.** Thank you very much, indeed. The next witnesses are Students for Quality Integrated Education, Pontiac, Mich.

Come forward, please.

STATEMENT OF STUDENTS FOR QUALITY INTEGRATED EDUCATION, PONTIAC, MICH.

Mr. DOHERTY. Mr. Chairman, we have Doug McIntyre from Central High School; Brad Jackson from Northern High School; Mary Brown, Jefferson Junior High; Chris Reynolds from Lincoln Junior High; Randy Young from Eastern Junior High; Dorianne Brooks from Eastern Junior High; Ivan Payne from Jefferson Junior High; Patricia Ford, Lincoln Junior High; and Maria Alfaro from Northern High School. Mr. Smith Carson, the principal of Eastern Junior High School, has accompanied them.

Mr. Brad Jackson, who is president of the student council of Northern High School, will be the spokesman for the group.

Chairman CELLER. We welcome you here and would be glad to hear from your spokesman, Mr. Brad Jackson.

Mr. JACKSON. Thank you.

Chairman Celler and honorable members of the committee, we would like to thank you for the opportunity to appear and express our opinions regarding the integration of the Pontiac schools. We represent supporters of integrated education from Pontiac's two high schools and from three of the six junior high schools.

From our own personal experience we can say that we support integration as a means to equal opportunity in education and we recognize that without the Federal court order, Pontiac schools would still be segregated.

The opinions which we express are taken from our own experiences. We are speaking for ourselves and we do not claim to speak for all of the students of the Pontiac school district.

On the whole, the actual busing of students in Pontiac has been peaceful. To our knowledge, there have been no major incidents of violence as a result of intradistrict busing. Several of us have younger brothers and sisters who rather enjoy the ride to school with their classmates. To them it does not seem to be a significant inconvenience. Those of us in junior high school do not find the bus ride overly inconvenient, but on the contrary, worth the effort because it means better education and relationships for all of us.

Two unexpected advantages of additional busing include the availability of extra buses for extracurricular activities and the availability of transportation to some of us who previously had to arrange for our own transportation.

The inschool situation is much improved over previous years for blacks, whites, and Latin Americans. We believe that the academic atmosphere in each of our schools is generally challenging and interesting and plans are underway to strengthen the program. With the junior highs each having only one grade level per school, there is an opportunity to choose from a broader selection of curricular offerings. Programs offered under title I are also available to more students under the integration plan.

We feel that there have been many personal benefits to each of us from an integrated school program. Several misconceptions have been dispelled due to personal relationships with students from other areas of the city. The majority of students that we associate with and have spoken with have had positive experiences that they will carry with them for the remainder of their lives.

We all seem to agree that discipline in our respective schools this year has been more firm, more equitable, and more understanding. School administrators seem to feel more free to use one disciplinary standard for all students regardless of race. Some of us feel that in past years a double standard was frequently used in school discipline.

As far as inschool violence is concerned, we do not want to imply that there have not been troubles in some of our schools, but then that is not something new this year. Students, teachers, and administrators have told members of our group that the number of disturbances in the schools has dropped considerably since the beginning of the school year and that complaints are now no more frequent than in previous years.

Administrators of both of our high schools have stated recently that their schools are more peaceful and less tense than they have been in several years. Although high school students are not bused, we feel that the attitudes developed in the elementary and junior high schools will affect the atmosphere in the high schools as well.

Positive identification by police and others have confirmed that many of the disturbances outside the schools at the beginning of the school year were the result of outsiders—students from outlying school districts whose schools had not opened, out-of-school youth, picketing adults, even agitators from several miles away. As the school year progresses, tension in our schools continues to decrease notably.

We conclude, therefore, that:

First. The integration plan is providing more equal educational opportunities.

Second. The integration plan is succeeding in creating a better understanding among Pontiac students.

Third. The majority of the students, teachers, and administrators directly affected, are working for the success of quality integrated education in Pontiac. In short, integration is working, and we won't want to go back to the old way.

Chairman CELLER. Do your parents know that you are down here and that you are making these statements?

Mr. JACKSON. Yes.

Chairman CELLER. Do they approve?

Mr. JACKSON. They discussed it with me, and I think they do.

Chairman CELLER. Was this statement that you have just read written by you?

Mr. JACKSON. Yes; it was written by a party of four students—myself, Doug MacIntyre, and a young lady from Lincoln Junior High, and another student from Lincoln—and Mr. Doherty went over the final draft with us and gave us advice on what we should cut out and add to, but we made the basic statement. We wrote the basic statement.

Chairman CELLER. Did you all come down here at your own expense?

Mr. JACKSON. No; the trip was paid for by the National Urban Coalition, local contributions, and student contributions.

Chairman CELLER. Are there any questions?

Mr. McCLORY. Mr. Chairman, I would like to ask a couple of questions.

I have had some experience with regard to integrated education, particularly in the California area where two sons of mine were teaching in a highly integrated community.

The problem with the disadvantaged, particularly the disadvantaged black, is the lack of the proper home environment, at least insofar as education is concerned. The family influence with regard to the Asiatic provides personal reinforcement and guidance, and so the young Asiatic student tends to excel.

Now, the testimony that we have heard here is that these busing plans tend to reduce family involvement in school activities. I am wondering if you have as much parental involvement with the parents at the school under the busing plan as you had before busing because, if you have less parental involvement, you are going contrary to what appears to be the real solution to quality education or raising the standard of education for students that have heretofore been disadvantaged.

How are the parents taking part in the school activities and in the educational programs under the busing program that you have?

Mr. JACKSON. There are three of us here that would like to reply to that question. I will answer first, and then I will turn the mike over to Doug and then Maria.

First of all, I think that the parental involvement in the Pontiac school system would tend to be greater this year than it has been because of the curiosity to see just how well this plan is working and so that the parents know firsthand what exactly is going on.

Mr. McCLORY. Have you established any new parent-student councils or anything of that nature?

Mr. JACKSON. If you mean PTA, I have no idea how active they are in relation to last year, but I have seen parents up at school when I did not last year, and there is an emphasis on parent-teacher conferences this year.

This whole week we are getting out half days for the sake of parent-teacher conferences, whereas last year we didn't have them, and the year before we didn't have them.

Mr. McCLORY. Have you had time to gather any concrete evidence of improvement in the study habits or the educational level of the students who were presumably from disadvantaged areas?

Mr. JACKSON. I didn't consider it. I was looking more at the social aspect.

Now I would like to turn the mike over to Doug McIntyre.

Mr. CARSON. I was administrator of one of the junior high schools in question. I can probably shed some light on parental involvement.

Having this year taken over what was once considered one of the worst schools in the city of Pontiac, I can, without reservation, say that there has been much greater parental involvement this year and much greater student involvement.

We have done several surveys on students' attitudes, and it is interesting to note that going from an all-black school last year, about 99 percent black, to about 60–40 school this year, that grades have tended to improve if we are talking about academic grades.

One of our concerns is, in addition to the academic areas, in which many people seem to profess interest, is also student attitudes. We have done surveys in all of our junior high schools on student attitudes on a number of things, but particularly in the area of getting along with their fellow students.

In my particular school 82 percent of the students responded that they had made friends of the opposite race. We no longer had gang wars or fights, or anything else. It is very rare when we have a fight, whether it be between two blacks, between two whites, or black-white.

The atmosphere in the neighborhood has improved. We no longer have roaming gangs around the schools. We have gone through two seasons for basketball and football without a fight and, as you well know, junior high school athletics is generally a place where tensions run very high. We went through two seasons without one fight occurring at one of these events.

We have had parent-teacher conferences. I have had 914 parents show up out of a possibility of 1,600. We hope we will do better this time.

So I think in general I can speak for my school and several others where I have talked to my colleagues, things are going much better.

Mr. McClory. Have you maintained or improved the disciplinary standards, would you say?

Mr. Carson. We are still operating under the same policy we operated under last year, but I think it is due greatly to the students themselves making an attempt to get along.

Mr. McClory. You don't have any open campuses or anything like that?

Mr. Carson. Well, in the junior high schools we never had what I suppose you would call an open campus. Students come in at a particular hour and remain in school until school is out, and this has been the pattern over the years.

Mr. McClory. This is all in junior high school?

Mr. Carson. Yes.

Mr. McCulloch. Mr. Chairman, I would like to ask a question there.

What time do students who wish to participate in athletic activities start home on the buses in Pontiac now?

Mr. Carson. We have not made many changes, in that student athletics have always been an after-school activity. Students either leave at 4 or 5 o'clock. On the 5 o'clock buses, normally on the east side of town, are the students who participate in athletic events. The 4 o'clock buses are generally for students who stay for after-school activities, newspaper, magazine, yearbook, skating, bowling, student council, skiing, and student union. All types of after-school actvities.

Mr. McCulloch. Do you believe that there has been an interference with any students who wished to participate in athletic activities by the forced busing?

Mr. Carson. None whatsoever.

I would say I think there have been more students able to participate. Where normally we have had one varsity club, we now have in football three varsity clubs, and four basketball clubs, so that any student that wanted to participate and had an opportunity, we did accommodate every student that came out for the program.

Mr. McCulloch. Mr. Chairman, I should like to take the time of the committee, and any visitors who want to listen, to tell a story about a young man who came from a rural area in my district. As a matter of fact, most of my district is rural.

He was seeking an appointment to the military academy, as I recall. I interviewed him personally, and he was a big, tall, strapping athletic fellow, and of course among other questions I asked him, "Do you participate in any high school athletics?"

He said that he did. I said, "Name them." He said, "Football." And I said, "Have you earned any letters in football?"

He said, "Yes, in our little conference we permit participation over 4 years." And then I asked him about some other athletics in that territory, the rural northwest Ohio area, and he said, "You know, I made an agreement with my parents when I started to this centralized school,"—let me emphasize that it was not a neighborhood school but a centralized school—"that I could have time to participate in one athletic activity."

And he made four letters, and he is doing unbelievably well at the academy.

Chairman CELLER. Are there any other students who wish to say something?

Miss MARIA ALFARO. Yes. I am a Latin student, and it is mainly black- and white-speaking parents, and I would like to say that I know of not only my parents but other parents of Latin students who have never participated in school activities. Some of them didn't know the language. Some of them didn't know what their children were doing in school.

When the student started talking about when busing came along, and they were going to different schools, my parents participated this year in an international unit they had at Kennedy Junior High. This is the first time they have really participated in things, this year.

They have had different activities with students. My parents have gone. They have seen how students are getting along and there were so many people there it was crowded. And they were getting along.

Mr. MCCULLOCH. Could I ask this young lady one question, if I may?

How old are you?

Miss ALFARO. I am 18.

Mr. MCCULLOCH. Have you seen any physical fights in the school or classrooms?

Miss ALFARO. No. My sister goes to Eastern. I have three younger sisters. One goes to the same high school I do, and the other two go to different junior high schools. One is in the seventh grade, and one is in the ninth grade. They have never had any fights.

Mr. MCCULLOCH. Is it your opinion that school discipline of the students is better or worse than it was before you had busing?

Miss ALFARO. I think discipline is better. I remember last year when my sisters were both going to Eastern and when I was in the ninth grade at Eastern, you could hardly get in——

Mr. MCCULLOCH. Thank you.

Chairman CELLER. Now that you have integration in the student body as a result of busing, do you find congenial relations between white students and black students?

Miss ALFARO. I didn't get the question.

Chairman CELLER. Is your relation very cordial with the students of other races?

Miss ALFARO. Yes. Before I know people would be afraid to go up to a black or Mexican because they have these opinions of them and prejudices, like a Mexican, "Don't turn your back on one because he is going to stick you with a knife in the back," but now I have lots of friends of both blacks and whites. But my sisters have friends and can meet each other and be playing with them instead, like before, they would be afraid.

Chairman CELLER. Does any other student wish to say something?

Mr. DOUG McINTYRE. I could say that I think it is much better at the high school from a comment by the principal of my high school, which is Central High School downtown. He said that the tension and incidents of violence in our school was less this year than it had been in over a decade, which I would consider a marked improvement over the past years, even with the equal opportunity education effort in Pontiac now.

Chairman CELLER. There are no inhibitions as to race?

Mr. McINTYRE. I find that there are not. I find that we get along just like we are all one big happy family at our high school.

Mr. JACKSON. Mr. Chairman, I would like to make a further comment on the violence.

I would like to point out two examples. Last year there was a fight, and it was a racial fight. It generated an exaggerated situation and grew into a very tricky situation. This was last year. This year there was a similar fight between a white and a black, and instead of the same thing happening as last year, which was an evolution of this bad situation, both blacks and whites got in and broke up that fight, and it did not take any kind of teachers at all.

This points up, or I hope this makes the point that the students this year are more mature and less eager to have racial conflicts. The students are more willing to make it work. They are trying.

Miss REYNOLDS. I would like to say something before I get into what I have to say, but because of busing this year, I have walked a mile and a half last year, and in the wintertime it is cold, and now that I am bused, I would like to say I found something new in the school system of Pontiac this year. It is a new kind of learning, a learning of students to each other. A learning of one another.

Something we have never had before. Sort of a social learning of what the Pontiac community is all about, and these are the children of the parents who make up our community. They are different from their parents.

Children on their own level can get together. They can get together and get along together as people, and they are working together.

In Lincoln Junior High they are working together to make it a better school. I think if these students grow up together, working together, then maybe some day we will not only be a United States, but we will be a united people, and I think the students in the Pontiac system are working to make this school environment better so later on in life I think they are going to work together to make their communities better and do it as one people.

Chairman CELLER. Is there any other student who wishes to speak?

Miss PATRICIA FORD. My name is Patricia Ford, and I represent the students at Lincoln Junior High.

Friday before I left school they asked me to tell you that the integration is really helping them and without integration they would not be able to be friends with people of opposite races and things of this sort.

A lot of the white students at the end of the year told me they were afraid to play with the black students or Mexican students, and now these people are walking down the halls together. They walk home together. They go out together. They eat lunch together. They do everything together.

I mean, without integration, like our testimony said, the schools would still be segregated and the blacks would still be thinking that they were inferior, and the whites would still be thinking that blacks were just mean and the lowest people, and we are not even human.

But now we can understand each other and we can get along with each other, and without integration in Pontiac, this would never have happened.

Chairman CELLER. Does any other student wish to make a statement?

If not, we express our gratitude to all of you.

Miss MARY BROWN. I would like to say at the beginning of the year at Jefferson a white student and black student got together and became friends and then they noticed they were talking, and they noticed that the parents, the people who weren't involved in the schools, were going out and showing the bad part of integration, showing the bad things that could happen and trying to make worse things happen, but the students didn't have anything to say. Nobody was listening to them.

So they told other students how they felt and they formed a club. "We Could Make It Work."

We spoke at assemblies at other schools letting other students and parents know how we felt. We gave a sheet where a student could sign up for membership, but they had to believe that they could make it work and make integration work, and they had to be ready to make an integrated society and right now we have 2,000 members. We only have about 30 active members who go around showing people that you can make it work.

And we give skits and show how we can make it work. It is really working.

Mr. CARSON. Mr. Chairman, could I make another statement?

Chairman CELLER. Yes, sir.

Mr. CARSON. One of our chief concerns, long before busing became a reality in Pontiac, when Judge Keith handed down the decision, we asked educators of the city of Pontiac, and I, being the president of the Administrators & Supervisors Association at that time composed of all principals and assistant principals involved in the day-to-day operation, went on record endorsing integrated education for all students.

This vote was overwhelming in support of Judge Keith's decision.

I could certainly understand the parental concerns. I could understand the political pressures from some of our legislators, but I think it is important that we hear from those people who deal day to day with students and are supposedly expert in the field of education.

I don't think that we can equate education on an emotional tone. I think we have to look at education in its fullest sense. Certainly we are all concerned with academic achievement, but we are also concerned with society in which everyone can live under the Constitution and not have those fears and those prejudices placed before them that I have seen in the Pontiac schools.

As a former administrator at Central High School, I saw students come from junior high schools that were totally segregated. I saw the results of black and white and Spanish-American students coming together for the first time in high school. I saw the results and suspicions that had been built up over the years, and I saw the result.

You remember the infamous four students that were shot outside Central High School because of a misunderstanding.

Today I think we are seeing students who are going to be able in the future to live together because they have experienced these things themselves.

If they hate someone, it is on the basis of, a person-to-person basis, rather than hearsay, rumor, and suspicion.

I think Pontiac is going to produce some of the best students that this country is going to have in the near future.

Thank you.

Chairman CELLER. If there are no other questions, we will conclude the testimony of the students of Pontiac and at the same time express our gratitude for your coming this long distance and spending this time and giving us the benefit of your views.

We thank all of you.

Our next witness is Mrs. James C. Farrell, Pine Bluff, Ark.

STATEMENT OF MRS. JAMES C. FARRELL, PINE BLUFF, ARK.

Mrs. FARRELL. Mr. Chairman and members of the subcommittee, I would like to thank you very much for allowing me to testify before this committee. I am Mrs. James C. Farrell from Watson Chapel, Ark., and I have asked to be allowed to testify before this committee and to ask you please to support the bill, House Joint Resolution 620 by Congressman Lent.

My husband and I are the parents of four children, and the neighborhood concept of schools is very precious to us. Although our children are now grown, we take great pride in the fact that they are children to be proud of.

When I came to this country in 1946 from a war-torn Europe to make my home with the man whom I had married while we were both in the service, he and I discussed at full length as to where we should make our home. Like many other young people, we realized that to raise a family it was important that we take into consideration the schools and communities.

We both talked about the insecurity we had always felt as children when our parents moved from one place to another to make a living, and so we both made a vow to each other that no matter how rough it became to make a living we would find a good school district, stay there and work to improve it in any way we could. This, gentlemen, is exactly what we did. It wasn't easy, but it was worth it to give our children a foundation on which to build their lives.

Taking pride in building for the future is one of the things this country had going for it—in the days when people voted for school officials on the local level, people that you knew and loved because you had seen them devote their time, money, and energies to helping build a community school. Taking pride in the academic and physical achievements of all the students; taking pride in the fact that when the band was asked to perform at out-of-town games you could point with pride and say, "That's my school playing, and my school colors"; helping to attract new people to the neighborhood because you had a fine school you could brag about; knowing that you were identified with the neighborhood.

Now, I realize that a constitutional amendment is a very serious and drastic step, but, gentlemen, the working class people of this country have no other recourse. We must protect our children at all costs, and promises are not the answer. We have listened to the empty promises out of Washington until we have little or no faith at all in the men and women up there.

The average American citizen daily is asking himself, "Why do we need elected officials and pay them fabulous salaries when they in turn do nothing but put us in the hands of men appointed by God knows who, to destroy our American way of life?"

The elite, such as yourselves, can sit back and say, "I can afford the best for my child, so I will send him to a private school, and so 'To hell with busing.'" But, gentlemen, it is because of the sweat off our backs that pay your salaries that you can speak such grand phrases; but I want you to know that John Q. Citizen is sick and tired of being taken for granted.

We pay taxes to support our schools and we are entitled to say what takes place in them. We all want public schools for our children because we live and work in public, which is as it should be in a democracy.

We are told to elect, not to appoint, local residents to see that our schools are maintained and operated for the betterment of all children, not just the select few. When we do this, a Federal judge that no local citizen even knew comes along, throws out a legal school election—and, gentlemen, this happened in my area—and takes over the control of the school, with the help of armed Federal marshals.

Is this the kind of democracy we are to expect from now on out of Washington? Are "We, the people," no more? Is Congress going to continue to sit back and let the Supreme Court totally and wholly destroy the American way of life?

As I am a citizen of this country by choice, not chance, I had to learn many things before I took my oath of citizenship, and one of the most important things I learned was that Congress was the only lawmaking body in this great land.

May I ask, gentlemen, has Congress forgotten this, as so far the total destruction of our school systems has been done by a decision from the Supreme Court, and the Congress sat idly by and let it happen? All Federal judges are appointees; the average working-class taxpayer has no representation, as it stands to reason these men rule in favor of the forces that appointed them. Don't deny it, gentlemen, as it is apparent to everyone all over this Nation.

I don't know whether you gentlemen are aware of it or not, but the taxpayers of this great country have been circulating petitions during the last 4 years trying to be heard so that the Federal judges be elected rather than appointed, as it is becoming more apparent every day that as long as we are under the control of appointees we are doomed as a freedom-loving society.

The original Constitution of America is one of the finest documents ever written, and I have tried in vain to find where it says that we must bus every student even though it destroys the health, education, and welfare of every child and family in this land.

The idea of one man, an appointee, such as Elliot Richardson, sitting in a place like Washington, D.C., and saying what we must do under his directions, is like my sitting back in my living room in Watson Chapel, Ark., and telling you all how to conduct the business of this Nation. It just won't work; only God in Heaven can have a long-range overall plan for us, and even He would hesitate to destroy children to make it work, I am sure.

No one who has any pride in identity, ownership, sportsmanship, personal ability, regardless of color, creed, or religion, can possibly condone busing. How can it be right when all citizens are so vehemently opposed to it that armed Federal marshals are required to enforce it?

Why is it that not 1 day goes by without glaring headlines in the newspapers of bomb threats, marches, civil disorders, children attacked on school grounds? Teachers are scared to turn in reports of violence because they may lose their jobs. School administrators are not telling their school boards the true facts about the happenings at school because they are afraid of retaliation.

One case in point is my school in Watson Chapel. Federal Judge Oren E. Harris of El Dorado, Ark., sent a court order to our superintendent of schools, Dale Spradlin, ordering him to spend title I funds to buy buses, although the President had said no educational funds could be used to buy buses.

Mr. Spradlin tried to save face by lying to the school board and saying that such a thing had not happened, but, gentlemen, I have here the court order from the judge telling him to disregard our elected school board officials and obey the edicts of his courts. Is this justice?

(The materials referred to follow:)

Spradlin Denies Using Federal Funds for Buses

Dale Spradlin, superintendent of the Watson Chapel School District, yesterday denied allegations that he had used federal money to purchase two school buses for the district last year.

The buses, he said, were purchased with school district funds.

Spradlin also said that $11,000 in federal money provided to the school district under Title 1 of the federal Elementary and Secondary Education Act of 1965 was transferred into the district's maintenance and operations account.

However, he said, the $11,000 was spent for the maintenance and operation of Title 1 programs.

Earl Glover, supervisor of finance for federal programs in the state Education Department, said yesterday that Title 1 funds were not supposed to be transferred into regular school district accounts.

However, he said, he asked Spradlin for documentation on how the transferred funds were spent and said he was satisfied that the money was spent for items that had been approved for the district's Title 1 program.

Glover said that he was not an auditor. He has not recommended an audit by federal Health, Education and Welfare Department auditors, he said, and is not sure he is "in a position to ask for one." HEW administers the Title 1 funds supplied to school districts.

John Norman Warnock of Camden, the Watson Chapel School Board's attorney, said yesterday that the board and Spradlin had been ordered to buy additional buses by Federal Judge Oren Harris of El Dorado.

When the board and Warnock told Harris that the district did not have sufficient buses to transport all of the district's students who needed transportation under the district's court-ordered desegregation plan. Warnock said, "he told us 'well get them—get them under Title 1 or get them any way.' "

The school board transferred the $11,000 from the district's Title 1 account to the maintenance and operation account for the purpose of buying buses, Warnock said.

"I say the money was transferred and Mr. Spradlin did a good job of using it to buy the buses," Warnock said. "I was not there, the school board doesn't know how he did it, the school board never asked him how he did it," Warnock said.

"I'm not condemning Mr. Spradlin because Mr. Spradlin was right in the middle," Warnock continued. "The court told him to buy buses, and the board gave him the money and told him to go ahead and do it. Now HEW says what he did doesn't show up on any of the accounts."

U.S. DISTRICT COURTS,
EASTERN AND WESTERN DISTRICTS OF ARKANSAS,
El Dorado, Ark., April 14, 1971.

Mr. DALE SPRADLIN,
Superintendent of Schools, Watson Chapel School District No. 24, Pine Bluff, Ark.

DEAR MR. SPRADLIN: As you and the school board will recall, the Court gave specific guidelines in its ruling from the bench following the hearing in Little Rock on Tuesday, March 30, 1971. A copy of the Court's ruling was made available so there would be no misunderstanding as to the Court's ruling.

One of the matters specifically referred to by the Court had to do with the obtaining of federal funds under Title I for the purchase of needed and necessary busses. The Court directed you to proceed with obtaining these funds and for the school board to co-operate. I am advised at a recent meeting of the school board this was a subject of consideration. I am also advised that the board directed its attorney, Mr. Warnock, to attend a meeting of the administrators in Monticello in connection with Title I program instead of you as superintendent attending to and pursuing this matter for the needed funds.

In order that the Court may be properly informed you are requested to send to me a copy of the minutes of the school board meeting with reference to this item, including any reason given, if any, why the school board referred this matter when it is the duty and responsibility of the superintendent as administrator to pursue it under the direction of the Court.

The Court is also advised that the school board proposes to employ by contract an administrative assistant to you as superintendent. My report reveals that this is a newly created position and it indicates for the purpose of placing a particular individual in this position for obvious reasons.

You are requested to provide me a copy of the minutes of the school board meeting with reference to this action, if such was taken.

You are further requested to provide me with a copy of the minutes of the school board meeting wherein Mr. Warnock's services were required and for which the school board would propose to pay from the school funds.

In order that there may be no further misunderstanding, this Court does not propose to permit the "bleeding" of the school district's funds for unnecessary expenditures of attorney's fees and other expenses not needed in the orderly operation of the school.

For their information, I am sending a copy of this letter to members of the school board and their attorney, Mr. Warnock, and Mr. W. H. Dillahunty, United States Attorney.

Your immediate response to this request is required.

Sincerely yours,

OREN HARRIS.

Mrs. FARRELL. This is not isolated incident, gentlemen, this is typical of what is happening in every school district where HEW has reared its ugly head and said, "Comply or funds will be cut off." Gentlemen, those funds we are being threatened with are our taxes and we do not intend to be intimidated by them. The money that has been thrown away by HEW would have educated several million children; instead, it has only paid the wages of people not qualified to do anything else!

The man who came into our area was named A. T. Miller, and as far as could be determined, he had no qualifications whatsoever in the way of education; he was here for 4 short hours, and with the stroke of a pencil and support of an appointed judge, he completely destroyed our community schools and racial relations it had taken years to build.

Surely, the fact that these very hearings are necessary tells you that the American people intend to protect their children from interference by people hell-bent on destroying our youth. I agree with many educators, gentlemen, that all children should be given equal opportunity, but not at the point of a gun. As far as making all of us equal—if God had intended us to be that way, in His infinite wisdom He would have done so.

I sent a letter to Senator Mondale last year, and I think it sums up the feelings of the people of my community very well. Integration is a myth; it is just a tool used by these appointees to destroy the American way of life. After all, I am not a social climber and I certainly would not want to stay in a country club set with whom I have nothing in common.

Also, gentlemen, as I am sitting here, I realize I am out of my depth by integrating with many of you, and I can assure you, were it not for the fact that I feel so strongly that the busing of children is destroying this country, I definitely would not be here.

Would you gentlemen mix, wine, and dine with a bunch of hippies regardless of their color? Would you give up all you have accumulated over the years and live in the ghettos so that you could mix with them against your will? Gentlemen, I can answer for you.

If a person wants to improve himself he must want to. Not you or all the money in the world can make him, if he does not have the desire; and the same goes for the children, regardless of race, no matter whom you mix them with it will not give them the desire to learn. And above all, busing them away from everything that spells security is starting them fast down the road to destruction.

So I am asking you to please start representing "We, the people," instead of letting incompetents from the Health, Education, and Welfare do your job.

CONCLUSION

(1) Busing is a tool that is being used by appointees not interested in the welfare of our country or our people, to destroy our youth.

(2) Busing is an insult to the intelligence of every man, woman, and child in this country.

(3) The Congress of these United States has allowed the courts to usurp their authority, and the only way this terrible wrong can be made right is to vote for a constitutional amendment to protect our children from such terrible wrongs in the future.

RECOMMENDATION

On behalf of the children of this Nation and their parents, please report out the bill House Joint Resolution 620 and support its passage in the Congress and its ratification throughout the several States in the Union.

Chairman **Celler**. You stated, I think, that integration is a myth?

Mrs. **Farrell**. Yes, sir.

Chairman CELLER. Would you like to elaborate on that a bit?

Mrs. FARRELL. Mr. Chairman, in the school district in Watson Chapel, Ark., we have six schools. We had two junior high, or rather, the junior high and high schools, and we had four elementary. We have been integrated since 1965 on a neighborhood school concept.

We have had and we do have a junior and senior high school in the Coleman School District which is part of ours, although it is in the city of Pine Bluff. We have had busing as a convenience for students. It is now being used as a tool against these students.

The idea of integration is that if you seat a black next to me, some of my education might rub off on him and make him my equal, or vice versa. That is my interpretation of integration, sir, and it has not worked.

If you want quality education, if you want racial equality, I have here a plan that I think is the ideal solution, but of course it covers a whole Nation, not just one or two small school districts. May I be allowed to read it, please?

Chairman CELLER. We would be glad to accept the plan for the file.

Mrs. FARRELL. It is short. May I read it?

Chairman CELLER. Yes.

Mrs. FARRELL. My ideal solution to busing: Move the entire family, one time, rather than move each child twice daily for 12 years. Assign 11 percent black population to every State, country, city, and school district in the United States. Assign 89 percent white population to every area.

Move an equal number of whites out of an area as the number of blacks that have moved in, so that no area would gain or lose. A lottery could be used to decide the ones to be moved.

The entire cost of moving enough families to create a racial balance in every single school district in the United States would not equal the cost of moving children twice daily for one semester. We would lose the right to choose our home; however, our children have already lost the freedom to choose their school. Since our freedoms have to be lost, why not do it the easiest way possible?

This method would decrease the time a child loses twice daily. It would decrease smog caused by buses and cars, and decrease traffic congestion. It would also decrease the number of injuries and deaths to children traveling to and back from school.

This method would also permit every child in America to attend his neighborhood school. This method should have the most favorable effect on morale since every child would be in school with many children from his own neighborhood, children known to him, children that play with him on evenings and weekends.

This method permits us to have our cake and eat it, too, if we can stand a little more loss of freedom, and it seems from past experiences that we can. I ask you to seriously consider this proposal. It is my considered opinion that it is the only way we can ever have a complete racial balance.

Mr. ZELENKO. Mrs. Farrell, I refer the committee and you to the decision on the Court of Appeals for the Eighth Circuit in the *Watson Chapel* case, in August 1971. You referred to the Watson Chapel district, I believe, as being a desegregated district as of 1965. I would like to quote this passage from the Eighth Circuit opinion:

> The record shows that the Watson Chapel District (located on the outskirts of Pine Bluff, Arkansas) covers 125 square miles. Over 50 percent of the students attending school in the district live within the city limits of Pine Bluff. In 1969–70, the district operated six schools. These schools had total enrollment of 3,871 students. There were two high schools and four elementary schools. The Coleman Pigh School and the Coleman Elementary School operated with 1,640 students, all black. In the remaining schools there were 96 black students and 2,135 white pupils.

The district judge, to whom I believe some of your remarks have been directed, Judge Oren E. Harris, found as follows:

> The school district has failed and refused to present a plan reasonably expected to comply with the law. The Court has no alternative at this late date but to require the school district to operate under a lawful system. The Court has considered the two plans recommended by the Department of Health, Education and Welfare, as well as other alternatives, and concludes that the alternate plan suggested by the Department of Health, Education, and Welfare would offer more reasonable and adequate solution to the school is needs and requirements for a unitary system as required by law.

Mrs. Farrell, in your opinion, has the school board in Pine Bluff or Watson Chapel district sought to develop a plan to desegregate the schools in that area?

Mrs. FARRELL. Gentlemen, I would hate to have to tell you the hours that our school board put in to trying to get the plan together. Coleman School District, as referred to there, is within the city limits of Pine Bluff. But because the Pine Bluff school system is overcrowded with problems of their own, the people of Watson Chapel School District voted to take it into our district so we could help them. It is a black community. It has been for over 70 years. The students that live in that area that have requested permission to attend the other schools in the same district are transported to those schools, but it is on the neighborhood concept, because, as Mr. McCulloch I believe has stated, he comes from a rural area, and you know that busing is used as a convenience for children living in rural areas. But at no time—and I have lived there 27 years, I have worked in the schools for 27 years—at no time has a child ever been denied any of the schools in that area.

And I would like to ask one question of you, sir, if I may; I don't know your name, counsel. Why do we need public school elected officials if a Federal judge is going to remove them? Could you answer me, please?

Mr. ZELENKO. I don't know if I can answer you to your satisfaction. I don't think I would attempt to do so. I would like to bring to the attention of the committee, however, something that you know already, Mrs. Farrell. The district court found the attorney for the school board in civil contempt for encouraging pupils of the Watson Chapel schools not to attend school, obstructing orderly operation of the schools, encouraging the school board to suspend all transportation facilities prior to implementation of the court order, appearing in mass meeting and making statements in public to encourage mass disobedience to the court's orders.

I understand the Court of Appeals of the Eighth Circuit sustained that.

Mrs. FARRELL. They found that moot. I might say, sir, that the judge also ordered every parent in Watson Chapel School District not to mention the problems at the school.

Why shouldn't they be mentioned? This is a free country. We are the public, and why are we not allowed to speak out when something is wrong?

Mr. HUNGATE. Mr. Chairman, may I say, Mrs. Farrell, some of us had an opportunity to serve with Judge Oren Harris, who has been mentioned previously in the testimony, and he didn't seem that much of a tyrant when he was here.

You proposed an 11-percent plan as a solution to this situation, and some found that amusing.

Mrs. FARRELL. I don't find it amusing.

Mr. HUNGATE. You state: "We pay taxes to support our schools and are entitled to say what takes place in them." Have you and your husband had experience with Army military service?

Mrs. FARRELL. Yes, sir, I came from London, where I served for 6 years. My husband served this country for 5 years. I have a son in Vietnam.

Mr. HUNGATE. You pay taxes to support the Army, but do they let you tell them how to run it?

Mrs. FARRELL. No, sir; and I don't elect the officials to run it, either.

Mr. HUNGATE. The officials aren't elected.

Mrs. FARRELL. The school board, and we as parents——

Mr. HUNGATE. I am talking about paying taxes to support the schools.

Mrs. FARRELL. That is right.

Mr. HUNGATE. I have no further questions, Mr. Chairman.

Chairman CELLER. Any more questions?

Thank you very much, Mrs. Farrell. We appreciate your coming and expressing your views.

Mrs. FARRELL. Thank you, sir. I appreciate it.

Mr. ZELENKO. Mr. Chairman, I ask to place in the record at this point the decision of the Eighth Circuit Court of Appeals in *United States* v. *Watson Chapel School District No. 24*, to which reference has been made.

Chairman CELLER. Without objection the decision will be placed in the record.

(The document referred to follows:)

UNITED STATES V. WATSON CHAPEL SCHOOL DISTRICT NO. 24
(Cite as 446 F.2d 933 (1971))

UNITED STATES OF AMERICA, APPELLEE, V. WATSON CHAPEL SCHOOL DISTRICT NO. 24 ET AL., APPELLANTS.

UNITED STATES OF AMERICA, APPELLEE, V. COTTON PLANT SCHOOL DISTRICT NO. 1 ET AL.,

In re John Norman Warnock, Appellant. Nos. 20699, 71-1175, 71-1180.

United States Court of Appeals, Eighth Circuit. Aug. 11, 1971

School desegregation case. The United States District Court for the Eastern District of Arkansas, Oren Harris, Chief Judge, entered judgment requiring school district to implement desegregation plan, found members of the school board guilty of civil contempt and found the attorney for the school district guilty of civil contempt. Appeals were taken by the school board, its members and the attorney and the appeals were consolidated. The Court of Appeals, Lay,

Circuit Judge, held that where none of plans submitted by local school board achieved unitary school system and local board made no effort to cooperate or to aid in solutions and desegregation plan submitted by Department of Health, Education and Welfare would achieve unitary system, trial court properly ordered adoption of the Department's desegregation plan.

Judgment in desegregation case affirmed and remanded; appeals in contempt cases dismissed as moot.

1. SCHOOLS AND SCHOOL DISTRICTS

Where none of plans submitted by local school board achieved unitary school system and local board made no effort to cooperate or to aid in solutions and desegregation plan submitted by Department of Health, Education and Welfare would achieve unitary system, trial court properly ordered adoption of the Department's desegregation plan. Civil Rights Act of 1964, § 407, 42 U.S.C.A. § 2000c–6.

2. SCHOOLS AND SCHOOL DISTRICTS

"Freedom of choice" school desegregation plan was constitutionally impermissible. Civil Rights Act of 1964, § 407, 42 U.S.C.A. § 2000c–6.

3. SCHOOLS AND SCHOOL DISTRICTS

The United States district courts have equity power to require transportation whenever and wherever necessary to disestablish a dual school system. Civil Rights Act of 1964, § 407, 42 U.S.C.A. § 2000c–6.

4. SCHOOLS AND SCHOOL DISTRICTS

Where school district was already engaged in bussing over 1200 students at time district court adopted desegregation plan which called for bussing and bussing was necessary to achieve integration, district court properly included bussing as part of the desegregation plan. Civil Rights Act of 1964, § 407, 42 U.S.C.A. § 2000c–6.

5. CONTEMPT

Where school board members fully complied with district court's school desegregation order and purged themselves of any contempt citation and all sanctions were lifted, there was no justiciable controversy and members' appeal from contempt citation order was moot and would be dismissed for lack of jurisdiction.

6. CONTEMPT

Where contemnor certified that he had disengaged from any activity violative of or in encouraging violation of district court desegregation decree, there was no justiciable controversy and contemnor's appeal was moot.

7. CONTEMPT

Fact that district court conditioned contemnor's relief from order judging him in contempt on future compliance did not make validity of contempt order justiciable.

8. CONSTITUTIONAL LAW

The Court of Appeals is without power to render advisory opinion on abstract facts.

John Norman Warnock, Camden, Ark., and Clyde J. Watts, Oklahoma City, Okla., for appellants; Art Givens, Little Rock, Ark., of counsel.

W. H. Dillahunty, U.S. Atty., Little Rock, Ark., and Edward S. Christenbury, Atty., Dept. of Justice, Washington, D.C., David L. Norman, Acting Asst. Atty. Gen., Brian K. Landsberg, Joseph D. Rich, Attys., Dept. of Justice, Washington, D.C., for appellee.

Before LAY, HEANEY, and BRIGHT, Circuit Judges.

LAY, Circuit Judge.

These appeals, consolidated for argument, involve (1) the propriety of the district court's order in requiring Watson Chapel School District No. 24 to implement a H.E.W. plan for a unitary school system; (2) the district court's order finding members of the school district guilty of civil contempt in failing to comply with the judgment of the court requiring implementation of that plan; and (3) the district court's order finding the attorney for the school district guilty of civil contempt and barring the attorney from future conduct in derogation of the court's decree.

We find no merit in the objections to the district court's order requiring implementation of the H.E.W. plan. We affirm the judgment in No. 20,699 and remand the cause for continuing jursdiction of the district court. We find the appeal by the school board members from the court's finding of civil contempt moot and dismiss the appeal in No. 71-1175 for lack of jurisdiction. We likewise find the appeal by the board's attorney John Warnock, as to the judgment of civil contempt moot and similarly dismiss the appeal in No. 71-1180 for lack of jurisdiction.

The appeal in No. 20,699 arises from a single complaint filed by the United States to require seven school districts in the State of Arkansas to adopt a unitary school system. The complaint was filed July 8, 1970, by John N. Mitchell as Attorney General of the United States, pursuant to 42 U.S.C. § 2000c-6 of the Civil Rights Act of 1964. Attached was the Attorney General's affidavit that complaints had been received from parents of minor children within the district that equal protection of the laws was being denied these children.

The record shows that the Watson Chapel District (located on the outskirts of Pine Bluff, Arkansas) covers 125 square miles. Over 50 percent of the students attending school in the district live within the city limits of Pine Bluff. In 1969-70 the district operated six schools. These schools had a total enrollment of 3,871 students. There were two high schools and four elementary schools. The Coleman High School and the Coleman Elementary School operated with 1,640 students, all black. In the remaining schools there were 96 black students and 2,135 white pupils. In the Watson Chapel High School there were 972 whites and 41 Negroes; in Owen Elementary there were 593 whites and 36 black pupils; in Edgewood Elementary there were 495 whites and 19 blacks; in Sulphur Springs Elementary, a rural school, there were 75 whites and no blacks. The few black students living in that area were bussed to the Coleman schools. The faculty was for practical purposes completely segregated.

The district court assumed jurisdiction and ordered the parties to work out a satisfactory plan. Only July 24, 1970, the United States reported that the Watson Chapel School officials had failed to agree on a plan and that the representative of the Office of Education would submit a plan on or before July 31, 1970. This plan was filed. The plan came on for hearing before the district court on August 11. On that date the district court found that a dual school system was being operated in the Watson Chapel District and that the plan of the Department of Health, Education and Welfare (H.E.W.) would "completely desegregate the district, but that the school district should be given an opportunity to develop a plan of their own to meet constitutional requirements." This plan was ordered to be filed no later than August 26, 1970.

The school district thereafter filed alternative plans. The first plan was a long range projection to raise five million dollars to build sometime in the future a central junior and senior high school complex. The second plan was simply a modified continuation of the previously rejected "freedom of choice" plan. This plan left 98 percent of the white students in the formerly white schools and 98 percent of the black students in the formerly black schools. No assignment of faculty or staff members was proposed. The district court rejected both plans.

On September 14, 1970, the district court ordered the partial implementation of the H.E.W. plan and enjoined the school district from operating a racially discriminatory dual school in Watson Chapel. Although the school semester was already under way the district court granted the school board until October 15 to work out an alternate recommendation to the H.E.W. plan that would be less burdensome and more satisfactory. On October 15, 1970, the school district responded that "there is no constitutional requirement for race mixing" and entered another formal objection to the H.E.W. plan. The school district supplemented their previously rejected proposal only by a suggested additional zoning to include a "proposed" housing area to be included in the zone occupied by the all black schools. The United States responded that few whites would ever live in the new area. Thereafter on November 17, 1970, the district court in rejecting the school board's last illusory effort wrote:

"The school district has failed and refused to present a plan reasonably expected to comply with the law. The Court has no alternative at this late date but to require the school district to operate under a lawful system. The Court has considered the two plans recommended by the Department of Health, Education and Welfare, as well as other alternatives, and concludes that the alternate plan suggested by the Department of Health, Education and Welfare would offer a more reasonable and adequate solution to the school's needs and requirements for a unitary system as required by law."

The final alternative plan submitted by H.E.W. on October 2, and accepted by the district court, restructured the district into a unified system reflecting the following racial changes.

School	Grade	Student enrollment	
		White	Black
Watson Chapel	9-12	613	486
Coleman Elementary and High	5-8	710	617
Owen Elementary	1-4	399	351
Edgewood Elementary	1-4	327	267
Sulphur Springs Elementary	1-4	75	25

The district court fixed zone lines between the elementary schools. The court also required desegregation of faculty and other staff until "the ratio of Negro to white teachers in each school, and the ratio of other staff in each, are substantially the same as each such ratio is to the teachers and other staff, respectively, in the entire school system."

The complete plan included appropriate orders as to future school construction and site selection, reports and transportation to promote a nonracial school system. The school board filed notice of appeal on December 11, 1970.

On February 6, 1971, the district court entered an order finding the Board of Directors and Superintendent of Schools in civil contempt in wilfully failing to carry out the court's decree. The court allowed the board until February 11, 1971, to implement the plan or have sanction imposed. On February 11, 1971, the superintendent filed a report indicating substantial steps had been taken to implement the court's order of November 17, 1970. On the basis of this report the court entered an order on February 12 relieving the school board members and the superintendent of contempt penalties. However, at the same time the school board indicated that transportation facilities in the district had been temporarily suspended on the advice of counsel.

The court's order of November 17, 1970, had provided:

"The transportation system shall be completely reexamined regularly by the Superintendent, his staff and the school board. Bus routes and the assignment of students to buses will be designed to insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis."

The court clarified this order on February 18, 1971, by decreeing:

"It is Therefore Ordered that the Board of Directors of Watson Chapel School District No. 24 and the Superintendent of Schools reinstate the transportation facilities on a basis which will insure the transportation of all eligible pupils on a non-segregated and otherwise non-discriminatory basis. Transportation for eligible pupils at the Sulphur Springs Elementary School shall be reinstated immediately. The Superintendent of Schools is directed to collaborate with the Arkansas State Department of Education in order to redraw existing bus routes and develop procedures and policies to insure the transportation of all other eligible pupils on a non-segregated and otherwise non-discriminatory basis."

A motion to stay or dismiss the supplemental order was filed by the school district on February 26, 1971. On March 2, 1971, the district court in a comprehensive order denied this request. The district court concluded:

"It is established that the school district provided bus transportation for eligible students in the district prior to and up to the time of implementing the desegregation plan by order of the court. It is quite obvious that bus transportation was suspended as a result of the desegregation order and, therefore, based on racial considerations.

"While this Court does not assume jurisdiction of transportation facilities by bus in the operation of the Watson Chapel schools, unless based on racial considerations, jurisdiction of the transportation facilities by the Court was established in the Court's order entered November 17, 1970. This being a part of the Court's continuing jurisdiction and as included in the Court's order of February 18, 1971, sufficient time having elapsed since the implementation of the plan, transportation for eligible students should be continued by the school district. The Court concludes that the order reestablishing bus transportation for eligible students who desire it is not only appropriate but desirable."

As indicated, appropriate appeals were filed from the court's order implementing the H.E.W. plan, and the findings of civil contempt of the board members and the school board attorney, John Warnock. We shall consider their contentions seriatim.

No. 20,699

[1] There can be little question as to the propriety of the district court's action in ordering the adoption of the H.E.W. plan. Complaint is made that local control of schools is being divested by Washington officials, that "freedom of choice" as adopted by the school is the only constitutional plan, that the school attendance is based solely on de facto housing patterns and that busing is per se unconstitutional. These complaints conveniently ignore the history of this case.

The district court was required under a constitutional mandate to order a unitary school system in the district. The school system as it was being operated was clearly impermissible in that it did not present any effective plan of integration. Judge Harris' ultimate decree requiring implementation of the H.E.W. plan patiently and painstakingly was rendered after giving the school district at least three distinct opportunities to study and submit a workable plan of its own. In all practicality there was complete defiance of the court's request and the only effort made was to offer illusory proposals which admittedly continued the school district's dual system where schools were easily identifiable as "black" or "white" schools.

This court has studied the final H.E.W. plan submitted to Judge Harris. We find it to be a thorough study and balances equitable considerations of the respective parties. It may not be the most complete or workable solution. However, the district court has now approved the plan and is satisfied that it will achieve a unitary school system. The school board has made no effort whatsoever to cooperate or to aid in solutions.

[2] There is no merit to the argument that the school locations and pupil assignments are patterned on solely a de facto basis. See Haney v. County Board of Education of Sevier County, Arkansas, 410 F. 2d 920 (8 Cir. 1969). As to the constitutionality of the freedom of choice plan operated in the school district, the record demonstrates that in 1969–70 94 percent of black students remained in all black schools. The district court properly ruled this plan impermissible. See Raney v. Board of Education of Gould School Dist., 391 U.S. 443, 88 S. Ct. 1697, 20 L. Ed. 2d 727 (1968); Green v. County School Board, 391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968); Kemp v. Beasley, 423 F. 2d 851 (8 Cir. 1970).

[3, 4] The district court based its jurisdiction to require a transportation system on the fact that the school district was already engaged in busing over 1,200 students. The record indicates that these students were mostly white students, since the great majority of blacks lived close enough to the Coleman complex so as not to require busing.[1] The decisions of Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 91 S. Ct. 1267, 28 L. Ed. 2d 554 (1971), and McDaniel v. Barresi, 402, U.S. 39, 91 S. Ct. 1287, 28 L. Ed. 2d 582 (1971), fully demonstrate the district court's equity power to require transportation whenever and wherever necessary to disestablish a dual school system. As stated in the *Swann* case the record here supports "[t]he importance of bus transportation as a normal and accepted tool of educational policy." 91 S. Ct. at 1282.

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[1] The record shows 98 percent of the colored people live within a two mile area of the previously all black Coleman School. The district operated in 1969–70 with 14 buses. Twelve Hundred Sixty students were bused according to district records in that school year: 48 were black, 1,212 were white students. Thus 33 percent were being transported. The principal of the school board testified the H.E.W. plan would double the requirements of busing. A. T. Miller, a program officer for the United States Office of Education in directing the H.E.W. plan observed that the plan would require, "the rerouting of present busses and if there were to be an increase it would be very slight. However, in our studying it we did not see that there would be a great increase as far as the number of buses to be used. No increase at all in that matter but just a slight extension of the bus run." The court was informed at oral argument two new school buses were acquired last spring in order to fully implement the new transportation schedule."

The district court in its opinion of March 2, 1971, observed:

"In its order of November 17, 1970, the Court considered the available facilities, the location of the facilities and how they could be utilized in the operation of an integrated system in a manner to comport with constitutional standards. To achieve this objective, there can only be one high school and one school facility such as the Coleman Schools for grades five through eight. The three available lower elementary schools appropriate to this district's operation is best suited for zone areas for each such elementary school.

"The school board, even though it has the responsibility to propose in good faith an acceptable plan, has failed to submit or offer a program that would be reasonable or acceptable with any hopes of disestablishing the traditional dual system of its schools. These uncontradicted facts illustrate that the method of operation of the schools as required by the Court's order does not lend itself to the question of racial balance. This is further demonstrated by the fact that the Sulphur Springs Elementary School's racial makeup is 75% white and 25% black. In the other two elementary schools the racial complexion is substantially different. The contention of the defendant is wholly unacceptable."

We conclude that the district court's order requiring an integrated school plan in all respects should be affirmed.

No. 71-1175

The district court's order of November 17, 1970, required the school board "[b]eginning no later than the commencement of the second semester of the 1970-71 school year * * * (to) assign students in accordance with the alternate recommendation of the Department of Health, Education and Welfare submitted on October 2, 1970 * * *."

No action was taken to effect this plan or to comply with the court's order. The second semester commenced January 18, 1971. On January 20, the United States sought an application for sanctions against each member of the board and the superintendent due to the segregated basis of operations. The matter came for hearing on February 5, 1971. The district court found a knowing and willful failure of the board and superintendent to implement its order of November 17, 1970. The court found each of the members and the superintendent in civil contempt and ordered them to file a sworn affidavit by February 11 stating their intention to comply or not to comply to implement that order; on failure of any member to do so the court ordered their individual incarceration in the custody of the United States Attorney General and a fine of $350 per day until the remainder of the school year.

On February 11, 1971, appropriate affidavits were filed and a detailed statement implementing the court's order was attached. Notwithstanding the board's refusal to adopt a transportation system,[2] the court found compliance with its previous contempt order and on February 12 relieved the parties of any penalties. An appeal was filed from the court's order of February 6, 1971, as to the original imposition of sanctions ordered.

[5] We find the matter not reviewable since the issues are moot. There has been full compliance with the court's order. The record shows the parties have purged themselves of any contempt citation, and the sanctions have been lifted. Under these circumstances there is no justifiable controversy pending before this court and the appeal must be dismissed for lack of jurisdiction. See St. Pierre v. United States, 319 U.S. 41, 63 S.Ct. 910, 87 L.Ed. 1199 (1943); F.T.C. v. Stroiman, 428 F.2d 808 (8 Cir. 1970); Murrell v. United States, 253 F.2d 267 (5 Cir. 1958), cert. denied, 358 U.S. 841, 79 S.Ct. 65, 3 L.Ed.2d 76. Cf. Guerrero v. Capitol Fed. Savings & Loan Ass'n., 197 Kan. 18, 415 P.2d 257 (1966).

No. 71-1180

On March 29, 1971, the district court ordered a writ of attachment against John N. Warnock, attorney for the school board, to show cause why he should not be held in civil contempt.[3] This order arose because of Warnock's "making public speeches, TV appearances, arranging mass meetings in defiance of the court's orders and continuing to urge resistance and defiance of the court's orders by patrons of the Watson Chapel School District and others."

The district court thereafter conducted a plenary hearing and found that Warnock had "knowingly, willfully and wantonly obstructed the implementation" of the court's orders requiring a unitary school assignment plan for Watson Chapel.

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[2] This was later clarified and required to be fully implemented in the court's March 2 order, supra.

[3] Due to our ultimate holding of lack of jurisdiction we make no observation as to the propriety of treating attorney Warnock's citation as one for civil contempt as contrasted to criminal contempt.

The court found that Warnock had:

"[E]ncouraged patrons of Watson Chapel School Board No. 24 to send their children to schools other than those to which the children have been assigned pursuant to the order of this Court of November 17, 1970.

"[O]bstructed the orderly operation of schools after entry of the February 6, 1971 order of this Court by aiding and participating in actions by the defendant school board president calculated to threaten not to pay faculty and staff members of the school district in accordance with state law.

"[A]dvised and encouraged the defendant school board to suspend all transportation facilities prior to implementation of the court-ordered desegregation plan with the effect of frustrating and obstructing the orderly operation of the public schools in compliance with this Court's orders.

"[A]ppeared at mass meetings and made public statements to the mass media with the purpose and effect of encouraging mass disobedience to orders of this Court, and in so doing has impugned the honor and integrity of the Court."

The court then found Warnock guilty of civil contempt and ordered that unless Warnock certify on the same day "that he will refrain from taking actions which obstruct the orderly implementation of this Court's orders and that he will make no further public statements, including statements to the mass media, which are intended to, or have the effect of, encouraging disobedience with lawful orders of this Court" that sanctions would be applied. The sanctions included a fine of $500 on that date, $350 each day thereafter and incarceration until such time as full compliance, for the remainder of the school year.

On that date, April 2, 1971, Warnock filed a certificate agreeing to obey the court's order of February 5 and to refrain from the prohibited activities so long as he was counsel for the Watson Chapel School District.

Appeal was then filed as to the order finding Warnock in contempt. On April 6 the court determined Warnock's certificate to be in compliance with the terms of its order. The court relieved Warnock of the penalties imposed and stated that he will "be relieved so long as he takes no action contrary to the court's orders."

On appeal the appellant, Warnock, raises several legal issues, inter alia, that the order prohibiting "public statements" was too broad and violative of his freedom of speech.

[6] We likewise find this appeal moot. There exists no sanction en force to force to present a justifiable controversy for appellate review. In re Eskay, 122 F.2d 819 (3 Cir. 1941). The contemnor has seen fit to certify that he has disengaged from any activity violative of or in encouraging violation of the court decree. By purging himself of the contempt, nothing remains.

"As to the distinctions existing see the excellent summary of the governing principles of law in Mechanic v. Gruensfelder, 461 S.W.2d 298 (St. Louis, Mo. Ct.App. 1970).

[7, 8] The fact that the court conditions the relief on future compliance does not make the issue justifiable. Cf. F. T.C. v. Stroiman, supra. Compliance is intended for all court orders until set aside by a higher court. The breadth of the court order can only be tested by actual facts. We only add that it requires little imagination and understanding to comprehend the full intent of the court's order as it specifically relates to defiance of the court's degree calling for a unitary school system in Watson Chapel School District. If the defendant is cited for future violation of that order the facts and procedure surrounding any future order can be subject to appellate review at that time. Cf. St. Pierre v. United States, 319 U.S. 41, 43, 63 S.Ct. 910, 87 L.Ed. 1199 (1943). To render an appellate decision at this time would be to give an advisory opinion on abstract facts. This, we have no power to do.

The appeal in 71-1180 is dismissed as moot.

In summary, the judgment in No. 20,699 is affirmed and the case remanded to the continuing jurisdiction of the district court; the appeals in No. 71-1175 and No. 71-1180 are ordered dismissed as moot.

Chairman CELLER. Our next witness is Dr. Frank E. Jones, of the Social Action Committee of Christians and Jews, of Nashville, Tenn.

STATEMENT OF DR. FRANK JONES, SOCIAL ACTION COMMITTEE OF CHRISTIANS AND JEWS, NASHVILLE, TENN.

Mr. JONES. Thank you, Mr. Chairman and members of the committee. I speak on behalf of the Social Action Committee of Christians and Jews, a coalition of the social action groups of 18 churches and synagogues in Nashville, Tenn. Our organization is involved in several areas of social concern in our city, but in the past year our efforts have been concentrated on the problems of school desegregation.

I have come to express our total opposition to any legislation which would destroy the unitary school system which we have achieved and return us to the old system of racial segregation in our public schools. The constitutional amendment proposed in House Joint Resolution 620 would do precisely that.

This resolution, called by its proponents the "antibusing amendment," would go much further than simply preventing the use of transportation to achieve racial balance in our schools, but would effectively prevent significant racial desegregation in our schools until racial segregation in housing patterns is eliminated, an event which will take many years to happen, if it occurs at all.

The inconvenience of traveling greater distances to school is significant, but compared to the ill effects on our children and our Nation of maintaining public school systems segregated by race and socioeconomic class, it assumes less importance.

The inconvenience of busing is at its greatest in the first years. In the past, schools were built in the center of racially identifiable areas in hopes of maintaining de facto segregation. This fact makes longer rides to school necessary for many children.

As new schools are built to serve adjacent neighborhoods of different racial composition, shorter bus rides will be necessary. With planning geared to promoting, rather than preventing, racial integration, we can have our cake and eat it, too—"neighborhood schools" which are racially integrated.

In the first years of operation of school systems integrated mainly by increased use of transportation, there are rarely enough buses to do the job adequately. As transportation facilities are expanded, staggered school opening hours, overcrowded buses, and other inconveniences will diminish. If we can live with these discomforts through the difficult initial phase, we will certainly be rewarded by better educational opportunities for all our children.

Nashville, Tenn., is a southern city which is doing just that. We have made the painful first steps, we are living with the inconvenience, and we are being rewarded with the emergence of a unitary school system of which we can be proud.

Prior to the Federal court decision of August 1971, ordering the Metropolitan Nashville Public School System to adopt a unitary school system, our public schools were largely segregated racially. Of our 23 senior and junior-senior high schools, only six had a reasonably appropriate racial mix.

Although our black pupils constituted 21 percent of the total, 15 of our high schools had a black pupil population of 6.5 percent or less. Three high schools had almost all black student populations. The racial composition of the enrollment in the elementary and junior high schools related directly to the high school centers that they fed.

Therefore, 17 years after the Supreme Court ruled that racial segregation in public schools was unconstitutional, the vast majority of public schools in Nashville were easily identifiable as "black schools" or "white schools."

As has been found to be the case in other times and places, "separate but equal" is impossible to attain. According to the building and school improvement study, commissioned by the Nashville Metropolitan School Board and director in 1970, the predominantly black schools' physical plants were inferior to a significant degree to those of the white schools.

The inferiority of the physical plants is only a symptom of the status of the schools in various parts of our metropolitan area. Parents in affluent suburban areas demand and get better public school facilities for their children than do the less politically powerful citizens of the rural areas and inner city.

In addition to the disparity in physical facilities is the cultural deprivation which is the result of class and racial isolation. Children learn from other children. Disadvantaged children who can associate only with other disadvantaged children cannot hope to achieve at the same level as more fortunate students. Ghetto children are not the only losers in this situation. Children in the affluent suburbs can learn much from association with children of different cultural backgrounds.

It is clear that before our schools opened in the fall of 1971, Nashville operated a public school system which was to a great extent racially segregated, with all the undesirable factors inherent in such a system.

In 1970, before the court order, about one-third of our approximately 100,000 schoolchildren rode buses to school. In 1971, after the unitary school system was adopted, about one-half of our children rode buses to school. Although the percent increase in bus riders was not great, our bus fleet was not adequate to meet the new needs.

Lack of positive leadership by our local officials made the transition more difficult than it need have been. In addition to public statements denouncing the change, officials refused to come up with funds to improve transportation facilities or to request outside help in this area.

The result was staggered school opening hours, from 7 a.m. to 10 a.m., overcrowded buses, and frequent bus breakdowns due to inadequate maintenance. These added annoyances alienated many parents and children who otherwise would have accepted the transition to a unitary system gracefully, if reluctantly.

The Social Action Committee of Christians and Jews, realizing the hardship that late school opening hours made on families in which both parents work, applied for ESAP funds to establish "before school" centers to care for children of working mothers between 6:30 a.m. and the time the school bus arrived at about 9:30 a.m. These funds were denied, as were most ESAP projects in our community.

This fact suggests that certain politicians were not interested in easing the stresses that busing causes in the initial stages, but rather wanted to make the transition as unpalatable as possible to the public.

The generous contributions of money and volunteers from the churches and synagogues in our city have allowed us to carry out this project on a more limited scale than that initially proposed.

Notwithstanding the difficulties involved, the unitary school system has been beneficial for the citizens of Nashville. Even before the first child stepped into a school last fall, the salutary effects of the court order were apparent. Mr. Delbert Nowell, assistant superintendent for business services of the Metropolitan Nashville public school system, was quoted in the Nashville Tennessean as saying: ". . . So, when the judge ruled that many of these suburban children would have to be bused to inner city schools, the parents of these bused children demanded that these inner city schools be improved . . ."

He is quoted further: ". . . These inner city schools need more work to bring them up to par with the suburban schools . . . Additional painting crews were sent to these schools, and there was a strong effort to clean these buildings up. The walls and desks were sanded and cleaned. Plumbing facilities were put in these schools and water coolers were placed in many schools."

Mr. Nowell is a realistic man, and he simply stated the facts. The conclusions are inescapable. Before 1971, black schools were inferior to white schools. After desegregation, an effort was made to bring all schools up to at least an acceptable level. This change is a tangible benefit to our community.

Intangible benefits are less subject to proof, but are of greater importance. On transfer to integrated schools, some disadvantaged children, especially those in the lower grades, were exposed to ideas and attitudes which were new to them. Many of these new experiences will be of incalculable value to them as they develop.

In spite of the failure of most local officials to offer positive moral leadership, the majority of citizens of our community have accepted the transition from segregated to integrated schools very calmly. In many instances, the schoolchildren themselves became the moral leaders and set a fine example for their parents and other adults to follow.

I know of a number of instances in which parents enrolled children in private segregated schools, only to have the children refuse to leave the public school.

Students were often outspoken in their opinions of the politicians and press. I quote from a letter to the Nashville Tennessean, March 8, 1972, by Miss Sharon Forgy, a high school junior:

> * * * You love to take up front page space with stories on fist fights, and how you were barred from the building. But you aren't very excited about giving space on the students who get along well. Why not take pictures and do a story on blacks and whites working side by side in labs or eating lunch together at McGavock, and other metro schools as well? * * *

When a school boycott, early in the year, began to fizzle out for lack of support, extremists picketed and tried physically to prevent parents from taking their children to public schools, but parents took their children to these integrated public schools in spite of interference. Parents and children in some school areas also picketed with signs—welcoming signs. In these areas, each new child was given a gift of a new pencil and a warm welcome to his new school, in his new, extended "neighborhood," no longer bound by geography.

After the initial turmoil of sudden change subsided, schoolchildren settled down to work together quite well. I would like to quote a letter to the Nashville Tennessean, October 28, 1971, by Miss Donna Boyington, a student at Pearl High School, which was 100-percent black before it was integrated in 1971:

> I am a student at Pearl High School, formerly of Glencliff High, and I would like to inform the public, especially those students and parents harboring false beliefs about this school, as to what it is really like.
>
> What we students being bused to Pearl High expected as we entered those doors for the first time on the morning of September 7th, we didn't know. What we found was a warm welcome from our fellow students.
>
> We found Pearl to be composed of friendliness and great people, in addition to being a good place to get an education * * *

Further in the letter, she describes the ways in which Pearl differs from other schools she has attended:

> . . . These ways include having an inadequate library in comparison, an undersized cafeteria, and such subjects as journalism, general business, bookkeeping, shorthand, sociology, and psychology being offered for the first time. Pearl may not be the greatest but we're working on it.

We are very proud of our young people. Blacks and whites are working together on class projects, school athletics, school newspapers, and other intra- and extracurricular activities. These boys and girls are learning from one another. They are not only learning the immediate subject matter, but they are gaining better understanding of one another which can only come through frequent and prolonged exposure.

This better understanding of the other man's culture and feelings and strengths and weaknesses is the stuff real democracy is made of.

The unitary school system has also brought black and white parents together in PTA meetings and projects and other school-related activities. This cannot help but improve communication and understanding between groups in our community.

In summary, Nashville, Tenn., had, prior to the Federal court decision ordering a unitary school system through the use of busing, a racially segregated public school system in which predominantly black schools were inferior to the predominantly white schools. Since adoption of the unitary school system, gross inequities in educational opportunity have been diminished, and we have had opportunities for black and white children and their parents to work together and learn from one another.

Passage of the resolution you have before you would prevent racial desegregation in Nashville by any means available, since pairing, clustering, sectoring, and other plans, as well as busing, require assignment on the basis of race. It would completely destroy our unitary system and return us to the old system of racially segregated schools and unequal educational opportunities.

We urge you to reject this undemocratic resolution.

Chairman CELLER. Any questions?

Mr. McCULLOCH. I would like to ask a question.

How old are you, Doctor?

Mr. JONES. Thirty-seven.

Mr. McCULLOCH. Are you married?

Mr. JONES. Yes, sir.

Mr. McCULLOCH. Do you have any children?

Mr. JONES. Yes; I have four.

Mr. McCulloch. Are they in school?

Mr. Jones. Three are in public schools and one is too young.

Mr. McCulloch. I have no further questions, Mr. Chairman.

Chairman Celler. Thank you very much, Doctor; we appreciate your contribution.

Our last witness this morning is Prof. Gary Orfield, of Princeton University.

STATEMENT OF GARY ORFIELD, ASSISTANT PROFESSOR OF POLITICS AND PUBLIC AFFAIRS, PRINCETON UNIVERSITY

Mr. Orfield. Mr. Chairman and members of the committee, my name is Gary Orfield, assistant professor of politics and public affairs at Princeton University, and I am currently a visiting scholar at Brookings Institution.

The busing controversy is only the latest version of a perennial American tragedy. The title has been changed and some of the scenery is different, but most of the leading actors remain the same. The simple truth is that most active opponents of busing have opposed each major step of racial progress. It is no accident that the leader of this is George Wallace, who a few years ago stood in the schoolhouse door to prevent racial integration.

The tragedy is that, once again, leading political figures are exploiting emotionally charged slogans to obscure serious human needs and turn back the drive toward racial justice.

This committee has heard a good deal of testimony on the educational importance and symbolic significance of the busing issue. If we are to have fully integrated school systems in large urban centers, substantial busing will obviously be essential. The 1970 census shows that we have made no discernible progress against housing segregation.

The choice we face is between new methods of assigning students to schools and acceptance of vast and growing educational segregation in our cities. Segregated education is inherently unequal and seriously damages children. Any serious effort to diminish the intense racial separation of our metropolitan areas must include a school integration plan.

Rather than take the committee's time retracing arguments that have already been ably made by earlier witnesses, I will concentrate on three points which have received less attention:

First of all, I will try to lend some historical perspective to the discussion, suggesting how forced busing fits in with a long procession of now discarded rhetorical devices used to exploit fears of racial change and obscure the abandonment of national ideals.

Second, I will analyze the support for the busing discharge petition in the House and show that the great majority of men who signed it have been consistent opponents of human rights who now readily join yet another movement to limit the constitutional guarantee of equal protection of the laws for black Americans.

Finally, I will discuss the significance of this amendment for the development of desegregation law.

Americans have always specialized in circumlocutions about race, especially when they are ashamed of what they are doing. Prof. Charles Miller has outlined the history of euphemisms used to obscure racial injustice in our constitutional law in a recent article on the Supreme Court. Even before the Constitutional Convention, he reports, southern opposition led Thomas Jefferson to omit a protest against the slave trade from the Declaration of Independence, leaving the "all men are created equal" phrase qualified by an implicit "white."

In the Constitution itself, slavery is described by such indirect usages as "such persons as any of the States now existing shall think proper to admit" or, in determining seats in the House, "three-fifths of all other persons."

In defending a document that accepted slavery, permitted another generation of slave importation, and denied citizenship to blacks, Madison spoke in the "Federalist Papers" of "an unhappy species of population abounding in some of the States."

Later, Chief Justice Marshall delicately described slaves as "property of this description," covering the peculiar institution with the patina of one of the most positive words in the lexicon of a free enterprise society.

From the very beginning, and to this present day, our history abounds with satisfying verbalisms which have disguised the moral dilemmas raised by discrimination in a society officially committed to equal opportunty. Time after time, the substance of a severe racial problem has been lost in a tide of words defending States rights or attacking Federal bureaucrats.

Although the post-Civil War amendments wrote forceful assertions of equality before the law for all Americans into the Constitution, almost a century passed before the Supreme Court began to give real force to the promise of the Reconstruction amendments.

From the 1870's until the 1950's, the Court had reduced the amendments to virtual meaninglessness. For decades, the Court held that the 14th amendment was not really intended to infringe on local discrimination but to protect corporations from regulation by State governments.

The "separate but equal" formulation, which prevailed until 1954, was a classic example of white leaders closing their eyes to political and social reality and covering their betrayal of black Americans with a veneer of egalitarian language.

The Supreme Court broke the encrusted tradition of segregation by euphemism with the powerful and eloquent words of the 1954 *Brown* decision. That decision laid down three fundamental principles that most Americans accept and which foreshadowed what has happened since in the development of constitutional law:

First, the Court held that legally segregated schools were "inherently unequal" and that they created a sense of inferiority among black children "that may affect their hearts and minds in a way unlikely ever to be undone."

Second, use of public authority to impose such inequality violated the Constitution.

Third, the courts, therefore, had an obligation to forge remedies to end such segregation.

The 1954 decision was the beginning of a great development of case law on school desegregation. The decision also stimulated the emergence of the civil rights movement and the effort on Capitol Hill which has now produced six major civil rights laws.

After the 1954 decision, defenders of segregation in schools and other fields campaigned hard, in the courts and in Congress, against serious change in the status quo. Each campaign of resistance was accompanied by slogans which attempted to make discrimination respectable.

In Congress, 101 Members signed a Southern Manifesto in 1956 implying that the Court's decision was illegal. Virginia solemnly "interposed its sovereignty" against the decision. States created innocent sounding "pupil placement boards" given enough vague powers to reject black students wishing to transfer to white schools to maintain segregation indefinitely.

Once desegregation really began, the rallying cry became "freedom of choice"—shorthand for a system which maintained separate black and white schools and put the entire burden of change on black families. Once that defense was struck down, southern leaders turned to the objectives of maintaining the "traditional neighborhood school" in States where there had never been neighborhood schools, but only racially separate systems.

As each successive slogan appeared in defense of the status quo, those who proclaimed it insisted that they were in favor of civil rights but that the next step was simply going too far. At each successive skirmish, however, the leaders of the opposition were much the same group that had led the earlier battles. Today, supporters of a constitutional amendment against busing assure us they support integrated schools and only oppose this latest requirement, the only requirement that makes possible integrated schools in certain areas.

In fact, most of the men who have signed the discharge petition have been consistent opponents of racial justice. It would be tragic if they were to win now.

The discharge petition is full of names of men who have made a career of voting against each successive move in the long battle for civil rights. Among the signers, for example, are 23 southern Congressmen who were in Congress in 1956. All but one of them signed the Southern Manifesto describing the *Brown* decision as a "clear abuse of judicial power" and promising to do everything possible to reverse it.

In 1964, while almost 70 percent of the House of Representatives supported the 1964 Civil Rights Act, the signers of this petition then in Congress voted overwhelmingly against it. These are political leaders who have not only opposed "forced busing" but were unwilling even to support the right of a black family to get a meal in a restaurant.

In looking at key civil rights votes over the past 4 years, I found that signers of the discharge petition had voted more than 7 to 1 against strong civil rights enforcement on a series of rollcalls.

Commentators accepting the argument that supporters of this constitutional amendment really favor racial justice will be hard pressed to explain the fact that they voted against the 1968 fair housing law by a margin of almost 5 to 1. Obviously, action against housing segregation is the only alternative to changing pupil assignments if schools are to be desegregated. Even the Virginia Legislature recognized this fact when it recently passed a fair housing law.

If these Congressmen really favor equal rights, why did they vote 102 to 14 on the key 1969 vote against extension of the Voting Rights Act? If they support opportunity for all, how is it that they voted by a 10 to 1 margin against giving the Equal Employment Opportunity Commission the kind of cease-and-desist powers that many similar State agencies possess?

Studying the list of signers, I could find only three Members who have voted consistently for strong civil rights enforcement. This is a small company and it has not been growing. In fact, at least one civil rights supporter has already scratched off his name.

The busing amendment is not a special case. Its supporters are not united by something special about school buses, but by a common record of hostility to racial change. A number of the supporters of the petition can't even claim constituency pressures, since only a tiny number of blacks live in their districts and there is almost no one to bus.

In the midst of the tension of an election year, we tend to forget how bitterly controversial each step forward has been, and also how well the change was accepted once the law was settled and the politicians calmed down. Just 8 years ago, the Senate saw the longest filibuster in its history over the issue of allowing black families into public accommodations.

Eight years from now, if we face our problems, it will seem equally strange that months of 1972 were absorbed in a squabble over the busing of a small fraction of our schoolchildren to realize one of the basic promises of our Constitution.

Busing is not the real issue in this battle and this amendment would do far more than prohibit long-distance busing. Much of the political momentum behind this amendment is based on a public belief that the courts are about to order large-scale busing across entire metropolitan areas forcing white kids to attend inferior ghetto schools where they might even confront physical threats and fights.

This is the first civil rights issue to have a direct impact on the lives of most middle-class white Americans and many are reacting with the same unreasoning fears that characterized the early Southern reaction to the *Brown* decision. I think it is important to review what the courts have actually ruled, and why, and then to examine the broad and destructive reach of Representative Lent's proposed amendment.

The courts have not acted against de facto segregation. In each case, even those in cities of the North and West, judges have ordered desegregation plans only after finding evidence of actions by local, State, and Federal public agencies which produced de jure segregation.

Evidence has shown that school boards have chosen building sites and drawn attendance zones to intensify segregation. Litigants have proved that the Federal Housing Administration and local urban renewal and public housing authorities have fostered segregated neighborhoods, and thus segregated neighborhood schools, through misuse of public authority. Given these violations of the Constitution, localities now have a clear obligation to desegregate.

The energies of the courts were long absorbed in getting the process of desegregation underway. Until after the passage of the 1964 Civil Rights Act, most southern school districts remained totally segregated. Only after the desegregation process began in earnest in the midsixties did the Court and HEW begin to spell out the final objective of the process, the creation of unified school systems without racially identifiable schools.

The South, the courts held, could not satisfy the constitutional requirement for equal school opportunity by any system which placed the burden of change on black children or left the dual school system largely intact. Public authorities who had the responsibility for creating and maintaining an unconstitutional system now had the responsibility of taking whatever actions were necessary to integrate it.

To repair the damage engendered by community identification of certain schools as black schools, and therefore inferior schools, officials were required to prepare desegregation plans which put both black teachers and black students in genuinely integrated schools.

Similar kinds of affirmative responsibilities to desegregate were emerging in other fields of civil rights enforcement as the Nation sought solutions to once intractable problems. Both President Johnson and President Nixon imposed affirmative action requirements against job discrimination by Government contractors. In the 1968 Fair Housing Law, Congress directed that all Federal urban development and housing programs be affirmatively administered to further the purpose of housing desegregation.

In voting rights, an even more drastic remedy was invoked. Deep South election officials were simply stripped of their power to use literacy tests and constitutional interpretation tests and forbidden to put into effect any new election laws without the approval of the Attorney General. The Justice Department was also authorized to take direct control of the local registration process where necessary. Affirmative action was essential for real change.

Last year, in the *Swann* case, the Supreme Court unanimously ruled that the affirmative duty of local school boards to desegregate included the use of busing necessary to disestablish a dual school system. The Court specifically held, however, that busing, particularly for young children, should not "risk either the health of the children or significantly impinge on the educational process." This is as far as the settled law reaches.

Much of the furor over busing does not relate to the settled law of the *Swann* decision at all, but to the public outcry stirred by decisions of Federal district judges in Richmond and Detroit. The Richmond case has produced an order for desegregation of the entire metropolitan area, but the order has been stayed by the Fourth Circuit Court of Appeals. The Detroit case still awaits decision.

Nowhere in the country is a metropolitan area actually desegregating under a metropolitan plan. The legal issues involved in these cases are novel and both cases are already under appeal. The Supreme Court, of course, has not yet spoken, and neither have the courts of appeals. The Supreme Court, in fact, has only recently accepted its first significant northern school case, that of the Denver school system.

It is a sign of hysteria that we are seriously talking about a constitutional amendment intended, in good measure, to reverse not a definitive ruling of our highest court, but tentative decisions of two district judges. Surely, at an absolute minimum, Congress owes the judiciary an opportunity to determine what the law is before it undertakes an alteration of our Constitution.

Close examination of the constitutional amendment supported by Congressman Norman Lent suggests the grave dangers to the whole desegregation process involved in writing an amendment aimed at busing. This amendment, by Mr. Lent's own admission in testimony before this subcommittee, would destroy the whole concept of affirmative action, rolling back the clock to 1966 when almost nine-tenths of southern black children remained in segregated schools.

It would guarantee the majority of black children who live in cities an indefinite future of segregated education. It would forbid even most voluntary action by local school authorities against segregation. It would make the process of stabilizing housing integration immensely more difficult.

It would force black children in many cities to leave integrated schools to return to the old separate and unequal ghetto schools. It would be a very long step toward the grim future of spiraling racial division and growing racial hatred forecast by the President's Violence Commission.

All of the major racial changes of the past two decades have been difficult and controversial at first. Congress could play a positive role in this process and speak to the fears of white constituents. Congress could commission research and conduct hearings on the physical and educational consequences of busing.

The public deserves this information and the courts would surely be actively interested. The Supreme Court has indicated as much already. I am certain that the findings would be reassuring.

Congress could provide funds to upgrade facilities and programs and assure security in ghetto schools so that no parent feels his child is losing an opportunity for quality education. Congress could fund construction of new kinds of campus schools, drawing on several neighborhoods and offering specialized programs never before available in the city.

Passage of the long-delayed emergency school assistance bill would be a major step in this direction if the Senate version would be adopted.

Reversing decades of spreading urban school segregation is extremely difficult. Since such segregation is largely the product of unconstitutional discrimination, however, we must either remedy it or abandon basic promises of our fundamental law. The time has come to vote this amendment down and face the real task of helping communities end the scandal of inequality. Once again this committee can be a bulwark for racial justice at a turning point in our history.

Chairman CELLER. Thank you, Professor Orfield. Any questions?

Mr. ZELENKO. I have one, Mr. Chairman.

Professor, do you see any lessons from the history of post-Reconstruction efforts to undo civil rights protections that might be helpful to this subcommittee in dealing with the issue of pupil assignment legislation today?

Mr. ORFIELD. I am not certain I understand your question. But I think the period at the end of Reconstruction when there was dismantlement of constitutional protections that had been adopted in a series of amendments and several pieces of legislation indicates there is nothing about civil rights progress that is necessarily solid, and that this whole process is vulnerable to reversal. Passage of a constitutional amendment on an issue of this sort might be a signal to the entire country and to the judges who hear these cases that indeed the country had turned around and they must fall in line again in this new direction of constitutional law.

There is no telling how this amendment would be read by courts in individual decisions. Even relatively clear-cut phrases in the Constitution have been subjected to such widely varying opinions and have been in effect nullified for decades in our history by judicial interpretation, that I think putting an openly antiblack section in the Constitution forbidding localities, even where they wish to, to undertake programs designed to produce equal educational opportunity in safely integrated schools, would be a disastrous signal of national failure. We could have consequences that we can only begin to imagine at this point.

Chairman **CELLER**. Are there any further questions?

Mr. **MCCLORY**. I don't think there is anything very revealing about the statistics comparing those who voted against the Voting Rights Act and other Civil Rights Acts and those who signed the discharge petition.

The thing that I think is striking—and your examination must have revealed it—is the number of civil rights liberals who are supporting the constitutional amendment in order to get at this subject of busing. That is the thing that has struck me as impressive, this change of attitude.

Mr. **ORFIELD**. That was one of the questions that led me to investigate the voting record of the men who signed the discharge petition. I found in the entire House of Representatives only three Members who had supported civil rights legislation consistently who had signed this petition.

Mr. **MCCLORY**. They may not be on the discharge petition, but some of them have been before this committee and some of them are expressing the view that one appears to take when he signs the discharge petition. It is perfectly clear to me that that is a development about which we should be concerned.

In giving your prepared statement, you interpolated an additional comment that "busing is the only requirement that can provide for desegregation." I don't think you mean that, that busing is the only way that we can desegregate.

Mr. **ORFIELD**. There are a good many other things we can do.

Mr. **MCCLORY**. There are all kinds of methods that are being used effectively; isn't that correct?

Mr. **ORFIELD**. There are a good many things that in some local circumstances will resolve problems of segregation without restorting to any significant amount of busing. But in the large cities of the country where most black children attend school, obviously you cannot have any general or long-range lasting stable integration without substantial busing.

Mr. **MCCLORY**. Let me ask this. What is happening, I am sure you understand, is that as the black ghetto schools are integrated, the whites are fleeing into private schools or to outlying suburban areas.

You can keep moving and you can keep busing, but is there not any limit on the distance to which we would bus in order to reach this ideal of integration that you might like to achieve?

Mr. ORFIELD. I think that there are several answers to your question. One is that right now our existing system creates a maximum incentive for rapid turnover of school systems from white school systems to black school systems, because almost nothing is done to stabilize integration. People know if the neighborhood undergoes racial change, the school board, public officials, and Federal agencies are going to do literally nothing to insure that that neighborhood will maintain a stable integrated school system.

I think there is urgent need for Federal-public policy or legislation from Congress to urge communities to evolve plans that would stabilize integration rather than this destructive——

Mr. McCLORY. Prevent them from moving? You don't want to prevent people from moving.

Mr. ORFIELD. Oh, no; but we could take many steps both to stabilize school integration and open suburban housing to blacks.

Mr. McCLORY. Then could you answer my question about the busing: Do you think there is any limit on the distance?

Mr. ORFIELD. Obvously, there is a limit that the Supreme Court itself has recognized; where it begins to interfere with the health and educational well-being of children, then courts will weigh that, as the Court has directed them to do.

I don't think in any cases that have been decided we are up against that limit. There are only a handful of school systems in the country that have the truly massive numbers of students that you tend to think of in the Washington and New York public school systems.

I think most of our desegregation problems even in metropolitan areas across the United States could be solved well within the limits of what is tolerable to children without seriously affecting them in any damaging way. I think that is one of the things in which Congress could help by providing research and information. Right now all we have is emotional slogans.

Mr. McCLORY. Shouldn't we provide some limit on time or distance by legislation?

Mr. ORFIELD. I think it would be a useful thing for Congress to commission leading educators, including leading southern educators, to do such research to find out whether there is anything to this claim that the students are educationally deprived. I don't believe that in the busing that goes on, say, in the Charlotte-Mecklenburg area, which is 35 minutes, or in the busing in rural areas in most States that goes up to an hour, infringes on the educational process. That has not been shown so far.

I am sure the courts would give a great deal of attention to any evidence produced by a respectable research project.

Mr. McCLORY. Is that about the limit, 35 minutes?

Mr. ORFIELD. No, I would say we have no information on this subject yet, except a lot of unfounded comments that have been made in public; and I think we should have information on it and I am sure the courts would respond on it.

I think Congress should first set about developing information, and I am sure there are many educators in the country who would be willing to undertake such research. It seems to me this would be a reasonable thing to make people realize we are taking their complaints seriously and we are going to get the best data we can find on these questions.

My suspicion is that nothing the courts have ordered to this date would seriously infringe on the educational process or physical well-being of children.

Mr. McClory. You think no legislation would calm their fears?

Mr. Orfield. I don't know. It seems to me that information is what is desperately needed. All we have are wild claims on both sides at this point, and it seems to me Congress could very well set in motion a process of gathering information and informing the public.

We have 40 percent of the children bused, and it would be easy to set up a research program and find out what does go on and compare those experiences with children who aren't bused. I think this would be very useful. I have seen no evidence of harm and much of better education from our massive rural and suburban busing programs.

Mr. McClory. Do you think some of the supporters of busing make wild claims too and that there is emotion on that side of the issue?

Mr. Orfield. The issue is very deeply embedded in emotion.

Mr. McClory. Did you get a little bit steamed up on this yourself?

Mr. Orfield. Obviously, Congressman. I think this question is going to help determine whether or not we are going to become two separate and unequal societies in the United States, and it seems to me that is a question that bears heavily on my future and my children and everyone I know.

Mr. McClory. Thank you.

Mr. McCulloch. Mr. Chairman. Mr. Orfield, wasn't it the basic conclusion of the National Advisory Commission on Civil Disorders that "our nation is moving toward two societies, one black, one white—separate and unequal?"

Mr. Orfield. Yes; it was. I am afraid we are moving in exactly that direction.

Mr. Zelenko. Why did you say the whole notion of neighborhood schools is a myth? How did you reach that conclusion?

Mr. Orfield. I said in the South it was a myth, because some cities never had neighborhood schools; they had a system of white schools that were based on a kind of neighborhood assignment pattern, and a separate system of black schools which were completely outside of that white neighborhood system. They had a dual school system, and during the transition period they would allow transfers between the two school systems, and then they justify and try to defend themselves against court orders for affirmative action, by claiming that these court orders violate the traditional neighborhood school system.

There is no such tradition in the great bulk of southern cities. There is a tradition of segregated schools and that is being replaced under court orders by unified school systems.

Chairman Celler. If there are no further questions, the Chair wishes to thank you, Professor, for a very interesting statement and a great deal of historical research. We are grateful to you.

Mr. Orfield. Thank you.

Chairman Celler. We will place in the record the following:

A statement of Hon. Roy A. Taylor, a U.S. Representative in Congress from the State of North Carolina.

A statement of Hon. Walter S. Baring, a U.S. Representative in Congress from the State of Nevada.

Letters dated February 28, 1972, to the Honorable Olin E. Teague—from the Honorable O. H. "Ike" Harris, member of the Texas State Senate—from the Honorable William O. Braecklein, member of the Texas House of Representatives—from Hon. John F. Boyle, Jr., a member of the Texas House of Representatives.

A letter to Hon. John Rarick from Mrs. John Peter Scott, Lake Charles, La., dated March 2, 1972.

A telegram to Hon. James D. McKevitt from Prof. George E. Bardwell, University of Denver, and 11 cosigners, dated March 6, 1972.

An editorial of WNBC–TV, 30 Rockefeller Plaza, New York, N.Y., dated March 6, 1972.

(The documents referred to follow:)

STATEMENT OF HON. ROY A. TAYLOR, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

I appreciate the opportunity of appearing before the Subcommittee No. 5 of the House Judiciary Committee in support of a bill I introduced, H.J. Res. 702, which provides for a Constitutional amendment stating, in effect, that no child shall be assigned to a particular school because of his race or color. The effect of this amendment if approved by Congress and ratified by three-fourths of the states, would be to treat all children alike on a color-blind basis.

I believe that the present system of massive busing of schoolchildren to achieve a racial balance should be stopped. I would prefer a statute passed quickly by Congress if such procedure could get results, but the courts have held that Congress does not have the power to override by a statute court decisions based on a Constitutional interpretation, as busing is.

The problem should be solved by the Supreme Court reversing its thinking and correcting the horrible mess that it has created, but we cannot depend on this action being taken.

Forced busing to achieve a racial balance only guarantees that classes will be racially mixed. There is no assurance that the quality of education will be improved. The objective in this country should be to provide good schools in each community, providing quality education for all children and permitting children to attend the school closest to their home or the school of their choice. The neighborhood school has been and is an essential segment of our education system.

As a safeguard, I would support legislation prohibiting states and counties from spending more money per child in one area than in another area.

Massive busing as ordered by the federal courts in Charlotte, North Carolina and in Richmond, Virginia, and as ordered frequently by the Department of HEW is burdensome to the students, a source of worry to the parents, and is destructive to quality education. It penalizes both black and white and both schoolchildren and their parents.

Segregation was wrong because it denied parents the freedom of sending their children to the school of their choice. Busing is equally wrong because it denies the parents the freedom of sending their children to the school of their choice.

A decision in this matter should not be delayed any longer. We should face the issue and take effective action this year.

STATEMENT OF HON. WALTER S. BARING, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. Chairman and Members of the Judiciary Subcommittee, I appreciate the opportunity to enter my remarks today regarding House Joint Resolution 620, and similar proposed amendments to the Constitution.

I signed the House Joint Resolution, and I hope for its affirmative consideration by this Subcommittee.

I am against forced busing and assignment of our public school students to meet ordered desegregation demands upon our public school system.

I believe that if the children of our residents live close to a school the children should not be made to go clear across town to another school to satisfy desegregation demands. The children should be permitted, and the parents of those children permitted, to allow the public school students to attend the school in their nearby neighborhood in the city their parents have chosen to live.

Mr. Chairman, the American people today, yesterday and, based on housing projections, I must assume tomorrow, will be continuing to purchase their homes in our cities with many various reasons in mind. But, the strongest reason that I can see for them to buy a home in a certain location is due to their desire to be near a public school which their children can attend.

My opposition to forced busing and assignment to schools of our children is also based on the fact that the parents of the children are the taxpayers. As taxpayers, and based on the many numbers of parents with whom I have talked in my State, the parents are definitely not in agreement with the various Federal court orders in the various states regarding desegregation and busing. I have spoken with black and white parents and parents of several minority groups in my State.

The parents tell me that they are already supporting the local school system in which their children are enrolled in their city and local neighborhood to such a point where they do not feel that they can handle added tax burdens that would likely result with an order to bus students to desegregate the schools.

They have stated that they are against the probability that, if busing of their children is ordered, then they as taxpayers will have to pay extra for the cost of new buses, drivers and the maintenance of the buses.

The cost for new buses is a problem of major proportion and I just do not feel the courts, or those people who are demanding integration by any means, have taken the time to fully study these costs. Wholesale prices for new school buses range from $5,000 to $7,000 and upward, I understand.

This point has been brought to my attention by many Nevada residents.

A point I personally feel must be emphasized is that our school buses are not safe. "Bedlam on wheels," I have heard them called without monitors, besides the drivers, who can or will discipline.

Safety belts for the children are non-existent. With such "bedlam," I ask how can and how will those drivers be able to manage to maneuver a bulky, bad handling bus through our already heavily congested streets of commuter traffic in cities of any size while thirty to forty youngsters have the free run of the bus?

What about the bus drivers? Who will pay for their training, work hours and headaches? We see many women and men driving buses and, under the circumstances related above, it is amazing that they can do the job they do. We have often read of school bus accidents with injuries and deaths to children. How many more would there be with all those additional buses that apparently would be needed to satisfy integration demands by bussing?

Most of the school bus accidents I have read about were caused, reports say, by mechanical failure of the bus or by another errant motorist not obeying the law.

It certainly appears to me, and many others, that if forced bussing to meet integration demands upon our public school system, is the end result, then we will have another major transportation industry or firm on our hands to regulate even further and at more expense to the taxpayers.

How would maintenance of the buses be handled and paid for? Most of us, I am sure, have found that to just get our own automobiles repaired it is quite often on an appointment basis due to so many auto service repair centers saying that they just cannot find enough competent auto mechanics today.

Auto mechanics is a course that is not very popular in our schools today. We will train the mechanics, if they can be found, needed for the buses and who will probably end up paying a large part of their training? The taxpayer, I fear, in the final analysis due to increased taxes to pay for school bussing to reach integration demands.

Also, what kind of engines will these buses have to help curb the smog? Very expensive engines.

Where will these fleets of buses be parked when not in service? School property grounds are at a premium in many states, including my own.

The parents of American children are very worried and so am I.

Equally as important to the parents, they are not in sympathy with so-called bussing plans by courts or school districts that are pending in many states which will necessitate that their children ride long distances out of their own neighborhood for lengthy periods of time to go to a school several miles away and in a vicinity of the metropolitan area which is completely foreign to the children.

Mr. Chairman, bussing to meet the desegregation demands, does not at all seem to me to be the American way of life of freedom of choice for any of our nation's residents. Forcing the parents and the children to accept such a dictate goes against the grain of the U.S. Constitution, in my opinion and in the opinion, I will add, of by far the majority of parents with whom I have spoken on this bussing issue in my State.

While I hope for affirmative action on this House Joint Resolution, an anti-busing amendment; I further believe that Congress should make the demand that equal educational opportunities should be afforded each child, no matter what color, race or creed, just as the U.S. Constitution means it.

To achieve equal education opportunities for all, I believe, and I feel that the majority of Americans feel, that the Federal share of funding for education of our children should be increased for elementary and secondary education for the purpose of trying, as best we can, to provide our public school systems with the tools and chance to further equal education goals for all students. Busing is not a good or an equitable tool and gambling with the lives of our children and their futures by busing is not a chance we can risk.

Instead of the limited $3.2 billion requested in the fiscal year 1973 budget from the Administration for elementary and secondary education, we should work to increase that amount by a good $5 billion in this coming fiscal year education appropriation bill and, at the same time, reduce the American foreign aid assistance give-away payments by an equal amount. There is at least $12 billion in the annual and the various foreign aid assistance budget requests coming before Congress which could be marked for education of U.S. chidlren.

That $5 billion would about triple the amount spent for these children, all children, today.

There are other areas of the budget which might just as easily be cut for education purposes but foreign aid is definitely one budget due, overdue I think, for a good trimming.

I see no reason and I believe it is preposterous for the United States, at the expense of its own children and at the expense of other pressing domestic needs, to continue to pay for much of the rest of the world's problems. We seem to continuously find that little benefit accrues for the United States by shoving out the cash for so many other countries.

In summation, first, let us halt busing proposals by adopting this House Joint Resolution against busing. Secondly, let us set about the job of insuring quality and equal education for our children by increasing that budget as a starter.

THE SENATE OF THE STATE OF TEXAS,
Dallas, Tex., February 28, 1972.

Hon. OLIN E. TEAGUE,
Member of Congress,
Washington, D.C.

DEAR CONGRESSMAN TEAGUE: I support any legislation or Constitutional amendments that would prohibit the Government busing of school children.

I am of the opinion that it will not in any way help to increase the quality of education nor is it the proper way to achieve any sort of racial balance.

I am very pleased to see that you are supporting this type of legislation.

Sincerely,

O. H. "IKE" HARRIS.

STATE OF TEXAS,
HOUSE OF REPRESENTATIVES,
Austin, February 28, 1972.

Hon. OLIN E. TEAGUE,
Member of Congress,
Washington, D.C.

DEAR OLIN: I am unalterably opposed to the forced busing of school children for the purpose of achieving racial balance. Anything that you can do in your capacity as Representative to help continue the concept of neighborhood schools will be greatly appreciated.

Sincerely,

WILLIAM O. BRAECKLEIN.

THE STATE OF TEXAS,
HOUSE OF REPRESENTATIVES,
Austin, Tex., February 23, 1972.

Re: Hearings before Judiciary Committee on Bills relative to Forced Busing of School Children.

Hon. OLIN E. TEAGUE,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN TEAGUE: Thank you for your letter of February 18, 1972, informing me of the March 1st hearing on various bills dealing with the forced busing of school children.

The constituents in my district are quite concerned and alarmed about the impact that forced busing solely for the purpose of achieving racial balance is having on our system of public education.

Although I believe any amendment to our United States Constitution should be weighed heavily and carefully and avoided if at all possible it does not appear that legislation passed by Congress or a State Legislature will be of any avail. Therefore I support a Constitutional amendment that will state in substance the following:

"No public school student shall, because of his race, creed or color, be assigned or required to attend a particular school."

I am sending a copy of this letter to Congressmen Collins, Cabell, Purcell and Wright to inform them of the view on this subject of a Dallas County State Representative.

If I can assist in this extremely important subject, please let me know. Thank you.

Yours very truly,

JOHN F. BOYLE, Jr.

MARCH 2, 1972.

Representative JOHN RARICK,
House of Representatives,
Washington, D.C.

DEAR REP. RARICK: Enclosed please find the signatures of some 6000 persons of Calcasieu Parish, Louisiana. These signatures were had to help support you, and others like you, in your fight against one of the greatest injustices in our land today . . . the busing of innocent children, of all colors, merely to achieve a racial quota. Never before, in the history of our great nation had we heard a court publicly state, "The good of the child is secondary."

The "equal protection of the law" clause of our Constitution is the only mention of "equality" contained in that document. It presupposes that inequality naturally flows from freedom itself and which makes such "protection" appropriate. There is no provision in the Constitution which provides for the socialistic leveling of all persons to one degree of mediocrity.

Our government is so interested in Ecology . . . what of Human Ecology. The little children who are transported like cattle merely to satisfy the whims of judicial activists and crusading bureaucrats. Parents are expected to send their children to schools far from home where in some instances, the children's lives have been endangered. Certainly, the politicians have heard of the stabbings, rapes, and fights that have stemmed from this nonsense.

The experimental programs being introduced into our schools under the Title III funds have robbed our children of ever being able to really attain their full potential. The bureaucrats have decided that academic excellence should be done away with and the schools should rather be used for social reforms. Facts and knowledge are unimportant, there are no rights and there are no wrongs, no one fails . . . and no one really succeeds. God is outlawed from our classrooms, but Humanism (which has been defined as a God-less religion) is allowed to penetrate every classroom in America.

If this is allowed to continue, what will happen to our great nation?

We thank God for men like you, Mr. Rarick, and our prayers are with you in the hope that sanity will one day prevail once again in our beloved country.

God bless you.

Sincerely,

MRS. JOHN PETER SCOTT, *Chairman,*
People Who Care,
Lake Charles, La.

[Telegram]

MARCH 6, 1972.

Hon. JAMES D. MCKEVITT,
House of Representatives,
Washington, D.C.

DEAR MR. MCKEVITT: This telegram respectfully asks for your opposition to legislation which would restrict our courts in tailoring individual plans for each community to desegregate public schools, including the use of buses.

We take this position not because we like busing but rather because there is no realistic way to achieve desegregation without it.

Within the past 3 years the segregated condition of Denver's public schools has been subjected to a comprehensive and searching examination by the courts. The impact of this segregation on the lives of Anglo, black, and Hispano children is depressing and cries out for rectification. The evidence of this damage in the *Denver* case was provided by several of the Nation's leading educational experts.

There are a number of aspects of the Denver situation of which we feel you should be aware:

1. Measured by HEW standards, segregation of elementary schools in 1971 in Denver is comparable to that in the 12 most segregated Southern States.

2. Quality education cannot exist in the presence of segregation. Evidence that desegregation substantially reduces the educational disadvantage of minority children is extensive, convincing, and nationwide. There is a long list of studies conforming this conclusion in the 1966 racial isolation report of the U.S. Civil Rights Commission. In Denver we have had precious little time to evaluate the effects of the small amount of desegregation ordered by the courts. Lines of communication, however, have already been opened between segment of the community which will have lasting effect. To curtail these beginning efforts now would truly invite disillusionment and close off the opportunity for further improvement.

3. Compensatory educational programs are ineffective in a segregated educational environment. Courts, including our own, have concluded that desegregation—combined with intensive compensatory programs is essential for quality education. Busing is merely a necessary first step in accomplishing these objectives.

4. Full implementation of the court orders on busing in Denver, if upheld by the Supreme Court, would affect only about one in five elementary students and require less than 1 percent of the yearly school budget. The average one-way bus trip would be less than 7 miles.

Busing has become a symbol of sincerity and the willingness of society to repair the injury to its minority children. The future of our educational progress may well depend upon how we address ourselves to the challenge of busing. The facts speak for themselves and we urge you to let the courts interpret the meaning of these facts without political intervention.

It is our desire to enter this communication in the record of the House Judiciary Committee in its hearings on busing.

Respectfully yours,

GEORGE E. BARDWELL, Ph. D., *University of Denver, Professor,*
Colorado Civil Rights Commission.
Denver Commission on Community Relations.
Denver League of Women Voters.
Colorado Federation of Teachers.
Denver Federation of Teachers.
Colorado Labor Council (AFL–CIO).
Black Educators United.
Denver Metro Council NAACP all branches.
East Denver Ministerial Alliance.
National Association of Social Workers,
Northern Colorado Chapter.
Greater Park Hill Association.

[Editorial of WNBC-TV, New York, N.Y., Mar. 6, 1972]

BUSING

When Representative Norman F. Lent of Nassau was asked whether his proposed constitutional amendment against busing school children was racist, he replied that it could not be. He said he took the language for his amendment from the civil rights law and from the 1954 Supreme Court decision which struck down the nation's dual school system.

The decision and the law called for an end to segregation on the basis of color, but at the same time decreed that youngsters could not be assigned to schools on the basis of color.

Father Theodore Hesburgh, Chairman of the Federal Civil Rights Commission, opposes the amendment. He said it would undermine what progress we have made in race relations. We agree with Father Hesburgh.

Busing, of course, is not the sole answer. It is an expediency only—in some areas badly needed; in many others sadly unwise.

But until we see and hear opponents of busing taking up the cudgels to battle with the same intensity for open housing to break down patterns of segregation, we will have to believe that anti-busing constitutional amendments are racist.

Chairman CELLER. The hearing is adjourned and will resume on Wednesday at 10 o'clock.

(Whereupon, at 12:25 p.m., the hearing adjourned, to reconvene at 10 a.m., Wednesday, March 15, 1972.)

SCHOOL BUSING

WEDNESDAY, MARCH 15, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler presiding.

Present: Representatives Celler, Brooks, Hungate, Mikva, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman Celler. The committee will come to order.

The Chair wishes to read a statement.

On February 10, the committee requested data from the Department of Health, Education, and Welfare on desegregation and pupil transportation. The subcommittee requested information on the growth of pupil enrollment and transportation in each State, and information which would show the amount of increase or decrease in pupil transportation which could be attributed to school desegregation.

The subcommittee also requested that the Department furnish specific pupil busing information for those school districts which are implementing desegregation plans.

The Department was also asked to furnish the number and percent of pupils being transported, the average time spent in transit, the average distance traveled by students, and the number and percent of majority students, and the number and percent of minority students, transported pursuant to desegregation plans in the 100 largest school districts.

The subcommittee has now received information from the Department of HEW setting forth such pupil enrollment and transportation data as the Department has been able to compile.

This information does not indicate the number and percent of students transported according to their race, nor does it show the average time spent in transit or the average distance traveled.

The Department advises that it does not maintain such information.

Furthermore, the subcommittee is advised that the Department does not have available transportation data on school districts prior to the 1970–71 school year.

Despite these shortcomings, this information on pupil enrollment, school desegregation, and pupil busing should enable the members better to evaluate the consequences of pupil busing to achieve school desegregation.

The relevant correspondence and statistical information supplied by the Department of HEW will be placed in the record at this point.

(The information referred to follows:)

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., February 10, 1972.

Hon. ELLIOT L. RICHARDSON,
Secretary, Department of Health, Education ,and Welfare,
Washington, D.C.

DEAR MR. SECRETARY: I am writing with further reference to forthcoming hearings to be held before this Committee on proposed amendments to the Constitution and other legislative proposals respecting the transportation and assignment of public school pupils.

It would be helpful to members of the Committee in evaluating the proposals before them if the Department of Health, Education, and Welfare would furnish the data on school desegregation and pupil transportation identified in the enclosure to this letter. It would also be helpful if the Department would identify any information as requested herein that is unavailable.

Should any questions arise in connection with these data, the staff may wish to contact Benjamin L. Zelenko, General Counsel to the Committee, telephone: 225-3926.

Sincerely yours,

EMANUEL CELLER, *Chairman.*

DESEGREGATION AND PUPIL TRANSPORTATION STATISTICS

Table I—Growth of school attendance and pupil transportation in the United States.

This table should display for the academic years 1953–54 through the present (1) the total public school student enrollment; (2) total number of pupils transported; (3) percentage of total enrolled students transported; (4) total non-public school student enrollment; (5) total number of non-public school students transported, and (6) percentage of non-public school students transported.

Table II—State-by-State transportation data for the academic years 1953–54 and 1966–67 through the present.

This table should provide for each State (1) the average daily pupil attendance; (2) the number of public school pupils transported: (3) the percentage of such pupils transported, and (4) the per cent of annual expenditures for pupil transportation. The information may be provided in four groupings: (a) Southeastern States; (b) Western and Southwestern States; (c) Great Lakes-Plains States, and (d) North Atlantic States.

Table III—Statistics on 76 largest school districts (indicate the percentage of total student enrollment represented by these 76 districts).

This table should provide: A. The number of public school students enrolled in academic years 1966–67 through the present. Total amount and percentage of minority students enrolled and number and percentage of black pupils attending schools which are: (1) 0 to 49.9 per cent minority; (2) 80 to 100 per cent minority, and (3) 100 per cent minority.

B. Pupil transportation data (as requested in Table II) for each of the 76 districts listed.

Table IV—Pupil transportation data in school districts implementing desegregation plans

This table should identify those school districts out of the 76 largest districts which are implementing desegregation plans. In each of the districts so identified the table should indicate—

(a) The number and per cent of pupils transported pursuant to a desegregation plan.

(b) The amount of increase or decrease in pupil transportation which can be attributed to desegregation in the selected districts.

(c) The average time spent in transit and average distance travelled by students transported pursuant to a desegregation plan.

(d) The number and per cent of minority students transported pursuant to a desegregation plan. Indicate the number and per cent of majority students transported pursuant to a desegregation plan.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 7, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Secretary Richardson has asked the Office for Civil Rights to furnish the Committee with available pupil enrollment and transportation data as requested in your letter of February 10.

This information is provided herewith in three attachments which correspond roughly to the four separate tables set forth in your enclosure. An explanation sheet is provided with each attachment.

Although most of the information requested is available and has been furnished, some of it is not. In particular, with respect to Table IV of your enclosure, the Office for Civil Rights does not have available transportation data on a district by district basis prior to the 1970–71 school year. In addition, we do not maintain information which would indicate the average time spent in transit and average distance travelled by public school students transported, either on a district by district basis or on a State-wide basis. However, it is possible that State education agencies or other State agencies maintain information of this kind.

Furthermore, Office for Civil Rights data does not break down the number of pupils transported by race.

For the 1970–71 and 1971–72 school years, we have provided data on the number of students transported for the 100 largest school districts, on the basis of survey returns processed to date. As indicated, 23 of these districts underwent new student desegregation in the 1971–72 year, according to our knowledge. We would caution, however, that although desegregation may have influenced the transportation trend in these cases, it is also possible that other factors may have had a bearing, such as changes in total enrollment and in the educational programs offered in the districts.

The Office for Civil Rights is currently completing the processing of survey returns to derive transportation data on the remainder of the 100 largest districts and, when completed, this data will be forwarded to the Committee. In addition, we are also able to obtain similar transportation data from the completed survey returns of other districts around the country, should the Committee request such additional information.

Sincerely yours,

J. STANLEY POTTINGER,
Director, Office for Civil Rights.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 13, 1972.

Mr. BENJAMIN L. ZELENKO,
General Counsel, Committee on the Judiciary,
Washington, D.C.

DEAR MR. ZELENKO: In response to your request, I am transmitting herewith fifteen (15) copies of pupil enrollment and transportation data. This will supplement material already made available, and is based on the Chairman's written request of February 10.

Attachment C (labeled as Tables III/IV A and B) has been revised, as noted, to include data for districts not yet processed when these tables were initially brought to you on March 7. Thus, data on the number of pupils transported for the 1970–71 and 1971–82 school years is provided for 88 of the 100 largest districts. Inasmuch as only 93 of the 100 largest districts were surveyed last fall, data for five districts is still lacking.

Although Charlotte-Mecklenburg, North Carolina, implemented a court-ordered desegregation plan in 1970–71, we are advised that some student assignment changes occurred at the start of the 1971–72 school year and on this basis the district is marked with an asterisk. You will find on Table III/IV A that desegregation figures for the district altered between the 1970–71 and the 1971–72 school years.

Except for a few cases, transportation data appearing on Table III/IV B was derived from the OCR survey of individual school districts. For the school years 1970–71 and 1971–72, each school campus of a surveyed school district was requested to provide the number of students transported to the school at public expense. This question formed part of OCR's regular annual survey of school enrollment. In a few cases, OCR staff telephoned the school district in order to secure the data or verify the returns.

With respect to your request for integration and transportation data covering more than 100 additional districts that underwent student desegregation in 1971–72, I have discussed this with OCR's planning and evaluation staff. To complete such a task would require a minimum of three weeks. Based on this time projection, I don't know whether the additional data would still be of help to the Committee and therefore please let me know your thinking on the matter as soon as possible.

Sincerely yours,

W. H. VAN DEN TOORN,
Assistant to the Director, Office for Civil Rights.

Attachments (15)

EXPLANATION—ATTACHMENT A

Attachment A comprises two tables in reply to the Committee's first request (National Pupil Enrollment and Transportation Data; National Public School Transportation Data, 1929–30 through 1967–68).

The Office of Education does not have available national data indicating the number of public school pupils transported and the percentage of those transported based on average daily attendance for the 1968–69, 1969–70, 1970–71 school years. Therefore, national data derived from the special informal OCR survey is provided in the first table for these years where possible. In addition, data for the 1967–68 school year is also derived from the OCR survey. For State totals covering the 1967–68, 1968–69, 1969–70, and 1970–71 school years, see Attachment B.

Inasmuch as the Office of Education has computed the percentage of public school pupils transported on the basis of average daily attendance and not of total enrollment since the 1953–1954 school year, this methodology was also used by OCR in its special, informal survey and represents available HEW information.

Also enclosed with Attachment A is a table showing national transportation figures on a yearly basis since the 1929–30 school year, furnished by the Office of Education.

NATIONAL PUPIL ENROLLMENT AND TRANSPORTATION DATA

	Public-school pupil enrollment total (in thousands)	Average daily attendance, total	Public-school pupils transported, total	Percent public-school pupil transported (based on average daily attendance)	Non-public-school pupil enrollment total (estimate) (in thousands)	Non-public-school pupils transported, total (for States reporting)
School year:						
1953–54[1]	28,100	25,643,871	8,411,719	32.8	4,200	42,278
1954–55[1]	29,549	---	---	---	4,400	---
1955–56[1]	30,680	27,740,149	9,695,819	35.0	4,600	145,963
1956–57[1]	31,719	---	---	---	4,900	---
1957–58[1]	32,951	29,722,275	10,861,689	36.5	5,100	104,095
1958–59[1]	34,081	---	---	---	5,400	---
1959–60[1]	35,182	32,477,440	12,225,142	37.6	5,600	128,715
1960–61[1]	36,281	---	---	---	5,900	---
1961–62[1]	37,464	34,682,340	13,222,667	38.1	5,900	155,378
1962–63[1]	38,749	---	---	---	6,100	---
1963–64[1]	40,187	37,405,058	14,475,778	38.7	6,300	179,108
1964–65[1]	41,416	---	---	---	6,300	---
1965–66[1]	42,173	39,154,497	15,536,567	39.7	6,300	417,154

See footnotes at end of table, p. 751.

NATIONAL PUPIL ENROLLMENT AND TRANSPORTATION DATA

	Public-school pupil enrollment total (in thousands)	Average daily attendance, total	Public-school pupils transported, total	Percent public-school pupil transported (based on average daily attendance)	Non-public-school pupil enrollment total (estimate) (in thousands)	Non-public-school pupils transported, total (for States reporting)
School year:						
1966-67 [1]	43,039				6,200	
1967-68 [2]	43,891	41,625,502	17,152,847	41.2	6,000	548,416
1968-69 [1]	44,944				5,800	
1969-70 [2]	45,619	43,773,489	18,396,372	42.0	5,600	
1970-71 [1]	45,904	[3] 42,495,346			5,500	
1971-72 [1]	[4] 45,900				[4] 5,300	

[1] Data furnished by Office of Education.

[2] Data indicating average daily attendance, number of public school pupils transported, and percentage of public school pupils transported (based on average daily attendance) furnished through special, informal Office for Civil Rights survey conducted January-February 1972. Since several States were unable to furnish data for the 1968-69, 1970-71 and 1971-72 school years, national totals for these years cannot be compiled.

[3] Estimated.

[4] Projected.

NATIONAL PUBLIC SCHOOL TRANSPORTATION DATA—1929-30 TO 1967-68

TABLE 46.—NUMBER AND PERCENT OF PUBLIC SCHOOL PUPILS TRANSPORTED AT PUBLIC EXPENSE, AND CURRENT EXPENDITURES FOR TRANSPORTATION: UNITED STATES, 1929-30 TO 1967-68

School year	Total enrollment	Pupils transported at public expense		Expenditure of public funds	
		Number	Percent of total enrollment	Total, excluding capital outlay (in thousands)	Average cost per pupil transported
(1)	(2)	(3)	(4)	(5)	(6)
1929-30	25,678,015	1,902,826	7.4	$54,823	$28.81
1931-32	26,275,441	2,419,173	9.2	53,078	24.01
1933-34	26,434,193	2,794,724	10.6	53,908	19.29
1935-36	26,367,098	3,220,638	12.3	62,653	19.27
1937-38	25,975,108	3,769,242	14.5	75,637	20.07
1939-40	25,433,542	4,144,161	16.3	83,283	20.10
1941-42	24,562,681	4,503,081	18.3	92,922	20.64
1943-44	23,266,616	4,512,412	19.4	107,754	23.68
1945-46	23,299,941	5,056,966	21.7	129,756	25.66
1947-48	23,944,532	5,854,041	24.4	176,265	30.11
1949-50	25,111,427	6,947,384	27.7	214,504	30.83
1951-52	26,562,664	7,639,130	29.0	288,277	34.93
1953-54	[1] 25,643,871	[1] 8,411,719	32.8	307,437	[1] 36.55
1955-56	[1] 27,740,149	[1] 9,695,819	35.0	353,972	[1] 36.51
1957-58	[1] 29,722,275	[1] 10,861,689	36.5	416,491	[1] 38.34
1959-60	[1] 32,477,440	[1] 12,225,142	37.6	486,338	[1] 39.78
1961-62	[1] 34,682,340	[1] 13,222,667	38.1	576,361	[1] 43.59
1963-64	[1] 37,405,538	[1] 14,475,778	38.7	673,845	[1] 46.55
1965-66	[1] 39,154,457	[1] 15,536,567	39.7	787,358	[1] 50.68
1967-68	[1] 40,827,965	[1] 17,130,873	42.0	981,006	[1] 57.27

[1] Pupils in average daily attendance.

Source: U.S. Department of Health, Education and Welfare, Office of Education, Statistics of State School Systems, and unpublished data.

EXPLANATION—ATTACHMENT B

This attachment comprises tables showing state-by-state average daily attendance and transportation data requested by the Committee for the school years 1953–54 through 1967–68. These tables were furnished by the Office of Education, and also convey additional related information not specifically requested.

Also attached are two tables from the Office of Education indicating state-by-state *projected* average daily attendance for the 1969–70 and 1970–71 school years.

Finally, four tables are provided indicating the state-by-state results of the special, informal OCR survey conducted January-February 1972. Figures were obtained by contacting State education agencies which, in most cases, did not have figures for the 1971–72 school year. In addition, as indicated, some states lacked data for some of the previous schools years covered in the survey.

SCHOOL YEAR 1953-54

TABLE 18.—ENROLLMENT, ATTENDANCE, AND MEMBERSHIP IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE: 1953-54

Region and State (1)	Enrollment (2)	Average daily attendance (3)	Aggregate days attendance (thousands) (4)	Average daily membership (5)	Aggregate days membership (thousands) (6)	Average length of term (in days) (col. 4 ÷ col. 3) (7)	Average number of days attended per pupil enrolled (col. 4 ÷ col. 2) (8)	Percent of pupils enrolled attending daily (col. 3 ÷ col. 2) (9)	Percent of average daily membership attending daily (col. 3 ÷ col. 5) (10)
Continental United States	28,836,052	25,643,871	4,581,240			178.6	158.9	88.9	
Northeast	6,281,139	5,531,550	1,005,892			181.8	160.1	88.1	
Connecticut	348,700	312,517	56,452	338,559	61,037	180.6	161.9	89.6	92.3
Maine	169,364	154,877	28,183			182.0	166.4	91.4	
Massachusetts	710,551	636,137	112,670	686,855	124,294	177.1	158.6	89.5	92.6
New Hampshire	82,778	74,204	13,081	79,107	13,943	176.3	158.0	89.6	93.8
New Jersey	793,782	700,970	126,622	760,921	137,422	180.6	159.5	88.3	92.1
New York	2,302,815	1,959,094	361,526			184.5	157.0	85.1	
Pennsylvania	1,698,688	1,538,941	279,946	1,642,631	298,894	181.9	164.8	90.6	93.7
Rhode Island	110,674	95,532	17,196	102,883	18,519	180.0	155.4	86.3	92.9
Vermont	63,787	59,278	10,211	64,520	11,164	172.3	160.1	92.9	91.9
North Central	8,135,312	7,247,397	1,302,021			179.[illegible]	160.0	89.1	
Illinois	1,363,260	1,201,861	223,924	1,274,386	237,226	186.3	164.3	88.2	94.3
Indiana	812,210	687,165	124,769	786,911	142,879	181.6	153.6	84.6	87.3
Iowa	522,954	463,872	83,325			179.6	159.3	88.7	
Kansas	407,343	356,405	61,088			171.4	150.0	87.5	
Michigan	1,240,730	1,150,433	207,078	1,224,006	220,321	180.0	166.9	92.7	94.0
Minnesota	552,123	501,870	87,167	534,059	92,939	173.7	157.9	90.9	94.0
Missouri	703,667	[illegible]9,187	110,145			183.8	156.5	85.2	
Nebraska	249,920	[illegible],908	39,623			176.2	158.5	90.0	
North Dakota	123,174	[1][illegible]0,228	[1]19,435	[1]112,654	[1]19,940	176.3	[1]159.9	[1]90.7	[1]97.8
Ohio	1,474,046	1,332,170	235,239	1,424,957	251,654	176.6	159.6	90.4	93.5
South Dakota	128,439	116,153	20,615			177.5	160.5	90.4	
Wisconsin	557,446	503,140	89,622			178.1	160.8	90.3	

South	10,279,268	9,020,505	1,594,921			176.8	155.2	87.8	
Alabama	703,647	615,686	108,328			175.9	154.0	87.5	
Arkansas	414,955	356,342	61,611	382,152	66,112	173.1	148.6	85.9	93.2
Delaware	57,205	51,003	9,064	53,770	9,704	177.7	158.4	89.2	94.9
Florida	628,477	541,400	97,474	575,197	103,535	180.0	155.1	86.1	94.1
Georgia	807,631	705,712	127,028			180.0	157.3	87.4	
Kentucky	591,568	511,395	88,028	560,960	96,493	172.1	148.8	86.4	91.2
Louisiana	552,491	488,643	87,672	528,845	94,838	179.4	158.7	88.4	92.4
Maryland	428,292	386,817	70,040	422,865	76,571	181.1	163.5	90.3	91.5
Mississippi	527,408	452,228	75,386			166.7	142.9	85.7	
North Carolina	968,066	874,165	157,350	932,728	167,891	180.0	162.5	90.3	93.7
Oklahoma	483,100	433,003	76,956			177.7	159.3	89.6	
South Carolina	539,437	456,650	82,043			179.7	152.1	84.7	
Tennessee	716,295	639,569	111,880			174.9	156.2	89.3	
Texas	1,604,293	1,383,927	243,969	1,485,552	262,653	175.5	152.1	86.6	93.6
Virginia	695,277	616,441	110,959	662,908	119,323	180.0	159.6	88.7	93.0
West Virginia	451,991	409,714	70,860	433,670	75,025	172.9	156.8	90.6	94.5
District of Columbia	109,135	91,810	16,213	100,312	17,716	176.6	148.6	84.1	91.5
West	4,140,333	3,844,419	678,406			176.5	163.9	92.9	
Arizona	197,535	163,302	27,839	174,337	28,736	170.5	140.9	82.7	93.7
California	2,139,806	[2] 2,109,469	372,863	2,174,700	384,393	176.8	174.3	[2] 98.6	[2] 97.0
Colorado	288,954	243,489	42,927	260,350	45,900	176.3	148.6	84.3	93.5
Idaho	136,376	122,910	21,141			172.0	155.0	90.1	
Montana	118,475	106,679	19,212	111,750	20,115	180.1	162.2	90.0	95.5
Nevada	43,608	35,640	6,280	37,337	6,579	176.2	144.0	81.7	95.5
New Mexico	173,268	144,935	26,088			180.0	150.6	83.6	
Oregon	312,564	270,954	48,957	289,615	53,329	180.7	156.6	86.7	93.6
Utah	183,164	166,794	29,036	177,175	30,828	174.1	158.5	91.1	94.1
Washington	478,312	424,361	74,156			174.7	155.0	88.7	
Wyoming	68,271	55,886	9,907			177.3	145.1	81.9	
Outlying parts of the United States:									
Alaska	27,676	20,436	3,516	21,637	3,768	172.0	127.0	73.8	94.4
Canal Zone	11,887	10,144	1,769	10,649	1,851	174.4	148.8	85.3	95.3
Guam	10,205	9,791	1,723			176.0	168.8	95.9	
Hawaii		103,188	18,368	109,023	19,406	178.0			94.6
Puerto Rico	505,151	451,433	86,224	482,974	92,248	191.0	170.7	89.4	93.5

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[1] Excludes kindergarten.

[2] Because attendance in California includes excused absences and enrollment is not cumulative, the relationship between attendance and enrollment is not strictly comparable with that in other States.

TABLE 21.—SELECTED DATA ON THE PUPIL-TRANSPORTATION AND SCHOOL-LUNCH PROGRAMS, BY STATE: 1953-54

Region and State	Pupil transportation										School-lunch program	
	Number of pupils[1] transported at public expense			Number of pupils for whom subsistence was paid in lieu of transportation	Number of school bus accidents in which children were killed or fatally injured	Number of pupils deaths resulting from school bus accidents	Total vehicles in use		Average cost per pupil transported (public only)	Transportation expenditure as percent of current expenditure for elementary and secondary schools	Average number of pupils served lunch per day	Total number of school plants operating a program for 6 months or more
	Public-school pupils		Nonpublic school pupils transported									
	Number transported	Percent of total					Publicly owned	Privately owned				
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Continental United States	8,411,719	32.8	42,278	256,175	16	17	95,903	56,542	$36.55	4.5	8,841,297	53,643
Northeast	1,396,518	25.2	15,806	34	8	9	6,139	15,463	44.53	3.5	1,397,012	8,255
Connecticut	106,143	34.0			1	2	124	1,226	37.24	4.3	73,297	439
Maine	70,816	45.7					380	890	37.70	8.6	53,533	580
Massachusetts[2]	131,491	20.7	12,617				31	1,550	42.02	2.9	396,292	1,970
New Hampshire	29,733	40.1	3,189				61	626	46.44	7.3	[3] 28,426	[3] 150
New Jersey	161,878	23.1			1	1	367	1,864	42.41	2.9	[3] 81,120	[3] 567
New York	350,000	17.9			4	4	3,840	3,000	63.44	3.1	400,000	2,627
Pennsylvania	499,716	32.5		[4] 31	2	2	1,143	5,392	35.56	3.9	325,000	1,375
Rhode Island	26,600	27.8					82	187	29.18	3.0	19,498	113
Vermont	20,141	34.0		3			111	728	52.10	7.2	19,846	434
North Central	2,140,803	29.5	9,839	242,824	1	1	31,356	22,951	47.04	5.0	2,389,979	16,522
Illinois	[5] 260,798	21.7	(5)	242,424			5,900	1,300	57.74	3.9	[6] 587,694	3,705
Indiana	301,010	43.8					[7] 3,247	2,908	39.17	6.1	223,852	1,172
Iowa	157,318	33.9					3,403	344	60.87	7.5	140,294	890
Kansas	76,635	21.5	983				2,715	5,973	71.90	5.9	96,165	918
Michigan	334,724	29.1	8,856				4,220	170	40.49	4.2	391,660	2,080
Minnesota	153,126	30.5			1	1	2,151	1,762	72.94	7.8	189,068	1,032
Missouri	211,218	35.3					2,060	2,049	37.86	5.7	[8] 220,000	2,200
Nebraska	[8] 16,000						540	205		3.2	50,991	443
North Dakota	20,520	18.6					148	473	75.46	5.4	34,286	788
Ohio	[9] 458,000	34.4					5,674	1,313	28.93	3.9	[3] 326,094	[3] 1,631
South Dakota	20,000	17.2					250	1,178	63.20	4.0	21,000	260
Wisconsin	[9] 131,454	26.1		400			1,048	5,276	61.77	5.5	108,875	1,403

South	3,895,400	43.2	15,133	3,992	7	7	45,614	13,343	25.40	5.6	3,941,976	21,936
Alabama	311,723	50.6					[10] 3,986	405	19.05	6.4	255,279	1,416
Arkansas	179,328	50.3		197			2,755	387	25.62	9.3	162,059	940
Delaware	19,899	39.0		587			39	301	37.28	4.5	12,566	96
Florida	185,268	34.2		114			2,117	309	25.21	3.8	304,656	970
Georgia	336,205	47.6					2,480	1,636	28.40	7.6	[3] 301,105	[3] 1,420
Kentucky	252,189	49.3		300	1	1	1,789	1,289	22.40	7.2	[3] 168,949	[3] 1,238
Louisiana	246,581	50.5	15,133		1	1	[11] 999	2,775	38.86	8.0	347,463	1,426
Maryland	159,128	41.1		9	1	1	407	1,414	32.34	5.0	152,050	672
Mississippi	210,768	46.6					2,734	2,171	29.80	11.3	185,763	1,125
North Carolina	458,128	52.4					7,043		16.07	4.8	432,668	1,570
Oklahoma	135,716	31.3			1	1	3,127	312	32.53	4.6	146,986	1,728
South Carolina	230,865	50.6			2	2	3,344	58	17.83	5.1	213,142	1,371
Tennessee	276,177	43.2		217			2,256	1,063	26.28	6.8	[8] 280,000	[8] 2,000
Texas	361,383	26.0			1	1	7,885	488	34.49	3.6	561,367	3,089
Virginia	325,481	52.8		329			3,075	659	20.38	5.6	288,319	1,369
West Virginia	[8] 206,436	50.4		2,239			1,574	71	21.77	5.9	124,888	1,468
District of Columbia	[12] 125	.1					4	5	294.26	.1	4,716	38
West	978,998	25.5	1,500	9,325			12,794	4,785	46.59	3.7	1,112,330	6,930
Arizona	[8] 60,000	36.7					557	63	22.45	2.9	61,325	265
California	[8] 350,000	16.6					5,151	562	55.27	2.7	561,309	3,162
Colorado	59,714	24.5					1,185	882	47.67	4.1	61,301	496
Idaho	56,776	46.2		926			709	383	44.02	8.6	45,800	396
Montana	32,572	30.5		8,321			277	451	87.16	8.1	28,314	253
Nevada	7,615	21.4					146	154	45.09	3.3	6,733	40
New Mexico	[5] 41,369	28.5	(5)				69	1,040	69.82	7.5	38,000	271
Oregon	118,819	43.9	1,500				1,167	618	44.01	5.7	93,751	665
Utah	52,802	31.7					452	87	25.24	3.8	[8] 62,000	366
Washington	182,014	42.9					2,375	224	31.04	4.4	134,297	885
Wyoming	17,317	31.0		78			706	321	74.68	7.0	19,500	131
Outlying parts of the United States:												
Alaska	4,221	20.7					25	67	109.55	5.5	2,300	16
Canal Zone	3,556	35.1					96		4.78	.7	425	1
Guam	2,182	22.3	261				36		37.16	4.8		
Hawaii										.5	70,359	158
Puerto Rico	2,911	.6							30.63	.5	199,909	1,670

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[1] Number of pupils in average daily attendance.
[2] Transportation data relate to pupils transported over 1½ miles daily.
[3] Programs assisted by Federal school lunch aid only.
[4] Data for 1951–52.
[5] Nonpublic school pupils included with public school pupils.
[6] Includes pupils receiving milk only.
[7] Includes 1,310 buses where driver owns the chassis or body.
[8] Estimated.
[9] Total number transported.
[10] Includes 66 vehicles jointly owned.
[11] Includes 285 vehicles jointly owned.
[12] Transportation program operated for handicapped children only.

TABLE 32.—CURRENT EXPENDITURES FOR OTHER PUBLIC SCHOOL SERVICES AND COMMUNITY SERVICES, BY STATE: 1953-54

[In thousands of dollars]

Region and State	Other school services								Community services			
	Total expenditures for other school services	Attendance services	Health services (provided by schools)	Transportation services for public school pupils			Food services	Miscellaneous school services	Total expenditures for community services	Public libraries under local boards of education	Nonpublic schools	Other community services
				Total	Salaries	Other expenditures						
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Continental United States	573,785	10,044	58,269	307,437			146,571	51,464	25,378	1,439	3,554	20,386
Northeast	143,249	4,453	26,326	62,192			33,043	17,235	9,497	876	3,477	5,143
Connecticut	5,659	175	1,257	3,952	2,220	1,732	275					
Maine	3,540		62	2,670			808					
Massachusetts	18,901	(1)	2,588	5,525			5,696	5,092	341		341	
New Hampshire	2,069	(1)	257	1,381			262	169	339		339	
New Jersey	17,279	1,013	3,748	6,865	610	6,254	2,735	2,919				
New York	49,159	1,633	10,737	22,203			11,351	3,235	7,936		2,797	5,139
Pennsylvania	43,144	1,530	7,352	17,771	1,688	16,083	10,781	5,710	876	876		(2)
Rhode Island	1,914	92	260	776	192	584	705	81	3			3
Vermont	1,585	10	65	1,049	108	941	432	28	2			2
North Central	165,378	1,316	10,088	100,639			29,055	24,220	3,571	105		3,466
Illinois	31,339		3,208	15,059			5,303	7,769				
Indiana	18,919		553	[3] 11,792			3,039	3,535				
Iowa	13,857		863	9,576			2,186	1,232				
Kansas	9,796			5,510	1,438	4,072	1,768	2,517				
Michigan	20,755		1,116	13,554			2,311	3,774	1,877			1,877
Minnesota	14,104		1,063	11,170	2,506	8,664	1,306	566	910			910
Missouri	13,870	493	1,498	7,996	1,703	6,293	3,766	117				
Nebraska	2,705	56	253	1,862			100	435				
North Dakota	1,912		36	1,548			177	151				
Ohio	23,635	766	1,497	13,249			7,069	1,053	521	105		416
South Dakota	2,825			1,264			564	998				
Wisconsin	11,661			8,121	1,958	6,163	1,466	[4] 2,075	262			262

South	182,008	4,174	5,997	98,934			66,007	6,895	540	260	77	204
Alabama	10,821	276	68	5,937			4,392	148	15			15
Arkansas	6,453			4,535	1,898	2,697	1,739	119				
Delaware	1,892	27	239	742			557	327	5			5
Florida	9,114	204	306	4,671	2,675	1,996	3,901	32				
Georgia	16,788	629		9,550	7,241	2,309	4,316	2,294				
Kentucky	10,185	698	216	5,650			3,417	204				
Louisiana	19,949		294	9,582	8,743	839	9,825	249				
Maryland	10,368	555	400	5,146	528	4,618	4,261	7	60		60	
Mississippi	9,943			6,281	1,237	5,044	3,421	241				
North Carolina	11,726	([1])	782	7,364			3,579					
Oklahoma	6,074	125	150	4,415	2,086	2,329	1,384					
South Carolina	9,973			4,116			5,857					
Tennessee	12,039		148	7,258	2,687	4,572	4,541	92				
Texas	25,356	881	2,502	12,463	5,392	7,072	6,614	2,896	116			116
Virginia	12,983	346	466	6,632	2,251	4,381	5,451	94				
West Virginia	7,649	264	272	4,494	2,910	1,584	2,529	90	328	260		68
District of Columbia	687	169	153	37		37	223	105	17		17	
West	83,150	101	15,858	45,612			18,467	3,114	11,771	197		11,573
Arizona	3,274			1,347			1,928					
California	39,534	([4])	13,579	19,345			6,611		11,220			11,220
Colorado	5,600		498	2,846	1,001	1,845	1,650	606	393	39		353
Idaho	3,884		89	2,499	677	1,822	1,014	281				
Montana	3,666			2,839			332	494				
Nevada	559	7	78	343			131					
New Mexico	4,073	36	290	2,889			859					
Oregon	8,204		375	5,229	3,531	1,697	2,083	512				
Utah	3,103	46	142	1,333	643	689	1,505	78	158	158		
Washington	9,283		735	5,649	2,699	2,950	1,959	940				
Wyoming	1,970	12	72	1,293			390	203				
Outlying parts of the United States:												
Alaska	511			462			49					
Canal Zone	32		15	17					84			84
Guam	81			81	69	12			9		9	
Hawaii	1,431	44	328	127		127	837	95	7			7
Puerto Rico	8,458	208		89		89	8,079	83	1,864	91	12	1,762

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[1] Included with expenditures for administration in table 28.

[2] Included in col. 9.

[3] Data for 1952-53.

[4] Includes recreation and health services.

[5] Included in col. 4.

Note.—Because of rounding, detail may not add to totals.

SCHOOL YEAR 1955-56

TABLE 23.—AVERAGE DAILY ATTENDANCE IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE: 1870-71 TO 1965-66

[In thousands]

State or other area (1)	1870-71[1] (2)	1899-1900 (3)	1929-30 (4)	1949-50 (5)	1955-56 (6)	1959-60 (7)	1963-64 (8)	1965-66 (9)
United States[2]	4,545	10,633	21,265	22,284	27,740	32,477	37,405	39,154
Alabama	108	298	474	595	649	709	771	787
Alaska			(3)	(11)	(27)	38	51	55
Arizona		10	76	127	191	258	333	347
Arkansas	47	195	331	355	350	373	402	409
California[3]	64	197	909	1,624	2,360	3,155	3,867	4,206
Colorado	3	73	191	201	275	345	432	454
Connecticut	63	112	274	245	350	425	504	543
Delaware	13	25	36	41	57	73	91	99
District of Columbia	10	35	68	84	95	106	124	130
Florida	11	75	267	415	632	871	1,082	1,150
Georgia	31	298	538	620	747	821	931	967
Hawaii			(69)	(85)	(113)	131	146	152
Idaho	1	22	98	111	131	147	162	165
Illinois	342	738	1,204	1,032	1,309	1,514	1,792	1,905
Indiana	295	430	596	589	742	863	982	1,028
Iowa	212	373	465	418	492	[4] 538	[4] 579	[5] 595
Kansas	53	262	365	301	381	441	474	463
Kentucky	121	310	433	484	535	567	610	619
Louisiana	40	146	350	421	532	619	708	738
Maine	100	98	138	145	164	182	204	208
Maryland	56	134	236	299	438	534	649	704
Massachusetts	202	366	676	560	689	793	907	941
Michigan	193	355	845	987	1,264	1,458	1,708	1,793
Minnesota	51	243	457	434	545	627	725	770
Mississippi	90	225	436	472	444	486	527	536

Missouri	187	460	578	558	631	705	798	[5] 821
Montana	1	[1] 76	105	94	116	[1] 132	150	154
Nebraska	14	182	259	204	237	260	299	302
Nevada	2	5	15	25	44	55	86	98
New Hampshire	48	47	66	66	81	96	113	120
New Jersey	87	208	663	583	766	942	1, 125	1, 187
New Mexico	1	22	76	121	161	202	235	248
New York	494	857	1, 866	1, 700	2, 115	2, 464	2, 796	2, 907
North Carolina	73	207	673	798	927	1, 003	1, 082	1, 102
North Dakota	1	44	149	103	117	126	136	140
Ohio	432	616	1, 141	1, 110	1, 468	1, 734	2, 025	2, 136
Oklahoma		64	470	394	453	486	533	546
Oregon	15	64	155	229	298	345	396	414
Pennsylvania	567	855	1, 661	1, 408	1, 610	1, 789	1, 985	2, 043
Rhode Island	22	47	103	84	103	118	136	138
South Carolina	45	201	348	414	482	531	583	593
South Dakota	(6)	68	139	106	120	138	155	159
Tennessee	89	339	482	583	678	736	810	824
Texas	41	439	1, 074	1, 157	1, 536	1, 822	2, 124	2, 262
Utah	13	51	121	142	181	216	256	272
Vermont	44	47	58	56	64	70	75	[7] 80
Virginia	77	216	453	537	668	756	873	916
Washington	3	75	279	357	475	569	658	679
West Virginia	51	151	350	399	416	421	411	401
Wisconsin	132	[1] 310	473	450	547	[3] 616	[3] 722	[3] 769
Wyoming	(8)	[1] 10	48	49	64	71	82	82
Outlying areas:								
American Samoa								7
Canal Zone			6	8	10	10	12	13
Guam			4		10	13	14	16
Puerto Rico			193	369	483	512	540	573
Virgin Islands			3	5	5	6	8	9

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[1] Estimated by the Office of Education.

[2] Beginning with 1959-60, includes Alaska and Hawaii.

[3] Includes excused absences.

[4] Includes an estimate for kindergartens.

[5] Excludes vocational high schools not reported as part of the regular public school system.

[6] Included with North Dakota.

[7] Data not entirely comparable to ADA reported in former years because formerly semiprivate schools have been designated as public schools by the State department of education.

[8] Fewer than 500.

Note.—Because of rounding, detail may not add to totals.

TABLE 22.—SELECTED DATA ON PUPIL TRANSPORTATION AND SCHOOL LUNCH PROGRAMS, BY STATE: 1955-56

[In thousands of dollars]

Region and State	Pupil transportation										School lunch program	
	Average daily attendance of pupils transported at public expense			Number of pupils for whom subsistence was paid in lieu of transportation	Number of school bus accidents in which children were killed or fatally injured	Number of pupil deaths resulting from school bus accidents	Total vehicles in use		Average cost per pupil transported (public only)	Transportation expenditures as percent of current expenditures for elementary and secondary schools	Average number of pupils served lunch per day	Total number of school plants operating a program for 6 months or more
	Public-school pupils		Non-public-school pupils transported				Publicly owned	Privately owned				
	Number transported	Percent of total average daily attendance										
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Continental United States	9,695,819	35.0	145,963	16,263	23	33	405,439	55,408	$36.51	4.3	10,064,448	55,592
Northeast	1,786,231	30.1	68,803	27	7	7	7,424	17,404	44.95	3.4	1,314,353	7,719
Connecticut	127,623	36.5	5,766				162	1,237	37.48	4.0	90,000	450
Maine	76,276	46.5					426	880	38.92	8.2	54,797	510
Massachusetts	[1] 168,706	24.5	16,089				85	1,735	41.19	3.1	168,708	845
New Hampshire	[3] 34,008	41.9	[3] 3,853				73	663	46.01	6.8	[3] 26,819	[3] 285
New Jersey	[4] 197,567	25.8	(1)				513	2,585	44.31	3.0	[3 5] 120,414	[3 5] 707
New York	527,762	25.0	42,501		4	4	4,435	3,638	52.06	3.1	492,000	2,767
Pennsylvania	595,423	37.0		19	3	3	1,518	5,811	34.17	3.8	314,097	1,636
Rhode Island	36,456	35.5					77	226	25.95	2.8	24,944	140
Vermont	22,410	31.8	594	8			135	629	51.03	6.8	[3 5] 22,574	379
North Central	2,457,035	34.3	56,199	805	4	4	34,061	19,922	45.99	4.6	2,624,922	17,552
Illinois	281,986	21.5	30,129				[6] 6,000	[6] 1,250	59.89	3.6	354,019	4,161
Indiana	326,481	41.0	11,329				[7] 3,310	3,003	36.76	5.6	[3] 234,264	1,283
Iowa	177,135	36.0					3,989	460	59.45	7.1	190,000	997
Kansas	83,522	21.9	1,307				1,798	532	65.46	4.9	117,577	1,027
Michigan	370,475	29.3	13,434				5,420		42.07	3.7	450,000	1,450
Minnesota	211,218	38.8			1	1	2,307	2,411	61.06	7.3	206,854	1,069
Missouri	[8] 212,316	38.7					2,372	2,112	47.37	6.0	293,898	2,368
Nebraska	18,499	7.8		336			719	373	98.59	2.8	52,931	370
North Dakota	[3] 23,795	20.3					202	1,890	76.11	5.4	51,906	1,098
Ohio	580,641	39.5		69	3	3	6,512	1,323	25.69	3.6	508,914	1,948
South Dakota	[6] 21,000	[6] 17.6					271	[6] 1,236	[6] 77.64	4.4	29,554	281
Wisconsin	149,967	27.4		400			1,131	5,332	62.92	5.1	134,975	1,500

South	4, 205, 068	43. 6	20, 961	4, 686	10	20	50, 270	13, 495	26. 73	5. 3	4, 675, 652	22, 773
Alabama	[2] 281, 835	43. 4			1	1	[9] 4, 297	509	23. 89	5. 5	393, 550	1, 603
Arkansas	181, 762	50. 4		231			2, 875	248	25. 96	8. 2	172, 592	949
Delaware	24, 201	42. 2		523			31	335	37. 26	4. 3	13, 651	91
Florida	208, 442	33. 0		43	2	2	2, 369	337	26. 10	3. 3	473, 526	1, 262
Georgia	374, 933	50. 2					2, 920	1, 714	27. 23	7. 0	[8] 352, 543	[3] 1, 573
Kentucky	277, 362	51. 8		715	2	2	2, 264	1, 422	23. 18	7. 1	[8] 290, 000	[3] 1, 319
Louisiana	296, 184	55. 7	18, 509		2	2	837	[10] 3, 316	43. 43	8. 6	380, 327	1, 408
Maryland	184, 069	42. 0	2, 452	16			517	1, 558	33. 50	4. 7	[8] 124, 489	[3] 620
Mississippi	230, 173	51. 9					3, 785	937	25. 89	8. 5	212, 000	1, 075
North Carolina	484, 455	52. 3					7, 539		16. 16	4. 5	465, 077	1, 649
Oklahoma	148, 571	32. 8					2, 996	345	12. 58	5. 6	156, 890	1, 770
South Carolina	244, 805	50. 8			1	1	4, 437	56	19. 68	5. 3	226, 538	1, 426
Tennessee	[1] 299, 589	44. 2		217	1	11	2, 404	1, 372	26. 64	6. 2	304, 729	1, 904
Texas	391, 864	25. 5			1	1	7, 836	466	35. 45	3. 4	683, 616	3, 389
Virginia	360, 964	54. 1		436			3, 502	531	20. 03	5. 1	281, 259	1, 531
West Virginia	215, 699	51. 9		2, 505			1, 650	48	22. 53	5. 9	139, 760	1, 554
District of Columbia	[11] 160	. 2					11		297. 03	. 1	5, 405	40
West	1, 247, 485	29. 0		10, 745	2	2	13, 684	4, 887	43. 00	3. 6	1, 391, 521	7, 518
Arizona	66, 169	34. 6					628	78	26. 58	2. 9	72, 016	304
California	562, 625	23. 8					5, 268	783	41. 60	2. 9	680, 000	3, 400
Colorado	68, 741	25. 0					1, 353	895	48. 33	4. 0	78, 513	646
Idaho	[6] 59, 717	45. 6		903			753	363	43. 96	8. 1	48, 923	[12] 427
Montana	27, 360	23. 6		8, 099			295	494	114. 13	7. 7	32, 558	260
Nevada	[5] 9, 326	21. 4					158	160	51. 18	3. 1	9, 182	41
New Mexico	47, 900	29. 8					74	1, 084	68. 41	6. 4	39, 340	300
Oregon	135, 670	45. 5		210	2	2	1, 645	392	42. 79	5. 5	110, 626	689
Utah	60, 295	33. 3		504			577	100	24. 63	3. 4	131, 743	392
Washington	190, 685	40. 1					2, 525	188	34. 70	4. 2	168, 470	960
Wyoming	18, 997	29. 9		1, 029			408	353	91. 99	8. 0	20, 160	129
Outlying parts of the United States:												
Alaska	5, 612	21. 0	140				26	105	123. 28	6. 2	3, 433	23
Canal Zone	4, 362	44. 0					95	10	5. 32	. 9	400	1
Guam	2, 753	26. 2	355				29					
Hawaii										([13])	79, 433	167
Puerto Rico	5, 040	1. 0							31. 96	. 4	248, 314	1, 771
Virgin Islands	481	8. 9	65				5	1	29. 22	1. 4	4, 771	31

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[1] Transportation data relate to pupils transported over 1½ miles daily.

[2] Data refer to total number of pupils transported instead of average daily attendance of pupils transported.

[3] Programs assisted by Federal school lunch aid only.

[4] Non-public-school pupils included with public school pupils.

[5] As of November 1955.

[6] Estimated.

[7] Includes 1,809 buses where the driver owns either the body or the chassis.

[8] Average number of pupils transported.

[9] Includes 43 vehicles jointly owned.

[10] Includes 71 buses operated under the joint plan of operation.

[11] Transportation program operated for handicapped children only.

[12] Number of attendance units.

[13] Less than 0.05 percent.

TABLE 33.—CURRENT EXPENDITURES FOR OTHER PUBLIC SCHOOL SERVICES AND COMMUNITY SERVICES, BY STATE: 1955–56

[In thousands of dollars]

Region and State	Other school services								Community services			
	Total expenditures for other school services	Attendance services	Health services (provided by schools)	Transportation services for public school pupils			Food services [1]	Miscellaneous school services [2]	Total expenditures for community services	Public libraries under local boards of education	Nonpublic schools	Other community services
				Total	Salaries	Other expenditures						
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
Continental United States	772,851	14,857	73,435	353,972			274,271	56,316	35,868	524	7,402	27,941
Northeast	197,958	7,571	36,215	74,931			63,470	15,772	14,275		7,176	7,099
Connecticut	9,557	400	1,525	4,783	2,648	2,135	2,310	539				
Maine	4,362	(3)	69	[4] 2,969			1,324					
Massachusetts	24,348	(4)	2,998	6,949			10,687	3,713	503		503	
New Hampshire	2,920	(3)	282	1,565			952	122	379		379	
New Jersey	22,884	1,193	7,505	8,754	810	7,944	4,990	441				
New York	80,871	4,063	14,806	27,477			30,812	3,713	13,390		6,293	7,096
Pennsylvania	48,318	[5] 1,800	[5] 8,600	20,344			10,574	[5] 7,000				
Rhode Island	2,702	103	331	946	270	676	1,102	220				
Vermont	1,995	10	99	1,144	134	1,009	719	23	3			3
North Central	214,486	1,424	9,858	112,990			62,246	27,998	5,824	108		5,716
Illinois	41,353		1,748	16,889			11,929	10,786				
Indiana	20,315		622	12,000			4,828	2,865				
Iowa	16,210	(6)	1,080	10,478			3,767	[6] 884				
Kansas	11,691			5,467	1,588	3,879	2,932	3,292				
Michigan	29,884		1,515	15,585	7,436	8,149	8,434	4,350	2,609			2,609
Minnesota	20,569		1,196	12,898	3,157	9,741	5,633	842	1,327			1,327
Missouri	17,612	500	1,500	10,057			5,555					
Nebraska	3,876	38	323	1,824			1,477	215	19	1		18
North Dakota	3,362		43	1,811			1,202	306				
Ohio	28,542	886	1,831	14,915	10,462	4,453	10,020	890	1,520	107		1,413
South Dakota	3,544			1,630			876	1,038				
Wisconsin	17,528		(7)	9,435	2,015	7,421	5,563	[7] 2,530	349			349

South	213, 749	5, 519	6, 783	112, 406			141, 329	7, 712	1, 828	285	135	1, 408
Alabama	14, 346	350	85	6, 732			6, 949	230	13	13		
Arkansas	9, 309	47	89	4, 719	1, 973	2, 747	4, 453					
Delaware	2, 198	10	305	902			494	487				
Florida	12, 752	200	321	5, 439	3, 228	2, 211	6, 750	41				
Georgia	18, 023	644		10, 209	7, 334	2, 875	7, 170					
Kentucky	13, 241	609	244	6, 430			5, 958		227			227
Louisiana	29, 069	566	260	[8] 12, 865	12, 067	797	15, 054	325			(9)	
Maryland	11, 719	751	450	6, 167	723	5, 445	4, 191	160	137		121	16
Mississippi	11, 408			5, 959	1, 989	3, 970	5, 097	352				
North Carolina	17, 752	190	698	7, 831			9, 032	1				
Oklahoma	12, 086	368	55	6, 326	4, 525	1, 800	5, 337					
South Carolina	10, 119			4, 818			5, 302					
Tennessee	17, 092		133	7, 980	3, 107	4, 872	8, 612	367				
Texas	38, 735	1, 104	3, 102	13, 892	6, 537	7, 355	15, 135	5, 591	1, 006			1, 006
Virginia	14, 997	46	589	7, 230	2, 706	4, 524	7, 038	93				
West Virginia	9, 400	278	288	4, 859	3, 181	1, 677	3, 975		431	272		159
District of Columbia	1, 505	356	165	48	44	3	782	155	14		14	
West	116, 658	343	20, 579	53 646			37, 256	4, 834	13, 941	132	92	13, 718
Arizona	4, 971	137	677	1, 759			2, 046	352				
California	59, 024	(10)	[10] 16, 887	23, 408			18, 729		13, 062			13, 062
Colorado	6, 745		579	3, 322	1, 267	2, 055	2, 279	564	381	31		350
Idaho	3, 978		95	2, 625	745	1, 881	1, 059	199				
Montana	4, 595			3, 123			923	550				
Nevada	783	10	98	477	132	345	198					
New Mexico	6, 854	28	517	3, 277	3, 242	35	1, 913	1, 118	191	99	92	
Oregon	9, 099		407	5, 806	3, 379	2, 427	2, 224	653				
Utah	3, 770	153	174	1, 485	723	762	1, 945	13	232	1		231
Washington	14, 106		1, 047	6, 617	3, 064	3, 553	5, 362	1, 081				
Wyoming	2, 742	16	96	1, 748			579	304	75			75
Outlying parts of the United States:												
Alaska	847	8	69	692			78					
Canal Zone	48		25	23		23			71			71
Hawaii	1, 995	31	185	9		9	1, 392	377				
Puerto Rico	10, 707	194		161		161	10, 219	133	2, 121	155	12	1, 955
Virgin Islands	200	7		14	7	7	177	2	50	34		16

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[1] Data have been supplemented by reference to publications of the U.S. Department of Agriculture.

[2] Includes direct expenditures or deficits for extracurricular activities for pupils, if paid from school funds, and any other services for public school pupils not included elsewhere.

[3] Included with expenditures for administration in table 29.

[4] Includes capital outlay expenditures for transportation equipment.

[5] Estimated.

[6] Expenditures for attendance services included with expenditures for miscellaneous school services.

[7] Expenditures for health services included with expenditures for miscellaneous school services.

[8] Includes transportation services for parochial school pupils.

[9] Expenditures for textbooks and transportation for parochial schools are included with such expenditures for public schools.

[10] Expenditures for attendance services included with expenditures for health services.

Note.—Because of rounding, detail may not add to totals.

SCHOOL YEAR 1957–58

TABLE 23.—AVERAGE DAILY ATTENDANCE IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE OR OTHER AREA: UNITED STATES, 1870 71 TO 1967-68

[In thousands]

Region and State or other area (1)	1870–71[1] (2)	1899-1900 (3)	1917–18 (4)	1929–30 (5)	1949–50 (6)	1957–58 (7)	1959–60 (8)	1965–66 (9)	1967–68 (10)
United States[2]	4,545	10,633	15,549	21,265	22,284	29,722	32,477	39,154	40,828
North Atlantic	1,706	2,831	4,185	5,845	5,271	6,965	7,592	9,100	9,543
Connecticut	63	112	191	274	245	384	425	543	576
Delaware	13	25	25	36	41	[3] 65	[3] 73	99	110
Maine	100	98	114	138	145	169	182	208	215
Maryland	56	134	162	236	299	479	534	704	749
Massachusetts	202	366	518	676	560	733	793	941	989
New Hampshire	48	47	53	66	66	87	96	120	128
New Jersey	87	208	424	663	583	842	942	1,187	1,267
New York	494	857	1,300	1,866	1,700	2,262	2,464	2,907	3,019
Pennsylvania	567	855	1,223	1,661	1,408	1,678	1,789	2,043	2,125
Rhode Island	22	47	72	103	84	108	118	138	148
Vermont	44	47	50	58	56	62	70	[4] 80	85
District of Columbia	10	35	48	68	84	96	106	130	132
Great Lakes and Plains	1,912	4,081	5,200	6,669	6,292	8,385	9,020	10,881	11,397
Illinois	342	738	962	1,204	1,032	1,414	1,514	1,905	2,016
Indiana	295	430	523	596	589	781	863	1,028	1,059
Iowa	212	373	396	465	418	506	538	[5] 595	618
Kansas	53	262	288	365	301	399	[3] 441	463	474
Michigan	193	355	523	845	937	1,373	1,458	1,793	1,913
Minnesota	51	243	374	457	434	578	627	770	800
Missouri	187	460	506	576	558	653	705	[5] 821	871
Nebraska	14	182	214	259	204	243	260	302	311
North Dakota	1	44	119	149	[3] 103	118	[3] 126	140	142
Ohio	432	616	849	1,141	1,110	1,585	1,734	2,136	2,207
South Dakota	(6)	[1] 68	90	139	106	129	138	159	160
Wisconsin	132	[1] 310	356	473	450	606	[3] 616	[3] 769	826

Southeast	783	2,661	3,760	5,135	6,093	7,368	7,893	9,042	9,255
Alabama	108	298	342	474	595	670	709	787	788
Arkansas	47	195	300	331	355	361	373	409	413
Florida	11	75	137	267	415	743	871	1,150	1,217
Georgia	31	298	461	538	620	771	821	967	999
Kentucky	121	310	315	433	484	544	567	619	635
Louisiana	40	146	233	350	421	567	619	738	774
Mississippi	90	225	346	436	472	444	486	536	540
North Carolina	73	207	415	673	798	950	1,003	1,102	1,115
South Carolina	45	201	256	348	414	498	531	593	605
Tennessee	89	339	406	482	583	695	736	824	831
Virginia	77	216	326	453	537	706	756	916	950
West Virginia	51	151	223	350	399	419	421	401	388
West and Southwest	144	1,058	2,442	3,689	4,727	7,157	7,972	10,134	10,630
Alaska			3	3	11	31	38	55	64
Arizona		10	41	76	127	218	258	347	366
California	64	197	430	909	1,624	2,767	3,155	4,206	4,454
Colorado	3	73	138	191	210	307	345	454	478
Hawaii			34	69	85	122	131	152	158
Idaho	1	22	75	98	111	138	147	165	168
Montana	1	[1] 26	90	105	94	124	[1] 132	154	161
Nevada	2	5	10	15	25	48	55	98	104
New Mexico	1	22	56	76	121	180	[4] 202	248	253
Oklahoma		64	334	470	394	461	486	546	559
Oregon	15	64	131	155	229	315	345	414	425
Texas	41	439	788	1,074	1,157	1,660	1,822	2,262	2,341
Utah	13	51	86	121	142	195	216	272	282
Washington	3	75	195	279	357	527	569	679	737
Wyoming	(6)	[1] 10	31	48	49	64	71	82	80
Outlying areas:									
American Samoa								7	
Canal Zone			2	6	8	10	10	13	14
Guam				4		12	13	16	18
Puerto Rico			106	193	369	491	512	573	604
Virgin Islands				3	5	6	6	9	10

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[1] Estimated by Office of Education.

[2] Data are for States in the Union as of the years reported.

[3] Includes estimate for kindergarten.

[4] Data not entirley comparable to ADA reported in former years because formerly semiprivate schools have been designated as public schools by the State department of education.

[5] Excludes vocational schools not operated as a part of the regular public school system.

[6] Included with North Dakota.

[7] Includes excused absences.

[8] Fewer than 500.

Note: U.S. totals are the sums of unrounded figures; regional totals are the sums of rounded figures.

TABLE 22. SELECTED DATA ON PUPIL TRANSPORTATION AND SCHOOL LUNCH PROGRAMS, BY STATE, 1957-58

Region and State	Public transportation: Average daily attendance of pupils transported at public expense: Public-school pupils: Number transported	Public transportation: Average daily attendance of pupils transported at public expense: Public-school pupils: Percent of total average daily attendence	Public transportation: Average daily attendance of pupils transported at public expense: Non-public-school pupils transported	Public transportation: Number of pupils for whom subsistence was paid in lieu of transportation	Public transportation: Number of school bus accidents in which children were killed or totally injured	Public transportation: Number of pupil deaths resulting from school bus accidents	Public transportation: Total vehicles in use: Publicly owned	Public transportation: Total vehicles in use: Privately owned	Public transportation: Total annual mileage of regular school bus routes to and from school (thousands)	Public transportation: Average cost per pupil transported (public only)	Public transportation: Transportation expenditures as percent of current expenditures for elementary and secondary schools	School lunch program: Average number of pupils served lunch per day	School lunch program: Total number of school plants operating a program for 6 months or more	School lunch program: Average cost per pupil served
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
United States (48 States and District of Columbia)	10,861,689	36.5	104,095	33,263	34	61	[1] 114,489	56,147		$38.34	4.1	11,006,124	59,173	$27.76
North Atlantic	2,396,339	34.4	24,812	16,665	7	7	9,358	20,553		42.55	3.5	1,908,170	9,937	40.36
Connecticut	154,033	40.1	905				191	1,438	12,539	37.49	3.8	105,000	550	31.00
Delaware	29,142	45.1		436			22	407	3,089	39.92	4.0	16,979	108	39.23
Maine	[2] 85,196	50.4	(2)				467	858	11,128	35.86	7.2	58,628	543	24.34
Maryland	203,660	42.5		31			580	1,688	15,935	37.61	4.6	[3] 146,441	[3] 694	31.97
Massachusetts	188,236	25.7	19,665	16,082			101	1,821		45.18	3.2	255,718	1,127	45.96
New Hampshire	34,968	40.3	3,654				87	738	5,438	51.42	6.5	[3] 31,220	[3] 309	30.83
New Jersey	[2] 242,936	28.9	(2)				618	3,331	18,770	45.99	3.0	[3] 106,664	[3] 720	43.73
New York	[2] 714,125	31.6	(2)		4	4	5,267	3,152	82,796	51.16	3.2	723,000	3,324	50.02
Pennsylvania	675,936	40.3		15	2	2	1,769	6,228		34.99	3.8	405,412	2,026	27.20
Rhode Island	41,557	38.4					100	249		29.94	3.1	26,489	155	39.64
Vermont	26,377	42.6	588	101	1	1	145	643	4,441	50.73	6.5	26,819	341	15.85
District of Columbia	[4] 173	2					11			[6] 348.21	.2	5,800	40	161.03
Great Lakes and Plains	2,802,469	33.4	56,340	1,061	5	5	36,602	20,836		46.71	4.4	2,999,552	19,530	24.05
Illinois	305,833	21.6	16,062				[5] 6,000	[5] 1,500	52,417	59.45	3.3	386,501	4,764	33.83
Indiana	350,059	44.8	20,561				[1] 3,253	3,128	35,901	45.32	6.0	332,946	1,289	17.69
Iowa	197,119	38.9					4,324	347	39,169	57.06	6.5	204,500	1,144	21.50
Kansas	94,236	23.6	1,643				2,020	568	24,267	64.73	4.6	146,500	1,128	21.42
Michigan	429,522	31.3	18,074	22			5,583	87	52,261	40.15	3.4	460,000	1,743	24.19
Minnesota	245,248	42.5		40	2	2	2,762	2,519	45,129	61.39	6.9	258,192	1,138	23.71
Missouri	282,293	43.3			2	2	2,514	2,327	41,331	40.49	5.5	319,913	3,113	18.36
Nebraska	25,606	10.5		449			995	293	7,783	90.77	3.1	66,700	449	28.35
North Dakota	[6] 28,635	24.2					224	2,609		84.52	6.3	50,799	830	23.26

Ohio	650,538	41.0		150			7,218	1,029	65,109	27.38	3.4	580,351	1,936	19.31
South Dakota	16,465	12.8					388	938	[7] 20,892	116.76	4.5	36,378	378	37.52
Wisconsin	176,915	29.2		400	1	1	1,321	5,491	3,010	63.79	5.2	156,772	1,618	43.89
Southeast	3,730,215	50.6	20,074	3,903	15	42	42,742	9,152		26.21	5.6	3,944,638	17,151	24.22
Alabama	293,964	43.9			3	4	[1] 4,578	402	35,211	24.38	5.3	341,313	1,592	19.65
Arkansas	181,238	50.1		240	2	2	[1] 2,995	217	1,103	29.53	7.2	179,872	960	23.57
Florida	239,282	32.2		39	1	1	2,618	341	20,761	27.79	2.9	[3] 350,380	[3] 1,123	20.96
Georgia	408,701	53.0		269			[1] 3,845	964	48,802	28.21	6.1	[3] 408,377	[3] 1,708	16.98
Kentucky	301,520	55.5			1	26	2,488	1,372	5,870	24.97	6.5	350,000	1,500	16.71
Louisiana	293,855	51.8	20,074		1	2	1,028	3,413	29,730	53.20	7.7	438,685	1,326	60.38
Mississippi	248,500	55.9			1	1	4,297	496	28,518	25.99	8.3	215,960	972	23.31
North Carolina	507,036	53.4		35	3	3	8,308		52,352	17.98	4.4	547,814	1,850	14.98
South Carolina	292,725	58.7			1	1	4,615	40	32,597	18.76	5.2	283,757	1,137	19.63
Tennessee	350,101	50.4			2	2	2,400	1,423	36,525	26.16	6.3	342,327	1,922	24.39
Virginia	386,557	54.7		868			3,821	426	37,323	21.23	4.8	315,221	1,523	20.86
West Virginia	226,736	45.2		2,452			1,749	58	15,710	24.09	5.6	170,932	1,538	24.79
West and Southwest	1,932,666	27.6	2,869	11,634	7	7	25,787	5,606		44.44	3.3	2,153,764	12,555	28.24
Arizona	[5] 70,000	32.1					[5] 590	[5] 120		30.79	2.7	83,381	346	26.65
California	637,405	23.0					5,636	888	71,410	45.07	2.4	[3] 568,353	[3] 3,175	38.96
Colorado	75,633	24.6		61	2	2	1,548	716	14,672	49.13	3.5	92,725	711	24.73
Idaho	63,927	46.2		928			834	328	9,002	43.75	7.5	32,542	311	30.04
Montana	29,890	24.1		8,449			344	482	8,543	119.61	7.5	37,500	260	25.91
Nevada	12,089	25.1		156			220	247	1,672	53.43	3.4	9,440	68	26.49
New Mexico	50,404	28.0					216	1,132		73.76	6.0	59,706	230	33.85
Oklahoma	145,898	31.7		48	1	1	3,336	334	26,576	46.71	5.2	173,771	1,720	29.26
Oregon	164,076	52.1	2,869	263	1	1	1,779	434	16,773	39.90	5.1	[3] 116,269	[3] 730	18.72
Texas	392,469	23.6			3	3	7,510	296	83,665	39.20	2.9	690,000	3,365	20.46
Utah	54,703	28.0		599			595	126	4,018	31.62	3.0	81,828	401	26.50
Washington	216,154	41.0					2,831	166	23,620	35.24	3.8	186,000	1,107	31.01
Wyoming	20,018	31.3		1,130			348	337	38,912	122.96	9.3	22,189	131	28.62
Outlying parts:														
Alaska	7,859	25.1					52	88	1,149	117.70	5.6	4,884	18	23.34
Canal Zone	4,786	46.2								6.96	1.1			
Guam	3,399	29.2	272				32	64	7,017			438	1	36.05
Hawaii											.5	91,433	177	17.85
Puerto Rico	11,732	2.4								25.77	.6	228,803	1,866	48.91
Virgin Islands	573	9.8	300	22			4	2	16,833	28.81	1.4	4,620	31	46.10

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[1] Includes 2,310 vehicles jointly owned reported by the following States: Alabama—26; Arkansas—14; Georgia—426; and Indiana—1,844.

[2] Nonpublic school pupils included with public school pupils.

[3] Programs assisted by Federal school lunch aid only.

[4] Transportation program operated for handicapped children only.

[5] Data as of 1956-57.

[6] Data refer to total number of pupils transported instead of average daily attendance of pupils transported.

[7] Represents mileage traveled by publicly owned vehicles only.

TABLE 33.—CURRENT EXPENDITURES FOR OTHER PUBLIC SCHOOL SERVICES AND COMMUNITY SERVICES, BY STATE: 1957-58

[In thousands of dollars]

Region and State	Other school services														Community services			
	Total expenditures for other school services	Attendance services			Health services (provided by schools)			Transportation services for public school pupils					Food services²	Miscellaneous school services³	Total expenditures for community services	Public libraries under local boards of education	Nonpublic schools	Other community services
		Total	Salaries	Supplies and other expenses	Total	Salaries	Supplies and other expenses	Total	Salaries	Supplies, maintenance, and garage operation and maintenance	Transportation insurance	Other¹						
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)
United States (48 States and District of Columbia)	890,118	25,352			85,574			416,491					305,524	57,177	40,855			
North Atlantic	248,559	10,450			42,667			101,955					77,017	16,481	15,413	988	1,569	12,856
Connecticut	11,263	262	250	12	1,451	1,257	194	5,774	514	237	51	4,973	3,255	520	303		147	156
Delaware	2,401	38	34	3	455	425	30	1,163	57	36	2	1,068	666	79	46			46
Maine	4,693	24	24	1	163	138	25	3,055	731	452	51	1,822	1,427	24	21			21
Maryland	14,052	982	926	57	510	452	58	7,659	905	513	55	6,187	4,682	219	262		182	80
Massachusetts	28,420	(⁴)			3,532			8,505					11,754	4,629	679		679	
New Hampshire	3,283	(⁴)			362			1,798					962	161	466		466	
New Jersey	27,214	⁵1,556			⁵5,782			11,172					4,665	4,039				
New York	101,002	4,761	4,477	284	18,871	18,024	847	36,532					36,168	4,670	9,542		91	9,451
Pennsylvania	49,844	2,421			10,786	10,271	514	23,653	⁶5,187	(⁶)		18,465	11,029	1,956	4,090	988		3,102
Rhode Island	3,043	167	158	8	453	421	32	1,244	280	201		763	1,050	130				
Vermont	1,914	11			117			1,338	158	168	12	990	425	53				
District of Columbia	1,410	230	225	5	185			60	55	5	(⁷)		934	1	4		4	
Great Lakes and Plains	245,620	2,681			15,009			130,893					72,146	24,890	7,048			
Illinois	41,673	(⁴)			5,465			18,181					13,076	4,951				
Indiana	26,816				1,050	868	182	15,866		578		15,288	5,891	4,009				
Iowa	17,757	(⁸)			1,271			11,248					4,397	⁹850				
Kansas	13,282							6,100	1,788	1,526	122	2,664	3,138	4,044				
Michigan	35,711	1,158			1,824			17,247	8,745	(⁶)	(⁴)	⁹8,502	11,126	4,356	2,347			
Minnesota	23,622				1,473			15,056	3,951	2,331	249	8,525	6,122	971	1,581			1,581
Missouri	19,027	451	351	100	1,272	972	300	11,431	2,700	2,500	200	6,030	5,873		893	893		
Nebraska	4,883	47	43	5	359	325	34	2,324	686	716	50	872	1,891	262	19	(⁷)		19
North Dakota	3,980				58			2,420					1,182	320				

Ohio	33, 151	1, 024			2, 236	2, 072	164	17, 811	12, 121	1, 886		3, 804	11, 206	874	1, 481	102		1, 379
South Dakota	4, 545							1, 922					1, 365	1, 257				
Wisconsin	21, 162				(10)			11, 286	2, 019	1, 384	135	7, 747	6, 880	[10] 2, 996	727			727
Southeast	202, 757	3, 265			2, 775			97, 757					95, 530	3, 429	679	254		425
Alabama	14, 565	369			65			7, 168					6, 706	257	26	26		
Arkansas	9, 756	55	47	9	109	47	63	5, 352	2, 318	2, 608		426	4, 239					
Florida	14, 685	304	266	38	313	95	217	6, 651	4, 114	1, 761	148	628	7, 344	74				
Georgia	21, 102	759	677	82				11, 530	7, 148	3, 189	127	1, 067	6, 933	1, 879				
Kentucky	13, 867	[11] 233	233		256			7, 529					5, 849		262			262
Louisiana	43, 193	763	715	48	309	129	179	[12] 15, 633	14, 608	834	146	45	26, 488				(12)	
Mississippi	11, 942							6, 460	1, 912	3, 730	23	795	5, 034	448				
North Carolina	18, 084	239	218	21	464	91	374	9, 115	3, 855	5, 231		29	8, 206	59				
South Carolina	11, 671	206			168			5, 490	1, 556	(9)	(9)	[9] 3, 934	5, 571	237				
Tennessee	17, 992	(13)			144	120	24	9, 158	3, 584	2, 107	129	3, 338	8, 348	343				
Virginia	15, 595	[11] 45	38	7	635	512	122	8, 208	3, 919	2, 999	158	1, 132	6, 575	132				
West Virginia	10, 305	293	260	33	313	265	48	5, 462	3, 569	1, 538	53	202	4, 237		391	228		163
West and Southwest	193, 172	8, 955			25, 123			85, 886					60, 831	12, 377	17, 716			
Arizona	5, 904	143	135	8	862	804	58	2, 155					2, 222	521				
California	74, 261	[5] 6, 503			[5] 16, 889			28, 727					22, 142		16, 325			16, 325
Colorado	7, 058	[5] 291			[6] 756			3, 716	1, 582	1, 037	99	998	2, 295		352	2		350
Idaho	4, 123				115			2, 797	843	851	56	1, 047	978	234				
Montana	5, 145	(13)						3, 575					972	598				
Nevada	1, 245	54	51	4	139	120	19	646	178	226	28	214	250	156				
New Mexico	6, 884	165	165		545	464	81	3, 718	[14] 2, 225	1, 441	52	(14)	2, 021	435	15	15		
Oklahoma	12, 602	265	230	35	437	319	118	6, 815	2, 278	3, 797	182	558	5, 085					
Oregon	10, 133				658	567	91	6, 546	3, 768	1, 320	146	1, 312	2, 176	753				
Texas	43, 304	1, 330	1, 202	128	3, 279	2, 729	550	15, 384	6, 983	7, 279	300	823	14, 119	9, 192	208			208
Utah	4, 318	183	169	14	322	174	58	1, 730	874	538	27	291	2, 169	5	361	4		357
Washington	14, 472				1, 087	951	136	7, 616	3, 608	3, 320	259	430	5, 768		454			
Wyoming	3, 723	20			124			2, 461	1, 042	541	267	612	635	483				
Outlying parts:																		
Alaska	1, 165				125	103	22	925					114	1				
Canal Zone	53				20	18	2	33				33			118			118
Guam	16												16					
Hawaii	2, 416	36			263	234	30	150				150	1, 632	335				
Puerto Rico	12, 156	230						302	3			300	11, 191	433	1, 902	197	18	1, 687
Virgin Islands	247	10	7	3				17	8	3	(7)	6	213	7	76	42	6	28

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[1] Includes contracted services, fares furnished pupils for public transportation, and payments in lieu of transportation.

[2] Data have been supplemented by reference to publications of the U.S. Department of Agriculture.

[3] Includes direct expenditures or deficits for extracurricular activities for pupils, if paid from school funds, and any other services for public school pupils not included elsewhere.

[4] Expenditures for attendance services included with expenditures for administration.

[5] Estimated.

[6] Data for column 11 included in column 10.

[7] Less than $500.

[8] Data for column 3 included in column 15.

[9] Figure shown in column 13 represents all expenditures for transportation other than for salaries

[10] Data for column 6 included in column 15.

[11] Incomplete, part of the expenditures for attendance services included with expenditures for instruction.

[12] Expenditures for transportation of nonpublic school pupils included with expenditures for public school pupils.

[13] Expenditures for attendance services included with expenditures for instruction.

[14] Data for column 13 included in column 10.

Note: Because of rounding, detail may not add to totals.

SCHOOL YEAR 1959 60

TABLE 22.—AVERAGE DAILY ATTENDANCE IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE: 1870 71 TO 1963 64

Region and State	1870-71 [1] (1)	1879 80 (2)	1889-90 (3)	1899-1900 (4)	1909-10 (5)	1919-20 (6)	1929-30 (7)	1939-40 (8)	1949-50 (9)	1959-60 (10)	1961-62 (11)	1963-64 (12)
United States [2]	4,545	6,144	8,154	10,633	12,827	16,150	21,265	22,042	22,284	32,477	34,682	37,405
North Atlantic:												
Connecticut	63	74	84	112	[3] 147	205	274	256	245	425	462	504
Delaware	13	17	20	25	23	27	36	39	41	[4] 73	[4] 82	91
Maine	100	103	98	98	107	116	138	149	145	182	192	204
Maryland	56	86	102	134	146	175	236	257	299	534	583	649
Massachusetts	202	233	274	366	444	520	676	630	560	793	833	907
New Hampshire	48	49	42	47	50	53	66	67	66	96	103	113
New Jersey	87	115	133	208	324	476	663	635	583	942	1,019	1,125
New York	494	573	643	857	1,123	1,362	1,866	1,920	1,700	2,464	2,607	2,796
Pennsylvania	567	602	683	855	1,001	1,266	1,661	1,668	1,408	1,789	[5] 1,855	1,985
Rhode Island	22	27	34	47	61	73	103	100	84	118	126	136
Vermont	44	49	46	47	52	50	58	56	56	70	[1] 69	75
District of Columbia	10	21	28	35	45	53	68	83	84	106	115	124
Great Lakes and Plains:												
Illinois	342	432	538	738	779	956	1,204	1,093	1,032	1,514	1,617	1,792
Indiana	295	322	342	430	421	457	596	590	589	863	893	982
Iowa	212	260	306	373	360	406	465	437	418	538	563	579
Kansas	53	138	243	262	291	310	365	331	301	[4] 441	451	474
Michigan	193	[1] 240	[1] 282	355	443	521	845	862	987	1,458	1,565	1,708
Minnesota	51	[1] 78	127	243	348	395	457	454	434	627	666	725
Missouri	187	[1] 281	385	460	490	531	576	599	558	705	742	798
Nebraska	14	60	146	182	191	233	259	243	204	260	278	299
North Dakota	1	[1] 9	21	44	90	128	149	125	[4] 103	[4] 126	130	136
Ohio	432	476	549	616	649	809	1,141	1,122	1,110	1,734	1,871	2,025
South Dakota	(4)	(4)	48	[1] 68	80	99	139	120	106	138	148	155
Wisconsin	132	156	200	[1] 319	320	369	473	487	450	[7] 616	[7] 664	[7] 722

Southeast:												
Alabama	108	118	182	298	267	368	474	567	595	709	734	771
Arkansas	47	[1] 55	[1] 149	195	255	326	331	373	355	373	386	402
Florida	11	27	65	75	104	166	267	327	415	871	980	1,082
Georgia	31	145	241	298	346	467	538	584	620	821	872	931
Kentucky	121	178	226	310	315	[8] 343	433	493	484	567	586	610
Louisiana	40	[1] 55	88	146	188	256	350	398	421	619	659	708
Mississippi	90	157	208	225	261	[8] 260	436	474	472	486	504	527
North Carolina	73	170	203	207	331	474	673	790	798	1,003	1,037	1,082
South Carolina	45	[1] 91	148	201	244	331	348	385	414	531	555	530
Tennessee	89	209	324	339	364	458	482	537	583	736	772	810
Virginia	77	128	198	216	259	351	453	494	537	756	812	373
West Virginia	51	92	122	151	190	256	350	412	399	421	409	411
West and Southwest:												
Alaska						3	3	5	11	38	45	51
Arizona		3	5	10	20	46	76	88	127	258	294	333
California [9]	64	101	147	197	287	481	909	1,057	1,624	3,155	3,515	3,867
Colorado	3	13	39	73	108	150	191	199	201	345	387	432
Hawaii						38	69	88	85	131	139	146
Idaho	1	4	[1] 10	22	51	85	98	106	111	147	[1] 157	162
Montana	1	[1] 3	11	[1] 26	41	92	105	98	94	[1] 132	141	150
Nevada	2	5	5	5	[1] 7	11	15	18	25	55	67	86
New Mexico	1	3	13	22	37	59	76	106	121	202	216	235
Oklahoma				64	279	356	470	485	394	486	504	533
Oregon	15	27	43	64	104	137	155	166	229	345	366	396
Texas	41	[1] 132	292	439	545	746	1,074	1,116	1,157	1,822	1,975	2,124
Utah	13	17	21	51	69	98	121	124	142	216	235	256
Washington	3	11	37	75	156	211	279	275	357	569	624	658
Wyoming	(10)	2	[1] 5	[1] 10	17	33	48	47	49	71	77	82
Outlying areas:												
Canal Zone						3	6	6	8	10	11	12
Guam							4	4		13	13	14
Puerto Rico						145	193	255	369	512	524	540
Virgin Islands							3		5	6	7	8

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[1] Estimated by Office of Education.
[2] Beginning 1959-60, includes Alaska and Hawaii.
[3] High school attendance not reported.
[4] Includes an estimate for kindergarten.
[5] Estimated by State.
[6] Included with North Dakota.
[7] Excludes vocational schools not operated as part of the regular public school system.
[8] Data for 1918-19.
[9] Includes excused absences.
[10] Less than 500.

Note.—Because of rounding, detail may not add to totals.

TABLE 24.—SELECTED PUPIL TRANSPORTATION STATISTICS, BY STATE: 1959-60

Region and State	Average daily attendance of pupils transported at public expense			Number of pupils for whom subsistence was paid in lieu of transportation	Number of school bus accidents in which children were killed or fatally injured	Number of pupil deaths resulting from school bus accidents	Total vehicles in use		Total annual mileage of regular school bus routes to and from school (thousands)	Average cost per pupil transported (public only)	Transportation expenditures as percent of current expenditures for elementary and secondary schools
	Public school pupils		Nonpublic school pupils transported								
	Number transported	Percent of total average daily attendance					Publicly owned	Privately owned			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
United States	12,225,142	37.6	128,715	9,643	47	62	[1] 125,734	58,623	NA	$39.78	3.9
North Atlantic	2,799,515	36.9	33,491	473	6	12	10,877	23,275	NA	43.66	3.5
Connecticut	183,812	43.2	480				210	1,543	15,129	38.08	3.8
Delaware	32,831	44.8		376			32	452	3,800	43.77	4.3
Maine	[2] 94,814	52.1	(2)				517	810	11,722	36.59	6.7
Maryland	230,247	43.1		40	1	7	657	1,870	26,590	38.90	4.3
Massachusetts [3]	245,887	31.0	27,672	50			151	2,702	19,350	41.33	3.1
New Hampshire	40,392	42.3	[4] 4,671				113	729	5,701	51.23	6.2
New Jersey	[2] 267,767	28.4	(2)				821	3,609	22,798	50.93	3.0
New York	[2] 869,133	35.3	(2)		2	2	5,927	3,819	99,338	51.21	3.2
Pennsylvania	759,906	42.5		7	3	3	2,063	6,907	70,136	36.75	3.8
Rhode Island	45,211	38.4					107	290	NA	33.92	3.1
Vermont	29,208	41.6	668				261	544	4,190	48.62	5.9
District of Columbia [5]	307	.3					18			375.51	.3
Great Lakes and Plains	3,138,674	34.8	47,192	972	5	5	38,453	20,303	439,689	48.25	4.3
Illinois	377,571	24.9	5,000				[6] 5,201	2,589	55,046	51.64	2.9
Indiana	347,050	40.2	24,236				[1] 3,560	3,159	37,278	58.58	6.4
Iowa	217,238	40.4					4,808		41,775	56.53	6.2
Kansas	101,309	23.0	2,231				2,310	915	27,300	81.41	5.4
Michigan	460,121	31.6	15,725	16	3	3	5,702	84	53,494	41.51	3.2
Minnesota	275,999	44.0		30			2,818	2,653	49,541	62.18	6.4
Missouri	330,266	46.9			[7] 2	2	2,826	2,293	46,063	39.98	5.4
Nebraska	31,500	12.1		413			1,346	237	9,931	89.38	3.2
North Dakota	42,431	33.6					584	2,060	13,677	85.40	7.8
Ohio	739,149	42.6		323			7,376	1,082	63,733	27.07	3.2
South Dakota [6]	19,015	13.8					438	145	4,949	100.14	4.0
Wisconsin	197,025	32.0		[6] 190			1,484	5,086	36,894	67.29	5.2

Southeast	3,990,308	50.6	43,405	3,673	25	29	46,761	8,621	436,019	28.04	5.5
Alabama	306,691	43.3			13	14	[1] 4,817	319	36,843	25.93	4.6
Arkansas	188,025	50.5					3,041	121	28,303	35.56	8.0
Florida	275,352	31.6		67			2,967	287	28,097	28.07	2.8
Georgia	435,895	53.1		184	1	1	[1] 4,216	795	51,285	32.82	6.9
Kentucky	300,869	53.1	13,516				2,797	1,307	35,642	29.30	6.7
Louisiana	349,954	56.5	29,889		6	8	1,151	3,537	31,985	45.82	7.0
Mississippi	287,356	59.2			2	2	4,643	341	39,000	27.21	7.8
North Carolina	537,931	53.6		58	2	2	8,969		54,735	18.06	4.1
South Carolina	314,643	59.2					5,056	40	33,714	19.76	5.3
Tennessee	337,314	45.9					2,706	1,479	39,704	29.83	5.7
Virginia	421,953	55.8		989	1	2	4,530	344	39,781	24.69	5.0
West Virginia	234,825	55.8		2,375			1,868	51	16,930	26.26	5.7
West and Southwest	2,296,145	28.8	4,627	4,525	11	16	29,643	6,424	NA	43.88	3.1
Alaska	11,804	31.2					36	128	1,501	109.88	6.3
Arizona	92,375	35.8					917	74	NA	28.18	2.5
California	699,982	22.2					6,359	1,054	73,120	48.44	2.3
Colorado	88,526	25.6			1	1	1,804	725	NA	57.65	3.7
Hawaii	[1] 9,063	6.9	427	17			11	107	NA	16.48	.4
Idaho	70,127	47.6		1,022			866	330	9,351	42.49	7.0
Montana	27,073	20.6		855			375	499	13,727	132.94	6.7
Nevada	12,394	22.4		165			277	212	1,922	60.59	3.2
New Mexico	69,675	34.4			1	1	175	1,521	10,537	65.02	6.2
Oklahoma	164,989	34.0			2	2	3,036	337	27,424	44.17	4.8
Oregon	177,847	51.5	4,200	722			1,646	606	16,039	42.01	4.8
Texas	543,785	29.8			5	10	9,985	253	100,018	33.08	3.0
Utah	59,332	27.4		578	1	1	637	98	4,619	34.63	2.9
Washington	246,532	43.4					3,049	167	26,041	35.59	3.7
Wyoming	22,641	31.7		1,166	1	1	470	313	53,946	99.66	7.0
Outlying parts:											
Canal Zone	5,430	53.2								11.42	1.7
Guam	5,393	42.2	718				43	56	1,250		
Puerto Rico	31,936	6.2								25.14	1.5
Virgin Islands	744	12.1	270				1	11	103,740	66.13	3.0

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[1] Includes 2,140 vehicles jointly owned, reported by the following States: Alabama—14; Georgia—353; and Indiana—1,773.

[2] Nonpublic school pupils included with public school pupils.

[3] Data differ from those reported for 1957-58 because of improvement in reporting.

[4] Data relate to average number of pupils transported.

[5] Transportation program operated for handicapped children only.

[6] Estimated by State.

[7] Estimated by Office of Education.

[8] Includes 4,700 pupils transported in military vehicles.

TABLE 38.—CURRENT EXPENDITURES FOR OTHER SCHOOL SERVICES AND COMMUNITY SERVICES, BY STATE: 1959–60

[In thousands of dollars]

Region and State	Other school services								
	Total expenditures for other school services	Attendance services			Health services (provided by schools)			Transportation services for public school pupils	
		Total	Salaries	Supplies and other expenses	Total	Salaries	Supplies and other expenses	Total	Salaries
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
United States	1,033,297	27,948	NA	NA	100,993	NA	NA	488,338	NA
North Atlantic	291,037	11,079	NA	NA	48,881	NA	NA	122,230	NA
Connecticut	13,028	184	173	11	1,923	1,718	205	6,999	408
Delaware	2,921	50	50	......	537	509	29	1,437	66
Maine	5,539	35	34	1	225	181	43	3,469	859
Maryland	17,169	1,365	1,274	90	500	436	63	8,956	1,272
Massachusetts	32,041	(3)	......	......	4,030	NA	NA	10,161	NA
New Hampshire	3,836	(3)	......	......	412	NA	NA	2,069	NA
New Jersey	33,703	[4]1,511	[4]1,445	65	6,944	6,480	464	13,636	1,854
New York	116,094	5,439	5,148	291	21,161	20,441	720	44,504	NA
Pennsylvania	59,228	2,245	NA	NA	10,260	9,565	694	27,929	3,427
Rhode Isand	3,426	(5)	(5)	(5)	539	496	43	1,533	380
Vermont	2,154	4	3	1	143	120	23	1,420	266
District of Columbia	1,897	246	242	5	208	208	......	115	98
Great Lakes and Plains	277,089	3,453	NA	NA	17,720	NA	NA	151,432	NA
Illinois	42,172	......	......	......	6,752	NA	NA	19,497	6,620
Indiana	29,815	375	357	8	1,199	1,182	17	20,330	17,945
Iowa	19,897	(3)	......	......	[6]1,600	NA	NA	12,281	NA
Kansas	12,298	......	......	......	......	......	......	8,248	2,392
Michigan	42,000	1,291	1,291	......	1,847	1,847	......	19,098	9,895
Minnesota	28,316	......	......	......	1,702	NA	NA	17,162	4,508
Missouri	23,435	513	388	125	1,351	1,013	338	13,205	4,239
Nebraska	5,681	59	56	3	394	364	30	2,815	903

North Dakota	5,566				64	NA	NA	3,628	NA
Ohio	39,027	1,180	NA	NA	2,635	2,447	188	20,009	13,492
South Dakota	3,659	34	27	7	176	124	52	1,904	564
Wisconsin	25,223				(9)			13,257	2,194
Southeast	242,847	4,396	NA	NA	2,965	NA	NA	111,920	NA
Alabama	22,349	417	NA	NA	69	NA	NA	7,952	NA
Arkansas	12,017	106	81	25	108	61	47	6,685	2,752
Florida	19,810	205	143	62	304	72	231	7,728	4,900
Georgia	24,210	813	764	79				14,307	7,511
Kentucky	19,265	1,128	912	216	261	45	215	8,814	3,073
Louisiana	41,120	887	831	57	313	125	187	16,035	14,816
Mississippi	14,921							7,819	3,321
North Carolina	22,008	250	224	27	525	94	431	9,716	4,089
South Carolina	13,806	204	NA	NA	142	NA	NA	6,217	1,704
Tennessee	21,384				146	114	32	10,062	3,974
Virginia	20,340	51	41	10	753	593	160	10,419	3,847
West Virginia	11,615	307	271	36	346	290	56	6,165	4,275
West and Southwest	222,325	9,021	NA	NA	33,427	NA	NA	100,755	NA
Alaska	1,649				111	34	76	[11] 1,297	181
Arizona	7,581	178	171	7	1,076	1,006	70	2,603	NA
California	89,651	[12] 6,387	NA	NA	[13] 22,912	NA	NA	33,909	NA
Colorado	10,572	332	319	13	932	802	130	5,103	1,949
Hawaii	2,967	73	66	7	308	292	17	149	NA
Idaho	4,703				128	NA	NA	2,980	935
Montana	5,381	(8)	(8)	(8)				3,599	70
Nevada	1,482	65	61	4	183	167	16	751	222
New Mexico	7,764	154	154		733	622	111	4,530	190
Oklahoma	13,507	226	189	37	350	288	63	7,288	2,444
Oregon	12,150				848	724	124	7,471	4,240
Texas	42,565	1,251	1,126	125	4,017	3,662	355	17,988	7,414
Utah	4,503	181	168	13	224	178	46	2,055	1,062
Washington	15,232	164	154	10	1,454	1,220	234	8,775	5,152
Wyoming	3,217	11	NA	NA	151	NA	NA	2,256	1,130
Outlying parts:									
Canal Zone	111				49		49	62	
Guam	9								
Puerto Rico	7,996	302	302					803	
Virgin Islands	256	5	4	1				49	

Region and State	Other school services								
	Transportation services for public school pupils					Community services			
	Supplies, maintenance, and garage operation and maintenance (10)	Transportation insurance (11)	Other [1] (12)	Food services [2] (13)	Miscellaneous school services (14)	Total expenditures for community services (15)	Public libraries under local boards of education (16)	Nonpublic schools (17)	Other community services (18)
United States	NA	NA	NA	372,975	45,042	57,953	NA	NA	NA
North Atlantic	NA	NA	NA	97,535	13,311	20,168	2,500	2,163	15,506
Connecticut	252	54	6,285	3,255	668	324		208	116
Delaware	54	2	1,315	896		5			5
Maine	510	64	2,036	1,730	81	38			38
Maryland	593	64	7,026	6,083	265	525		193	332
Massachusetts	NA	NA	NA	14,589	3,261	713		713	
New Hampshire	NA	NA	NA	1,116	239				
New Jersey	960	95	10,727	8,372	3,239	1,422	1,422		
New York	NA	NA	NA	42,194	2,795	11,021		613	10,408
Pennsylvania	3,658	NA	20,844	16,181	2,610	5,675	1,077		4,597
Rhode Island	123		1,030	1,208	146				
Vermont	163	15	976	581	6	22		13	10
District of Columbia	11		6	1,325	1	422		422	
Great Lakes and Plains	NA	NA	NA	89,357	15,127	13,262	NA	NA	NA
Illinois	4,408	366	8,102	14,030	1,893				
Indiana	1,898	159	327	7,058	853	736			736
Iowa	NA	NA	NA	5,641	374				
Kansas	2,062	165	3,628	4,050	(7)	[7] 4,487	NA		NA
Michigan	9,202			15,485	4,278	3,313			3,313
Minnesota	2,901		9,752	8,061	1,388	1,908			1,908
Missouri	2,501	250	6,215	7,761	605	556	NA	NA	NA
Nebraska	981	66	866	2,110	302	22	1		22
North Dakota	NA	NA	NA	1,567	307	75			75
Ohio	6,456		61	13,721	1,479	1,683	153		1,530
South Dakota	404	23	914	1,363	182	47	NA	NA	47
Wisconsin	1,621	152	9,290	8,502	[8] 3,464	436			436

Southeast	NA	NA	NA	114,671	8,895	2,886	570	2,143	173
Alabama	NA	NA	NA	7,637	6,275	30	30		
Arkansas	3,348	148	438	5,008	110				
Florida	2,010	146	672	10,738	836				
Georgia	5,619	139	1,038	9,060					
Kentucky	3,112	142	2,488	9,062		114	57		57
Louisiana	896	242	51	23,792	184	2,143		2,143	
Mississippi	3,845	26	627	6,489	614			(9)	
North Carolina	5,606		21	11,502	16	13			13
South Carolina	(10)	(10)	[10] 4,512	6,952	292	133	133		
Tennessee	2,344	142	3,603	10,842	334				
Virginia	5,319	227	1,026	9,006	112				
West Virginia	1,636	64	191	4,673	124	454	350		104
West and Southwest	NA	NA	NA	71,412	7,710	21,637	NA	NA	NA
Alaska	72	4	1,040	220	22			(11)	
Arizona	NA	NA	NA	3,048	676				
California	NA	NA	NA	25,843		19,809	NA		19,809
Colorado	2,018	110	1,026	3,759	446	448	5		443
Hawaii	NA	NA	NA	2,437					
Idaho	830	64	1,151	1,316	278				
Montana	1,136	47	2,296	1,140	642				
Nevada	251	25	252	318	165				
New Mexico	112	62	4,166	2,347		127	18	109	
Oklahoma	4,020	227	597	5,643		150			150
Oregon	1,475	183	1,573	2,895	937				
Texas	9,639	304	631	14,772	4,537	311			311
Utah	681	30	281	2,036	7	361	5		356
Washington	3,151	NA	471	4,840		431			431
Wyoming	(10)	(10)	[10] 1,127	798					
Outlying parts:									
Canal Zone			62			111			111
Guam				9					
Puerto Rico			803	6,282	609	2,114	437	30	1,647
Virgin Islands	1		48	202		202	79	33	90

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[1] Includes contracted services, fares furnished pupils for public transportation, and payments in lieu of transportation.

[2] Data relate to net expenditures from Federal, State, and local funds expended to cover deficit of school lunch and milk programs.

[3] Expenditures for attendance services included with expenditures for administration.

[4] Incomplete; salaries of visiting teachers included with salaries of instructional staff.

[5] Expenditures for attendance services included with expenditures for instruction.

[6] Expenditures for attendance services included with expenditures for health services.

[7] Col. 14 included in col. 15.

[8] Col. 5 included in col. 14.

[9] Expenditures for textbooks for nonpublic schools included with expenditures for instruction.

[10] Data for cols. 10 and 11 included in col. 12.

[11] Expenditures for transportation of nonpublic school pupils included with expenditures for public school pupils.

[12] Estimated by Office of Education.

Note.—Because of rounding, detail may not add to totals.

TABLE 22.—AVERAGE DAILY ATTENDANCE IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE: 1870-71 TO 1963-64

Region and State	1870-71 [1] (1)	1879-80 (2)	1889-90 (3)	1899-1900 (4)	1909-10 (5)	1919-20 (6)	1929-30 (7)	1939-40 (8)	1949-50 (9)	1959-60 (10)	1961-62 (11)	1963-64 (12)
United States [2]	4,545	6,144	8,154	10,633	12,827	16,150	21,265	22,042	22,284	32,477	34,682	37,405
North Atlantic:												
Connecticut	63	74	84	112	[3] 147	205	274	256	245	425	462	504
Delaware	13	17	20	25	23	27	36	39	41	[4] 73	[4] 82	91
Maine	100	103	98	98	107	116	138	149	145	182	192	204
Maryland	56	86	102	134	146	175	236	257	299	534	583	649
Massachusetts	202	233	274	366	444	520	676	630	560	793	833	907
New Hampshire	48	49	42	47	50	53	66	67	66	96	103	113
New Jersey	87	115	133	208	324	476	663	635	583	942	1,019	1,125
New York	494	573	643	857	1,123	1,362	1,866	1,920	1,700	2,464	2,607	2,796
Pennsylvania	567	602	683	855	1,001	1,266	1,661	1,668	1,408	1,789	[5] 1,855	1,985
Rhode Island	22	27	34	47	61	73	103	100	84	118	126	136
Vermont	44	49	46	47	52	50	58	56	56	70	[1] 69	75
District of Columbia	10	21	28	35	45	53	68	83	84	106	115	124
Great Lakes and Plains:												
Illinois	342	432	538	738	779	956	1,204	1,093	1,032	1,514	1,617	1,792
Indiana	295	322	342	430	421	457	596	590	589	863	893	982
Iowa	212	260	306	373	360	406	465	437	418	538	563	579
Kansas	53	138	243	262	291	310	365	331	301	[4] 441	451	474
Michigan	193	[1] 240	[1] 282	355	443	521	845	862	987	1,458	1,565	1,708
Minnesota	51	[1] 78	127	243	348	395	457	454	434	627	666	725
Missouri	187	[1] 281	385	460	490	531	576	599	558	705	742	798
Nebraska	14	60	146	182	191	233	259	243	204	260	278	299
North Dakota	1	[1] 9	21	44	90	128	149	125	[4] 103	[4] 126	130	136
Ohio	432	476	549	616	649	809	1,141	1,122	1,110	1,734	1,871	2,025
South Dakota	([6])	([6])	48	[1] 68	80	99	139	120	106	138	148	155
Wisconsin	132	156	200	[1] 310	320	369	473	487	450	[7] 616	[7] 664	[7] 722
Southeast:												
Alabama	108	118	182	298	267	368	474	567	595	709	734	771
Arkansas	47	[1] 55	[1] 149	195	255	326	331	373	355	373	386	402

Florida	11	27	65	75	104	166	267	327	415	871	980	1,082
Georgia	31	145	241	298	346	467	538	584	620	821	872	931
Kentucky	121	178	226	310	315	[8] 343	433	493	484	567	586	610
Louisiana	40	[1] 55	88	146	183	256	350	398	421	619	659	708
Mississippi	90	157	208	225	261	[8] 260	436	474	472	486	504	520
North Carolina	73	170	203	207	331	474	673	790	798	1,003	1,037	1,082
South Carolina	45	[1] 91	148	201	244	331	348	385	414	531	555	583
Tennessee	89	209	324	339	364	458	482	537	583	736	772	810
Virginia	77	128	198	216	259	351	453	494	537	756	812	873
West Virginia	51	92	122	151	190	256	350	412	399	421	409	411
West and Southwest:												
Alaska						3	3	5	11	38	45	51
Arizona		3	5	10	20	46	76	88	127	258	294	333
California [9]	64	101	147	197	287	481	909	1,057	1,624	3,155	3,515	3,867
Colorado	3	13	39	73	108	150	191	199	201	345	387	432
Hawaii						38	69	88	85	131	139	146
Idaho	1	4	[1] 10	22	51	85	98	106	111	147	[1] 157	162
Montana	1	[1] 3	11	[1] 26	41	92	105	98	94	[1] 132	141	150
Nevada	2	5	5	5	[1] 7	11	15	18	25	55	67	86
New Mexico	1	3	13	22	37	59	76	106	121	202	216	235
Oklahoma				64	279	356	470	485	394	486	504	533
Oregon	15	27	43	64	104	137	155	166	229	345	366	396
Texas	41	[1] 132	292	439	545	746	1,074	1,116	1,157	1,822	1,975	2,124
Utah	13	17	21	51	69	98	121	124	142	216	235	256
Washington	3	11	37	75	156	211	279	275	357	569	624	658
Wyoming	(10)	2	[1] 5	[1] 10	17	33	48	47	49	71	77	82
Outlying areas:												
Canal Zone						3	6	6	8	10	11	12
Guam							4	4		13	13	14
Puerto Rico						145	193	255	369	512	524	540
Virgin Islands							3		5	6	7	8

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[1] Estimated by Office of Education.
[2] Beginning 1959-60, includes Alaska and Hawaii.
[3] High school attendance not reported.
[4] Includes an estimate for kindergarten.
[5] Estimated by State.
[6] Included with North Dakota.
[7] Excludes vocational schools not operated as part of the regular public school system.
[8] Data for 1918-19.
[9] Includes excused absences.
[10] Less than 500.

Note.—Because of rounding, detail may not add to totals.

TABLE 24.—SELECTED PUPIL TRANSPORTATION STATISTICS, BY STATE, 1961 62

Region and State	Average daily attendance of pupils transported at public expense			Number of pupils for whom subsistence was paid in lieu of transportation	Number of school bus accidents in which children were killed or fatally injured	Number of pupil deaths resulting from school bus accidents	Total vehicles in use		Total annual mileage of regular school bus routes to and from school (thousands)	Average cost per pupil transported (public only)	Transportation expenditures as percent of current expenditures for elementary and secondary schools
	Public school pupils										
	Number transported	Percent of total average daily attendance	Nonpublic school pupils transported				Publicly owned	Privately owned			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
United States	13,222,667	38.1	155,378	[1] 17,129	[1] 29	[1] 35	133,420	59,833	[1] 1,620,098	$43.59	3.9
North Atlantic	3,098,701	38.5	56,682	[1] 571	[1] 8	[1] 9	12,301	25,557	317,753	46.97	3.5
Connecticut	206,266	44.6	5,829				243	1,680	18,920	40.06	3.6
Delaware	35,924	43.6		294			32	495	3,800	45.46	4.1
Maine	98,873	51.6	[1] 2,500	NA	NA	NA	560	745	12,052	42.73	6.8
Maryland	254,981	43.7		46			816	2,009	22,648	41.88	4.2
Massachusetts	277,458	33.3	31,822	231			158	3,154	22,672	44.43	3.2
New Hampshire	44,966	43.7	[3] 5,765	NA			115	749	5,994	52.35	5.9
New Jersey	[4] 309,122	30.3	([4])				1,040	3,776	25,593	52.14	3.0
New York	969,588	37.2	([4])	NA	5	5	[5] 6,911	[3] 5,197	109,382	55.75	3.3
Pennsylvania	825,908	44.5		NA	3	4	2,063	6,907	83,413	39.05	3.9
Rhode Island	42,319	33.7	[2] 10,000				133	266	[2] 3,737	44.19	3.2
Vermont	32,946	47.7	766	NA			212	579	5,142	49.69	5.8
District of Columbia [6]	350	.3					18			411.43	.3
Great Lakes and plains	3,441,881	35.9	61,452	[1] 8,523	8	9	41,824	20,211	492,194	55.02	4.5
Illinois	[6] [7] 375,063	23.2	([7])	NA			5,077	2,235	59,641	75.75	3.5
Indiana	374,722	41.9	20,360		2	2	3,648	3,150	41,183	56.27	5.5
Iowa	285,262	41.8			1	1	5,319	254	49,412	55.10	5.6
Kansas	110,294	24.5	2,510		2	3	2,387	1,071	27,974	76.31	4.5
Michigan	517,975	33.1	22,755	16	2	2	6,368	54	58,751	51.47	3.8
Minnesota	300,029	45.0		[8] 79	1	1	3,186	2,737	51,581	64.79	6.1
Missouri	368,501	49.6					3,157	2,361	48,821	42.25	5.3
Nebraska	44,278	15.9					1,585	285	12,134	76.34	3.3
North Dakota	45,027	34.6		7,167			1,031	2,027	20,047	104.54	9.0
Ohio	795,411	42.5	15,827	1,066			7,794	1,028	73,317	35.17	3.8
South Dakota	22,807	15.4		NA			535	238	6,469	114.75	4.7
Wisconsin	252,522	38.1		[3] 195			1,737	4,771	42,864	71.88	5.8

Southeast	4,254,184	61.2	33,035	3,734	9	9	49,932	8,068	456,489	29.56	5.1
Alabama	319,697	43.6			3	3	4,985	299	37,367	25.09	4.5
Arkansas	195,211	50.6			1	1	3,125	197	25,546	36.88	7.1
Florida	308,987	31.5		33			3,287	337	31,634	29.84	2.7
Georgia	456,328	52.3		269			4,363	649	51,061	34.89	6.3
Kentucky	324,409	55.4	(9)				3,142	1,295	38,839	33.06	6.1
Louisiana	375,062	57.0	33,035		2	2	1,124	3,783	34,225	46.76	6.9
Mississippi	299,294	59.3			1	1	5,286	136	41,379	31.86	8.2
North Carolina	560,677	54.1		35	2	2	9,179		57,182	18.68	3.4
South Carolina	321,491	57.9					5,232		35,965	23.88	5.6
Tennessee	389,553	50.4					3,251	1,062	40,844	28.19	5.5
Virginia	463,491	57.1		1,078			5,003	256	43,432	25.22	4.5
West Virginia	239,984	58.6		2,319			1,955	54	18,965	28.24	5.7
West and Southwest	2,427,901	27.8	4,209	[1] 4,301	[1] 4	[1] 8	29,363	6,047	[1] 353,662	47.64	3.0
Alaska	13,069	29.0					48	136	1,639	113.93	5.3
Arizona	[10] 96,380	32.8			NA	NA	[10] 1,060	[10] 90	NA	32.69	2.4
California	767,894	21.8		NA	NA	NA	6,547	1,045	80,807	50.44	2.2
Colorado	119,809	31.0		117	NA	NA	1,895	697	20,813	48.26	3.5
Hawaii	5,371	3.9	440	NA			21	122	NA	64.98	.7
Idaho	73,644	47.0		742			934	345	9,915	48.44	7.1
Montana	43,197	30.7		185			427	525	10,334	106.86	7.3
Nevada	15,785	23.7		178			223	39	2,595	58.54	3.0
New Mexico	79,776	37.0			2	2	161	1,245	11,096	63.93	5.8
Oklahoma	193,848	38.5					2,988	332	24,834	40.28	4.7
Oregon	184,676	50.5	3,769	756			1,734	754	18,620	45.26	4.5
Texas	473,481	24.0			NA	4	9,059	227	86,236	40.15	2.7
Utah	65,472	27.9		958			681	104	5,143	33.48	2.7
Washington	273,258	43.8		NA	2	2	3,056	145	27,628	44.66	4.2
Wyoming	22,241	29.0		1,365			569	241	[11] 53,946	107.10	6.2
Outlying areas:											
Canal Zone	6,112	53.3	1							10.96	1.5
Guam	5,956	44.9	1,079				41	60	421		
Puerto Rico	53,280	10.2								28.77	1.9
Virgin Islands	967	13.8	253				1	13	83	NA	NA

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[1] Total for States reporting.
[2] Estimated by State.
[3] Data relate to average number of pupils transported.
[4] Nonpublic school pupils included with public school pupils.
[5] Incomplete.
[6] Transportation program operated for handicapped children only.
[7] Incomplete; includes only pupils transported to schools which claim State reimbursement.
[8] Includes 58 handicapped pupils attending approved special classes.
[9] Cost of transporting 15,043 nonpublic school pupils paid by appropriations from fiscal courts and not from public school funds.
[10] Estimated by Office of Education.
[11] Data for 1959-60.

TABLE 38.—CURRENT EXPENDITURES FOR OTHER SCHOOL SERVICES, BY STATE: 1961–62

[In thousands of dollars]

Region and State	Total expenditures for other school services	Attendance services			Health services (provided by schools)			Transportation services for public school pupils						Food services [2]	Miscellaneous school services [3]
		Total	Salaries	Supplies and other expenses	Total	Salaries	Supplies and other expenses	Total	Salaries	Replacement of vehicles	Supplies, maintenance, and garage operation and maintenance	Transportation insurance	Other [1]		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
United States	1,192,057	35,584	NA	NA	129,007	NA	NA	576,361	NA	NA	NA	NA	NA	400,636	50,469
North Atlantic	326,887	12,916	NA	NA	63,128	NA	NA	145,559	NA	NA	NA	NA	NA	82,896	17,383
Connecticut	16,351	304	286	18	2,294	2,043	251	8,263	495	114	297	56	7,301	4,362	1,128
Delaware	3,504	41	41	(4)	664	628	36	1,633	92	.....	29	.....	1,512	1,166	.....
Maine	7,003	38	37	1	245	203	42	4,225	1,031	415	582	62	2,135	2,315	180
Maryland	19,918	1,322	1,235	87	1,236	965	271	10,679	1,688	171	1,119	75	7,626	6,681	.....
Massachusetts	38,785	(5)	.....	.....	4,680	NA	NA	12,328	NA	NA	NA	NA	NA	17,825	4,002
New Hampshire	5,353	(5)	.....	.....	459	NA	NA	2,354	NA	NA	NA	NA	NA	1,358	1,182
New Jersey	39,075	1,586	1,514	72	8,085	7,501	584	16,119	2,569	375	1,010	146	12,019	9,174	4,111
New York	118,260	6,721	6,432	289	36,973	24,676	12,297	54,059	NA	NA	NA	NA	NA	16,519	3,988
Pennsylvania	68,975	2,389	NA	NA	12,488	11,689	749	32,248	3,427	.....	4,013	NA	24,808	19,397	2,503
Rhode Island	4,484	227	214	13	704	669	34	1,870	507	27	167	17	1,152	1,400	283
Vermont	2,567	4	3	1	122	90	32	1,637	310	74	208	17	1,028	797	7
District of Columbia	2,612	234	279	5	278	271	7	[6] 144	119	5	20	(4)	.....	1,902	4
Great Lakes and Plains	328,202	6,098	NA	NA	19,526	NA	NA	189,381	NA	NA	NA	NA	NA	100,969	12,228
Illinois	54,035	1,061	994	67	6,057	5,295	762	28,409	7,412	7,339	4,090	421	9,144	17,607	902
Indiana	32,621	1,096	1,096	.....	1,517	1,505	12	21,086	.....	1,508	3,313	.....	16,265	8,922	.....
Iowa	21,481	(7)	.....	.....	[7] 1,859	NA	NA	12,964	NA	NA	NA	NA	NA	6,505	153
Kansas	14,702	203	NA	NA	866	NA	NA	8,417	NA	NA	NA	NA	NA	4,896	350
Michigan	48,560	1,380	1,380	.....	2,143	2,143	.....	26,661	11,635	5,064	9,600	362	NA	13,882	4,494
Minnesota	31,383	.....	.....	.....	1,836	NA	NA	19,440	5,149	.....	2,925	317	11,049	8,863	1,244
Missouri	28,206	525	NA	NA	1,562	NA	NA	15,570	NA	NA	NA	NA	NA	9,907	652
Nebraska	6,736	99	83	16	424	392	32	3,388	1,129	(5)	[8] 1,169	60	1,030	2,498	327
North Dakota	6,516	.....	.....	.....	48	NA	NA	4,707	NA	NA	NA	NA	NA	1,483	278
Ohio	48,478	1,697	1,632	65	3,088	2,707	381	27,971	12,360	4,661	6,957	375	3,618	15,722	.....
South Dakota	4,670	37	26	11	166	145	21	2,617	670	217	536	38	1,156	1,590	260
Wisconsin	30,813	.....	.....	.....	(9)	.....	.....	18,151	2,577	1,622	1,791	169	11,992	9,094	[9] 3,568

Southeast	273,095	5,760	NA	NA	3,186	NA	NA	125,760	NA	NA	NA	NA	NA	130,529	12,860
Alabama	26,084	430	NA	NA	79	NA	NA	8,022	NA	NA	NA	NA	NA	9,837	7,716
Arkansas	12,812	43	36	7	88	59	29	7,200	3,004	1,152	2,502	143	399	5,371	110
Florida	23,128	247	171	76	352	95	257	9,219	5,570	548	2,165	165	781	12,480	880
Georgia	28,098	1,049	954	95	...	...	...	15,923	8,817	2,415	3,515	171	1,005	11,126	...
Kentucky	21,454	1,484	1,236	248	270	61	209	10,726	3,837	1,132	2,817	164	2,776	8,974	...
Louisiana	43,272	970	911	59	302	118	184	17,538	16,256	...	945	277	60	[10] 24,403	59
Mississippi	17,483	4	...	4	12	...	12	9,537	3,866	1,405	3,965	38	263	7,336	592
North Carolina	26,964	337	304	33	477	81	396	10,471	4,362	2,706	3,329	...	74	13,620	2,059
South Carolina	16,232	232	211	21	143	113	30	7,676	1,823	1,790	([11])	([11])	[11] 4,063	7,869	312
Tennessee	25,767	607	538	69	200	161	39	10,983	4,285	398	2,044	184	4,072	13,070	907
Virginia	24,161	45	35	10	847	642	205	11,689	5,714	1,510	3,335	257	873	11,432	148
West Virginia	12,640	312	276	86	416	262	154	6,776	4,802	...	1,719	67	188	5,009	127
West and Southwest	253,873	10,810	NA	NA	38,167	NA	NA	115,661	NA	NA	NA	NA	NA	85,243	7,993
Alaska	2,026	74	71	3	145	113	32	1,489	223	32	52	8	1,174	284	34
Arizona	9,251	217	209	8	1,326	1,245	80	3,151	NA	NA	NA	NA	NA	3,724	833
California	102,200	[12] 7,167	NA	NA	[12] 25,710	NA	NA	38,730	NA	NA	NA	NA	NA	30,593	...
Colorado	11,881	420	402	18	1,136	983	153	5,782	2,545	767	1,417	129	924	4,145	398
Hawaii	4,020	122	113	9	291	270	21	349	NA	NA	NA	NA	NA	3,258	...
Idaho	5,694	...	...	...	147	NA	NA	3,567	1,059	351	861	81	1,215	1,524	456
Montana	6,223	30	26	4	146	134	12	4,616	642	323	1,391	56	2,204	1,426	5
Nevada	1,793	92	84	8	234	216	18	924	339	...	294	28	303	360	183
New Mexico	8,761	124	118	6	682	617	65	5,100	173	52	116	71	4,688	2,855	...
Oklahoma	14,999	290	243	47	483	386	97	7,808	3,054	1,666	2,194	263	641	6,418	...
Oregon	13,572	349	NA	NA	539	NA	NA	8,358	NA	NA	NA	NA	NA	3,762	564
Texas	49,439	1,512	1,434	78	5,166	4,761	405	19,010	8,188	3,417	6,484	301	620	18,252	5,499
Utah	5,371	194	180	14	270	210	60	2,192	1,217	131	533	32	279	2,694	21
Washington	20,052	205	200	5	1,697	1,426	271	12,203	6,017	1,982	3,622	...	582	5,947	...
Wyoming	3,591	13	13	...	195	195	...	2,382	[13] 1,207	...	767	([13])	408	1,001	...
Outlying areas:															
Canal Zone	138	...	...	...	71	66	5	67	...	...	...	...	67	...	...
Guam	174	...	...	...	...	...	...	...	...	...	...	...	...	174	...
Puerto Rico	16,931	401	401	...	...	...	...	1,533	...	...	...	...	1,533	14,223	774

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[1] Includes contracted services, fares furnished pupils for public transportation, and payments in lieu of transportation.

[2] Data relate to net expenditures from Federal, State, and local funds expended to cover deficit of school lunch and milk programs.

[3] Includes direct expenditures or deficits for extracurricular activities for pupils, if paid from school funds, and any other services for public school pupils not included elsewhere.

[4] Less than $500.

[5] Included with expenditures for administration for local basic administrative units.

[6] Transportation program operated for handicapped children only.

[7] Expenditures for attendance services included with expenditures for health services.

[8] Column 10 included with column 11.

[9] Column 5 included with column 15.

[10] Includes expenditures for nonpublic schools.

[11] Data for columns 11 and 12 included with column 13.

[12] Estimated by Office of Education.

[13] Column 12 included with column 9.

Note.—Because of rounding, detail may not add to totals.

TABLE 22.—AVERAGE DAILY ATTENDANCE IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE: 1870-71 TO 1963-64

Region and State	1870-71 [1] (1)	1879-80 (2)	1889-90 (3)	1899-00 (4)	1909-10 (5)	1919-20 (6)	1929-30 (7)	1939-40 (8)	1949-50 (9)	1959-60 (10)	1961-62 (11)	1963-64 (12)
United States [3]	4,545	6,144	8,154	10,633	12,827	16,150	21,265	22,042	22,284	32,477	34,682	37,405
North Atlantic												
Connecticut	63	74	84	112	[3] 147	205	274	256	245	425	462	504
Delaware	13	17	20	25	23	27	36	39	41	[4] 73	[4] 82	91
Maine	100	103	98	98	107	116	138	149	145	182	192	204
Maryland	56	86	102	134	146	175	236	257	299	534	583	649
Massachusetts	202	233	274	366	444	520	676	630	560	793	833	907
New Hampshire	48	49	42	47	50	53	66	67	66	96	103	113
New Jersey	87	115	133	208	324	476	663	635	583	942	1,019	1,125
New York	494	573	643	857	1,123	1,362	1,866	1,920	1,700	2,464	2,607	2,796
Pennsylvania	567	602	683	855	1,001	1,266	1,661	1,668	1,408	1,789	[5] 1,855	1,985
Rhode Island	22	27	34	47	61	73	103	100	84	118	126	136
Vermont	44	49	46	47	52	50	58	56	56	70	[1] 169	75
District of Columbia	10	21	28	35	45	53	68	83	84	106	115	124
Great Lakes and Plains												
Illinois	342	432	538	738	779	956	1,204	1,093	1,032	1,514	1,617	1,792
Indiana	295	322	342	430	421	457	596	590	589	863	893	982
Iowa	212	260	306	373	360	406	465	437	418	538	563	579
Kansas	53	138	243	262	291	310	365	331	301	[4] 441	451	474
Michigan	193	[1] 240	[1] 282	355	443	521	845	862	987	1,458	1,565	1,708
Minnesota	51	[1] 78	127	243	348	395	457	454	434	627	666	725
Missouri	187	[1] 281	385	460	490	531	576	599	558	705	742	798
Nebraska	14	60	146	182	191	233	259	243	204	260	278	299
North Dakota	1	[1] 9	21	44	90	128	149	125	103	[4] 126	130	136
Ohio	432	475	549	616	649	809	1,141	1,122	1,110	1,734	1,871	2,025
South Dakota	(6)	(6)	48	[1] 68	30	99	139	120	106	138	148	155
Wisconsin	132	156	200	[1] 310	320	369	473	487	450	[7] 616	[7] 664	[7] 722
Southeast:												
Alabama	108	118	182	298	267	368	474	567	595	709	734	771
Arkansas	47	[1] 55	[1] 149	195	255	326	331	373	355	373	386	402

Florida	11	27	65	75	104	166	267	327	415	871	980	1,082
Georgia	31	145	241	298	346	467	538	584	620	821	872	931
Kentucky	121	178	226	310	315	[8] 343	433	493	484	567	586	610
Louisiana	40	[1] 55	88	146	183	356	350	398	421	619	659	708
Mississippi	90	157	208	223	261	[8] 269	436	474	472	486	504	527
North Carolina	73	170	203	207	331	474	673	790	798	1,003	1,037	1,082
South Carolina	45	[1] 91	148	201	244	331	348	385	414	531	556	583
Tennessee	89	209	324	339	364	458	482	537	583	736	772	810
Virginia	77	128	198	216	259	351	453	494	537	756	812	873
West Virginia	51	92	122	151	190	256	350	412	399	421	409	411
West and Southwest:												
Alaska						3	3	5	11	38	45	51
Arizona		3	5	10	20	46	76	88	127	258	294	333
California [9]	64	101	147	197	237	481	909	1,057	1,624	3,155	3,515	3,867
Colorado	3	13	33	73	108	150	191	199	201	345	387	432
Hawaii						38	69	88	85	131	139	146
Idaho	1	4	[1] 10	22	51	85	98	106	111	147	[1] 157	162
Montana	1	[1] 3	11	[1] 26	41	92	105	98	94	[1] 132	141	150
Nevada	2	5	5	5	[1] 7	11	15	18	25	55	67	86
New Mexico	1	3	13	22	37	59	76	106	121	202	216	235
Oklahoma				64	279	356	470	485	394	486	504	533
Oregon	15	27	43	64	104	137	155	166	229	345	366	396
Texas	41	[1] 132	292	433	515	746	1,074	1,116	1,157	1,822	1,975	2,124
Utah	13	17	21	51	69	98	121	124	142	216	235	256
Washington	3	11	37	75	156	211	279	275	357	569	624	658
Wyoming	(10)	2	[1] 5	[1] 10	17	33	48	47	49	71	77	82
Outlying areas:												
Canal Zone						3	6	6	8	10	11	12
Guam							4	4		13	13	14
Puerto Rico						145	193	255	369	512	524	540
Virgin Islands							3		5	6	7	8

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[1] Estimated by Office of Education.
[2] Beginning 1959–60, includes Alaska and Hawaii.
[3] High school attendance not reported.
[4] Includes an estimate for kindergarten.
[5] Estimated by State.
[6] Included with North Dakota.
[7] Excludes vocational schools not operated as part of the regular public school system.
[8] Data for 1918–19.
[9] Includes excused absences.
[10] Less than 500.

Note.—Because of rounding, detail may not add to totals.

TABLE 24.—SELECTED PUPIL TRANSPORTATION STATISTICS, BY STATE: 1963-64

Region and State	Average daily attendance of pupils transported at public expense			Number of pupils for whom subsistence was paid in lieu of transportation	Number of school bus accidents in which children were killed or fatally injured	Number of pupil deaths resulting from school bus accidents	Total vehicles in use		Total annual mileage of regular school bus routes to and from school (thousands)	Average cost per pupil transported (public only)	Transportation expenditures as percent of current expenditures for elementary and secondary schools
	Public school pupils										
	Number transported	Percent of total average daily attendance	Nonpublic school pupils transported				Publicly owned	Privately owned			
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
United States	14,475,778	38.7	[1] 179,108	[1] 11,752	[1] 37	39	145,211	58,168	[1] 1,680,896	$46.53	3.9
North Atlantic	3,533,950	40.6	[1] 71,693	[1] 514	10	10	13,935	27,516	[1] 345,005	55.45	3.9
Connecticut	233,261	46.3	5,847				215	1,617	18,868	39.31	3.4
Delaware	42,534	46.8		327			35	572	4,856	48.62	4.1
Maine	104,129	51.0	3,716	47	1	1	651	725	13,048	44.45	6.3
Maryland	287,697	44.3	9,276	45	1	1	979	2,147	29,650	43.82	4.1
Massachusetts	321,333	35.4	36,952	92			175	3,521	23,870	45.58	3.1
New Hampshire	49,852	44.1	6,579	NA			29	778	6,538	55.10	5.5
New Jersey	366,843	32.6	NA	NA	2	2	1,337	4,259	26,000	52.30	2.9
New York	1,115,470	39.9	NA	NA	2	2	[2] 7,555	[2] 5,666	[2] 125,613	80.06	4.3
Pennsylvania	926,895	46.7	NA	3	4	4	[3] 2,487	[3] 7,403	[3] 85,500	40.10	3.9
Rhode Island	49,970	36.7	8,666	NA			106	320	4,507	43.79	3.3
Vermont	35,540	47.3	657	NA			237	508	6,525	49.51	5.4
District of Columbia [4]	416	.3					29			417.73	.3
Great Lakes and Plains	3,914,131	37.7	68,457	[1] 5,425	[1] 5	5	45,459	18,459	509,861	53.79	4.3
Illinois	[5] [6] 470,768	26.3	(1)	NA			5,556	2,110	60,592	62.93	3.2
Indiana	438,851	44.7	20,391	NA	1	1	4,115	2,772	39,990	58.42	5.8
Iowa	252,525	43.6			1	1	5,463	275	51,203	56.64	5.4
Kansas	120,348	25.4	2,825				2,623	545	31,287	75.11	4.2
Michigan	[3] 532,000	34.1	[3] 28,000	[3] 15			[3] 6,900	60	[1] 61,000	45.87	3.3
Minnesota	335,697	46.3		[4] 71			3,431	2,903	54,324	71.20	6.4
Missouri	404,599	50.7					3,465	2,354	51,541	41.91	5.0
Nebraska	48,322	16.2		NA	[7] 2	2	1,865	259	13,528	77.83	3.2
North Dakota	51,788	38.1		5,144			1,212	1,617	[1] 12,765	107.50	9.6
Ohio	872,505	43.1	[3] 17,251	NA			8,530	647	75,002	34.49	3.4
South Dakota	28,715	18.5		NA			601	327	9,844	101.41	4.6
Wisconsin	308,013	42.7		195	1	1	1,698	4,590	48,952	71.56	5.9

Southeast	4,459,630	50.7	[1] 34,661	2,475	14	16	53,453	8,106	479,130	31.21	4.9
Alabama	341,088	44.3			1	1	5,263	258	38,650	26.51	4.0
Arkansas	203,135	50.5	NA	69	1	1	3,908	256	24,891	37.39	6.7
Florida	333,828	30.9	NA	94			3,570	355	34,173	33.51	2.6
Georgia	484,128	52.0		185			4,553	503	52,184	34.23	5.6
Kentucky	350,782	57.5	(8)		1	1	3,520	1,144	42,561	33.10	6.0
Louisiana	376,853	53.2	34,661				1,423	3,787	37,746	52.13	7.1
Mississippi	311,687	59.1					5,482	60	43,408	34.76	8.2
North Carolina	587,064	54.2		30	3	3	9,481		59,564	18.89	3.2
South Carolina	334,878	57.5		5	2	2	5,508	30	36,419	22.65	4.7
Tennessee	375,690	46.4			4	6	3,061	1,476	42,645	32.37	5.1
Virginia	509,741	58.4			1	1	5,622	183	46,679	26.11	4.2
West Virginia	250,756	61.0		2,092	1	1	2,062	49	20,210	34.09	6.5
West and Southwest	2,568,067	27.0	[1] 4,297	[1] 3,338	[1] 3	[1] 8	[1] 32,364	[1] 4,087	346,870	49.77	2.9
Alaska	14,263	27.9					39	173	1,843	114.18	4.7
Arizona	[3] 102,800	30.9	NA	NA	NA	NA	NA	NA	NA	35.30	2.3
California	830,093	21.5	NA	NA	NA	NA	8,935	NA	86,593	52.66	2.2
Colorado	127,583	29.6	NA	125			2,419	584	23,123	52.44	3.3
Hawaii	4,500	3.1		NA			NA	NA	NA	102.98	.8
Idaho	73,369	45.2		630			969	354	10,607	50.07	6.5
Montana	45,699	30.4		649			485	528	10,982	95.32	6.5
Nevada	20,520	23.8		226			300	42	2,825	62.62	3.1
New Mexico	91,201	38.7					163	1,234	11,755	61.51	5.1
Oklahoma	199,766	37.5					3,248	239	28,573	41.43	4.4
Oregon	202,831	51.3	4,297	NA	1	1	2,081	509	20,976	45.49	4.3
Texas	455,892	21.5			6	6	9,251	NA	88,810	43.72	2.4
Utah	77,694	30.4	NA	154			797	89	6,086	34.32	2.5
Washington	298,401	45.4		NA	1	1	3,234	127	30,140	46.05	4.1
Wyoming	23,455	28.7		1,554			470	208	24,602	125.17	6.7
Outlying areas:											
Canal Zone	7,263	59.3	NA						NA	9.57	3.6
Guam	8,383	58.0	886				50	46	587	36.31	4.5
Puerto Rico	59,048	10.9					NA	NA	NA	51.56	1.9
Virgin Islands	2,111	27.3	328				1	19	107	50.21	.1

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[1] Total for States reporting.
[2] Incomplete.
[3] Partially estimated by State.
[4] Transportation program for handicapped children only.
[5] Data for col. 3 included in col. 1.
[6] Incomplete; includes only pupils transported to schools which claim State reimbursement.
[7] Estimated by Office of Education.
[8] Less than 500 pupils.

TABLE 38.—CURRENT EXPENDITURES FOR OTHER SCHOOL SERVICES, BY STATE: 1963–64

[In thousands of dollars]

Region and State	Total expenditures for other school services	Attendance services			Health services (provided by schools)			Transportation services for public school pupils						Food services [2]	Miscellaneous school services [3]
		Total	Salaries	Supplies and other expenses	Total	Salaries	Supplies and other expenses	Total	Salaries	Replacement of vehicles	Supplies, maintenance, and garage operation and maintenance	Transportation insurance	Other [1]		
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
United States	1,394,492	38,026	NA	NA	127,737	NA	NA	673,845	NA	NA	NA	NA	NA	493,182	61,703
North Atlantic	441,397	17,348	NA	NA	65,229	NA	NA	195,957	NA	NA	NA	NA	NA	136,836	26,625
Connecticut	18,137	(4)	NA	NA	[5] 2,985	NA	NA	9,169	NA	NA	NA	NA	NA	4,500	[8] 1,483
Delaware	4,446	(4)	NA	NA	[5] 944	908	36	2,069	103		53		1,913	1,433	
Maine	7,451	40	39	1	282	234	48	4,628	1,144	401	731	66	2,287	2,312	188
Maryland	23,635	2,120	2,011	108	549	466	84	12,608	2,617	325	666	(4)	[6] 8,999	7,926	433
Massachusetts	44,907	1,440	1,121	319	5,303	NA	NA	14,966	1,838	74	131	22	12,901	20,049	3,149
New Hampshire	6,192	32	31	1	493	445	49	2,747	169	56	121	18	2,382	1,513	1,406
New Jersey	45,811	1,689	1,621	68	9,569	8,911	658	19,186	3,441	546	1,127	155	[7] 13,916	10,363	5,004
New York	193,178	7,903	7,557	346	29,714	28,751	963	83,299	NA	NA	NA	NA	NA	61,786	10,477
Pennsylvania	81,374	3,645	3,394	251	14,158	12,627	1,532	37,164	4,733	1,617	3,332	87	27,336	22,718	3,688
Rhode Island	4,708	165	157	8	763	720	43	2,183	405	62	174	23	1,525	1,420	172
Vermont	2,806	4	4	1	190	150	40	1,759	332	101	241	21	1,054	826	25
District of Columbia	2,752	310	306	4	279	272	7	[9] 174	127	16	21	(4)	10	1,990	
Great Lakes and Plains	366,269	9,500	NA	NA	23,801	NA	NA	210,529	NA	NA	NA	NA	NA	113,757	8,684
Illinois	58,817	1,897	1,774	123	5,162	3,614	1,549	29,626	NA	NA	NA	NA	NA	17,418	4,714
Indiana	38,436	613	511	102	1,793	1,537	256	25,536	2,518	2,838	1,146	295	18,779	10,454	
Iowa	23,583	273	NA	NA	1,350	1,350		14,302	NA	NA	NA	NA	4,817	7,659	
Kansas	16,438	168	NA	NA	976	NA	NA	9,040	NA	NA	NA	NA	NA	5,833	421
Michigan	48,018	2,781	2,645	136	2,098	1,925	173	26,698	13,569	4,714	4,806	437	3,172	15,048	1,394
Minnesota	37,838	1,087	1,017	70	1,990	1,821	169	23,902	NA	NA	NA	NA	NA	10,327	532
Missouri	31,595	604	NA	NA	1,825	NA	NA	16,955	NA	NA	NA	NA	NA	11,309	902
Nebraska	7,858	102	98	4	478	432	46	3,761	1,321	567	752	91	1,039	3,122	394
North Dakota	7,511	18	15	3	58	44	14	5,567	1,658	403	1,353	81	2,072	1,835	34
Ohio	54,506	1,926	1,856	70	3,532	3,132	400	30,090	14,282	4,018	6,715	411	4,664	18,958	
South Dakota	5,196	31	26	5	193	163	31	2,912	755	179	600	48	1,329	1,766	293
Wisconsin	36,414	(10)	NA	NA	[11] 4,346	NA	NA	22,040	2,969	1,480	1,920	184	15,488	10,028	

Southeast	309,171	7,102	NA	NA	3,662	NA	NA	139,178	NA	NA	NA	NA	NA	143,244	15,985
Alabama	33,466	501	NA	NA	98	NA	NA	9,043	NA	NA	NA	NA	NA	11,616	12,208
Arkansas	14,827	70	49	22	117	102	15	7,594	3,266	1,097	2,646	161	424	6,754	291
Florida	27,488	278	187	91	340	106	234	11,187	6,592	1,112	2,465	181	837	14,750	934
Georgia	30,790	1,181	1,081	99				16,572	9,230	2,430	3,615	168	1,129	13,038	
Kentucky	24,022	1,812	1,718	94	294	82	212	11,611	4,515	1,243	3,018	203	2,631	10,145	160
Louisiana	43,469	993	934	59	311	127	185	19,645	17,409	755	1,103	321	57	22,323	196
Missippi	20,040	2	NA	NA	3	NA	NA	10,834	4,312	2,042	4,318	47	115	8,529	673
North Carolina	28,618	614	552	62	546	NA	NA	11,090	5,319	2,663	3,021		88	15,611	756
South Carolina	17,447	240	216	24	156	122	34	7,585	1,830	1,792	3,963			8,956	510
Tennessee	28,670	1,013	910	104	287	229	59	12,162	4,534	666	2,063	198	4,702	15,181	27
Virginia	25,607	64	54	10	1,043	778	265	13,308	6,940	1,784	3,698	386	501	10,963	230
West Virginia	14,726	334	301	33	467	234	232	8,547	5,410	950	1,944	67	177	5,378	
West and Southwest	277,654	4,076	NA	NA	35,045	NA	NA	128,101	NA	NA	NA	NA	NA	99,346	11,009
Alaska	2,356	(4)	NA	NA	[4] 204	NA	NA	1,629	311	97	126	16	1,078	480	44
Arizona	10,704	233	219	13	1,543	1,453	90	3,629	NA	NA	NA	NA	NA	4,379	921
California	99,523	(4)	NA	NA	[4] 20,677	18,967	1,709	43,709	23,941	NA	NA	NA	NA	35,142	
Colorado	14,252	513	499	20	1,314	1,148	165	6,691	3,152	873	1,539	159	967	5,115	614
Hawaii	5,031	(4)	NA	NA	[4] 459	NA	NA	463	NA	NA	NA	NA	NA	4,109	
Idaho	6,426				148	NA	NA	3,674	1,141	272	921	81	1,259	1,748	856
Montana	7,073	76	42	34	374	164	210	4,713	NA	NA	NA	NA	NA	1,631	280
Nevada	2,456	165	153	12	331	296	34	1,285	515	74	272	48	375	451	235
New Mexico	10,726	208	195	13	795	729	66	5,610	267	84	251	141	4,857	3,924	189
Oklahoma	17,231	332	302	30	512	460	52	8,277	3,691	1,566	2,367	278	375	7,601	509
Oregon	15,292	450	425	25	620	311	309	9,228	3,564	819	2,259	222	2,364	4,248	747
Texas	54,325	1,578	1,486	92	5,794	5,312	482	19,931	8,875	3,655	6,457	337	607	20,445	6,577
Utah	6,533	277	261	16	296	241	55	2,666	1,505	273	522	41	325	3,257	37
Washington	21,546	228	220	7	1,751	NA	NA	13,740	NA	NA	NA	NA	NA	5,826	
Wyoming	4,164	11	NA	NA	227	NA	NA	2,936	1,328	395	782	(12)	431	990	
OUTLYING AREAS															
Canal Zone	149				79	NA	NA	70	NA	NA	NA	NA	NA		
Guam	707	4	NA	NA				304	167	66	72			399	
Puerto Rico	19,031	539	NA	NA				1,864					1,864	15,846	783
Virgin Islands	617	9	NA	NA				106					106	501	

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[1] Includes contracted services, fares furnished pupils for public transportation, and payments in lieu of transportation.

[2] Data relate to net expenditures rom Federal, State, and local funds expended to cover deficit of school lunch and milk programs.

[3] Includes direct expenditures or deficits for extracurricular activities for pupils, if paid from school funds, and any other services for public school pupils not included elsewhere.

[4] Expenditures for attendance services included with expenditures for health services.

[5] Estimated by Office of Education.

[6] Data for col. 12 included in col. 13.

[7] Estimated by State.

[8] Transportation program operated for handicapped children only.

[9] Less than $500.

[10] Included with expenditures for instruction.

[11] Includes expenditures for recreation and school forests.

[12] Included with expenditures for fixed charges allocated to pupil costs.

Note: Because of rounding, detail may not add to totals.

TABLE 23.—AVERAGE DAILY ATTENDANCE IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE OR OTHER AREA: UNITED STATES, 1870-71 TO 1967-68

[In thousands]

Region and State or other area (1)	1870-71[1] (2)	1899-1900 (3)	1917-18 (4)	1929-30 (5)	1949-50 (6)	1957-58 (7)	1959-60 (8)	1965-66 (9)	1967-68 (10)
United States[2]	4,545	10,633	15,549	21,265	22,284	29,722	32,477	39,154	40,828
North Atlantic	1,706	2,831	4,185	5,845	5,271	6,965	7,592	9,100	9,543
Connecticut	63	112	191	274	245	384	425	543	576
Delaware	13	25	25	36	41	[3] 65	[3] 73	99	110
Maine	100	98	114	138	145	169	182	208	215
Maryland	56	134	162	236	299	479	534	704	749
Massachusetts	202	366	519	676	560	733	793	941	939
New Hampshire	48	47	53	66	66	87	96	120	128
New Jersey	87	208	424	663	583	842	942	1,187	1,267
New York	494	857	1,300	1,866	1,700	2,262	2,464	2,907	3,019
Pennsylvania	567	855	1,228	1,661	1,408	1,678	1,789	2,043	2,125
Rhode Island	22	47	72	103	84	108	118	138	148
Vermont	44	47	50	58	56	62	70	[4] 80	85
District of Columbia	10	35	48	68	84	96	106	130	132
Great Lakes and Plains	1,912	4,081	5,200	6,669	6,292	8,385	9,020	10,881	11,397
Illinois	342	738	962	1,204	1,032	1,414	1,514	1,905	2,016
Indiana	295	430	523	596	589	781	863	1,028	1,059
Iowa	212	373	396	465	418	506	538	[4] 595	613
Kansas	53	262	288	365	301	399	[3] 441	463	476
Michigan	193	355	523	845	987	1,373	1,458	1,793	1,919
Minnesota	51	243	374	457	434	578	627	770	808
Missouri	187	460	506	576	558	653	705	[5] 821	874
Nebraska	14	182	214	259	204	243	260	302	311
North Dakota	1	44	119	149	[3] 103	118	[3] 126	140	142
Ohio	432	616	849	1,141	1,110	1,585	1,734	2,136	2,207
South Dakota	(4)	[1] 68	90	139	106	129	138	159	160
Wisconsin	132	[1] 310	356	473	450	606	[5] 616	[6] 769	826

Southeast	783	2,661	3,760	5,135	6,093	7,368	7,893	9,042	9,255
Alabama	108	298	342	474	595	670	709	787	788
Arkansas	47	195	300	331	355	361	373	409	413
Florida	11	75	137	267	415	743	871	1,150	1,217
Georgia	31	298	461	538	620	771	821	967	999
Kentucky	121	310	315	433	484	544	567	619	635
Louisiana	40	146	233	350	421	567	619	738	774
Mississippi	90	225	346	436	472	444	486	536	540
North Carolina	73	207	415	673	798	950	1,003	1,102	1,115
South Carolina	45	201	256	348	414	498	531	593	605
Tennessee	89	339	406	482	583	695	736	824	831
Virginia	77	216	326	453	537	706	756	916	950
West Virginia	51	151	223	350	399	419	421	401	388
West and Southwest	144	1,053	2,442	3,689	4,727	7,157	7,972	10,134	10,630
Alaska			3	3	11	31	38	55	64
Arizona		10	41	76	127	218	258	347	366
California	64	197	430	909	1,624	2,767	3,155	4,206	4,454
Colorado	3	73	138	191	210	307	345	454	478
Hawaii			34	69	85	122	131	152	158
Idaho	1	22	75	98	111	138	147	165	168
Montana	1	[1] 26	90	105	94	124	[1] 132	154	161
Nevada	2	5	10	15	25	48	55	98	104
New Mexico	1	22	56	76	121	180	202	248	253
Oklahoma		64	334	470	394	461	486	546	559
Oregon	15	64	131	155	229	315	345	414	425
Texas	41	439	788	1,074	1,157	1,660	1,822	2,262	2,341
Utah	13	51	86	121	142	195	216	272	282
Washington	3	75	195	279	357	527	569	679	737
Wyoming	(8)	[1] 10	31	48	49	64	71	82	80
Outlying areas:									
American Samoa								7	
Canal Zone			2	6	8	10	10	13	14
Guam				4		12	13	16	18
Puerto Rico			106	193	369	491	512	573	604
Virgin Islands				3	5	6	6	9	10

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[1] Estimated by Office of Education.
[2] Data are for States in the Union as of the years reported.
[3] Includes estimate for kindergarten.
[4] Data not entirely comparable to ADA reported in former years because formerly semiprivate schools have been designated as public schools by the State department of education.
[5] Excludes vocational schools not operated as a part of the regular public school system.
[6] Included with North Dakota.
[7] Includes excused absences.
[8] Fewer than 500.

Note: U.S. totals are the sums of unrounded figures, regional totals are the sums of rounded figures.

TABLE 25.—PUPIL TRANSPORTATION SERVICE DATA, BY STATE, 1965-66

State or other area	Average daily attendance of pupils transported at public expense				School bus accident in which children were killed or fatally injured		Total number of vehicles			
	Public school pupils						Publicly owned		Privately owned	
	Number transported	Percent of total average daily attendance	Nonpublic school pupils transported	Number of pupils for whom subsistence was paid in lieu of transportation	Number of accidents	Pupils killed	Large buses	Other vehicles	Large buses	Other vehicles
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
United States	15,536,567	39.7	[1] 417,154	[2] 11,117	[1] 42	[1] 58	129,235	7,882	43,439	9,156
Alabama	397,622	50.5			3	2	5,004	470	209	
Alaska	15,931	28.8					41	3	168	19
Arizona	109,397	31.6	NA	NA	1	1	1,134	850	47	16
Arkansas	208,266	50.9		14			NA	NA	NA	NA
California	858,795	20.4	NA	NA	NA	NA				
Colorado	136,412	30.0	NA	123			2,269	NA	260	344
Connecticut	266,930	49.1	10,368				217	29	1,857	242
Delaware	49,170	43.5		69	1	1	29	7	625	5
District of Columbia [1]										
Florida	348,060	30.3	NA	75	1	3	3,463	256	191	133
Georgia	505,888	52.3		450			4,736		310	56
Hawaii	13,279	8.8	1,115				21		184	67
Idaho	80,917	48.5		611	2	2	[3] 1,015	([3])	[4] 315	([4])
Illinois	[5] 520,450	27.3	([5])	NA	2		5,268	312	2,137	297
Indiana	481,300	46.8	23,619		2	2	2,846	NA	3,863	48
Iowa	266,098	44.7			1	1	5,521	316	168	89
Kansas	[6] 130,210	28.1	3,326		NA	3	[3] 2,775	([3])	[4] 600	([4])
Kentucky	368,639	59.5	19,603		3	3	4,093	185	574	367
Louisiana	401,168	54.4	37,092		1	1	[7] 1,573	19	3,755	183
Maine	126,675	61.0	3,238	36			686	9	595	128
Maryland	314,695	44.7	9,495	33			1,157	30	2,166	75
Massachusetts	358,143	38.1	41,271	96	3	1	239	39	3,133	572
Michigan	603,850	33.7	42,615	11			7,071	133	63	
Minnesota	361,950	47.0		84	3	3	3,149	271	2,442	24

Mississippi	312,085	58.2			1	4	5,176	359	37	19
Missouri	458,813	55.9					3,785	83	2,172	143
Montana	45,036	29.3		633			481	7	507	46
Nebraska	51,797	17.1		NA			1,434	616	175	112
Nevada	25,169	25.7		197			250	63	39	
New Hampshire	56,831	47.4	7,262	NA			152	4	582	209
New Jersey	[5] 395,737	33.3	(5)		1		1,433	202	3,138	1,254
New Mexico	97,427	39.3			1	1	161	7	1,113	194
New York	[5] 1,239,042	42.6	(5)	NA	1	1	7,324	918	4,395	2,088
North Carolina	592,318	53.7		9	3	3	9,108	660		
North Dakota	54,352	38.9		4,382			1,194		436	199
Ohio	956,823	44.8	124,178	NA	3	5	8,922	NA	620	NA
Oklahoma	180,785	33.1			1	1	3,605	180	NA	NA
Oregon	219,030	52.9	4,640	NA			2,219	[6] 307	735	(8)
Pennsylvania	1,029,196	50.4	77,656	1	4	4	NA	NA	NA	NA
Rhode Island	57,719	41.9	10,991				70	33	344	36
South Carolina	344,264	58.0				3	5,338	402		
South Dakota	31,627	19.9	NA				764	16	193	47
Tennessee	490,691	47.4					3,130	320	1,125	106
Texas	473,039	20.9			NA	9	7,787	NA	152	NA
Utah	83,296	30.6	NA	112			718	201	49	
Vermont	38,774	48.4	775				270	10	266	202
Virginia	538,544	58.8		205	2	2	5,852	340	93	
Washington	312,536	46.0		NA	1	1	3,351	71	20	143
West Virginia	252,603	63.0		2,940			2,144			42
Wisconsin	351,995	45.8		210	1	1	1,697	150	3,578	1,158
Wyoming	24,093	29.5		826			509			273
Outlying areas:										
American Samoa	1,069	15.9	479				14			
Canal Zone	7,841	61.2	NA							
Guam	9,346	57.9	1,016				64		29	
Puerto Rico	84,768	14.8					116		310	560
Virgin Islands	2,867	31.0	950				1	1	31	

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[1] Total for States reporting this information.

[2] Data for District of Columbia not reported. Transportation program is normally provided for handicapped children only.

[3] Data for column 9 included in col. 8.

[4] Data for column 11 included in col. 10.

[5] Data for col. 4 included in col. 2.

[6] Actual number of pupils, not ADA.

[7] Includes 72 buses jointly owned by school board and contractor.

[8] Data for col. 11 included in col. 9.

TABLE 42.—CURRENT EXPENDITURES FOR PUPIL TRANSPORTATION SERVICES, AND RELATED DATA BY STATE: 1965-66

State or other area	Expenditures for transportation of public school pupils (in thousands of dollars)						Public school buses			Transportation cost as percent of current expenditures for education in elementary and secondary schools
	Total	Salaries	Replacement of vehicles	Supplies and maintenance for buses and garage	Transportation insurance	Other expense [1]	Average cost per pupil transported	Annual mileage of buses to and from schools (in thousands)	Average cost per bus-mile	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
United States	787,358	NA	NA	NA	NA	NA	$50.68	1,871,315	$0.42	3.7
Alabama	10,464	(2)	(2)	(2)	[7] 10,464	(2)	26.32	40,511	.26	3.7
Alaska	2,056	393	123	159	20	1,362	129.06	2,213	.93	4.8
Arizona	[3] 4,195	[3] 4,195	NA	NA	NA	NA	38.35	24,000	.17	2.3
Arkansas	8,534	3,758	1,220	2,908	209	439	40.98	25,513	.33	5.2
California	50,839	28,336				22,503	59.20	92,007	.55	2.1
Colorado	7,501	3,706	853	1,764	196	982	54.99	25,160	.30	3.0
Connecticut	12,178	NA	NA	NA	NA	NA	45.62	21,108	.58	3.5
Delaware	2,378	131		35	(4)	2,212	48.36	4,736	.50	3.6
District of Columbia [5]	338									.4
Florida	12,236	7,445	771	2,902	218	900	35.15	37,292	.33	2.3
Georgia	18,083	8,250	3,049	5,837	210	737	35.75	53,702	.34	4.8
Hawaii	840	116		95		628	63.26	NA	NA	1.0
Idaho	3,969	1,300	386	1,014	97	1,172	49.60	10,668	.37	5.7
Illinois	30,575	9,830	2,197	4,339	525	13,683	58.75	68,586	.45	2.7
Indiana	27,462	3,287	2,650	1,465	258	19,802	57.06	43,367	.63	5.0
Iowa	16,372	NA	NA	NA	NA	NA	61.53	53,143	.31	5.3
Kansas	10,207	NA	NA	NA	NA	NA	78.39	33,218	.31	4.1
Kentucky	13,297	5,472	1,263	3,836	247	2,480	36.07	44,436	.30	5.6
Louisiana	22,543	19,985	911	1,229	398	19	56.19	39,420	.57	6.6
Maine	5,096	1,211	549	794	85	2,456	40.23	13,902	.37	5.8
Maryland	15,124	3,378	674	1,036	NA	10,036	48.06	35,727	.42	3.8
Massachusetts	18,015	534	107	1,939	12	15,424	50.30	26,451	.68	3.1
Michigan	34,469	16,859	6,641	6,477	682	3,811	57.08	71,236	.48	3.4
Minnesota	28,246	6,902	3,917	3,325	249	13,854	78.04	56,165	.50	6.3

Mississippi	11,851	4,760	2,441	4,313	106	230	37.97	44,390	.27	7.5
Missouri	19,740	NA	NA	NA	NA	NA	43.02	55,090	.36	4.9
Montana	5,221	919	587	610	97	3,007	115.93	11,980	.44	6.4
Nebraska	4,538	1,663		1,772	118	984	87.61	14,852	.31	3.2
Nevada	1,624	720	114	335	31	425	64.52	8,742	.19	2.9
New Hampshire	3,183	228	89	177	20	2,670	56.01	7,078	.45	5.4
New Jersey	22,251	4,721	667	1,449	218	15,196	56.23	59,540	.37	2.8
New Mexico	6,382	[6] 287	107	165	68	[6] 5,755	65.51	12,174	.52	4.9
New York	119,933	28,935	5,929	12,004	(7)	73,065	96.79	135,130	.89	4.8
North Carolina	11,669	5,786	2,597	3,061		225	19.70	60,928	.19	2.8
North Dakota	6,278	1,804	567	1,760	87	2,059	115.51	23,439	.27	9.3
Ohio	32,877	16,451	3,560	7,399	453	5,014	34.36	81,416	.40	3.2
Oklahoma	9,301	4,050	1,878	2,617	307	449	51.45	28,955	.32	3.9
Oregon	10,678	4,105	1,145	2,515	254	2,660	48.75	23,837	.45	4.1
Pennsylvania	44,077	6,184	NA	4,108	NA	33,785	42.83	103,293	.43	3.8
Rhode Island	2,445	425		149		1,871	42.36	4,523	.54	3.0
South Carolina	8,001	1,837	2,017	4,079		68	23.24	37,720	.21	4.0
South Dakota	3,354	852	249	780	65	1,408	106.05	11,073	.30	4.5
Tennessee	13,140	5,041	520	2,329	236	5,014	33.63	43,342	.30	4.4
Texas	22,397	9,896	4,217	7,011	337	876	47.35	78,294	.29	2.1
Utah	3,075	1,790	239	677	42	327	36.92			2.4
Vermont	2,057	NA	NA	NA	NA	NA	53.05	5,331	.39	5.0
Virginia	15,255	8,478	1,973	4,011	462	331	28.33	49,347	.31	3.9
Washington	15,447	8,024	1,762	4,213	451	996	49.42	32,975	.47	3.9
West Virginia	9,778	6,240	1,176	2,071	86	204	38.71	21,606	.45	6.4
Wisconsin	25,164	3,228	1,357	2,136	202	18,241	71.49	68,016	.37	5.5
Wyoming	2,624	1,419		781		423	108.91	25,683	.10	5.4
OUTLYING AREAS										
American Samoa								98		
Canal Zone	93					93	11.86	NA	NA	1.1
Puerto Rico	2,621					2,621	30.92			
Virgin Islands	279					279	97.31	151	1.85	6.2

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[1] Includes contracted services, fares for public transportation, and payments in lieu of transportation.

[2] Data for cols. 3, 4, 5, and 7 included in col. 6.

[3] Transportation expenses other than driver's salary are reported with expenditures for operation and maintenance and with fixed charges.

[4] Transportation insurance paid by State insurance commissioner.

[5] Estimated by Office of Education.

[6] Data have been supplemented by reference to published State report for New Mexico.

[7] Data for col. 6 reported with expenditures for fixed charges.

Note.—Because of rounding, detail may not add to totals.

SCHOOL YEAR 1967-68

TABLE 23.—AVERAGE DAILY ATTENDANCE IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY STATE OR OTHER AREA: UNITED STATES, 1870-71 TO 1967-68

[In thousands]

Region and State or other area (1)	1870-71 [1] (2)	1899-1900 (3)	1917-18 (4)	1929-30 (5)	1949-50 (6)	1957-58 (7)	1959-60 (8)	1965-66 (9)	1967-68 (10)
United States [1]	4,545	10,633	15,549	21,265	22,284	29,722	32,477	39,154	40,828
North Atlantic	1,706	2,831	4,185	5,845	5,271	6,965	7,592	9,160	9,543
Connecticut	63	112	191	274	245	384	425	543	576
Delaware	13	25	25	35	41	[3] 65	[3] 73	99	110
Maine	100	98	114	138	145	169	182	208	215
Maryland	56	134	162	236	299	479	534	704	749
Massachusetts	202	366	518	676	560	733	793	941	989
New Hampshire	48	47	53	66	66	87	96	120	128
New Jersey	87	208	424	663	583	842	942	1,187	1,267
New York	491	857	1,300	1,866	1,700	2,262	2,464	2,907	3,019
Pennsylvania	567	855	1,228	1,661	1,408	1,678	1,789	2,043	2,125
Rhode Island	22	47	72	103	84	108	118	138	148
Vermont	44	47	50	58	56	62	70	[4] 80	85
District of Columbia	10	35	48	68	84	96	106	130	132
Great Lakes and Plains	1,912	4,081	5,200	6,669	6,292	8,385	9,020	10,881	11,397
Illinois	342	738	952	1,204	1,032	1,414	1,514	1,905	2,016
Indiana	295	430	523	596	589	781	863	1,028	1,059
Iowa	212	373	356	465	418	506	538	[5] 595	618
Kansas	53	262	288	365	301	399	[3] 441	463	474
Michigan	193	355	523	845	987	1,373	1,458	1,793	1,913
Minnesota	51	243	374	457	434	578	627	770	800
Missouri	187	460	506	576	558	653	705	[4] 821	871
Nebraska	14	182	214	259	204	243	260	302	311
North Dakota	1	44	119	149	[3] 103	118	[3] 126	140	142
Ohio	432	616	849	1,141	1,110	1,585	1,734	2,136	2,207
South Dakota	(6)	[3] 68	93	139	106	129	138	159	160
Wisconsin	132	[3] 310	356	473	450	606	[5] 616	[5] 769	926

Southeast	763	2,561	3,760	5,135	6,093	7,368	7,893	9,042	9,255
Alabama	108	298	342	474	595	670	709	787	788
Arkansas	47	195	350	331	355	361	373	409	413
Florida	11	75	137	267	415	743	871	1,150	1,217
Georgia	31	298	451	539	620	771	821	967	999
Kentucky	121	310	315	433	484	544	567	619	635
Louisiana	40	146	273	350	421	567	619	738	774
Mississippi	90	225	375	436	472	444	486	536	540
North Carolina	73	207	415	673	798	950	1,003	1,102	1,115
South Carolina	45	201	256	348	414	498	531	593	605
Tennessee	89	339	405	482	583	695	736	824	831
Virginia	77	216	326	453	537	706	756	916	950
West Virginia	51	151	223	350	399	419	421	401	388
West and Southwest	144	1,058	2,442	3,689	4,727	7,157	7,972	10,134	10,630
Alaska			3	3	11	31	38	55	64
Arizona		10	41	76	127	218	258	347	366
California [7]	64	197	430	909	1,624	2,767	3,155	4,206	4,454
Colorado	3	73	138	191	210	307	345	454	478
Hawaii			34	69	85	122	131	152	153
Idaho	1	22	75	98	111	138	147	165	168
Montana	1	[1] 26	90	105	94	124	[1] 132	154	161
Nevada	2	5	10	15	25	48	55	98	104
New Mexico	1	22	56	76	121	180	202	248	253
Oklahoma		64	334	470	394	461	486	546	559
Oregon	15	64	131	155	229	315	345	414	425
Texas	41	439	788	1,074	1,157	1,660	1,822	2,262	2,341
Utah	13	51	86	121	142	195	216	272	282
Washington	3	75	195	279	357	527	569	679	737
Wyoming	(8)	[1] 10	31	48	49	64	71	82	80
Outlying areas:									
American Samoa								7	
Canal Zone			2	6	8	10	10	13	14
Guam				4		12	13	16	18
Puerto Rico			106	193	369	491	512	573	604
Virgin Islands				3	5	6	6	9	10

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[1] Estimated by Office of Education.
[2] Data are for States in the Union as of the years reported.
[3] Includes estimate for kindergarten.
[4] Data not entirely comparative to ADA reported in former years because formerly semiprivate schools have been designated as public schools by the State department of education.
[5] Excludes vocational schools not operated as a part of the regular public school system.
[6] Included with North Dakota.
[7] Includes excused absences.
[8] Fewer than 500.

Note: U.S. totals are the sums of unrounded figures; regional totals are the sums of rounded figures.

TABLE 25.—PUPIL TRANSPORTATION SERVICE DATA, BY STATE OR OTHER AREA: UNITED STATES, 1967–68

Region and State or other area	Average daily attendance of pupils transported at public expense				School bus accidents in which children were killed or fatally injured		Total number of vehicles					
	Public school pupils		Nonpublic school pupils transported	Number of pupils for whom subsistence was paid in lieu of transportation	Number of accidents	Pupils killed	Publicly owned		Privately owned		Jointly owned	
	Number transported	Percent of total average daily attendance					Large buses	Other vehicles	Large buses	Other vehicles	Large buses	Other vehicles
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
United States [1]	17,130,873	42.0	548,416	53,930	36	52	147,839	9,310	52,585	9,413	881	67
North Atlantic	4,487,990	47.0	178,767	34,370	5	9	18,577	2,127	24,689	6,215		
Connecticut	315,751	54.8	15,459				2,183	320	226	42		
Delaware	55,002	50.1		176	1	1	32	6	713			
Maine	130,519	60.6	7,037	38			812	14	551	92		
Maryland	362,270	48.4	5,882	25			1,484	40	2,299	73		
Massachusetts	413,000	41.8	42,200	34,091	3	3	393	55	3,691	616		
New Hampshire	65,875	51.5	7,235				150	1	683	178		
New Jersey [2]	[3] 395,737	33.3	(4)		1		1,486	202	3,138	1,254		
New York	[3] 1,485,025	49.2	(4)			5	8,296	1,138	4,830	2,414		
Pennsylvania	1,145,866	53.9	88,299	2			3,215	251	7,734	1,323		
Rhode Island	63,872	46.5	11,501	38			99	42	467	62		
Vermont	48,070	56.2	754				399	22	297	161		
District of Columbia	2,003	1.5					23	36				
Great Lakes and Plains	4,863,556	42.7	304,345	15,156	14	21	50,198	1,917	17,673	1,604	632	63
Illinois	617,984	30.7	41,976				5,530	223	2,321	369		
Indiana	524,698	49.6	24,091		2	3	3,357		2,826	51	625	26
Iowa	269,706	43.7		6,225	1	1	5,764	379	139	96		
Kansas	145,777	30.7	3,530	4,057			3,209		722			
Michigan	700,011	36.6	45,863	7	9	9	8,868	117	63			
Minnesota	398,616	49.8		69			3,673	294	3,488	265	7	37
Missouri	526,252	60.4				3	4,131	94	2,207	121		
Nebraska	59,047	19.0			1	4	1,580	670	157	102		
North Dakota	59,461	41.9		2,654			1,239		487	128		
Ohio	1,131,560	51.3	130,539				[5] 10,134	(5)	[5] 608	(5)		

South Dakota	38,085	23.8		2,135			874	38	376	65		
Wisconsin	392,359	47.5	57,940	9	1	1	1,839	102	4,329	407		
Southeast	4,855,105	52.5	61,120	2,413	13	16	54,763	3,734	6,455	1,113	178	
Alabama	397,754	50.5			4	7	5,257	481	179	21	2	
Arkansas	210,266	50.9		14			3,467	665	159			
Florida	369,240	30.3		61			3,684	244	194	133		
Georgia	517,517	51.3		562	2	2	4,773	31	256	70	104	
Kentucky	389,019	61.2	18,762				3,957	70	662	410		
Louisiana	462,241	59.7	42,358		1	1	1,750	12	3,903	184	72	
Mississippi	312,956	58.0			1	1	5,269	417	17	9		
North Carolina [2]	592,318	53.1		9	3	3	9,108	664				
South Carolina	352,064	58.2					5,555	413				
Tennessee	422,744	50.9					3,379	363	1,040	241		
Virginia	573,207	60.3		414			6,313	374	55			
West Virginia	255,779	65.9		1,353	2	2	2,251			45		
West and Southwest	2,924,222	27.5	4,184	1,991	4	6	24,301	1,532	3,758	481	71	4
Alaska	23,072	36.1					71		[6] 208	17		
Arizona	118,891	32.4		106			1,133	723	33	13	11	4
California	[7] 936,000	21.0										
Colorado	156,197	32.7		124	1	1	[8] 2,652	[8] 271				
Hawaii	23,812	15.1	275	50			11		196	70		
Idaho	85,629	50.9		831	2	2	[4] 1,039	([4])	[5] 360	([5])		
Montana	50,098	31.2		576			596	15	644	46		
Nevada	36,047	34.5		183			313	55	43			
New Mexico	109,708	43.4			1	1	203	10	1,240	184		
Oklahoma	203,151	36.3					3,452	20	53	8	60	
Oregon	227,230	53.5	3,909				2,083	345	500			
Texas	491,855	21.0				2	7,755		109			
Utah	85,563	30.3		121			780	54	59	24		
Washington	351,757	47.8					3,633	39	37	119		
Wyoming	25,202	31.4					580		276			
Outlying areas:												
Canal Zone	7,650	56.5										
Guam	11,877	66.6	2,663				136					
Puerto Rico	99,461	16.5					143		317	1,080		
Trust Territory	571		464						7			
Virgin Islands [9]	3,594	34.3										

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[1] Totals are for States reporting this information.
[2] Data for 1965-66 school year.
[3] Data for col. 4 included in col. 2.
[4] Data for col. 9 included in col. 8.
[5] Data for col. 11 included in col. 10.
[6] Includes 1 boat.
[7] Estimated by Office of Education.
[8] Includes vehicles operated by contractor.
[9] Data from published annual territory report.

TABLE 42.—CURRENT EXPENDITURES FOR PUPIL TRANSPORTATION SERVICES, AND RELATED DATA FOR PUBLIC SCHOOL PURPOSES, BY STATE OR OTHER AREA: UNITED STATES, 1967-68

Region and State or other area	Expenditures for transportation of public school pupils (in thousands of dollars)						Public school buses			
	Total	Salaries	Replacement of vehicles	Supplies and maintenance for buses and garage	Transportation insurance	Other expense [1]	Average cost per pupil transported	Annual mileage of buses to and from schools (in thousands)	Average cost per bus-mile	Transportation cost as percent of current expenditures for education in elementary and secondary schools
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
United States	$981,005	NA	NA	NA	NA	NA	$57.27	1,974,583	$0.50	3.7
North Atlantic	326,884	NA	NA	NA	NA	NA	72.84	405,895	.81	4.1
Connecticut	15,839	$748	$168	$497	(2)	[2]$14,426	50.16	28,533	.56	3.6
Delaware	2,794	139	15	31		2,609	50.80	6,083	.46	3.4
Maine	6,835	1,744	1,052	1,157	117	2,766	52.37	(3)		6.0
Maryland	19,805	5,178	1,003	1,504		12,120	54.67	41,204	.43	3.7
Massachusetts	23,397	878	283	238	23	21,926	56.65	34,400	.68	3.2
New Hampshire	3,884	311	103	204	23	3,242	58.96	7,997	.49	5.2
New Jersey [2]	28,978	7,200	994	2,136	341	18,307	[5]66.99			2.9
New York	160,617	38,158	7,130	15,345	(4)	99,984	108.16	151,000	1.06	4.9
Pennsylvania	57,926	8,778	1,613	6,339	460	38,756	50.55	125,825	.46	4.0
Rhode Island	3,251	497		169	(4)	2,584	47.20	6,353	.51	3.1
Vermont	2,813	645	242	467	56	1,403	58.52	3,863	.73	5.0
District of Columbia	745	NA	NA	NA	NA	NA	(7)	638	(7)	.7
Great Lakes and Plains	293,581	111,911	25,411	38,629	3,502	113,924	60.36	640,932	.46	3.9
Illinois	41,371	11,467	2,836	5,399	673	20,995	66.95	67,795	.61	2.9
Indiana	32,749	5,063	3,056	1,689	298	22,642	62.42	48,436	.68	4.8
Iowa	20,463	[8]20,463	(5)	(5)	(5)	(5)	75.87	55,665	.37	4.9
Kansas	13,978	4,615	6,091	2,956	317		95.89	33,533	.42	4.6
Michigan	44,099	23,506	6,945	6,592	901	6,154	63.00	88,255	.50	3.2
Minnesota	29,552	8,481		3,873	335	16,863	74.14	52,000	.57	5.2
Missouri	24,382	7,984	2,091	4,376	432	9,498	46.33	62,008	.39	4.8
Nebraska	5,729	2,082	1,185	1,024	137	1,300	97.02	17,548	.33	3.2
North Dakota	7,037	2,027	846	1,639	90	2,385	118.35	25,431	.28	8.6
Ohio	35,923	20,890		7,237		7,795	31.75	100,637	.36	2.7
South Dakota	4,283	1,074	283	958	94	1,833	112.45	13,713	.31	4.8
Wisconsin	34,015	4,259	2,077	3,036	235	24,408	86.69	75,910	.45	5.9

Southeast	185,946	111,426	21,973	37,532	2,934	12,079	38.30	513,154	.36	4.0
Alabama	12,032	[8] 12,032	([8])	([8])	([8])	([8])	30.25	41,388	.29	3.5
Arkansas	9,453	4,384	1,276	3,076	290	426	44.96	25,600	.37	4.6
Florida	14,981	9,378	1,317	3,063	218	1,025	40.57	34,860	.43	2.1
Georgia	21,873	11,531	3,539	5,728	278	798	42.27	53,997	.41	4.2
Kentucky	15,648	6,763	1,723	4,151	338	2,673	40.22	46,933	.33	5.2
Louisiana	26,751	23,534	1,014	1,592	579	33	57.87	43,887	.61	6.0
Mississippi	13,088	5,505	2,386	4,875	65	256	41.82	44,611	.29	6.6
North Carolina	[4] [5] 15,439	[5] 7,655	[5] 3,435	[5] 4,051	....	[5] 297	[5] 25.81	60,928	.25	2.9
South Carolina	9,561	4,998	2,537	1,482	230	314	27.16	40,586	.24	3.4
Tennessee	15,484	6,364	688	2,456	297	5,679	36.63	44,517	.35	4.0
Virginia	19,273	11,266	2,590	4,533	503	331	33.62	52,061	.37	3.6
West Virginia	12,363	8,016	1,468	2,495	136	247	48.34	23,786	.52	6.2
West and Southwest	174,595	85,185	13,696	22,216	2,253	51,246	59.71	414,601	.42	2.6
Alaska	[9] 2,630	[9] 506	[9] 157	[9] 203	[9] 25	[9] 1,739	113.99	2,904	.91	4.4
Arizona	[9] [10] 5,275	[10] 5,275	([10])	([10])	([10])	([10])	44.37	[9] 26,088	.20	2.2
California	62,258	35,749	([11])	([11])	([11])	[11] 26,509	66.52	129,000	.48	2.1
Colorado	8,768	4,641	869	1,991	212	1,052	56.13	26,833	.33	3.0
Hawaii	1,185	48	23	92	....	1,022	49.77	....	....	1.1
Idaho	4,506	1,585	361	1,179	108	1,273	52.62	11,915	.38	5.2
Montana	6,014	1,066	707	694	110	3,438	120.05	12,796	.47	5.7
Nevada	2,189	937	320	390	50	443	60.73	4,180	.52	3.1
New Mexico	7,946	596	222	238	95	6,794	72.43	14,350	.55	5.1
Oklahoma	10,653	4,797	2,276	2,513	363	704	52.44	29,078	.37	3.7
Oregon	11,412	4,623	943	2,317	290	3,240	50.22	23,871	.48	3.8
Texas	25,437	11,473	4,884	7,567	471	1,022	51.72	84,258	.30	2.0
Utah	3,471	2,071	346	643	31	380	40.57	6,641	.52	2.3
Washington	19,647	10,800	2,228	3,824	426	2,370	55.85	37,106	.53	3.9
Wyoming	3,204	970	360	542	72	1,260	127.13	[12] 5,571	.58	5.8
Outlying areas:										
Canal Zone	130	....	....	....	....	130	16.99			1.3
Guam	923	923	....	....	....	....	77.71	1,714	.54	6.5
Puerto Rico	5,722	....	....	....	....	5,722	57.53	....	....	3.6
Trust Territory	276	....	....	....	....	276	([14])	28	([14])	5.2
Virgin Islands	[13] 402	NA	NA	NA	NA	NA	111.85	[13] 212	1.90	....

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[1] Includes contracted services, fares for public transportation, and payments in lieu of transportation.

[2] Data for col. 6 included in col. 7.

[3] State no longer collects these data.

[4] Data from Current Expenditures by Local Educational Agencies, 1967–68 (OE–22026–68).

[5] Data adjusted for number of pupils transported to arrive at this computation.

[6] Data for col. 6 reported in fixed charges (table 40).

[7] Transportation program in the District of Columbia is normally provided for handicapped children only, hence computations for cost not comparable to those of the States.

[8] Data for cols. 4, 5, 6, and 7 included in col. 3.

[9] Estimated by Office of Education.

[10] Transportation expenses other than drivers' salaries are reported with expenditures for operation and maintenance and with fixed charges.

[11] Data for cols. 4, 5, and 6 included in col. 7.

[12] Data reported in previous years apparently carried mile per day instead of thousands of miles per year.

[13] Data from published annual territory report.

[14] Basic data for number of pupils were not realist ic hence computations are not available.

Note: Because of rounding, detail may not add to totals.

SCHOOL YEAR 1969-70 ESTIMATED AVERAGE DAILY ATTENDANCE

TABLE 5.—ENROLLMENT BY LEVEL, FALL 1969 AND FALL 1968, AND MEMBERSHIP AND ATTENDANCE, FALL 1969, IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY REGION AND STATE

Region, State, and other areas	Fall 1969			Fall 1968[1]			Percent increase in total membership (minus (−) denotes decrease)	1969-70 school year	
	Total	Elementary	Secondary	Total	Elementary	Secondary		Estimated average daily membership	Estimated average daily attendance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
United States	45,618,578	27,455,152	18,163,426	44,943,904	27,362,858	17,581,046	1.5	[3] 44,709,531	42,298,516
North Atlantic	10,923,369	6,348,598	4,574,771	10,670,151	6,254,259	4,415,892	2.4	10,797,143	10,070,440
Connecticut	646,393	416,356	230,037	632,208	411,205	221,003	2.2	640,000	595,000
Delaware[3]	130,471	73,764	56,707	124,666	70,418	54,248	4.7	129,100	121,350
Maine[4]	240,169	174,748	65,421	232,127	167,414	64,713	3.5	234,000	221,000
Maryland	891,981	514,665	377,316	858,766	497,375	361,391	3.9	883,854	811,378
Massachusetts[3]	1,147,561	648,218	499,343	1,112,461	630,973	481,488	3.2	1,110,000	1,040,000
New Hampshire	152,188	91,331	60,857	145,706	88,366	57,340	4.4	148,650	140,230
New Jersey	1,454,378	961,372	493,006	1,421,455	934,713	486,742	2.3	1,450,000	1,350,000
New York[3]	3,513,432	1,958,971	1,554,461	3,411,000	1,940,000	1,471,000	3.0	3,465,432	3,223,000
Pennsylvania	2,317,500	1,247,800	1,069,700	2,309,700	1,261,500	1,048,200	.3	2,305,000	2,170,600
Rhode Island	180,285	104,563	75,722	173,393	100,249	73,144	4.0	174,490	161,815
Vermont	99,957	63,540	36,417	99,649	57,668	41,981	.3	102,597	97,467
District of Columbia[3]	149,054	93,270	55,784	149,020	94,378	54,642	([5])	154,020	[6] 138,600
Great Lakes and Plains	12,933,234	8,084,674	4,848,560	12,717,035	8,101,076	4,615,959	1.7	[3] 12,514,099	11,865,050
Illinois	2,324,516	1,488,907	835,609	2,273,517	1,473,728	799,789	2.2	2,201,206	2,088,704
Indiana	1,223,747	750,118	473,629	1,205,252	671,307	533,945	1.5		1,150,000
Iowa	660,389	374,164	286,225	657,791	464,884	192,907	.4	650,483	624,728
Kansas[4]	518,253	363,721	154,532	522,211	368,868	153,343	−.8		475,000
Michigan[3]	2,165,766	1,219,327	946,439	2,123,573	1,197,483	926,090	2.0		1,989,040
Minnesota	913,915	491,244	422,671	895,332	488,294	407,038	2.1	911,447	867,182

Missouri	1,077,288	727,410	349,878	1,056,101	784,962	271,139	2.0	----------	907,800
Nebraska	330,990	192,070	138,920	328,685	191,755	136,930	.7	330,000	317,780
North Dakota	147,782	93,716	54,066	148,965	95,260	53,705	−.8	146,300	141,000
Ohio [4]	2,423,831	1,715,021	708,810	2,384,160	1,703,200	680,960	1.7	2,416,800	2,263,400
South Dakota	166,693	91,356	75,337	167,205	93,992	73,213	−.3	165,860	158,358
Wisconsin	980,064	577,620	402,444	954,243	567,343	386,900	2.7	926,160	882,058
Southeast	10,142,936	6,156,946	3,985,990	10,082,113	6,161,511	3,920,602	.6	10,060,181	9,474,913
Alabama [3]	826,237	440,150	386,087	831,661	449,314	382,347	−.7	814,348	779,848
Arkansas	460,115	252,418	207,697	453,314	250,011	203,303	1.5	440,070	417,626
Florida	1,408,095	775,647	632,448	1,355,846	750,661	605,185	3.9	1,401,600	1,312,560
Georgia [7]	1,112,416	718,422	393,994	1,103,306	715,250	388,056	.8	1,107,464	1,028,941
Kentucky	703,720	449,137	254,583	698,790	451,562	247,228	.7	691,370	650,623
Louisiana	853,766	522,143	331,623	864,765	527,788	336,977	−1.3	875,000	812,000
Mississippi	575,284	333,249	242,035	581,734	340,112	241,622	−1.1	572,900	539,500
North Carolina [6]	1,185,592	836,587	349,005	1,195,258	849,483	345,775	−.8	1,175,081	1,109,614
South Carolina	648,182	388,810	259,372	648,694	385,274	263,420	−.1	643,000	605,000
Tennessee	891,414	565,744	325,670	883,500	566,500	317,000	.9	883,350	841,500
Virginia	1,076,749	652,176	424,573	1,055,606	647,555	408,051	2.0	1,056,500	999,000
West Virginia	401,366	222,463	178,903	409,639	228,001	181,638	−2.0	399,498	378,691
West and Southwest	11,619,039	6,864,934	4,754,105	11,474,605	6,846,012	4,628,593	1.3	[3] 11,338,108	10,888,113
Alaska	76,828	50,113	26,715	71,469	47,222	24,247	7.5	78,210	73,460
Arizona	418,069	293,577	124,492	411,070	287,369	123,701	1.7	408,920	383,962
California	4,597,700	2,877,700	1,720,000	4,581,600	2,892,700	1,688,900	.4	4,540,000	4,485,000
Colorado	538,175	305,143	233,032	524,347	300,306	224,041	2.6	533,000	500,500
Hawaii [3]	178,448	102,030	76,418	172,230	99,171	73,059	.6	178,893	167,812
Idaho [3]	179,873	92,322	87,551	178,900	92,527	86,373	.5	----------	172,000
Montana	174,784	107,747	67,037	172,768	108,581	64,187	1.2	171,700	162,500
Nevada	123,663	72,600	51,063	118,236	71,219	47,017	4.6	123,000	115,000
New Mexico	276,286	151,260	125,026	272,567	150,811	121,756	1.4	276,253	265,458
Oklahoma	612,374	345,624	266,750	604,017	342,779	261,238	1.4	583,146	559,000
Oregon	478,923	281,454	197,469	472,067	281,745	190,322	1.5	463,710	436,552
Texas [3]	2,754,600	1,520,400	1,234,200	2,704,000	1,509,000	1,195,000	1.9	2,594,900	2,422,700
Utah	302,394	166,910	135,484	301,116	169,313	131,803	.4	301,002	288,669
Washington [3]	820,482	451,361	369,121	804,205	446,407	357,798	2.0	----------	773,500
Wyoming [3]	86,440	46,693	39,747	86,013	46,862	39,151	.5	86,000	82,000

See footnotes at end of table.

SCHOOL YEAR 1970-71 ESTIMATED AVERAGE DAILY ATTENDANCE

TABLE 4.—ENROLLMENT BY ORGANIZATIONAL LEVEL, FALL 1970 AND FALL 1969, AND AVERAGE DAILY MEMBERSHIP AND AVERAGE DAILY ATTENDANCE, 1970-71, IN FULL-TIME PUBLIC ELEMENTARY AND SECONDARY DAY SCHOOLS, BY REGION, STATE, AND OTHER AREAS: UNITED STATES

Region, State, and other areas of the United States	Fall 1970			Fall 1969			Percent increase in total membership (minus (—) denotes decrease)	1970-71 school year	
	Total	Elementary	Secondary	Total	Elementary	Secondary		Estimated average daily membership	Estimated average daily attendance
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
United States	45, 903, 371	27, 496, 754	18, 406, 617	45, 618, 578	27, 455, 152	18, 163, 426	0.6	[1] 44, 895, 537	42, 495, 346
North Atlantic	11, 036, 373	6, 397, 969	4, 638, 404	10, 923, 369	6, 348, 598	4, 574, 771	1.0	10, 911, 922	10, 207, 357
Connecticut	662, 205	454, 130	208, 075	646, 393	416, 356	230, 037	2.4	655, 000	602, 000
Delaware [2]	132, 745	73, 590	59, 155	130, 471	73, 764	56, 707	1.7	131, 600	122, 900
Maine [3]	244, 670	176, 804	67, 866	240, 169	174, 748	65, 421	1.9	242, 000	229, 500
Maryland [2]	916, 244	523, 725	392, 519	891, 981	514, 665	377, 316	2.7	909, 830	834, 698
Massachusetts [2]	1, 167, 713	649, 517	518, 196	1, 147, 561	648, 218	499, 343	1.8	1, 116, 000	1, 096, 000
New Hampshire	158, 756	94, 624	64, 132	152, 188	91, 331	60, 857	4.3	153, 760	144, 750
New Jersey	1, 482, 000	978, 120	503, 880	1, 454, 378	961, 372	493, 006	1.9	1, 452, 000	1, 406, 000
New York [2]	3, 477, 016	1, 922, 161	1, 554, 855	3, 513, 432	1, 958, 971	1, 554, 461	−1.0	3, 477, 016	3, 164, 000
Pennsylvania	2, 358, 100	1, 260, 000	1, 098, 100	2, 317, 500	1, 247, 800	1, 069, 700	1.8	2, 342, 100	2, 203, 200
Rhode Island	188, 090	111, 157	76, 933	180, 285	104, 563	75, 722	4.3	179, 647	167, 179
Vermont	103, 130	63, 708	39, 422	99, 957	63, 540	36, 417	3.2	106, 986	101, 635
District of Columbia [2]	145, 704	90, 433	55, 271	149, 054	93, 270	55, 784	−2.3	145, 983	[4] 135, 505
Great Lakes and Plains	12, 963, 328	8, 031, 226	4, 932, 102	12, 933, 234	8, 084, 674	4, 848, 560	.2	[1] 12, 580, 212	11, 866, 173
Illinois	2, 356, 636	1, 499, 554	857, 082	2, 324, 516	1, 488, 907	835, 609	1.4	2, 256, 101	2, 100, 000
Indiana	1, 231, 458	749, 063	482, 395	1, 223, 747	750, 118	473, 629	.6	1, 177, 425	1, 188, 650
Iowa	660, 104	373, 701	286, 403	660, 389	374, 164	286, 225	.1	654, 000	625, 000
Kansas [3]	512, 308	356, 992	155, 316	518, 253	363, 721	154, 532	−1.2	492, 857	467, 004
Michigan [2]	2, 180, 699	[5] 1, 227, 734	[5] 952, 965	2, 155, 766	1, 219, 327	946, 439	.7	NA	2, 006, 000
Minnesota	920, 839	489, 232	431, 607	913, 915	491, 244	422, 671	.8	923, 602	877, 899
Missouri	1, 039, 477	684, 486	354, 991	1, 077, 288	727, 410	349, 878	−3.5	NA	918, 000
Nebraska	329, 110	187, 150	141, 960	330, 990	192, 070	138, 920	−.6	327, 125	312, 484
North Dakota	147, 013	91, 275	55, 738	147, 782	93, 716	54, 066	−.5	146, 700	141, 500
Ohio [3]	2, 425, 643	1, 698, 298	727, 345	2, 423, 831	1, 715, 021	708, 810	.1	2, 399, 987	2, 248, 788
South Dakota	166, 505	87, 852	78, 453	166, 693	91, 356	75, 337	−.2	165, 473	157, 990
Wisconsin	993, 736	585, 889	407, 847	980, 064	577, 620	402, 444	1.4	937, 502	892, 859

Southeast	10,097,452	6,146,964	3,950,488	10,142,936	6,156,946	3,985,990	-.5	9,968,283	9,422,616
Alabama [3]	805,205	426,209	378,996	826,237	440,150	386,087	-2.6	798,293	756,814
Arkansas	463,320	252,046	211,274	460,115	252,418	207,697	.7	437,100	415,120
Florida	1,427,896	781,703	646,193	1,408,095	775,647	632,448	1.4	1,430,000	1,340,000
Georgia [6]	1,098,901	705,347	393,554	1,112,416	718,422	393,994	-1.2	1,067,004	1,035,108
Kentucky	717,205	455,979	261,226	703,720	449,137	254,583	1.9	636,000	651,000
Louisiana	842,365	508,881	333,484	853,766	522,143	331,623	-1.3	831,250	770,000
Mississippi	534,395	312,093	222,302	575,284	333,249	242,035	-7.1	530,000	504,200
North Carolina [3]	1,192,187	835,739	356,448	1,185,592	836,587	349,005	.6	1,175,330	1,111,245
South Carolina	637,800	393,319	244,481	648,182	388,810	259,372	-1.6	637,800	598,300
Tennessee	899,893	571,224	328,669	891,414	565,744	325,670	1.0	892,821	848,074
Virginia [6]	1,078,754	682,644	396,110	1,076,749	652,176	424,573	.2	1,075,000	1,012,000
West Virginia	399,531	221,780	177,751	401,366	222,463	178,903	-.5	397,685	380,845
West and Southwest	11,806,218	6,920,595	4,885,623	11,619,039	6,864,934	4,754,105	1.6	[1] 11,435,120	10,999,150
Alaska	79,845	51,881	27,964	76,828	50,113	26,715	3.9	79,500	74,000
Arizona	439,524	304,585	134,939	418,069	293,577	124,492	5.1	434,172	412,464
California [7]	4,633,198	2,864,287	1,768,911	4,597,700	2,877,700	1,720,000	.8	4,551,300	4,484,000
Colorado	550,060	307,292	242,768	538,175	305,143	233,032	2.2	543,116	512,313
Hawaii [2]	180,641	102,251	78,390	178,448	102,030	76,418	1.2	NA	170,925
Idaho [2]	182,333	92,841	89,492	179,873	92,322	87,551	1.4	NA	174,300
Montana	176,712	107,336	69,376	174,784	107,747	67,037	1.1	173,300	164,000
Nevada	127,550	74,116	53,434	123,663	72,600	51,063	3.1	125,000	117,050
New Mexico	281,372	152,947	128,425	276,286	151,260	125,026	1.8	278,167	268,958
Oklahoma	626,956	350,004	276,952	612,374	345,624	266,750	2.4	585,000	570,000
Oregon [7]	479,527	280,636	198,891	478,923	281,454	197,469	.1	469,147	439,200
Texas [2]	2,839,900	1,577,800	1,262,100	2,754,600	1,520,400	1,234,200	3.1	2,633,400	2,479,400
Utah	304,002	165,492	138,510	302,394	166,910	135,484	.5	303,200	288,400
Washington [3]	817,712	442,618	375,094	820,482	451,361	369,121	-.3	NA	762,150
Wyoming [2]	86,886	46,509	40,377	86,440	46,693	39,747	.5	86,000	82,000
Outlying areas:									
American Samoa	NA	NA	NA	8,779	6,957	1,822	NA	NA	NA
Canal Zone [2]	13,479	7,846	5,633	[8] 14,135	[8] 8,255	[8] 5,880	-4.7	13,225	12,767
Guam [2]	24,757	16,002	8,755	21,725	13,418	8,307	14.0	24,733	23,191
Puerto Rico [3]	686,777	434,138	252,639	672,249	430,695	241,554	2.2	666,260	628,480
Virgin Islands					NO REPORT				
DOD Overseas Schools	166,297	117,278	49,019	NA	NA	NA	NA	165,306	NA
Trust Territory of the Pacific Islands [3]	29,723	25,709	4,014	28,939	25,218	3,721	2.7	29,719	28,000

See footnotes at end of table.

OFFICE FOR CIVIL RIGHTS—SPECIAL SURVEY

	1967-68			1968-69			1969-70			1970-71			1971-72		
	Average daily attendance	Pupils transported	Percent pupils transported	Average daily attendance	Pupils transported	Percent pupils transported	Average daily attendance	Pupils transported	Percent pupils transported	Average daily attendance	Pupils transported	Percent pupils transported	Average daily attendance	Pupils transported	Percent pupils transported
North Atlantic States:															
Connecticut [1]	[2] 576, 187	315, 751	54. 8	584, 029	328, 345	56. 2	602, 677	343, 884	57. 0	609, 228			613, 517		
Delaware	108, 019	55, 002	50. 1	114, 989	61, 368	53. 3	120, 819	71, 475	59. 1	122, 324	74, 316	60. 7		73, 682	
Maine	215, 352	130, 519	60. 6	218, 566	139, 561	63. 8	225, 145	145, 448	64. 6	228, 699	150, 597	65. 9			
Maryland	[2] 748, 491	362, 270	48. 4	[2] 751, 567	382, 307	50. 2	[2] 786, 313	451, 344	57. 4	[2] 851, 492	494, 717	58. 1			
Massachusetts	1, 016, 035	413, 000	41. 8	1, 034, 754	435, 557	42. 1	1, 059, 890	472, 430	44. 5						
New Hampshire	129, 232	65, 875	51. 5	150, 620	79, 806	52. 9	140, 230	85, 314	60. 8						
New Jersey [3]	[2] 1, 745, 082	[4] 509, 564	29. 2	[2] 1, 811, 958	525, 468	29. 0	[2] 1, 773, 045	540, 779	30. 5						
New York [5]	[2] 3, 018, 343	1, 485, 025	49. 2	3, 397, 413	1, 532, 562	45. 1	3, 442, 809	1, 520, 840	44. 0	3, 489, 245	1, 593, 624	45. 6			
Pennsylvania	[2] 2, 125, 910	1, 145, 866	53. 9	2, 148, 336	1, 191, 956	55. 4	2, 169, 225	1, 229, 400	56. 6	[10] 2, 196, 400	1, 260, 946	57. 4			
Rhode Island [6]	153, 202	68, 872	44. 0				163, 205	82, 483	50. 5						
Vermont	85, 461	48, 070	56. 2	92, 679	52, 720	56. 9	96, 584	56, 700	58. 7	99, 061	64, 555	65. 2			
Total	9, 921, 324	4, 599, 814	46. 4				10, 579, 942	5, 000, 097	47. 3						
Great Lakes and Plains States:															
Illinois	2, 016, 000	617, 984	30. 7	2, 061, 509	682, 346	33. 0	2, 094, 332	662, 144	31. 6	2, 118, 777	696, 343	32. 8			
Indiana	1, 053, 000	524, 698	49. 6	1, 077, 126	586, 614	54. 4	1, 112, 042	603, 128	54. 2	1, 112, 319	629, 818	56. 6			
Iowa	643, 196	269, 706	43. 7	651, 935	282, 288	43. 3	654, 639	386, 732	43. 8	665, 675	288, 497	44. 0			
Kansas	474, 352	145, 777	30. 7	473, 835	158, 874	33. 5	470, 236	163, 623	34. 8	466, 026	166, 345	35. 7			
Michigan [7]	1, 913, 000	700, 011	36. 6	2, 122, 919	803, 695	37. 8	2, 164, 386	791, 259	36. 5	2, 178, 745	805, 155	36. 9			
Minnesota [8]	824, 562	361, 478	43. 8	848, 269	370, 696	43. 7	864, 595	406, 678	47. 0	876, 625	422, 673	48. 2			
Missouri	871, 443	526, 252	60. 4	880, 799	548, 689	62. 2	906, 132	581, 387	64. 1	916, 497	585, 650	63. 9			
Nebraska	311, 377	59, 047	19. 0	312, 759	60, 053	19. 2	314, 516	62, 479	19. 9	[10] 313, 500	[10] 63, 500	20. 2			
North Dakota	141, 786	59, 461	41. 9	141, 065	58, 088	41. 1	141, 961	57, 084	40. 2	141, 411	57, 055	40. 3			
Ohio [9]	2, 207, 000	1, 131, 560	51. 3	2, 395, 293	1, 186, 510	49. 4	2, 425, 086	1, 216, 211	50. 1	2, 424, 074	1, 236, 192	50. 9	2, 432, 489	1, 225, 438	50. 3
South Dakota	160, 219	38, 085	23. 8	159, 225	42, 669	26. 8	158, 542	47, 250	29. 8	158, 747	51, 957	32. 7			
Wisconsin	826, 305	392, 359	47. 5	857, 506	421, 008	49. 0	880, 609	435, 987	49. 5	895, 498	449, 918	50. 2			
Total	11, 448, 240	4, 826, 418	42. 2				12, 187, 136	5, 313, 962	43. 6	12, 267, 894	5, 453, 103	44. 4			

Southeastern States:															
Alabama	787, 714	397, 754	50. 5	786, 218	394, 864	50. 2	777, 123	360, 087	45. 6	754, 014	359, 486	47. 6			
Arkansas	[1] 413, 082	210, 444	50. 9	413, 760	211, 236	51. 0	414, 131	210, 929	50. 9	415, 583	217, 231	52. 2			
Florida	[2] 1, 218, 613	369, 240	30. 3	[2] 1, 274, 672	388, 775	30. 5	1, 318, 669	419, 337	31. 8	[2] 1, 333, 919	461, 536	34. 6			
Georgia	998, 781	517, 517	51. 8	1, 013, 047	535, 981	52. 9	1, 019, 427	550, 066	54. 0	1, 006, 879	567, 532	56. 4			
Kentucky	[2] 635, 651	389, 019	61. 2	[2] 642, 555	397, 099	61. 8	648, 170	403, 810	62. 3	659, 256	415, 991	63. 1			
Louisiana	773, 941	462, 241	59. 7	796, 647	476, 965	59. 8	776, 554	486, 376	62. 6	773, 046	497, 908	64. 4			
Mississippi	[2] 539, 615	312, 956	58. 0	541, 975	313, 415	57. 8	524, 623	301, 458	57. 4	497, 846	292, 472	58. 7	[10] 495, 843		
North Carolina	[1] 1, 118, 415	603, 069	53. 9	1, 132, 144	610, 760	53. 9	1, 139, 754	629, 953	55. 2	1, 101, 860	683, 413	62. 2		[10] 719, 916	[10] 65. 6
South Carolina	604, 928	352, 064	58. 2	603, 387	352, 205	58. 3	600, 292	351, 823	52. 0	586, 988	368, 538	56. 0			
Tennessee	[2] 830, 533	422, 744	50. 9	[2] 834, 275	432, 989	51. 9	836, 010	438, 642	52. 5	849, 882	446, 878	52. 6			
Virginia	[2] 950, 592	573, 207	60. 3	986, 152	598, 773	60. 7	1, 002, 961	618, 960	61. 7	1, 006, 230	627, 356	62. 4			
West Virginia	388, 385	255, 779	69. 9	380. 361	257, 999	67. 8	372, 277	255, 222	68. 6	369, 145	258, 792	70. 1			
Total	9, 260, 255	4, 866, 034	52. 5	9, 405, 193	4, 971, 081	52. 8	9, 429, 991	5, 026, 663	53. 3	9, 354, 648	5, 197, 133	55. 5			
Western and Southwestern States:															
Alaska	63, 923	23, 072	36. 1	67, 489	25, 388	37. 6	72, 489	26, 500	36. 5	76, 630	31, 562	41. 1			
Arizona	372, 269	[11] 113, 600	30. 5	380, 419	133, 000	34. 9	395, 427	139, 483	35. 2	481, 653	143, 408	29. 7			
California	[2] 4, 797, 342	882, 711	18. 4	[2] 4, 920, 691	910, 328	18. 5	4, 990, 435	920, 375	18. 4	4, 633, 198	914, 653	19. 7	4, 601, 550		
Colorado [12]	[2] 477, 666	156, 197	32. 7	485, 975	160, 775	33. 1	500, 388	171, 379	34. 2	512, 449	181, 168	35. 3	[10] 526, 182	[10] 173, 576	33. 0
Hawaii	158, 110	18, 912	11. 0	160, 971	22, 512	13. 9	167, 444	26, 309	15. 7	167, 349	28, 600	17. 0	172, 443	32, 319	18. 7
Idaho	168, 255	85, 629	50. 9	169, 808	86, 749	51. 0	170, 919	87, 568	51. 2	173, 443	90, 486	52. 2			
Montana	[2] 160, 570	50, 098	31. 2	160, 912	45, 431	28. 2	162, 664	45, 879	28. 2	163, 554	49, 253	30. 1			
Nevada	104, 422	36, 047	34. 5	109, 199	39, 700	36. 4	113, 421	45, 821	40. 4	117, 534	46, 491	39. 6			
New Mexico [13]	266, 939	109, 708	41. 1	271, 123	113, 330	41. 8	274, 867	117, 514	42. 8	279, 295	120, 945	43. 3			
Oklahoma [14]	[2] 559, 672	203, 161	36. 3	555, 675	204, 306	36. 7	560, 993	206, 400	36. 7	565, 028	222, 451	39. 3			
Oregon	425, 047	227, 230	53. 5	431, 282	238, 768	55. 4	436, 736	246, 710	56. 5	438, 776	[10] 247, 000	56. 2	[10] 440, 400		
Texas	[2] 2, 342, 166	491, 855	21. 0	2, 391, 551	505, 554	21. 1	2, 597, 204	534, 979	20. 5	2, 489, 263	583, 231	23. 0	2, 503, 400		
Utah	[2] 282, 386	85, 563	30. 3	285, 144			287, 405	90, 543	31. 5	286, 749	94, 605	32. 9	[10] 290, 285		
Washington	736, 554	351, 757	47. 8	743, 155	350, 820	42. 2	764, 735	368, 192	48. 0	762, 006	376, 465	49. 4			
Wyoming	80, 362	25, 041	31. 1	80, 811	25, 608	31. 6	81, 293	27, 998	34. 4	81, 698	28, 364	34. 7		28, 364	
Total	10, 995, 683	2, 860, 581	26. 0				11, 576, 420	3, 055, 650	26. 4	11, 228, 625	3, 158, 682	28. 1			

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[1] State has no ADA figure after 1967–68. For subsequent years, State's formula (90 percent of total enrollment as of Oct. 1) is used.

[2] Computed by OCR.

[3] New Jersey measures transportation to public and private schools against total enrollment.

[4] Updates figure used by NCES.

[5] Does not include New York City.

[6] Rhode Island tabulates the figures only for the odd-year requests from USOE.

[7] Average daily attendance is for entire State. Pupils transported, however, does not include larger cities such as Lansing, Grand Rapids, Pontiac, Jackson, Kalamazoo.

[8] Includes both public and private school pupils transported.

[9] The pupils transported represent a daily average.

[10] Estimated.

[11] State official gave this figure, said NCES figure incorrect.

[12] Colorado used total enrollment, not average daily attendance.

[13] Average daily memberships and not average daily attendance is used.

[14] Oklahoma uses total enrollment, not average daily attendance.

EXPLANATION—ATTACHMENT C

Attachment C comprises two tables. The first table (labeled III/IV–A) indicates for the 100 largest school districts total enrollment, number and percentage of minority and Negro pupils, and the number and percentage of black pupils attending schools at various levels of minority isolation. This data covers school years 1968–1971 and was obtained from the annual OCR school district surveys.

The second table (labeled III/IV–B) indicates the number and percentage of pupils transported at public expense for the 1970–71 and 1971–72 school years in the 100 largest school districts. This data (unedited) was obtained from the annual OCR school district surveys. However, the question pertaining to the number of pupils transported at public expense was not included in the OCR annual survey prior to the 1970–71 school year. In the second table, an asterisk next to the name of the school district indicates that the district underwent new student desegregation in the 1971–72 school year, based on information available to OCR.

CODE

*—Districts with 1971 Desegregation Plans (23 districts: 21 court plans; 2 HEW plans—Wichita, Kansas and Virginia Beach, Va.).

NA—Data Not Available At Time of Compilation—November 19, 1971.

NS—District Not Surveyed That Year.

IR—Insufficient Response To Pupil Transportation Question (i.e.: less than 75% of the district's schools answered the question).

TABLE III/IV—REVISED MARCH 9, 1972[1]

ONE HUNDRED LARGEST (1970) SCHOOL DISTRICTS TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971

(All data is final except for 1971, which is unedited)

CODE

*—Districts with 1971 Desegregation Plans (23 districts: 21 court plans; 2 HEW plans—Wichita, Kans., and Virginia Beach, Va.)

NA—Data Not Available At Time of Compilation—March 9, 1972.

NS—District Not Surveyed That Year.

The 100 largest districts[2] account for approximately:

23% of all public elementary and secondary school pupils in the continental United States: (44.9 million total pupils in the continental United States; 10.5 million pupils in the 100 largest districts).

48% of all minority pupils: (9.4 million minority pupils in the continental United States; 4.5 million minority pupils in the 100 largest districts).

51% of all black pupils: (6.7 million black pupils in the continental United States; 3.4 million black pupils in the 100 largest districts).

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[1] This revision of Table III/IV A provides fall 1971 data for 15 of the 24 districts for which 1971 data was not previously available. Two additional districts (Philadelphia and Seattle) are still being compiled, and the seven remaining districts were not surveyed in 1971. (They are coded "NS" for that year—Not Surveyed.)

[2] 1970 data.

TABLE III/IV-A.—100 LARGEST (1970) SCHOOL DISTRICTS, TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971

[See code and footnotes on first page]

District	A. Total pupils in membership	B. Minority pupils		C. Black pupils		Black pupils attending schools which are—					
						D. 0-49.9 percent minority		E. 80-100 percent minority		F. 100 percent minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Akron, Ohio:											
1968	58,589	15,248	26.0	15,137	25.8	5,705	37.7	5,958	39.4	588	3.9
1969	56,838	15,201	26.7	15,071	26.5	5,944	39.4	5,345	35.5	522	3.5
1970	56,426	15,546	27.6	15,413	27.3	5,624	36.5	7,594	49.3	0	0
1971	55,570	15,627	28.1	15,454	27.8	5,208	33.7	6,214	40.2	454	2.9
Albuquerque, N. Mex.:											
1968	79,669	31,959	40.1	1,987	2.4	523	27.6	971	51.2	0	0
1969	82,085	34,020	41.4	2,148	2.6	674	31.4	1,112	51.8	134	6.2
1970	83,781	34,936	41.7	2,048	2.4	742	36.2	779	38.0	0	0
1971	85,473	36,116	42.3	2,180	2.6	750	34.4	1,022	46.9	0	0
Anne Arundel County, Md. (Annapolis):											
1968	65,745	9,288	14.1	8,923	13.6	7,161	80.3	222	2.5	0	0
1969	70,786	9,672	13.7	9,312	13.2	7,317	78.6	346	3.7	0	0
1970	74,021	10,069	13.6	9,587	13.0	7,547	78.7	335	3.5	0	0
1971	75,654	10,423	13.8	9,783	12.9	7,716	78.9	305	3.1	0	0
Atlanta, Ga.:											
1968	111,227	68,721	61.8	68,662	61.7	3,728	5.4	63,050	91.8	53,644	78.1
1969	109,664	70,346	64.1	70,296	64.1	3,861	5.5	63,652	90.5	41,726	59.4
1970	105,598	72,552	68.7	72,523	68.7	4,777	6.6	63,111	87.0	24,332	33.6
1971	100,316	72,474	72.2	72,321	72.1	5,768	8.0	62,131	85.9	15,625	21.6
Austin, Tex.:*											
1968	51,760	17,826	34.4	7,783	15.0	1,022	13.1	6,691	86.0	1,728	22.2
1969	52,724	18,370	34.8	7,822	14.8	1,050	13.4	6,387	81.7	507	6.5
1970	54,974	19,574	35.6	8,284	15.1	1,323	16.0	6,507	78.5	1,216	14.7
1971	55,565	19,749	35.5	8,147	14.7	2,938	36.1	4,735	58.1	697	8.6
Baltimore City, Md.:											
1968	192,171	125,174	65.1	125,174	65.1	9,646	7.7	104,886	83.8	54,505	43.5
1969	193,123	127,794	66.2	127,794	66.2	10,727	8.4	106,369	83.2	52,337	41.0
1970	192,458	129,220	67.1	129,220	67.1	12,122	9.4	104,683	81.0	55,378	42.9
1971	190,735	129,993	68.2	129,993	68.2	11,982	9.2	109,334	84.1	55,378	42.6
Baltimore County, Md.:											
1968	123,717	4,339	3.5	4,299	3.5	4,299	100.0	0	0	0	0
1969	129,594	4,676	3.6	4,662	3.6	4,662	100.0	0	0	0	0
1970	133,674	5,097	3.8	5,097	3.8	5,097	100.0	0	0	0	0
1971	135,181	5,311	3.9	5,311	3.9	5,311	100.0	0	0	0	0

TABLE III/IV-A.—100 LARGEST (1970) SCHOOL DISTRICTS, TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971—Continued

[See code and footnotes on first page]

District	A. Total pupils in membership	B. Minority pupils		C. Black pupils		Black pupils attending schools which are—					
						D. 0-49.9 percent minority		E. 80-100 percent minority		F. 100 percent minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Birmingham, Ala.:											
1968	66,434	34,156	51.4	34,156	51.4	2,472	7.2	31,649	92.7	28,906	84.6
1969	66,161	34,909	52.8	34,909	52.8	3,298	9.4	31,611	90.6	30,221	86.6
1970	61,994	33,869	54.6	33,869	54.6	5,3[illegible]	15.8	24,887	73.5	11,360	33.5
1971	59,907	33,876	56.5	33,785	56.4	4,70[illegible]	13.9	25,244	74.7	11,700	34.6
Boston, Mass.:											
1968	94,174	29,674	31.5	25,482	27.1	5,943	23.3	13,878	54.5	79	.3
1969	94,887	32,230	34.0	27,276	28.7	5,863	21.5	16,324	59.8	1,476	5.4
1970	96,696	34,682	35.9	28,822	29.8	5,174	18.0	18,757	65.1	3,172	11.0
1971	96,583	37,193	38.5	30,654	31.7	4,574	14.9	19,381	63.2	398	1.3
Brevard County, Fla. (Titusville):											
1968	62,563	6,753	10.8	6,327	10.1	4,416	69.8	1,911	30.2	1,911	30.2
1969	61,730	7,216	11.7	6,839	11.1	6,159	90.1	680	9.9	0	0
1970	61,908	7,090	11.5	6,618	10.7	5,876	88.8	742	11.2	0	0
1971	61,979	7,391	11.9	6,872	11.1	6,151	89.5	721	10.5	0	0
Broward County, Fla. (Fort Lauderdale):*											
1968	103,003	25,517	24.8	24,516	23.8	3,556	14.5	19,545	79.7	16,882	68.9
1969	112,400	27,662	24.6	26,131	23.2	4,135	15.8	20,916	80.0	13,967	53.4
1970	117,324	29,412	25.1	27,230	23.2	14,189	52.1	11,201	41.1	4,303	15.8
1971	122,376	30,849	25.2	28,554	23.3	22,467	78.7	2,291	8.0	650	2.3
Buffalo, N.Y.:											
1968	72,115	28,173	39.1	26,381	36.6	7,113	27.0	17,161	65.1	1,474	5.6
1969	71,441	28,895	40.4	26,940	37.7	7,154	26.6	16,887	62.7	2,220	8.2
1970	70,305	29,284	41.7	27,069	38.5	7,249	26.8	16,172	59.7	1,785	6.6
1971	68,217	29,278	42.9	26,953	39.5	7,381	27.4	15,907	59.0	3,778	14.0
Caddo Parish, La. (Shreveport):											
1968	60,483	26,574	43.9	26,429	43.7	649	2.5	25,734	97.4	24,844	94.0
1969	58,782	26,793	45.6	26,552	45.2	2,864	10.8	23,425	88.2	22,320	84.1
1970	53,866	26,568	49.3	26,401	49.0	6,777	25.7	17,959	68.0	11,740	44.5
1971	53,420	26,711	50.0	26,489	49.6	6,748	25.5	17,653	66.6	8,023	30.3
Charleston County, S.C.:											
1968	47,178	16,827	35.7	16,730	35.5	2,140	12.8	14,091	84.2	14,091	84.2
1969	58,278	27,162	46.6	27,016	46.4	4,882	18.1	21,546	79.8	14,658	54.3
1970	57,410	27,254	47.5	27,059	47.1	8,332	30.8	16,197	59.9	3,675	13.6
1971	57,128	27,759	48.6	27,445	48.0	7,866	28.7	17,113	62.4	6,838	24.9

Charlotte-Mecklenburg County, N.C.:*											
1968	83,111	24,488	29.5	24,241	29.2	6,704	27.7	16,506	68.1	9,459	39.0
1969	84,518	24,988	29.6	24,690	29.2	8,269	33.5	14,384	58.3	8,160	33.0
1970	82,507	25,688	31.1	25,404	30.8	23,050	90.7	1,053	4.1	0	0
1971	81,042	26,116	32.2	25,796	31.8	25,253	97.9	399	1.5	0	0
Chatham County, Ga. (Savannah):*											
1968	42,416	17,449	41.1	17,449	41.1	1,620	9.3	15,102	86.5	13,460	77.1
1969	42,306	17,539	41.5	17,539	41.5	2,380	13.6	14,457	82.4	13,402	76.4
1970	40,897	18,115	44.3	17,963	43.9	3,499	19.5	12,058	67.1	2,804	15.6
1971	37,712	18,342	48.6	18,195	48.2	10,809	59.4	1,385	7.6	0	0
Chicago, Ill.:											
1968	582,274	362,796	62.3	308,266	52.9	9,742	3.2	278,219	90.3	146,152	47.4
1969	582,071	372,183	63.9	314,232	54.0	10,565	3.4	286,305	91.1	159,491	50.8
1970	577,679	378,010	65.4	315,711	54.8	9,502	3.0	290,694	91.8	143,900	45.4
1971	574,495			320,797	55.8	6,959	2.2	293,830	91.6	147,780	46.1
Cincinnati, Ohio:											
1968	86,807	37,576	43.3	37,275	42.9	8,171	21.9	18,957	50.9	6,291	16.9
1969	85,286	37,638	44.1	37,456	43.9	9,255	24.7	20,598	55.0	4,778	12.8
1970	84,199	38,135	45.3	37,853	45.0	6,399	16.9	20,661	54.6	5,924	15.7
1971	81,879	38,045	46.5	37,731	46.1	5,159	13.7	20,696	54.9	3,986	10.6
Clark County, Nev. (Las Vegas):											
1968	67,526	10,803	16.0	8,233	12.2	3,961	48.1	4,272	51.9	0	0
1959	70,909	11,791	16.6	8,928	12.6	5,159	57.8	3,020	33.8	0	0
1970	73,822	12,665	17.2	9,567	13.0	5,960	62.3	2,870	30.0	515	5.4
1971	73,745	12,642	17.1	9,499	12.9	6,420	67.6	1,774	18.7	353	3.7
Cleveland, Ohio:											
1968	156,054	89,730	57.5	87,241	55.9	4,156	4.8	79,221	90.8	21,516	24.7
1969	150,718	88,415	58.7	85,552	56.8	3,404	4.0	76,812	89.8	28,867	33.7
1970	153,619	91,643	59.7	88,558	57.6	3,725	4.2	80,505	90.9	30,852	34.8
1971	148,854	88,718	59.6	85,291	57.3	3,931	4.6	77,841	91.3	30,232	35.4
Cobb County, Ga. (Marietta):											
1968	40,918	1,425	3.5	1,336	3.3	1,246	93.3	90	6.7	90	6.7
1969	43,013	1,506	3.5	1,350	3.1	1,298	96.1	0	0	0	0
1970	44,504	1,556	3.5	1,397	3.1	1,397	100.0	0	0	0	0
1971	45,661	1,536	3.4	1,336	2.9	1,336	100.0	0	0	0	0
Columbus, Ohio:											
1968	110,699	29,044	26.2	28,729	26.0	8,263	28.8	16,341	56.9	890	3.1
1969	110,193	29,628	26.9	29,234	26.5	7,427	25.4	16,040	54.9	1,008	3.4
1970	109,329	29,847	27.3	29,440	26.9	7,614	25.9	15,604	53.0	655	2.2
1971	110,735	31,758	28.7	31,279	28.2	8,788	28.1	16,862	53.9	205	.7
Compton, Calif.:											
1968 NS											
1969 NS											
1970	40,364	38,265	94.8	33,486	83.0	0	0	31,056	92.7	5,303	15.8
1971	39,356	38,041	96.7	33,471	85.0	0	0	32,740	97.8	2,483	7.4

TABLE III/IV-A.—100 LARGEST (1970) SCHOOL DISTRICTS, TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971—Continued

[See code and footnotes on first page]

District	A. Total pupils in membership	B. Minority pupils		C. Black pupils		Black pupils attending schools which are—					
						D. 0-49.9 percent minority		E. 80-100 percent minority		F. 100 percent minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Corpus Christi, Tex.:											
1968	46, 110	24, 013	52. 1	2, 496	5. 4	43	1. 7	1, 960	78. 5	640	25. 6
1969	46, 025	24, 217	52. 6	2, 475	5. 4	40	1. 6	1, 879	75. 9	591	23. 9
1970	46, 292	25, 391	54. 8	2, 590	5. 6	71	2. 7	2, 176	84. 0	12	. 5
1971	45, 900	26, 370	57. 5	2, 601	5. 7	143	5. 5	2, 080	80. 0	15	. 6
Dade County, Fla. (Miami):											
1968	232, 465	96, 867	41. 7	56, 518	24. 3	7, 032	12. 4	46, 362	82. 0	27, 482	48. 6
1969	244, 016	106, 792	43. 8	59, 351	24. 3	9, 538	16. 1	43, 820	73. 8	21, 543	36. 3
1970	240, 447	111, 005	46. 2	60, 957	25. 4	13, 254	21. 7	32, 352	53. 1	7, 498	12. 3
1971	244, 765	119, 053	48. 6	62, 974	25. 7	14, 507	23. 0	33, 485	53. 2	8, 129	12. 9
Dallas, Tex.:*											
1968	159, 924	62, 036	38. 8	49, 235	30. 8	1, 045	2. 1	45, 777	93. 0	15, 807	32. 1
1969	162, 490	66, 010	40. 6	51, 733	31. 8	1, 162	2. 2	47, 960	92. 7	18, 998	36. 7
1970	164, 736	70, 343	42. 7	55, 648	33. 8	1, 528	2. 7	52, 380	94. 1	12, 899	23. 2
1971	157, 799	72, 893	46. 2	57, 338	36. 3	8, 617	15. 0	47, 843	83. 4	6, 028	10. 5
Dayton, Ohio:											
1968	59, 527	22, 945	38. 5	22, 790	38. 3	2, 488	10. 9	18, 837	82. 7	5, 061	22. 2
1969	58, 287	23, 096	39. 6	22, 932	39. 3	2, 447	10. 7	18, 458	80. 5	4, 122	18. 0
1970	56, 609	23, 194	41. 0	23, 013	40. 7	2, 990	13. 0	17, 900	77. 8	2, 183	9. 5
1971	55, 041	23, 693	43. 0	23, 439	42. 7	3, 670	15. 6	18, 343	78. 1	3, 431	14. 6
DeKalb County, Ga. (Decatur):											
1968	77, 967	4, 293	5. 5	4, 124	5. 3	1, 841	44. 6	1, 939	47. 0	421	10. 2
1969	82, 743	5, 038	6. 1	4, 876	5. 9	3, 739	76. 7	688	14. 1	0	0
1970	85, 859	5, 640	6. 6	5, 379	6. 3	3, 793	70. 5	793	14. 7	48	. 9
1971	88, 012	7, 435	8. 4	6, 351	7. 2	4, 452	70. 3	1, 412	22. 2	0	
Denver, Colo.:											
1968	96, 577	33, 179	34. 4	13, 639	14. 1	2, 732	20. 0	8, 993	65. 9	0	0
1969	96, 634	34, 722	35. 9	13, 932	14. 4	5, 711	41. 0	6, 979	50. 1	0	0
1970	97, 928	37, 474	38. 3	14, 434	14. 7	6, 431	44. 6	6, 426	44. 5	0	0
1971	94, 808	37, 661	39. 7	14, 901	15. 7	6, 755	45. 3	5, 443	36. 5	0	0
Des Moines, Iowa:											
1968	46, 532	4, 107	8. 8	3, 611	7. 8	2, 057	57. 0	408	11. 3	0	0
1969	45, 788	4, 090	8. 9	3, 612	7. 9	2, 221	61. 5	0	0	0	0
1970	45, 375	4, 198	9. 3	3, 751	8. 3	2, 193	58. 5	24	. 6	0	0
1971	44, 350	4, 238	9. 6	3, 738	8. 4	2, 137	57. 2	298	8. 0	0	0

Detroit, Mich.:											
1968	296,097	179,847	60.7	175,316	59.2	15,781	9.0	138,623	79.1	18,510	10.6
1969	288,383	183,094	63.5	177,942	61.7	11,420	6.4	140,641	79.0	12,754	7.2
1970	284,396	186,299	65.5	181,538	63.8	10,618	5.8	143,946	79.3	24,809	13.7
1971	282,076	188,336	66.8	183,262	65.0	11,629	6.3	143,992	68.6	22,105	12.1
Duval County, Fla. (Jacksonville):*											
1968	122,637	34,638	28.2	34,638	28.2	4,362	12.6	30,276	87.4	26,566	76.7
1969	124,901	35,601	28.5	35,601	28.5	7,150	20.1	28,451	79.9	22,515	63.2
1970	122,493	36,054	29.4	36,054	29.4	9,237	25.6	20,747	57.5	13,345	37.0
1971	117,576	36,769	31.3	36,769	31.3	13,229	35.0	14,042	38.2	8,549	23.3
East Baton Rouge Parish, La.:											
1968	63,725	23,953	37.6	23,751	37.3	1,333	5.6	22,362	94.2	19,007	80.0
1969	65,566	24,627	37.6	24,418	37.2	1,665	6.8	22,301	91.3	21,032	86.1
1970	64,198	25,010	39.0	24,785	38.6	5,457	22.0	17,810	71.9	7,211	29.1
1971	65,906	26,040	39.5	25,723	39.0	5,897	22.9	18,531	72.0	5,399	21.0
El Paso, Tex.:											
1968	62,105	35,811	57.7	1,804	2.9	1,114	61.8	510	28.3	78	4.3
1969	62,199	36,352	58.4	1,941	3.1	1,247	64.2	409	21.1	41	2.1
1970	62,545	37,185	59.5	1,867	3.0	1,090	57.8	383	20.3	60	3.2
1971	62,900	37,755	60.0	1,915	3.0	1,358	70.9	355	18.5	0	0
Escambia County, Fla. (Pensacola):											
1968	46,875	13,145	28.0	12,924	27.6	2,904	22.5	9,216	71.3	9,046	70.0
1969	46,245	13,389	29.0	13,152	28.4	6,096	46.4	2,265	17.2	0	0
1970	45,987	13,847	29.5	13,413	28.6	5,548	41.3	2,225	16.6	0	0
1971	44,723	13,331	29.8	12,713	28.4	5,391	42.4	1,938	15.2	1	0
Fairfax County, Va. (District of Columbia area):											
1968	122,107	4,201	3.4	3,322	2.7	3,322	100.0	0	0	0	0
1969 NS											
1970	133,368	5,913	4.4	4,214	3.2	4,214	100.0	0	0	0	0
1971 NS											
Flint, Mich.:											
1968	46,495	17,850	38.4	17,212	37.0	4,165	24.2	7,297	42.4	0	0
1969	46,377	18,559	40.0	17,998	38.8	4,943	27.5	7,427	41.3	0	0
1970	45,659	19,187	42.0	18,475	40.5	3,512	19.0	7,051	38.2	385	2.1
1971	41,899	17,945	42.8	17,116	40.9	3,494	20.4	7,973	46.6	319	1.9
Fort Wayne, Ind.:											
1968	41,595	6,218	14.9	5,760	13.8	1,552	26.9	3,291	57.1	0	0
1969	43,016	6,476	15.1	5,932	13.8	1,664	28.1	2,542	42.9	0	0
1970	43,400	7,025	16.2	6,492	15.0	1,921	29.6	3,194	49.2	0	0
1971	42,963	7,356	17.1	6,720	15.6	3,440	51.2	2,429	36.1	0	0
Fort Worth, Tex.:*											
1968	86,528	28,517	33.0	21,398	24.7	2,065	9.7	18,283	85.4	12,991	60.7
1969	88,099	30,670	34.8	22,796	25.9	3,126	13.7	19,180	84.1	9,199	40.4
1970	88,095	31,956	36.3	23,542	26.7	2,309	9.8	18,845	80.0	11,399	49.8
1971	82,418	31,725	38.5	23,311	28.3	4,993	21.4	15,623	67.0	4,767	20.4

TABLE III/IV-A.—100 LARGEST (1970) SCHOOL DISTRICTS, TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971—Continued

[See code and footnotes on first page]

District	A. Total pupils in membership	B. Minority pupils		C. Black pupils		Black pupils attending schools which are					
						D. 0-49.9 percent minority		E. 80-100 percent minority		F. 100 percent minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Fresno, Calif.:											
1968	58,234	17,486	30.0	5,251	9.0	831	15.8	4,023	76.6	593	11.3
1969	57,029	16,430	28.8	4,876	8.6	872	17.9	3,321	68.1	0	0
1970	57,508	17,362	30.2	5,133	8.9	1,255	24.4	3,441	67.0	16	.3
1971	55,783	17,237	30.9	5,190	9.3	1,506	29.0	3,322	64.0	13	.3
Garden Grove, Calif.:											
1968	52,908	5,761	10.9	83	.2	83	100.0	0	0	0	0
1969 NS											
1970	52,684	6,634	12.6	110	.2	110	100.0	0	0	0	0
1971	51,983	6,959	13.4	170	.3	170	100.0	0	0	0	0
Gary, Ind.:											
1968	48,431	34,368	71.0	29,826	61.6	916	3.1	27,057	90.7	9,652	32.4
1969	48,436	35,190	72.7	30,623	63.2	893	2.9	27,542	89.9	14,581	47.6
1970	46,595	34,500	74.0	30,169	64.7	1,060	3.5	27,673	91.7	11,781	39.1
1971	45,332	34,622	76.4	30,593	67.5	1,177	3.8	29,272	95.7	5,336	17.4
Granite, Utah (Salt Lake City):											
1968	62,236	1,950	3.1	59	.1	59	100.0	0	0	0	0
1969 NS											
1970	62,767	2,383	3.8	83	.1	83	100.0	0	0	0	0
1971 NS											
Greenville County, S.C.:											
1968	56,306	12,453	22.1	12,453	22.1	1,839	14.8	10,378	83.3	9,258	74.3
1969	56,573	12,913	22.8	12,913	22.8	2,729	21.1	9,780	75.7	8,579	66.4
1970	57,222	12,837	22.4	12,788	22.3	12,594	98.5	72	.6	0	0
1971	57,559	12,836	22.3	12,770	22.2	12,654	99.1	0	.0	0	0
Hillsborough County, Fla. (Tampa):*											
1968	100,985	26,356	26.1	19,225	19.0	3,513	18.3	14,896	77.4	12,371	64.3
1969	103,795	27,463	26.5	19,867	19.1	4,472	22.5	13,888	69.9	6,637	33.4
1970	105,347	27,553	26.2	20,417	19.4	4,771	23.4	12,832	62.8	2,303	11.3
1971	101,298	25,904	25.6	19,769	19.5	19,335	97.8	90	.5	0	0
Houston, Tex.:*											
1968	246,098	114,999	46.7	81,966	33.3	4,318	5.3	74,482	90.9	52,854	64.5
1969	236,220	111,769	47.3	79,058	33.5	4,324	5.5	71,659	90.6	47,724	60.4
1970	241,139	121,958	50.6	85,965	35.6	7,202	8.4	73,373	85.4	7,604	8.8
1971	225,681	122,002	54.1	85,276	37.8	7,398	8.7	73,351	86.0	7,391	8.7
Indianapolis, Ind.:											
1968	108,587	36,577	33.7	36,577	33.7	8,205	22.4	22,872	62.5	3,945	10.8
1969	108,192	37,988	35.1	37,656	34.8	6,678	17.8	23,504	62.4	4,589	12.2
1970	106,239	38,467	36.2	38,044	35.8	7,785	20.5	22,925	60.3	3,318	8.7
1971	102,326	38,992	38.1	38,542	37.7	9,060	23.5	23,180	60.1	4,889	12.7

Jefferson County, Ala. (Birmingham area):*											
1968	65,328	18,186	27.8	8,186	27.8	538	3.0	17,579	96.7	17,579	96.7
1969	62,024	14,463	23.3	14,463	23.3	2,905	20.1	11,115	76.9	10,210	70.6
1970	59,717	16,776	28.1	16,776	28.1	3,240	19.3	13,159	78.4	8,020	47.8
1971	56,573	15,160	26.8	15,110	26.7	5,952	39.4	8,563	56.7	4,528	30.0
Jefferson County, Colo. (Lakewood):											
1968	60,367	1,459	2.4	60	.1	60	100.0	0	0	0	0
1969 NS											
1970	67,675	1,721	2.5	71	.1	71	100.0	0	0	0	0
1971 NS											
Jefferson County, Ky. (Lo[illegible]ville):											
1968	85,846	3,322	3.9	3,213	3.7	2,365	73.6	848	26.4	0	0
1969	89,754	3,271	3.6	3,271	3.6	2,597	79.4	674	20.6	0	0
1970	93,454	3,382	3.6	3,382	3.6	2,738	81.0	644	19.0	0	0
1971	95,660	3,814	4.0	3,590	3.8	3,082	85.8	508	14.2	0	0
Jefferson Parish, La. (Gretna):*											
1968	59,485	12,812	21.5	12,812	21.5	2,632	20.5	10,180	79.5	10,180	79.5
1969	61,859	14,759	23.9	12,938	20.9	5,685	43.9	6,603	51.0	2,874	22.2
1970	63,572	14,264	22.4	13,201	20.8	6,425	48.7	4,791	36.3	2,577	19.5
1971	61,763	13,870	22.5	12,790	20.7	12,015	93.9	80	.6	0	0
Kanawha County, W. Va. (Charleston):											
1968	56,118	3,656	6.5	3,548	6.3	2,905	81.9	0	0	0	0
1969	53,777	3,610	6.7	3,491	6.5	2,917	83.6	0	0	0	0
1970	52,888	3,530	6.7	3,404	6.4	2,934	86.2	0	0	0	0
1971	52,617	3,584	6.8	3,450	6.6	3,017	87.4	0	0	0	0
Kansas City, Mo.:											
1968	74,202	34,692	46.8	34,692	46.8	4,865	14.0	27,083	78.1	5,050	14.6
1969	72,638	35,326	48.6	35,325	48.6	3,153	8.9	27,813	78.7	4,808	13.6
1970	70,503	35,375	50.2	35,375	50.2	3,301	9.3	29,504	83.4	5,275	14.9
1971	68,335	35,657	52.2	35,657	52.2	3,478	9.7	30,793	86.4	8,871	24.9
Long Beach, Calif.:											
1968	72,065	10,611	14.7	5,489	7.6	2,011	36.6	679	12.4	0	0
1969	70,472	11,050	15.7	5,813	8.2	2,880	49.5	0	0	0	0
1970	69,927	11,727	16.8	6,349	9.1	2,219	35.0	0	0	0	0
1971	69,205	12,924	18.7	6,972	10.1	2,405	34.5	0	0	0	0
Los Angeles, Calif.:											
1968	653,549	302,640	46.3	147,738	22.6	7,012	4.7	130,272	88.2	18,118	12.3
1969	654,654	312,866	47.8	153,541	23.5	7,339	4.8	134,624	87.7	12,441	8.1
1970	642,895	318,830	49.6	154,926	24.1	9,121	5.9	134,889	87.1	13,551	8.7
1971	633,951	324,525	51.2	157,589	24.9	10,712	6.8	136,459	86.6	12,046	7.6
Louisville, Ky.:											
1968	55,212	25,513	45.2	25,470	46.1	3,432	13.5	16,525	64.9	1,996	7.8
1969	53,586	25,392	47.4	23,342	47.3	2,750	10.9	19,324	76.3	2,714	10.7
1970	53,197	25,739	48.4	25,674	48.3	3,013	11.7	19,884	77.4	1,094	4.3
1971	50,440	24,653	48.9	24,591	48.8	3,120	12.7	20,246	82.3	3,830	15.6

TABLE III/IV-A.—100 LARGEST (1970) SCHOOL DISTRICTS, TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971—Continued

[See code and footnotes on first page]

District	A. Total pupils in membership	B. Minority pupils		C. Black pupils		Black pupils attending schools which are—					
						D. 0-49.9 percent minority		E. 80-100 percent minority		F. 100 percent minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Memphis, Tenn.:											
1968	125,813	67,542	53.7	67,395	53.6	1,765	2.6	64,290	95.4	49,381	73.3
1969	134,190	74,413	55.5	74,237	55.3	2,865	3.9	70,241	94.6	53,035	71.4
1970	148,304	76,561	51.6	76,303	51.5	4,979	6.5	68,751	90.1	37,979	49.8
1971	145,903	78,661	53.9	78,402	53.7	5,554	7.1	69,896	89.2	32,516	41.5
Milwaukee, Wis.:											
1968	130,445	35,284	27.0	31,130	23.9	3,849	12.4	23,620	75.9	4,819	15.5
1969	132,462	38,929	29.4	34,235	25.8	3,898	11.4	27,327	79.8	787	2.3
1970	132,349	39,326	29.7	34,355	26.0	4,197	12.2	26,193	76.2	0	0
1971	131,815	42,497	32.2	36,960	28.0	5,467	14.8	29,111	78.8	2,059	5.6
Minneapolis, Minn.:											
1968	70,006	7,516	10.7	5,255	7.5	3,722	70.8	0	0	0	0
1969	68,278	8,166	12.0	5,528	8.1	3,415	61.8	0	0	0	0
1970	66,938	8,717	13.0	5,938	8.9	3,416	57.6	0	0	0	0
1971	65,201	9,466	14.5	6,351	9.7	4,118	64.8	428	6.7	0	0
Mobile County, Ala.:*											
1968	75,464	31,441	41.7	31,441	41.7	3,442	10.9	27,519	87.5	18,832	59.9
1969	73,504	30,884	42.0	30,884	42.0	6,776	21.9	22,796	73.8	15,125	49.0
1970	69,791	31,114	44.6	31,034	44.5	5,658	18.2	16,888	54.4	3,141	10.1
1971	66,593	31,045	46.6	30,958	45.9	11,081	35.8	12,764	44.2	4,727	15.3
Montgomery County, Md.:											
1968	121,458	7,828	6.4	4,872	4.0	4,872	100.0	0	0	0	0
1969 NS											
1970	125,343	10,499	8.4	6,454	5.1	6,454	100.0	0	0	0	0
1971 NS											
Mount Diablo, Calif.:											
1968	48,351	2,706	5.6	369	.8	369	100.0	0	0	0	0
1969 NS											
1970	48,395	2,698	5.6	416	.9	416	100.0	0	0	0	0
1971 NS											
Muscogee County, Ga. (Columbus):*											
1968	42,373	12,804	30.2	12,517	29.5	884	7.1	10,951	87.5	8,768	70.0
1969	43,597	13,143	30.1	12,935	29.7	1,332	10.3	11,072	85.6	9,028	69.8
1970	42,010	13,359	31.8	13,074	31.1	1,564	12.0	11,214	85.8	8,093	61.9
1971	40,341	13,317	33.0	13,126	32.5	12,602	96.0	211	1.6	211	1.6

Nashville-Davidson., Tenn.:*											
1968	93,720	22,681	24.2	22,561	24.1	3,794	16.8	15,656	69.4	11,696	51.8
1969	95,821	23,258	24.3	23,101	24.1	4,782	20.7	16,233	70.3	7,432	32.2
1970	95,313	23,710	24.9	23,473	24.6	5,877	25.0	15,727	67.0	4,942	21.1
1971	88,190	24,076	27.3	23,963	27.2	19,820	82.7	0	0	0	0
New York, N.Y.:											
1968	1,063,787	596,422	56.1	334,841	31.5	65,824	19.7	202,517	60.5	34,033	10.2
1969	1,115,870	663,043	59.4	375,997	33.7	66,300	17.6	237,845	63.3	25,402	6.8
1970	1,140,359	703,902	61.7	393,516	34.5	63,981	16.3	258,685	65.7	46,947	11.9
1971	1,131,058			388,089	34.3	62,428	16.1	268,399	69.2	23,316	6.0
Newark, N.J.:											
1968	75,960	62,244	81.9	55,057	72.5	1,174	2.1	48,686	88.4	10,607	19.3
1969	77,227	65,472	84.8	55,995	72.5	1,327	2.4	49,068	87.6	7,555	13.5
1970	78,456	67,268	85.7	56,651	72.2	1,620	2.9	51,685	91.2	11,217	19.8
1971	79,661	69,841	87.7	57,358	72.0	1,463	2.6	52,359	91.3	12,888	22.5
Norfolk, Va.:*											
1968	56,029	24,205	43.2	23,499	41.9	2,701	11.5	19,341	82.3	11,648	49.6
1969	59,429	25,740	43.3	24,984	42.0	2,788	11.2	19,406	77.7	10,188	40.8
1970	55,117	25,473	46.2	24,757	44.9	8,139	32.9	13,827	55.9	6,457	26.1
1971	50,791	24,961	49.1	24,341	47.9	12,280	50.4	285	1.2	0	0
Oakland, Calif.:											
1968	64,102	44,267	69.1	35,386	55.2	1,958	5.5	27,292	77.1	1,661	4.7
1969	61,679	43,905	71.2	35,248	57.1	1,841	5.2	27,416	77.8	194	.6
1970	67,830	48,615	71.7	38,567	56.9	2,498	6.5	28,988	75.2	991	2.6
1971	67,323	49,368	73.3	39,102	58.1	2,480	6.3	28,582	73.1	634	1.6
Oklahoma City, Okla.:											
1968	74,727	16,255	21.8	16,255	21.8	2,037	12.5	13,542	83.3	924	5.7
1969	72,945	19,475	26.5	16,585	22.7	3,421	20.6	12,945	78.1	963	5.8
1970	70,042	19,547	27.9	16,109	23.0	3,442	21.4	12,095	75.1	3,672	22.8
1971	69,130	19,559	28.3	16,309	23.6	3,576	21.9	11,135	68.3	5,235	32.1
Omaha, Nebr.:											
1968	62,431	12,475	20.0	11,284	18.1	2,309	20.5	6,210	55.0	0	0
1969	62,481	12,899	20.6	11,547	18.5	2,730	23.6	7,840	67.9	0	0
1970	63,516	13,135	20.7	11,786	18.6	3,145	26.7	7,582	64.3	0	0
1971	63,931	13,579	21.2	11,535	18.0	3,382	29.3	7,106	61.6	0	0
Orange County, Fla. (Orlando):*											
1968	76,089	13,055	17.2	13,055	17.2	2,627	20.1	10,064	77.1	10,064	77.1
1969	83,361	15,235	18.3	15,235	18.3	5,097	33.5	9,156	60.1	4,397	28.9
1970	85,270	15,398	18.1	15,398	18.1	6,265	40.7	8,005	52.0	2,553	16.9
1971	84,928	16,880	19.9	15,638	18.4	8,173	52.3	4,428	28.3	772	4.9
Orleans Parish, La. (New Orleans):											
1968	110,783	76,110	68.7	74,378	67.1	6,569	8.8	61,942	83.3	46,320	62.3
1969	110,664	77,205	69.8	75,259	68.0	6,694	8.9	62,991	83.7	45,367	60.3
1970	109,856	78,450	71.4	76,388	69.5	5,925	7.8	62,567	81.9	37,053	48.5
1971	108,969	79,905	73.3	77,538	71.4	5,072	6.6	62,669	80.8	36,587	47.2

TABLE III/IV-A.—100 LARGEST (1970) SCHOOL DISTRICTS, TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971—Continued

[See code and footnotes on first page]

District	A. Total pupils in membership	B. Minority pupils		C. Black pupils		Black pupils attending schools which are					
						D. 0-49.9 percent minority		E. 80-100 percent minority		F. 100 percent minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Palm Beach County, Fla.:*											
1968	61,715	18,743	30.4	17,158	27.8	3,191	18.6	13,636	79.5	12,409	72.3
1969	65,686	19,819	30.2	17,753	27.0	3,723	21.0	13,011	73.3	7,025	39.6
1970	66,760	20,609	30.9	18,338	27.5	4,597	25.1	7,445	40.6	0	0
1971	65,609	21,358	32.6	18,733	28.6	11,786	62.9	2,024	10.8	0	0
Philadelphia, Pa.:											
1968	282,617	173,105	61.3	166,083	58.8	15,880	9.6	127,641	76.9	7,201	4.3
1969	283,209	177,498	62.7	169,509	59.9	13,929	8.2	131,148	77.4	12,418	7.3
1970	279,829	178,063	63.6	169,334	60.5	12,541	7.3	135,866	80.2	8,668	5.1
1971 not available											
Pinellas County, Fla. (Clearwater):*											
1968	78,466	13,170	16.8	12,715	16.2	2,762	21.7	9,303	73.2	3,298	25.9
1969	81,885	13,603	16.6	13,153	16.1	4,029	30.6	8,238	62.6	4,257	32.4
1970	85,117	14,192	16.7	13,766	16.2	6,264	45.5	2,881	20.9	667	4.8
1971	86,878	14,710	16.9	14,137	16.3	13,408	94.8	0	0	0	0
Pittsburgh, Pa.:											
1968	76,268	30,263	39.7	29,898	39.2	6,373	21.3	17,936	60.0	2,925	9.8
1969	73,500	29,538	40.2	29,342	39.9	6,284	21.4	17,698	60.3	4,139	14.1
1970	73,481	29,802	40.6	29,595	40.3	6,900	23.3	17,009	57.5	3,905	13.2
1971	71,502	29,625	41.4	29,357	41.1	6,876	23.4	18,076	61.6	2,786	9.5
Polk County, Fla. (Bartow):											
1968	52,255	11,884	22.7	11,652	22.3	3,815	32.7	7,769	66.7	7,769	66.7
1969	53,099	12,183	22.9	11,857	22.3	7,439	62.7	3,516	29.7	1,021	8.6
1970	54,380	12,255	22.5	11,899	21.9	8,622	72.5	1,444	12.1	0	0
1971	55,343	12,627	22.8	12,217	22.1	9,761	79.9	1,433	11.7	0	0
Portland, Oreg.:											
1968	78,413	8,257	10.5	6,388	8.1	3,664	57.4	1,589	24.9	0	0
1969	77,806	8,838	11.4	6,685	8.6	3,909	58.5	1,590	23.8	0	0
1970	76,206	9,129	12.0	7,008	9.2	4,352	62.1	1,494	21.3	0	0
1971	72,694	9,366	12.9	7,013	9.8	3,721	52.4	1,504	21.2	0	0
Prince Georges County, Md. (District of Columbia area):											
1968	146,976	22,313	15.2	22,313	15.2	12,525	56.1	5,705	25.6	3,112	13.9
1969	155,505	26,912	17.3	26,912	17.3	11,231	41.7	9,522	35.4	2,943	10.9
1970	160,897	33,099	20.6	31,994	19.9	13,040	40.8	11,190	35.0	724	2.3
1971	162,828	38,876	23.9	36,450	22.4	14,093	38.7	14,510	39.8	550	1.5

Richmond, Va.:											
1968	43,115	29,573	68.6	29,441	68.3	1,890	6.4	26,092	88.6	22,971	7.80
1969	42,719	30,232	70.8	30,097	70.5	1,808	6.0	25,300	84.1	18,903	62.8
1970	47,988	30,947	64.5	30,785	64.2	3,609	11.7	17,485	56.8	2,954	9.6
1971	44,989	31,250	69.5	31,101	69.1	1,901	6.1	11,363	36.5	32	.1
Richmond, Calif.:											
1968	43,123	13,967	32.4	10,424	24.2	4,006	38.4	4,522	43.4	534	5.1
1969	42,215	14,685	34.8	11,126	26.4	5,031	45.2	4,768	42.9	416	3.7
1970	41,492	15,012	36.2	11,389	27.4	5,730	50.3	3,781	33.2	343	3.0
1971	41,390	15,889	38.4	11,699	28.3	5,704	48.8	3,598	30.8	345	2.9
Rochester, N.Y.:											
1968	47,372	15,356	32.4	13,679	28.9	6,232	45.6	4,708	34.4	0	0
1969	46,843	16,491	35.2	14,586	31.1	5,999	41.1	5,329	36.5	0	0
1970	45,500	17,090	37.6	15,082	33.1	6,161	40.9	6,661	44.2	0	0
1971	44,152	18,076	40.9	15,747	35.7	7,709	49.0	5,303	33.7	0	0
Rockford, Ill.:											
1968	36,975	4,792	13.0	4,434	12.0	2,593	58.5	472	10.6	0	0
1969	42,826	5,176	12.1	4,767	11.1	2,471	51.8	417	8.7	0	0
1970	43,116	5,774	13.4	5,300	12.3	2,965	55.9	412	7.8	0	0
1971	42,131	5,915	14.0	5,385	12.8	2,999	55.7	449	8.3	0	0
Sacramento, Calif.:											
1968	52,545	17,782	33.8	7,324	13.9	5,150	70.3	387	5.3	0	0
1969	53,327	18,564	34.8	7,776	14.6	5,123	65.9	327	4.2	0	0
1970	52,218	18,722	35.9	8,012	15.3	5,273	65.8	302	3.8	0	0
1971	49,658	18,397	37.0	8,070	16.3	5,166	64.0	540	6.7	0	0
San Antonio, Tex.:											
1968	79,353	58,043	73.1	11,637	14.7	1,234	10.6	9,963	85.6	6,137	52.7
1969	78,289	59,460	75.9	11,529	14.7	1,487	12.9	8,235	71.4	640	5.6
1970	77,253	59,549	77.1	11,853	15.3	1,099	9.3	7,950	67.1	1,310	11.1
1971	74,955	58,941	78.6	11,600	15.5	958	8.3	8,260	71.2	1,463	12.6
San Diego, Calif.:											
1968	128,914	30,751	23.9	15,004	11.6	3,767	25.1	9,643	64.3	0	0
1969	129,531	31,545	24.4	15,872	12.3	4,351	27.4	9,591	60.4	0	0
1970	128,783	31,705	24.6	16,008	12.4	5,146	32.1	9,017	56.3	0	0
1971	128,327	32,246	25.1	16,409	12.8	5,770	35.2	9,118	55.6	0	0
San Francisco, Calif.:*											
1968	94,154	55,330	58.8	25,923	27.5	4,024	15.5	12,079	46.6	110	.4
1969	93,139	58,813	63.1	26,037	28.0	2,893	11.1	13,891	53.4	175	.7
1970	91,150	57,549	63.1	25,988	28.5	3,681	14.2	14,417	55.5	281	1.1
1971	83,584	55,242	66.1	25,408	30.4	2,380	9.4	5,673	22.3	337	1.3
San Juan, Calif. (Carmichael):											
1968	53,174	1,693	3.2	134	.3	134	100.0	0	0	0	0
1969 NS											
1970	55,621	2,208	4.0	217	.4	217	100.0	0	0	0	0
1971 NS											
Seattle, Wash.:											
1968	94,025	16,732	17.8	10,376	11.0	4,647	44.8	2,531	24.4	0	0
1969	89,183	16,648	18.7	10,343	11.6	4,570	44.2	3,151	30.5	0	0
1970	83,924	17,019	20.3	10,736	12.8	4,358	40.6	2,690	25.1	0	0
1971 NA											

TABLE III/IV-A.—100 LARGEST (1970) SCHOOL DISTRICTS, TOTAL PUPILS, MINORITY PUPILS AND BLACK PUPILS, FALL 1968, 1969, 1970 AND 1971—Continued

[See code and footnotes on first page]

District	A. Total pupils in membership	B. Minority pupils		C. Black pupils		Black pupils attending schools which are—					
						D. 0–49.9 percent minority		E. 80–100 percent minority		F. 100 percent minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
Shawnee Mission, Kans. (Kansas City area):											
1968 NS											
1969 NS											
1970	45, 289	450	1. 0	140	. 3	140	100. 0	0	0	0	0
1971	41, 936	611	1. 5	157	. 4	144	91. 7	3	1. 9	3	1. 9
Spring Branch, Tex. (Houston area):											
1968	35, 704	399	1. 1	15	0	15	100. 0	0	0	0	0
1969 NS											
1970	39, 771	654	1. 6	22	. 1	22	100. 0	0	0	0	0
1971 NS											
St. Louis, Mo.:											
1968	115, 582	73, 770	63. 8	73, 408	63. 5	5, 244	7. 1	65, 321	89. 0	36, 651	49. 1
1969	113, 374	73, 510	64. 8	73, 128	64. 5	5, 082	6. 9	63, 545	86. 9	36, 697	50. 2
1970	111, 233	73, 356	65. 9	72, 965	65. 6	1, 827	2. 5	64, 166	87. 9	36, 316	49. 8
1971	107, 986	73, 601	68. 2	73, 149	67. 7	1, 545	2. 1	65, 668	89. 8	34, 717	47. 5
St. Paul, Minn.:											
1968	50, 338	4, 669	9. 3	2, 917	5. 8	2, 556	87. 6	361	12. 4	0	0
1969	48, 432	5, 000	10. 3	3, 040	4. 3	2, 486	81. 8	316	10. 4	0	0
1970	49, 732	5, 354	10. 8	3, 163	6. 4	2, 043	64. 6	340	10. 7	0	0
1971	50, 589	5, 841	11. 5	3, 541	7. 0	2, 241	68. 4	339	9. 6	0	0
Toledo, Ohio:											
1968	61, 684	18, 026	29. 2	16, 473	26. 7	3, 725	22. 6	10, 553	64. 1	1, 617	9. 8
1969	62, 965	18, 686	29. 7	17, 043	27. 1	4, 637	27. 2	10, 903	64. 0	774	4. 5
1970	61, 699	18, 195	29. 5	16, 407	26. 6	3, 954	24. 1	9, 725	59. 3	579	3. 5
1971	62, 597	19, 023	30. 4	17, 052	27. 2	3, 838	22. 5	10, 121	59. 4	448	2. 6

Tucson, Ariz.:											
1968	53,667	17,373	32.4	2,767	5.2	524	18.9	955	34.5	0	0
1969	55,964	17,969	32.1	2,888	5.2	619	21.4	890	L30.8	0	0
1970	57,346	18,957	33.1	3,088	5.4	835	27.0	1,068	34.6	0	0
1971	61,837			3,308	5.3	1,003	30.3	1,171	35.4	0	0
Tulsa, Okla.:*											
1968	79,990	13,577	17.0	9,728	12.2	1,518	15.6	7,493	77.0	4,447	45.7
1969	79,566	13,623	17.1	10,332	13.0	2,291	22.2	7,651	74.1	1,352	13.1
1970	77,822	13,745	17.7	10,672	13.7	2,933	27.5	7,332	68.7	1,887	17.7
1971	75,069	13,679	18.2	10,616	14.1	4,282	40.3	5,434	51.2	1,067	10.1
Virginia Beach, Va.:*											
1968	41,272	4,953	12.0	4,372	10.6	2,719	62.2	1,653	37.8	1,278	29.2
1969	43,637	5,115	11.7	4,586	10.5	3,958	86.3	628	13.7	0	0
1970	45,245	5,390	11.9	4,793	10.6	4,187	87.4	606	12.6	0	0
1971	46,802	5,437	11.6	4,793	10.2	4,793	100.0	0	0	0	0
Washington, D.C.:											
1968	148,725	140,445	94.4	139,006	93.5	1,253	.9	134,161	96.5	38,701	27.8
1969	148,931	141,456	95.0	140,251	94.2	1,556	1.1	134,622	96.0	41,700	29.7
1970	145,330	138,834	95.5	137,502	94.6	1,674	1.2	133,421	97.0	46,117	33.5
1971	141,806	136,356	96.2	135,068	95.2	455	.3	131,844	97.6	47,516	35.2
Wichita, Kans.:*											
1968	68,391	10,331	15.1	8,913	13.0	4,058	45.5	4,757	53.4	0	0
1969	67,025	10,807	16.1	9,276	13.8	5,211	56.2	3,952	42.6	0	0
1970	63,811	10,943	17.1	9,362	14.7	6,025	64.4	2,950	31.5	371	4.0
1971	59,868	11,007	18.4	9,274	15.5	9,247	99.7	0	0	0	0
Winston-Salem/Forsyth County:											
1968	49,831	13,856	27.8	13,798	27.7	2,111	15.3	11,687	84.7	9,778	70.9
1969	50,462	13,941	27.6	13,886	27.5	2,025	14.6	11,675	84.1	8,641	62.2
1970	49,514	13,824	27.9	13,727	27.7	5,077	37.0	7,884	57.4	6,015	43.8
1971	47,937	14,913	29.6	14,097	29.4	13,494	95.7	383	2.7	0	0

TABLE III/IV B—REVISED 3/9/72[1]

100 LARGEST (1970) SCHOOL DISTRICTS/PUPILS TRANSPORTED AT PUBLIC EXPENSE

(Fall 1970 and 1971 Unedited Data)

CODE

*—Districts with 1971 Desegregation Plans (23 districts: 21 court plans; 2 HEW plans—Wichita, Kans. and Virginia Beach, Va.)

NA—Data Not Available At Time of Compilation—3/9/72.

NS—District Not Surveyed That Year.

IR—Insufficient Response To Pupil Transportation Question (i.e.: less than 75% of the district's schools answered the question).

TABLE III/IV-B.—100 LARGEST (1970) SCHOOL DISTRICTS PUPILS TRANSPORTED AT PUBLIC EXPENSE (FALL 1970 AND 1971 UNEDITED DATA)

[See code and footnotes on first page]

	A	B		C	
	Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A	Number	Percent
Akron, Ohio:					
1970	56,426	2,004	3.6	68	100.0
1971	55,570	2,157	3.8	67	100.0
Albuquerque, New Mex.:					
1970	83,121	25,972	31.2	108	99.1
1971	82,559	29,172	35.3	108	98.2
Anne Arundel County, Md. (Annapolis):					
1970	74,021	46,805	63.2	98	100.0
1971	75,654	49,179	65.0	97	100.0
Atlanta, Ga.:					
1970	105,598	0	0	150	100.0
1971	100,316	1,664	1.6	154	100.0
Austin, Tex.:*					
1970	54,662	2,875	5.3	73	98.6
1971	55,565	6,381	11.4	72	100.0
Baltimore City, Md.:					
1970	192,458	55,462	28.8	218	100.0
1971	190,735	56,597	29.7	218	100.0
Baltimore County, Md.:					
1970	132,942	71,621	53.9	178	98.9
1971	134,313	74,272	55.3	181	98.6
Birmingham, Ala.:					
1970	61,994	0	0	95	100.0
1971	59,907	0	0	93	100.0
Boston, Mass.:					
1970	93,791	2,598	2.8	201	98.5
1971	86,214	3,032	3.5	186	91.6
Brevard County, Fla. (Titusville):					
1970	61,085	21,088	34.5	67	98.5
1971	61,979	20,462	33.0	68	100.0
Broward County, Fla. (Fort Lauderdale):*					
1970	117,324	28,299	24.1	124	98.4
1971	122,376	40,799	33.3	141	100.0
Buffalo, N.Y.:					
1970	70,305	11,631	16.5	95	100.0
1971	68,217	14,571	21.4	99	100.0
Caddo Parish, La. (Shreveport):					
1970	53,866	12,685	23.5	78	100.0
1971	53,420	14,210	26.6	80	100.0
Charleston County, S.C.:					
1970	57,410	24,834	43.3	84	100.0
1971	56,367	25,780	45.7	83	98.8
Charlotte-Mecklenburg County, N.C.:*					
1970	82,507	46,076	55.8	108	99.1
1971	80,488	46,849	58.2	105	97.2
Chatham County, Ga. (Savannah):*					
1970	40,297	13,749	34.1	61	98.4
1971	37,712	19,378	51.3	61	100.0

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[1] This revision of Table III/IV B provides previously unavailable pupil transportation data for 23 districts.

TABLE III/IV-B.—100 LARGEST (1970) SCHOOL DISTRICTS PUPILS TRANSPORTED AT PUBLIC EXPENSE (FALL 1970 AND 1971 UNEDITED DATA)—Continued

[See code and footnotes on first page]

	A	B		C	
	Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A	Number	Percent
Chicago, Ill.:					
1970	577, 679	4, 608	. 8	630	100. 0
1971	572, 659	2, 808	. 5	649	99. 5
Cincinnati, Ohio:					
1970	84, 199	4, 889	5. 8	109	100. 0
1971	81, 713	4, 507	5. 5	107	99. 1
Clark County, Nev. (Las Vegas):					
1970	73, 822	12, 830	17. 4	91	100. 0
1971	73, 745	14, 718	19. 9	93	100. 0
Cleveland, Ohio:					
1970	153, 619	3, 156	2. 1	189	100. 0
1971	145, 806	3, 514	2. 4	184	97. 4
Cobb County, Ga. (Marietta):					
1970	44, 424	33, 766	76. 0	56	96. 6
1971	45, 661	33, 403	73. 1	56	100. 0
Columbus, Ohio:					
1970	109, 329	6, 418	5. 9	169	100. 0
1971	106, 339	8, 626	8. 1	168	96. 6
Compton, Calif.:					
1970	40, 364	3, 870	9. 6	42	100. 0
1971	34, 202	3, 312	9. 6	36	90. 0
Corpus Christi, Tex.:					
1970	45, 809	628	1. 4	62	98. 4
1971	45, 900	838	1. 8	64	100. 0
Dade County, Fla. (Miami):					
1970	236, 533	31, 288	13. 2	229	99. 1
1971	241, 841	36, 514	15. 0	234	98. 7
Dallas, Tex.:*					
1970	157, 742	5, 079	3. 2	176	97. 2
1971	156, 394	12, 154	7. 7	179	97. 8
Dayton, Ohio:					
1970	56, 609	4, 081	7. 2	69	100. 0
1971	55, 041	3, 552	6. 4	69	100. 0
DeKalb County, Ga. (Decatur):					
1970	85, 570	38, 453	44. 9	104	95. 4
1971	88, 012	47, 373	53. 8	111	100. 0
Denver, Colo.:					
1970	97, 928	14, 753	15. 1	121	100. 0
1971	94, 808	14, 354	15. 0	120	100. 0
Des Moines, Iowa:					
1970	45, 375	4, 931	10. 9	83	100. 0
1971	41, 392	4, 886	11. 8	77	93. 9
Detroit, Mich.:					
1970	284, 396	17, 312	6. 1	334	100. 0
1971	263, 206	14, 985	5. 6	311	94. 8
Duval County, Fla. (Jacksonville):*					
1970	122, 493	35, 963	29. 4	138	100. 0
1971	117, 576	42, 651	36. 2	133	100. 0
East Baton Rouge Parish, La.:					
1970	63, 044	25, 898	41. 1	100	98. 0
1971	63, 239	28, 548	45. 1	98	95. 1
El Paso, Tex.:					
1970	58, 313	4, 737	8. 1	57	91. 9
1971	56, 252	4, 024	7. 1	52	85. 2
Escambia County, Fla. (Pensacola):					
1970	46, 987	23, 430	49. 9	70	100. 0
1971	43, 350	23, 386	53. 9	64	91. 4
Fairfax County, Va. (District of Columbia area):					
1970	132, 803	85, 252	64. 2	161	99. 4
1971 NS					
Flint, Mich.:					
1970	45, 659	2, 092	4. 6	56	100. 0
1971	36, 568	518	1. 4	48	88. 9
Fort Wayne, Ind.:					
1970	43, 400	7, 971	18. 4	58	100. 0
1971	41, 956	8, 946	21. 3	57	95. 0
Fort Worth, Tex.:*					
1970	87, 673	2, 979	3. 4	115	99. 1
1971	81, 935	6, 861	8. 3	112	99. 1
Fresno, Calif.:					
1970	57, 508	6, 473	11. 3	77	100. 0
1971	55, 783	6, 801	12. 1	75	100. 0
Garden Grove, Calif.:					
1970	49, 818	9, 681	19. 4	64	94. 1
1971	51, 311	8, 364	16. 3	66	98. 5

TABLE III/IV-B.—100 LARGEST (1970) SCHOOL DISTRICTS PUPILS TRANSPORTED AT PUBLIC EXPENSE (FALL 1970 AND 1971 UNEDITED DATA)—Continued

[See code and footnotes on first page]

	A	B		C	
	Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A	Number	Percent
Gary, Ind.:					
1970	46,036	2,250	4.9	51	98.1
1971	43,703	2,912	6.6	45	93.9
Granite, Utah (Salt Lake City):					
1970	62,767	11,924	19.0	73	100.0
1971 NS					
Greenville County, S.C.:					
1970	57,222	23,358	40.8	103	100.0
1971	57,160	23,977	41.9	88	98.9
Hillsborough County, Fla. (Tampa):*					
1970	101,211	28,698	28.4	122	94.6
1971	100,756	47,969	47.6	124	99.2
Houston, Tex.:*					
1970	206,718	9,162	4.4	203	88.3
1971	218,401	15,202	6.9	219	96.9
Indianapolis, Ind.:					
1970	104,631	9,143	8.7	122	99.2
1971	102,306	7,802	7.6	121	99.2
Jefferson County, Ala. (Birmingham area):*					
1970	IR	IR	IR	IR	IR
1971	54,161	30,713	56.7	76	96.2
Jefferson County, Colo. (Lakewood):					
1970	67,292	22,037	32.7	93	98.9
1971 NS					
Jefferson County, Ky. (Louisville):					
1970	93,454	54,413	58.2	94	100.0
1971	95,660	57,559	60.1	98	100.0
Jefferson Parish, La. (Gretna):*					
1970	61,538	41,880	68.1	73	96.1
1971	59,628	43,691	73.2	73	96.1
Kanawha County, W. Va. (Charleston):					
1970	52,888	27,692	52.4	130	100.0
1971	52,617	27,138	51.5	127	100.0
Kansas City, Mo.:					
1970	67,467	9,543	14.1	94	94.9
1971	68,335	10,813	15.8	99	100.0
Long Beach, Calif.:					
1970	69,927	2,800	4.0	79	100.0
1971	69,205	3,105	4.4	79	100.0
Los Angeles, Calif.:					
1970	634,281	32,539	5.1	577	99.0
1971	573,647	33,040	5.7	522	89.2
Louisville, Ky.:					
1970	52,372	460	.9	67	98.5
1971	50,440	503	.9	67	100.0
Memphis, Tenn.:					
1970	147,708	2,040	1.4	156	98.7
1971	130,329	1,655	1.3	145	90.1
Milwaukee, Wis.:					
1970	132,349	8,256	6.2	157	100.0
1971	128,441	7,817	6.0	153	97.5
Minneapolis, Minn.:					
1970	66,938	3,156	4.7	118	100.0
1971	65,201	4,695	7.2	122	100.0
Mobile Coumty, Ala.:*					
1970	69,791	18,147	26.0	83	100.0
1971	66,593	26,285	39.5	82	100.0
Montgomery County, Md.:					
1970	124,380	51,424	41.3	186	99.5
1971 NS					
Mount Diablo, Calif.:					
1970	48,395	10,491	21.7	59	100.0
1971 NS					
Muscogee County, Ga. (Columbus):*					
1970	42,010	10,580	25.2	67	100.0
1971	40,224	14,916	37.0	66	98.5
Nashville-Davidson County, Tenn.:*					
1970	95,313	32,574	34.2	141	100.0
1971	88,190	43,132	48.9	136	100.0
New York, N.Y.:					
1970	1,140,359	273,825	24.0	925	100.0
1971	1,055,230	279,826	26.5	1,002	93.2
Newark, N.J.:					
1970	78,456	3,214	4.1	91	100.0
1971	75,012	4,461	5.9	90	96.8

TABLE III/IV-B.—100 LARGEST (1970) SCHOOL DISTRICTS PUPILS TRANSPORTED AT PUBLIC EXPENSE (FALL 1970 AND 1971 UNEDITED DATA)—Continued

[See code and footnotes on first page]

	A	B		C	
	Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A	Number	Percent
Norfolk, Va.:*					
1970	52,605	703	1.3	70	97.2
1971	49,693	637	1.2	71	98.6
Oakland, Calif.:					
1970	IR	IR	IR	IR	IR
1971	65,174	1,528	2.3	97	96.0
Oklahoma City, Okla.:					
1970	69,667	12,465	17.9	112	99.1
1971	69,130	14,690	21.2	112	100.0
Omaha, Nebr.:					
1970	62,684	782	1.2	96	99.0
1971	62,458	1,064	1.7	94	95.9
Orange County, Fla. (Orlando):*					
1970	IR	IR	IR	IR	IR
1971	82,750	31,010	37.4	93	97.9
Orleans Parish, La. (New Orleans):					
1970	106,269	6,696	6.3	138	97.9
1971	108,947	8,288	7.6	141	99.3
Palm Beach County, Fla.:*					
1970	66,009	19,321	29.3	92	98.9
1971	65,038	25,920	39.9	83	98.8
Philadelphia, Pa.:					
1970	279,829	18,496	6.6	275	100.0
1971	NA				
Pinellas County, Fla. (Clearwater):*					
1970	85,117	34,183	40.2	112	100.0
1971	86,878	36,332	41.8	114	100.0
Pittsburgh, Pa.:					
1970	73,481	9,242	12.6	115	100.0
1971	68,335	9,809	14.4	112	97.4
Polk County, Fla. (Bartow):					
1970	54,380	22,719	41.8	87	100.0
1971	55,343	24,483	44.2	88	100.0
Portland, Oreg.:					
1970	76,206	6,619	8.7	122	100.0
1971	76,462	6,558	9.1	119	99.2
Prince Georges County, Md. (District of Columbia area):					
1970	160,897	72,740	45.2	227	100.0
1971	162,828	76,155	46.7	232	100.0
Richmond, Calif.:					
1970	41,492	4,213	10.2	61	100.0
1971	41,390	4,538	10.9	61	100.0
Richmond, Va.:					
1970	47,988	7,676	16.0	83	100.0
1971	44,989	17,688	39.3	83	100.0
Rochester, N.Y.:					
1970	45,500	8,263	18.2	56	100.0
1971	44,152	13,425	30.4	59	100.0
Rockford, Ill.:					
1970	34,126	3,847	11.3	57	78.1
1971	42,131	3,352	7.9	71	100.0
Sacramento, Calif.:					
1970	52,218	3,181	6.1	78	100.0
1971	49,085	1,521	3.0	75	98.7
San Antonio, Tex.:					
1970	77,253	2,270	2.9	97	100.0
1971	74,955	3,367	4.4	100	100.0
San Diego, Calif.:					
1970	128,783	2,577	2.0	155	100.0
1971	126,783	3,172	2.5	154	98.1
San Francisco, Calif.:					
1970	89,808	6,662	7.4	163	99.4
1971	79,095	21,436	27.1	159	96.4
San Juan, Calif. (Carmichael):					
1970	50,045	21,355	42.7	71	91.0
1971 NS					
Seattle, Wash.:					
1970	IR	IR	IR	IR	IR
1971	NA				
Shawnee Mission, Kans. (Kansas City area):					
1970	44,831	4,074	9.1	64	98.5
1971	39,308	4,313	10.9	62	95.4

TABLE III/IV B—100 LARGEST (1970) SCHOOL DISTRICTS PUPILS TRANSPORTED AT PUBLIC EXPENSE (FALL 1970 AND 1971 UNEDITED DATA)—Continued

[see code and footnotes on first page]

	A	B		C	
	Total pupils in schools Ahich ansAered the transportation question	Pupils transported		Number and percent of schools Ahich ansAered the transportation question	
		Number	Percent of A	Number	Percent
Spring Branch, Tex. (Houston area):					
1970	38, 749	22, 123	58. 6	29	93. 5
1971 NS					
St. Louis, Mo.:					
1970	111, 233	3, 349	3. 0	179	99. 4
1971	107, 356	4, 129	3. 8	175	99. 4
St. Paul, Mi[illegible]:					
1970	49, 732	3, 141	6. 3	82	100. 0
1971	49, 082	2, 874	5. 8	83	96. 5
Toledo, Ohio:					
1970	61, 699	7, 738	12. 5	74	100. 0
1971	62, 342	8, 340	13. 3	73	98. 6
Tucson, Ariz.:					
1970	57, 263	7, 468	13. 0	82	97. 6
1971	61, 837	9, 032	14. 6	88	100. 0
Tulsa, Okla.:					
1970	77, 822	6, 716	8. 6	108	100. 0
1971	74, 349	9, 354	12. 6	105	98. 1
Virginia Beach, Va.:					
1970	45, 245	41, 525	91. 8	47	100. 0
1971	46, 802	42, 071	89. 8	47	100. 0
Washington, D.C.:					
1970	139, 214	6, 458	4. 6	192	98. 0
1971	128, 087	1, 305	1. 0	180	93. 3
Wichita, Kans.:					
1970	63, 811	15, 108	23. 7	113	100. 0
1971	59, 868	16, 317	27. 2	107	100. 0
Winston-Salem Forsyth County, N.C.:					
1970	49, 514	23, 440	47. 3	67	100. 0
1971	47, 516	32, 194	67. 6	66	98. 5

Chairman CELLER. Our first witness this morning is Dr. Michael Bakalis, Illinois superintendent of public instruction, Chicago, Ill.

STATEMENT OF DR. MICHAEL BAKALIS, ILLINOIS SUPERINTENDENT OF PUBLIC INSTRUCTION, CHICAGO, ILL., ACCOMPANIED BY ROBERT A. LYONS, DIRECTOR, DEPARTMENT OF EQUAL EDUCATION OPPORTUNITY, SUPERINTENDENT'S OFFICE; AND EMMETT SLINGSBY, ASSISTANT SUPERINTENDENT OF PUBLIC INSTRUCTION

Mr. BAKALIS. Mr. Chairman and representatives, thank you for the opportunity to appear before you in consideration of the House Joint Resolution No. 620.

To my left is Mr. Emmett Slingsby, assistant superintendent of public instruction of the State of Illinois.

On my right, Mr. Robert Lyons, director of equal educational opportunity section of the superintendent of public instruction.

On May 17, 1954, nine men sitting in the Chamber, that is the Supreme Court, asked the rhetorical question:

> Does segregation of children in public schools solely on the basis of race, even though the physical factors may be equal, deprive the children of the minority group of equal educational opportunities?

The High Court's answer was clear and unmistakable:

"We believe that it does."

Yet, 18 years later, separation of children in public schools is still an educational and social fact of life in this country. Not only is school desegregation not widespread, but neither is the busing of students to achieve it.

Of the roughly 18,000 school districts in this country, school busing for the purpose of desegregation has taken place in 1,445 districts across the Nation, either under court order or under the U.S. Civil Rights Act—in other words, in about 8 percent of the school districts in this country. (Office of Civil Rights, Department of Health, Education, and Welfare, 1972.)

The Supreme Court, since the *Brown* decision, has not deviated in the slightest degree from its holding and the constitutional underpinnings in that case. Subsequent Federal court decisions have further amplified that holding.

Undoubtedly some progress in equalizing educational opportunity has been made since 1954, but that progress cannot begin to weigh in the same scale with the extensive segregation that stubbornly persists in school districts throughout this country.

The evidence of the effects of segregation can no longer be disputed or ignored. The systematic separation of minority children from others of similar age and qualifications is capable of generating a feeling of inferiority—a feeling, the Supreme Court has noted, "That may affect their hearts and minds in a way unlikely ever to be undone."

We now know conclusively that as a result of segregation, the motivation of minority children to learn may diminish; their self-esteem and self-concept may be irreparably damaged, if not destroyed; and their educational and mental development severely handicapped. And we know for a certainty that for too many minority children, denial of equal educational opportunities impairs their access and contributions to the American mainstream. One need only to consider the alarming dropout rate among black students attending all black schools.

A resistant racism debilitates even the curriculum and day-to-day operations of many of our schools. The history and language of minority children are ignored and even deprecated. Teachers assigned to segregated schools are frequently the least prepared, the least experienced, and the least paid.

And these conditions are exacerbated further by the inequitable distribution of educational resources, not only between school districts, but sometimes between schools in the same district—a practice which almost invariably penalizes schools attended principally by poor and minority children.

Finally, a high price is paid by any child, be he white or black, who goes through his entire school career without ever meeting a child or teacher of another racial or ethnic background, or learning to value the enriching potential that culture holds for his own education.

Segregated schools can only serve to nurture prejudicial attitudes among the young and to divide us further as a people. A child who has been so isolated throughout his formative years is being educationally deprived.

The subject of using busing to help achieve racial desegregation of public schools is so complicated it seems to defy simple discussion. However, I would like to approach this subject in terms of four basic concepts. They are:

One, busing some children to school is absolutely essential to efficiently and economically achieving equal educational opportunity for children of all races and economic groups in almost all parts of the Nation.

Two, some busing of students is also essential to moving toward equal educational opportunity for minority-group children, and to creating an appreciation of diversity among all American children.

Three, busing should be used to achieve racial desegregation of public schools in such a manner that no children are transported to a school that is significantly more dangerous or violence-prone, or significantly more dominated by students from lower-income households, or demonstrably inferior educationally than the area in which those children live.

Four, school desegregation should be studied in terms of the metropolitan areawide proposals, not just in central cities—regardless of the existing structure of school districts.

The first concept is that busing some children to school is absolutely essential to achieving equal educational opportunity for children of all races and economic groups in almost all parts of the Nation.

For decades, educational authorities across the Nation have promoted a policy of consolidating tiny rural school districts, and small suburban districts, into larger districts to gain economies of scale in education.

It was—and continues to be—the busing of children that allows us to shift from the one-room, one-teacher rural schoolhouse with its terribly limited educational contents to large modern schools with varied subjects from Russian to calculus to special classes for handicapped children.

For example, in Illinois in the last 20 years, pupil transportation for the purpose of consolidation has grown from 1,400 (out of some 8,000) districts busing 170,000 students in 1950 to 1,000 (of 1,140 districts) which bus 700,000 students in 1971.

So we surely cannot be opposed to busing itself in principle—especially since, nationally, almost half our children use it every day to reach school. The general quality of American schools would deteriorate markedly if busing to create more equal educational opportunities were to be prohibited.

The second idea is that some busing of students is also essential to moving toward equal educational opportunity for minority-group children, and to creating an appreciation of diversity among all American children that is vital to the longrun survival of our democratic society.

Busing children to achieve race-related educational purposes—and ignoring the concept of the neighborhood school in doing so—is hardly new.

For several decades, both white and black students were extensively bused right past schools near their homes in the South in order to maintain racial segregation in public schools.

In fact, in some southern districts, desegregation actually led to a reduction in the total mileage of busing as compared to segregated arrangements.

But some busing must be used to achieve a greater mixture of white minority-group students in public schools than would occur without it if equal educational opportunity is to be anything but an empty slogan.

Housing patterns are strongly segregated by race, especially in large northern urban areas where a great many American blacks live. Consequently, exclusive use of the neighborhood school might result in relatively little physical coattendance of whites and blacks at the same schools, except along the boundary lines between mainly white and mainly minority-group neighborhoods.

Yet, the evidence is overwhelming that segregation of American students into mainly black and mainly white public schools is not going to produce equality of educational opportunity.

This is true regardless of whether we are talking about de jure or de facto segregation. My admitting—even asserting—this truth does not mean I believe there can be no such thing as a high-quality all-black school. There can be and, in some places there may be now.

But there are three fundamental reasons why even de facto segregation by race will normally result in inferior educational opportunities for black and other minority group students.

First, history proves decisively that white schools almost invariably wind up with the best teachers, the best equipment, and the most money in segregated school systems. The causes may range from union seniority rules to blatant racism; but whatever they are, they operate with amazing consistency throughout the Nation.

Also, I do not believe any proposed reforms of a purely financial nature will ever change this outcome. B. J. Chandler, dean of the school of education at Northwestern University, has noted that, theoretically, if we would start putting more money into ghetto schools, they would, so to speak, be equalized.

But that hasn't happened, despite the expenditure of considerable dollars in compensatory programs. And it's not going to happen. The influential people who make the decisions will still see to it that the schools in their areas get an unfair share of the total resources * * * the only way to correct this is to get a mix in student population.

For one thing, this will put pressure on the decisionmakers who then will know that they cannot deprive the children of others without, at the same time, depriving their own children.

Second, there is impressive—though not yet absolutely conclusive—evidence that social-class integration in a school with middle-class children in the majority produces better educational results than dominance by lower income children. Yet, the proportion of blacks in the United States who are poor is more than three times as high as the proportion of whites who are poor—about 31.1 percent versus 9.5 percent, in 1969.

Therefore, arranging schools so that most blacks attend schools mainly with other blacks greatly reduces the chances that black children will be going to schools in which middle-class children—white or black—predominate.

Such arrangements also increase the chances that most whites will, in fact, attend schools in which such middle-class predominance exists. This increases the already-existing "gap" in educational quality between the poorer blacks and the more affluent whites. Hence, it becomes harder for black children to escape from poverty through acquisition of quality education.

Third, I believe it is imperative that black and white children learn to live with each other, to respect each other's personal abilities and viewpoints, and to understand each other, through direct daily interaction in public schools.

I do not think our democracy can achieve anywhere near its full potential unless this occurs to a significant degree every day in areas where both black and white adults must share in political and economic responsibilities.

The failure of adults, black and white, to interact in ways that provided equal opportunities in the past has partly occurred through ignorance in both groups about the values, ideas, desires, and capabilities of other adults of different races.

We have made a great start toward overcoming this heritage of mutual ignorance during the past two decades.

Yet, if we now prohibit a key tool in this effort—busing to attain some racial mixture of students in schools—from being used, it will be a tragic step backwards. It will help preserve the racial hostilities and misunderstandings now frozen into our residential segregation patterns.

Traditionally, American schools have educated children from diverse backgrounds under one classroom roof successfully. This is not a new task our schools are being asked to perform.

But one of the effects or racially isolated schooling for Negroes is the reduction of their adult occupational and economic achievement. Negro adults who attended segregated schools are less likely to hold white-collar jobs or to have substantial incomes than those who attended desegregated schools (U.S. Commission on Civil Rights).

Among the factors which inhibit residential desegregation is the low-income levels of most Negroes; even if there were effective fair housing laws, only a small proportion of urban negroes could afford the housing open to their occupancy.

Therefore, given existing Negro income levels, those who say that integrated schools should wait on integrated housing effectively advocate the maintenance of existing patterns of segregation in both housing and schools.

It is obvious to the most naive observer that the current hue and cry against busing is not directed against transporting children to school in large motor vehicles. Nor, in my opinion, is it a passionate desire to preserve the so-called neighborhood schools.

As I mentioned earlier, both busing and avoidance of the neighborhood school were accepted, by many of the same people who now bitterly oppose them, when those tools were used to preserve racial segregation, rather than reduce it.

Why then, is busing so strongly opposed? Insofar as the answer is sheer racism, a blatant rejection of any contact between children of different racial groups, it must be denied any legitimate standing in the shaping of public policy. But I believe there are other far more legitimate concerns.

In my opinion, the greatest fears among those parents who oppose busing concern the possibility that their children will be transported from areas that the parents regard as safe and sheltering to distant areas that they regard as significantly more dangerous and threatening to both the safety and the values of their children.

These fears are strongest among many middle-class parents, mainly—but not exclusively—white. They believe busing to achieve racial desegregation might result in their children attending schools in poverty areas where a majority of children would be from low-income black households. These parents have been led to believe by the media and experiences of persons they know that conditions in such schools are far less desirable than conditions in schools located in their own neighborhoods.

Chairman CELLER. Your statement is very long. It is almost 26 pages.

I wonder if you could epitomize the balance of your statement. We have many witnesses this morning. I don't like to cut you off, but if you can epitomize we would be most appreciative.

(The balance of Dr. Bakalis' statement follows:)

They have heard tales of much higher levels of violence in such poverty schools, prevalent access to and use of hard drugs, gang extortion of money from little children, physical attacks upon teachers, need for police stationed in school halls, disrupted classrooms, gang murders of young men and boys, and other clearly undesirable conditions. I believe no reasonable parents would want their children to experience such conditions if they could avoid it.

I do not wish to exaggerate the moral rectitude of the middle-class, or the deficiencies of the poor. Nor am I attempting to attribute virtue to the former or blame to the latter, particularly since the environment in poverty areas is difficult for their residents to influence or improve. In fact, it is created in part by the thoroughness with which the middle-class has excluded poor people from its own neighborhoods. Nevertheless, whatever the causes of the disparity in conditions between the roughest poverty-area schools and typical middle-class neighborhood schools, that disparity certainly exists. Furthermore, it is clearly perceived by middle-class parents everywhere.

Under these circumstances, I believe those parents have a right to be concerned about the potential effects of school busing policies that aim at racial desegregation, but pay no attention to the conditions I have just described, or to their potential consequences.

Achieving equal educational opportunity through racial desegregation is a vital objective of public schools in our democracy. But it is not the only objective of our schools. An equally central objective is including in children basic values that respect personal relationships among people without violence that eschew the use of addictive narcotics, and that protect the safety and property of others. It is just as wrong for public policies to ignore the second objective while pursuing racial desegregation, as it was for public policies to ignore racial desegregation while pursuing this second objective.

All this leads up to the third concept. In my opinion, busing should be used to achieve racial desegregation of public schools, but in such a manner that no children are transported to a school that is significantly more dangerous or violence-prone, or significantly more dominated by students from lower-income households, or demonstrably inferior educationally, than the area in which those children live. This principle should be given very heavy weight in designing specific busing and other schemes to achieve racial desegregation, by both courts and administrators. If this were done effectively, I believe the basis for much of the current bitter opposition to busing to achieve racial desegregation would be removed, or at least ameliorated.

I fully recognize that this principle has significant drawbacks. For one thing, I have no good ideas about how to give it legal standing equivalent to the principles that have emerged from the long series of court cases underlying racial desegregation of public schools. Second, putting this principle into effect requires measuring concepts that are not easy to define or measure. Examples are what "significantly more dangerous" means, or how "violence-prone" a school or a neighborhood is, or how educational inferiority is measured. Yet we can hardly draw back from doing things that are urgently desirable because they are difficult, or we would not be pursuing equal educational opportunity in the first place.

Third, some may say, "if these so-called violence-prone and inferior schools are good enough for the poor, now, why shouldn't they be good enough for the middle-class, too? Why should we "protect" one group from a school to which we send another group? That is a double standard!"

My answer is that these schools are *not* good enough for the poor now—or for *anyone else*. We would like to be able to send *everyone* to much better schools. So we should arrange busing and other devices—including fairer distribution of funds—to make these bad schools better.

But most experience shows that busing some middle-class students into very low-income schools where children from poor homes remain the majority does not noticeably improve the quality of those schools. In such case, all that busing does, is reduce the quality of the educational experiences of the middle-class children. That not only results in a net loss in those schools, but also tremendously antagonizes middle-class parents—for very understandable reasons.

But I would suggest that the alarm and concern over increased violence in a desegregated school is largely unjustified. In Pasadena, California, desegregated by a court order, according to Superintendent Hornbeck; in 1971, school disruption in Pasadena is the lowest in the last 5–6 years.

In Pontiac, Mich. despite strong opposition at the onset of desegregation, student disorder declined to negligible proportions, according to the director of pupil services in that school district. In fact, by mid-year, average incidents were below previous years, and parents report that improvements are now being made in formerly all-black schools in Pontiac for the first time.

Dean Chandler has suggested that a high level of student conflict in schools is not necessarily the result of student diversity, for some of the greatest difficulties of tihs type have arisen in high schools in this country where students were quite similar. Other factors are involved, such as the slowness of educational change and increased levels of aspiration.

Yet middle-class parents form an overwhelming majority in this Nation. If we greatly antagonize them on this issue, by ignoring their legitimate concern for their children, they have the potential political power to undermine truly effective use of busing to achieve desegregation. That is demonstrated by the current pressure to prohibit use of busing to improve racial equality in education. I believe it is far better to avoid this disastrous outcome by paying attention to the legitimate concerns of middle-class parents. After all, they simply want their children to enjoy the fruits of the social and economic status they have worked so hard to attain. Let us help them achieve that goal and at the same time use busing and other techniques to enable poor children to enjoy middle-class educational conditions, too. Equalizing upwards is a better basic policy than equalizing downwards in most situations—and this is one of them.

This implies that there would be more busing of students out of low-income areas into middle-class ones than the reverse. In fact, the best scheme in some cities might be to close these inferior schools altogether and bus their students to other schools. Since blacks and other minority groups in central cities are much poorer than whites, use of this principle may often mean predominance of so-called "one-way" busing of blacks, with whites mainly staying where they are. I do not regard that as desirable, but I regard it as far more desirable than arousing such hostility towards busing for achievement of racial desegregation that we get a constitutional amendment forbidding it, or laws that, in effect, make it impossible. It would be far better to recognize the legitimate concerns of middle-class parents about the same problems that make many low-income parents criticize the schools that now serve them.

Admittedly, at this moment, I have no detailed blueprint to accomplish this as a practical matter. Yet I would rather propose it as a basic concept and reveal my ignorance of how to do it, than appear wiser by keeping quite altogether.

The last ideas central to achievement of effective desegregation in many large urban areas is that school desegregation may have to be carried out on a metropolitan-area-wide basis, not just in central cities, regardless of the existing structure of school districts.

But in view of the fact that this approach to desegregation is one of the greatest burdens of administrative activity for any state and with little or no time having been provided for a systematic research exploration of the various factors involved, a comprehensive evaluation of this method is needed.

I am mindful, too, that any such study must be more than a retrospective retracing of isolated variables. However, I believe it is especially important in large cities with predominantly minority-group majorities in their public school systems to recognize that enforcing "racial balance" or widespread busing to achieve racial desegregation in those cities without an attendant concern for the surronding suburbs will simply accelerate the withdrawal of white students and cause rapid re-segregation in their public schools.

And so I would suggest that before this concept is dismissed as unworthy of support that means be provided for the states to examine the characteristic factors that might appear as predictors of achievement in our quest for equal educational opportunity and social class interaction.

I have spoken at some length to the extent of the problem, but would like now to consider some of the implications of the resolution under consideration (H.J. Res. 620).

By the deliberate omission of any specific provisions for public education, the U.S. constiution reserved the authority and responsibility for providing a common school education to the State. Not even by implication does the Federal constitution treat this authority, and yet voices are now raised in a call for repeal of a non-existent provision. To propose a constitutional amendment aimed at 8% of the school districts in this country is the height of over-reaction.

The state of Illinois, however, constitutionally and by statute, mandates more than the provision of public education to its citizens.

While article X of the 1970 Illinois constitution declares that, "a fundamental goal of the people of the people of the State is the educational development of all persons to the limits of their capacities", the Illinois general assembly enacted (1963) the Armstrong act which provided, "as soon as practicable, and from time to time thereafter, the board (of education) shall change or revise existing (attendance) units or create new units in a manner which will take into consideration the prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality."

During pendency of the legislation that year, Rep. Charles Armstrong, author of the bill, explained that it was "aimed at boards of education which use their powers to determine school sites and boundary lines so as to circumvent the laws of Illinois prohibiting segregation in public schools."

Thus, in Illinois, the distinctive educational function of State government is to insure an equitable distribution of educational opportunity to the children of this state.

As chief State school officer of Illinois, mandated by its electorate to uphold its constitution and the Armstrong Act, I am concerned by both the language and intent of H.J. Res. 620, which would remove from the office I hold the authority and responsibility and traditionally and constitutionally has been that of State governments.

The constitution of the State of Illinois, the Armstrong Act, the "rules establishing requirements and procedures for the elimination and prevention of racial segregation in schools", adopted early in my administration, Federal District Courts and the U.S. Supreme Court do not and have not required the achievement of an arbitrary racial balance in schools, but rather the elimination of racial isolation and unequal educational opportunities.

Recent court decisions, by their findings of De Jure segregation have, in fact, required the state to develop a remedy for an illegal act on the part of school authorities.

Recognizing its responsibilities under the constitution and court rulings, the State of Illinois has implemented administrative procedures, based on existing legislation, to reduce and eliminate racial isolation. These rules and procedures do not mandate a specific racial balance, but in fact recognize, as did the Supreme Court, that in some instances it may be necessary and permissable to maintain all-black schools.

Further, these rules do not demand excessive and unreasonable transportation of students, but rather that the school community determine the method of school desegregation that will most effectively meet the requirements of the rules for that particular school district. Pupil transportation is merely one of the educational tools that may be utilized in the process of equalizing educational opportunity.

The rules do not say that a school will be considered desegregated only when it reflects a fixed percentage of minority and majority children. We believe a reasonable determinant is that an attendance unit reflect within fifteen percent, plus or minus, the racial composition of the school district as a whole. This does not mean that in every instance every school must reflect that fifteen percent range. These percentage specifications must be mitigated by the constraints of economic and administrative feasibility and educational soundness. I would stress again, that these rules recognize something which others have too often forgotten—that our goal is not the achievement of a magic arithmetical percentage, but the assurance of an equal educational opportunity for all children.

The soundness and saneness of these rules lie in their flexibility, the generous time frames, the requirements for community involvement in plan development, the provisions for judicial review, and various options open to school authorities for accomplishing desegregation. They do not impose on the entire state one plan for desegregation. Nor do they advocate a single method of desegregation. We recognize, as the Supreme Court has, that "there is no universal answer to the complex problems of desegregation; there is obviously no one plan that will do the job in every case." However, to remove from the list of possible remedies the option to transport students would be thoroughly debilitating—to those programs now in operation, as well as to the Illinois "rules" and would severely hinder the equalization of educational opportunities.

Based on experiences in Illinois and elsewhere, we know that desegregation can succeed. Commitment and leadership on the part of school authorities is, of course, a prerequisite—and I believe that such commitment and leadership exists in hundreds of our school districts. In communities where desegregation is in effect, white parents have learned that their children do not suffer academically. The performance of white children on standard achievement tests show that they perform as well as white children in all white schools.

Recent studies have been made of the desegregation via busing in Hartford, Conn., where inner city children attended suburban schools. After two years, the gains of the black children were significant, while the achievement of white children in the receiving schools held up without exception. The black children "had significantly defferent (and higher) scores on measures of mental ability and achievement generally." (Mahan, "Changes in Cognitive Style: An Analysis of the Impact of White Suburban Schools on Inner City Children", 1970)

In Evanston, Ill., the results of an extensive three year evaluation of their desegregation program conducted by educational testing service indicate that busing has not hurt academic performance. In fact, students who were transferred and bused to new schools showed a higher rate of gain than those who were not bused. Nor has Evanston's desegregation program impaired the high achievement rate of white pupils who continued to average above the national norm, with no decline evident after three years of desegregation.

Community response to busing in Evanston has been favorable. A questionnaire sent to a sample of black parents asked for their reactions after four years of desegregated schools. Almost all parents strongly favored the educational experience in desegregated schools. Only a handful felt their children have been inconvenienced by the exigencies of riding a bus daily to school.

In Berkeley, Calif., a community that desegregated smoothly, at the start of the program (1966-67) black third graders were reading at a grade level of 2.8 years; now they are at 3.1, but white children are at 4.4 well above the statewide average of 3.8.

Equally important is the evidence that poor and minority children who attend integrated schools perform at a higher academic level than their counterparts who attend segregated schools.

Soon after the 1954 Brown decision, after more than a half century of a theoretical "separate-but-equal" national school policy, many school districts published achievement test results of Negro and white children. Without exception, the results showed a large gap between the two. This is true of school systems all over the country.

In a large sample of Negro school children in the southeast, a researcher found that this discrepancy in achievement levels had grown when he retested the sample again in 1965, and that though IQ trends remained the same, "the amount of retardation at the tenth grade level is quite severe." (W. A. Kennedy, et al, The Standardization of the 1960 Revising of the Standard-Binet Intelligence Scale on Negro Elementary School Children in the Southeastern United States, Florida State U., 1961)

An HEW report on effects of desegregation on learning indicated that black students gained a full year or more in the first year of desegregation, while their former classmates in the segregated school registered no gain at all. (U.S. Office of Civil Right, HEW, "Much Better Than They Expected", 1970)

A study of the busing program in Syracuse, "showed that the reading achievement of bused pupils was significantly higher after one year than was that of a matched comparison group at the predominantly Negro school, even though there had been no difference between the groups in reading achievement at the beginning of the year." The bused pupils in Syracuse achieved a mean growth (in months) slightly more than double that of the non-bused children.

Because the Brown decision held out a promise of so much to so many, some of the current disillusionment is understandable. When school desegregation has been in effect for 2–5 years, test results indicate greater gains in the academic achievement of black students. But, regrettably, the effects of 150 years of isolation in public schools cannot be remedied overnight, and although gains have been demonstrated, in many areas, the achievement levels of black children are still lower than those of white students.

I would suggest that the body of supportive evidence is great and growing daily as evaluations are made of desegregated school programs that children of different races can attend the same school without jeopardizing their safety or academic gains.

Even apart from the academic considerations is the fact that students—be they black or white—are less likely to adopt racist attitudes in a desegregated setting—and these attitudinal changes represent the key to mending a racially polarized society.

But I would respectfully submit that that key will rust with disuse if school districts in this country are not permitted to utilize the option of pupil transportation.

In conclusion, I would put to you the question—are we so bereft of trust in the educational system of this nation that we must amend our constitution and thus render the states incapable of extending freedom of educational opportunity to all?

I think not. This challenge—peculiar to our time—the hopeful spirit of all, beacons for optimism and confidence—not despair and fear. Rather let us at all times in every way reaffirm our faith in the judgment of our educational enterprise—and reject H.J. Resolution 620.

For, as Judge Robert Merhige observed, "Community resistance to change affords no legal base for perpetuating segregation."

Dr. BAKALIS. Let me follow through on this one thought and try to summarize the rest, if I could. I was talking about the kind of attitudes the parents have in regard to where children would be bused to.

What we are saying is that under these circumstances, I believe those parents have a right to be concerned about potential effects of school-busing policies that aim at school desegregation but pay no attention to conditions I have described or to their potential consequences.

Achieving equal educational opportunity through racial desegregation is a vital objective of public schools in our democracy but it is not the only objective of our school.

It is just as wrong for public policies to ignore the second objectives while pursuing racial desegregation, as it was for public policies to ignore racial desegregation while pursuing their other objectives.

What I am saying, Mr. Chairman, is that I believe strongly that we should look at the concerns middle-class parents have; and they are genuine concerns, I think, in terms of where their children will be sent. Perhaps we ought to be thinking in terms of a one-way busing concept, one-way being that children would be bused, if that is the desire of a local district, from areas that are significantly of inferior quality, for whatever reason, to an area more equal in terms of the kinds of opportunities they have and the quality of education.

I don't believe it is any longer at this point in time in history necessary for us to continue to think only of a two-way exchange of students, which antagonize the legitimate concerns of middle-class parents, whether they be white or black, about where their children are going to be educated. I am not one who is opposed to the whole concept of moving children if that is the local desire in one-way direction rather than in two-way direction.

That may mean closing down schools in the inner city. That may mean closing them down on the theory they are not suited for black or white in terms of any kind of educational environment.

The fourth idea I mentioned is that I believe in most urban areas, school desegregation may have to be carried out on a metropolitan areawide basis, not just in the central city. But in view of the fact that this approach to desegregation is one of the greatest burdens of administrative activity for any State and with little or no time having been provided for a systematic research exploration of the various factors involved, a comprehensive evaluation of this method is needed.

Chairman CELLER. Do I understand that one of your suggestions is to bus the white children and not the black children?

Dr. BAKALIS. No, sir. I said that it certainly may be legitimate for us to say that the first objective is to equalize educational opportunity. It is a fact demonstrated in a variety of ways that inferior schools are to be found very often in inner city schools, which are most often predominantly black.

I would certainly not be opposed to us thinking in terms of moving children, transporting children, if it is a local desire to do so, from the black area into white areas and not necessarily having to think of the reverse.

Chairman CELLER. But you would not limit busing to only black children and exclude white children?

Dr. BAKALIS. No, sir; I am talking about the quality of the school. Whether the children who are unfortunate enough to be in it are black, white, chicano, or American Indian is not the point.

The point is the quality of the school. I think we should consider the fears, the legitimate fears, that many parents have that their children, if bused in a two-way direction, will be subjected to an inferior school.

After all, we are trying to get some students out of those schools to better ones. The alternative is a massive compensatory educational program, and I think there is serious doubt whether it has worked or will continue to work, certainly on the scale which would be needed.

We have in Illinois a set of guidelines for the desegregation of schools which places the option and burden of ending segregation on the local district, and we say to that district you must tell us how. You must work toward the elimination of segregation in every district.

How you do it is up to the local district. The State does not impose a method of ending segregation in that school.

Mr. MCCULLOCH. Will the chairman yield?

Chairman CELLER. Yes.

Mr. MCCULLOCH. Mr. Chairman, may I ask a question at this time? Mr. Bakalis, have you found any scheme other than "forced busing" to effectively bring the quality education which we all desire to every student?

Dr. BAKALIS. Yes. I want to make clear that I have consistently taken a position, as I do here today, that a forced kind of busing is an undesirable way to equalize educational opportunity.

Busing is a legitimate and viable tool that should remain available to school administrators and local districts if they choose to——

Mr. MCCULLOCH. Mr. Chairman, I would like to ask another question.

What are your other plans to equalize educational opportunities in our country?

Dr. BAKALIS. We could equalize educational opportunities, I suppose, by equalization of finance which has not come about as yet either nationally or statewide. We can and we have had magnet schools, schools that are designed to draw students from a variety of areas to one central place. You can redraw district boundary lines to allow this kind of mixing to take place and allow for certain students to be in better schools.

We can have new pairings of schools. There are a number of ways in which we can bring about the desegregation of schools. Busing certainly should be one option that is left open to the local district.

Mr. MCCULLOCH. If I might interrupt, it is my sincere hope that you can show us other ways to bring quality education to all. If you could reveal to us how we can dismantle our separate and unequal school systems without busing, which has aroused such opposition, you will have done a great service.

Dr. BAKALIS. Let me also say, sir, in certain large urban areas, transportation of students may be perhaps the only one that can work. Our segregation guidelines in Illinois also recognize the fact that certain schools may not be able to be desegregated, that they just can't be for reasons that may be very complicated.

We are not involved in Illinois in arbitrary forced mixing of people for the sake of mixing people.

Mr. MCCULLOCH. I am glad to hear you say that. There has not been enough examination in my opinion of how we in this great Nation can provide quality education for all of our schoolchildren.

Mr. MCCLORY. Will the gentleman yield to me for a question?

Mr. MCCULLOCH. I will yield for only one question at this time because I want to get to the bottom of this problem.

Mr. MCCLORY. The question I wanted to ask was this.

You have established guidelines published last year which provided that there should be a racial balance in each school which did not vary by more than 15 percent from the balance within the school district, and that applied to blacks, American Indians, the Spanish speaking, and Orientals; is that correct?

Dr. BAKALIS. Our guidelines say, Congressman, that we have to have a standard by which to judge a district as being segregated or not. I certainly understand there is no magical number. We thought it would be reasonable to say that a school district in Illinois is segregated if the school does not reflect, within a 15-percent range above or below, the racial composition of the district as a whole. Our goal is that the district should be moving toward having their schools reflect what the racial composition of the district as a whole is, within a range of 15 percent up or down.

Mr. MCCLORY. Pursuing the question my colleague from Ohio was asking about other methods of achieving quality education, you do support—as my colleague from Illinois, Mr. Mikva, and I support—programs such as Follow Through and Upward Bound, do you not?

Dr. BAKALIS. Certainly.

Mr. MCCLORY. Do you feel that greater equality of education is going to be achieved by integrating children, or through these programs which are, in general, directed primarily to the black disadvantaged child? What troubles me is this: If you are going to bus the black child to remove him from a segregated school, aren't you making it harder for these special programs to be effective? How can you specially treat the disadvantaged and integrate simultaneously?

How do you feel? Which do you prefer? I fear we must choose one or the other.

Dr. **Bakalis.** I think it is both. We need to continue compensatory programs and special programs.

Mr. **McClory.** Would you bus a black child away from his school that has a Follow Through Program, in order to desegregate, or would you prefer to leave the child there for the advantages of the special education program?

Dr. **Bakalis.** I think the real answer to that is, if I were the black father of children in the inner city of Chicago, for example, I am not sure how long I could wait, you see. And the project Follow Through may or may not work. Headstart may or may not work. We are talking about human life. We are not going to experiment and say, "It is too bad it didn't work this time. We will catch it the next time around."

You are dealing with a child who has one chance and one shot. The point I am making is that we need to encourage and continue those programs if we cannot equalize educational opportunity in other ways.

The real way, if you follow that logic, is to make up your mind——

Mr. **McClory.** You have to make up your mind, don't you? I can't understand your answer of not favoring one over the other.

Dr. **Bakalis.** I don't think it is an either-or proposition, sir.

First of all, the schools cannot desegregate society. We can encourage and hope that we can move toward desegregation. We still have to recognize that certain programs, certain children, will remain in segregated schools.

Mr. **McClory.** You had a 30-day deadline in your rules and regulations for school districts to report on compliance with your guidelines. Has the city of Chicago complied?

Dr. **Bakalis.** The city of Chicago has complied. They asked for an extension until February 2, that was granted as it was granted to other districts. They have turned in a report as of February 2. It is being reviewed by Mr. Lyons and myself and the equal educational opportunity units.

Chairman **Celler.** Are you an elected official?

Dr. **Bakailis.** I am the last officer to be elected to my office. My office becomes appointive in 1975.

Chairman **Celler.** Are you here representing the educational arm of the State of Illinois?

Mr. **Bakalis.** Yes, sir.

Chairman **Celler.** Mr. Mikva?

Mr. **Mikva.** Mr. Chairman, I would like to apologize to Dr. Bakalis, for being a few minutes late. I would like to inform the chairman and the other members of the committee that Dr. Bakalis has provided tremendous leadership in the State with this very knotty problem. I think the quality of his leadership is reflected in his statement, in response to questions of Mr. McCulloch and Mr. McClory, that there is no pat answer to this problem.

I think his expression of opposition to House Joint Resolution 620 is based in part on that conclusion, that it offers a pat answer to the problem.

I am glad to hear you say that you disagree. Obviously, none of us are for taking a child from a good school and putting him in a bad school, whether it is by bus, by foot, by oxcart, or by anything else; and this, of course, is the fear that has generated so much emotionalism about the busing issue.

I am intrigued by the one-way busing notion except that in our Chicago area, for instance, where the overwhelming number of schools in the inner city are not educating children, if you sought any kind of immediate one-way busing you would not begin to have enough school facilities anywhere in the State to accommodate those who would be bused.

What kind of gradualism, what kind of "all deliberate speed" timetable, do you see that would achieve this? I think your answer probably would also shed some light on the question Mr. McClory was asking.

Dr. BAKALIS. That is an important question. I suppose the logic of what I said was we ought to evacuate all of the schools in inner Chicago and close them down. Mr. Mikva, that isn't what I am talking about. I don't have the administrative answers right now, but that doesn't mean I should be reluctant to talk about possibilities.

I think we ought to make judgments on an individual basis. Certain children can be educated very well where they are. Certain children will benefit from compensatory education programs, and that should be encouraged. Other children might benefit more by moving out.

I don't like to go to extreme positions and suggest that everybody has to do this or everybody has to do that. I think we can find ways in which to show movement in our State, that we are trying to bring about equal educational opportunity. We have no timetable in Illinois, Congressman.

I don't think we can erase 400 years of American history in 2 years or 20 years. There is no timetable. We don't say to one district, you must desegregate the schools by next fall or by next spring. Every district is different. Every district is individual.

We say to some districts, you may not be able to desegregate all of your schools. We understand that, because an effective desegregation plan is not one in which the community is up in arms.

If the community can't support it or whites are evacuating, that is not effective. What does that accomplish? We say the community has to supply an effective plan that may mean a public education program for a year before anybody is moved, before anybody has moved anywhere.

Mr. MIKVA. Again, nothing I am about to suggest is a panacea, but I ask your response to these ideas.

In Illinois, most districts require those who transfer in from outside a district to pay tuition. At least that used to be the law. What would be the response to a program where the State, for instance, picked up the tuition cost to allow transfer by bus, oxcart, or otherwise, of students into better schools from poorer schools?

Dr. BAKALIS. I haven't thought of it. I think anything that would reduce racial segregation that would broaden the base of educational opportunity, I would be willing to explore and be interested in.

Mr. MIKVA. You mentioned in your statement the experiment of which most of those who live there are quite proud, but which again has not afforded a solution to the problem although it has been a long step forward, as I think you are aware.

The statistics show clearly that black students are by and large reading at higher reading levels than when they were going to segregated schools, and white students are not fairing any worse under busing.

One of the intriguing parts of the busing program in Evanston is that the previously existing all-black school was turned into a laboratory school in the heart of an all-black neighborhood, and there is a waiting list for white parents to send their kids on a bus to that school, the reason, of course, being that it is a superschool. There are more educational resources being put into that school than into the average school in Evanston, and it is a great place for bright students. There are a few similar schools in the city of Chicago. There is a black school on the south side which is a superschool, where children are admitted by application.

What would be your response to the State, county, or school district setting up such superschools, which would achieve both quality and integration in some measure?

Dr. Bakalis. We are in the process now, Congressman, of establishing within Illinois what I am calling a quality schools network that will be a network to begin with, of about 46 schools that will probably double in a few years throughout the State which will be pilot, experimental, schools; and one of the things that they will be concerned with is exactly the kind of idea you are talking about, calling them superschools or whatever you like; we hope they can be exemplary schools that we can show to the rest of the citizens.

Mr. McClory. Will the gentleman yield at that point?

Mr. Mikva. Sure.

Mr. McClory. The thing I would like to ask is this: If we are going to desegregate the schools in order to help achieve equality of educational opportunity, how are we going to distinguish the pilot schools and the experimental schools to help the blacks and other minorities and not require them to be desegregated according to the same ratios and on the same basis as other schools? And if we did apply different rules to these special schools, would not that be very unpopular?

Dr. Bakalis. Maybe I didn't make myself clear. These are not going to be all-black schools at all. They are going to be throughout the State of Illinois.

Mr. McClory. They are going to be primarily black?

Mr. Mikva. If my colleague would yield back, that would be my next question.

Mr. McClory. They are going to get white students in these schools?

Dr. Bakalis. How can we bring about the highest quality of education? In some parts of the State, there are no blacks to be found within 500 miles.

Mr. McClory. We don't want to bus the black children from these special schools or superschools out into the suburbs, do we? We don't want to do that.

Dr. BAKALIS. The thrust of what I am saying is that busing is an option which should remain for local administrators and local communities if they want it. I must say, as a former professor of history, I am deeply disturbed that there is even a consideration of an amendment to the Federal Constitution on an educational issue when the Constitution and Founding Fathers certainly allowed that function to remain a State function, and I find it rather disturbing that we are seeking to amend a power that doesn't exist and has been given to the States historically.

Mr. MIKVA. I have one last question. Getting back to what has been called a superschool—and I don't like that terminology and hope we can come up with a better description—what would be your reaction to some kind of managed integration of such a school?

I think my colleague, Mr. McClory, has been under the impression thus far that both in Evanston and in Chicago, these schools are predominantly white. I can conceive though that sometimes in order to either maintain a sufficient number of black students in the schools or a sufficient number of white students, depending on the region in which it is located, you might have to seek a managed integration.

Dr. BAKALIS. What do you mean by managed integration?

Mr. MIKVA. Certainly not a quota, but a preference to be given to students of one race or another in order to maintain racial balance.

Dr. BAKALIS. Incentive in terms of formula?

Mr. MIKVA. But nonrigid formula. I don't like the idea of saying a school should be 50 percent black or 50 percent white. But if a school is going to be 99 or 98 percent black, it is going to be very hard to maintain any white students in it.

Similarly, if a school is 98 percent white, it is going to be hard to achieve integration. I am talking about managed integration in a flexible formula.

Dr. BAKALIS. I don't know. The key is the educational soundness of a program in the school. I think we need to move toward integration wherever we can, but I think there may be circumstances, and I am sure, Congressman, you know there are parts of the city of Chicago which would be difficult, unless one went to a metropolitan plan, to desegregate at all.

It is almost impossible. Our guidelines and rules say we recognize, as the courts have recognized, that all-white or all-black schools may in certain kinds of circumstances, while not desirable be permissible.

Mr. MCCLORY. May we have a copy of the rules and regulations, Mr. Chairman, included in the record?

Chairman CELLER. Yes, the rules and regulations referred to will be included in the record at this point.

(The document referred to follows:)

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Rules Establishing Requirements and Procedures for the Elimination and Prevention of Racial Segregation in Schools

STATE OF ILLINOIS

Office of
The Superintendent of Public Instruction
Michael J. Bakalis, Superintendent

CERTIFICATION

I, Michael J. Bakalis, Superintendent of Public Instruction, hereby certify that the Rules attached hereto and filed herewith and indicated by me by the identifying rule number listed in the "Numerical Table of Contents" (hereby incorporated herein) have been adopted by me and herewith filed with the Secretary of State of the State of Illinois, conform with the rules prescribed by the Secretary of State for filing of Administrative Rules as required by "An Act Concerning Administrative Rules" (Chapter 127, paragraphs 263 through 268.1, of the Illinois Revised Statutes, 1969), effective June 14, 1951, as amended.

Michael J. Bakalis

Michael J. Bakalis
Superintendent of Public Instruction
State of Illinois

Done this 22nd day of
November, 1971

RULES PRESCRIBED BY
THE SUPERINTENDENT OF PUBLIC INSTRUCTION
ESTABLISHING REQUIREMENTS AND PROCEDURES
FOR THE ELIMINATION AND PREVENTION OF
RACIAL SEGREGATION IN SCHOOLS

The following rules are established pursuant to all pertinent authority and jurisdiction conferred by the Constitution and laws of Illinois and of the United States of America, including particularly Chapter 122, Section 2-3.3, 2-3.6, 2-3.24, 2-3.25 (as amended), 2-3.26, 2-3.35 (as amended), 10-21.3 (as amended), 10-20.12, 10-22.5 (as amended), 18-12 (as amended), 21-21, 22-11, 22-12, 22-19 (as amended), 34-2, 34-18 and 34-22 (as amended) of the Illinois Revised Statutes of 1969.

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ARTICLE I

v

EXPLANATORY AND OTHER MATTER

Equality of opportunity for all our children is an educational principle and a legal requirement.

Racial segregation in our schools has been conclusively identified as a principal factor in the denial of equal educational opportunity. That denial impairs our minority group children's access and contributions to the American mainstream; and it is a cause of prejudicial attitudes among our majority group children and devisiveness in our society.

More than seventeen years ago the United States Supreme Court said: ". . . in the field of public education, the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

More than eight year ago our own legislature committed us "as soon as practicable" to the "prevention of segregation and the elimination of separation of children in public schools because of color, race or nationality."

Despite the increasing evidence of the soundness of the commitment—and the steep price we are paying for its non-fulfillment—we must acknowledge that our performance has not matched our promise. Consequently, while the task of achievement may now be greater, the moral, legal, and educational imperatives are greater still.

Therefore, pursuant to my constitutional and statutory responsibilities, I am directing the energies of my office toward the accomplishment of quality integrated education for all our children.

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ARTICLE II

A. DEFINITIONS

DESEGREGATION:	The affirmative act of a school authority which effects the elimination and prevention of racial segregation with respect to (a) the employment and assignment of all faculty and staff personnel, and (b) all pupils at all schools, and in all grades and departments, within that authority's jurisdiction.
EQUAL EDUCATIONAL OPPORTUNITY:	Educational opportunities of the highest quality and diversity, organized to promote understanding across cultural lines, made available to all persons in our society according to need.
INTEGRATION:	A learning environment that is characterized by mutual cultural respect, inter-racial acceptance, and a curriculum and staff that are responsive to the educational needs of all participants.
METROPOLITAN, OR MULTI-DISTRICT PLANS:	Voluntary cooperative pupil attendance arrangements or assignments whereby pupils attend schools located in districts other than those in which they reside.
RACIAL SEGREGATION:	A public school whose proportion of white, black, Spanish-speaking, American Indian, and Oriental pupils or administrative, faculty, and staff personnel, fails to reflect, within fifteen (15) percent, the proportions of such pupils and personnel in the district as a whole at the grade levels maintained. Persons considered by themselves, by the school authority, or by the community as members of the aforementioned groups shall be so considered for the purposes of these Rules.
SCHOOL AUTHORITY:	All state and local authorities, bodies, and individuals charged with the governance or administration of public schools or school systems.
SCHOOL SYSTEM:	A public school or group of schools governed by a school authority.

B. PROCEDURES

1. Elimination and Prevention of Racial Segregation in Schools

1.1 Each and every School Authority shall adopt and maintain such pupil assignment practices, and faculty and staff hiring and assignment policies, as will eliminate and prevent segregation in schools because of color, race or nationality, and provide to all students at all levels an integrated education.

1.2 Not later than thirty (30) days after the effective date of these Rules each and every School Authority shall submit to the Office of the Superintendent of Public Instruction a written report detailing the action taken, and the amount of desegregation achieved by each such action, since June 13, 1963, to implement the provisions of Chapter 122, Section 10-21.3, Illinois Revised Statutes.

1.3 The report referred to in subsection 1.2 shall also set forth the actions in process or now proposed to effect compliance with the aforementioned legislation, together with the implementation timetable of each such action and the amount of desegregation projected to be achieved.

2. School System Reports

2.1 Not later than thirty (30) days after the effective date of these Rules, and not later than October 15 of each succeeding year, each and every School Authority shall submit, in conjunction with its Annual Fall Housing Report, a report showing (in a manner to be prescribed by the Superintendent of Public Instruction):

(a) the racial count of all pupils in attendance at schools or centers maintained wholly or in part by each such school authority;

(b) the racial count of the student body at each attendance center maintained (wholly or in part) by each such school authority, together with information showing the grades, including special classes, programs, or courses, offered at each attendance center;

(c) the racial count of all certificated and non-certificated personnel employed by the school authority, together with information showing, with respect to each employee, his or her attendance center assignment.

2.2 In addition to the foregoing, the State Superintendent of Public Instruction may, from time to time and upon reasonable notice to affected School Authorities, require School Authorities to submit reports, in a manner to be prescribed by the State Superintendent, concerning steps taken to achieve integration.

3. Review and Findings

3.1 Upon receipt of the information required by these Rules, the Superintendent of Public Instruction shall promptly review such information and determine whether each school system is in compliance with these requirements.

3.2 If, after the aforementioned review of all relevant information concerning a school system, the Superintendent of Public Instruction finds a system to be in non-compliance with the requirements of these Rules, he shall promptly notify in writing the pertinent School Authority specifying the system's deficiency.

4. Requirement of a Plan

4.1 Any School Authority receiving notification of non-compliance with the requirements of these Rules shall prepare a comprehensive plan to correct the specified deficiencies and achieve compliance with the requirements of these Rules.

4.2 In preparation of a plan, the School Authority shall inform parents and other citizens of the pending issues and shall involve in the planning, on a basis that is representative of the entire community which the syetm serves, interested individuals and professional and community groups.

4.3 Upon receipt of a notification of non-compliance, a School Authority may, in connection with the development of its plan, request in writing that the Office of the Superintendent of Public Instruction furnish technical assistance of an informational and advisory nature. Following receipt of such a written request from a School Authority, the Office of the Superintendent shall promptly furnish appropriate technical assistance.

5. Submission and Contents of Plan

5.1 Within ninety (90) days following the receipt of a notification of non-compliance, the recipient School Authority shall submit to the Superintendent of Public Instruction a plan to achieve compliance with the requirements of these Rules.

5.2 Each plan shall contain: (a) an explicit, unqualified commitment by the School Authority to fulfillment of the requirements of these Rules; (b) a detailed description of the specific actions to be taken to correct each specified deficiency, together with a showing of the intended effect of each action proposed; (c) with respect to the entire plan, and each specific action proposed in the plan, a timetable showing dates of initial implementation and completion.

5.3 In the formulation of plans to eliminate and prevent racial segregation in schools, School Authorities shall consider and employ all methods that are educationally sound and administratively and economically feasible, including but not limited to: school pairings and groupings; grade reorganization; alteration of school and school district attendance zones and boundaries; pupil reassignments and such optional transfers as are consistent with these requirements; establishment of educational parks and plazas; rearrangements of school feeder patterns; voluntary metropolitan or inter-district cooperative plans; specialized or "magnet" schools; differentiated curricular or other program offerings at schools serving children predominantly of different racial groups at the same grade level; reassignments of faculty, staff, and other personnel, affirmative recruitment, hiring, and assignment practices to insure that each system's personnel corps, as well as the faculty, staff, and other personnel at all attendance centers within systems, become and remain broadly representative racially.

5.4 Plans that are based upon parent-pupil choices, or are otherwise voluntary or optional, shall constitute compliance with the requirements of these Rules only to the extent that they actually eliminate and prevent racial segregation in schools because of color, race or nationality.

5.5 All decisions by School Authorities concerning selection of sites for new schools and additions to existing facilities shall take into account, and give maximum effect to, the requirements of eliminating and preventing racial segregation in schools because of color, race or nationality.

5.6 All plans to effect school desegregation and integration shall be equitable and non-discriminatory. Within the constraints imposed by feasibility and educational soundness, inconvenience or burdens occasioned by desegregation should be shared by all and not borne disproportionately by pupils and parents of racially identifiable groups.

5.7 School Authorities shall not adopt or maintain pupil grouping or classification practices which result in racial segregation of pupils within schools for a substantial portion of the school day.

5.8 All plans shall include specific affirmative proposals to insure that the integration process provides an effective learning environment for all children based upon mutual cultural and personal respect among all racial groups. Such proposals may relate, for example, to curriculum revision, in-service training of personnel, and compensatory programs to enable pupils to overcome the adverse educational effects of racial segregation.

5.9 All plans shall contain provisions to the effect that they are subject to continuing review and evaluation by the School Authority, and that amendments to improve their effectiveness will be adopted and implemented on a continuing basis; provided, however, that any proposed amendment whose implementation would result in racial resegregation of any school or classroom, shall not take effect until after it has been reviewed by the Superintendent of Public Instruction in the manner provided with respect to plans in Rule 6, below. Submissions of proposed amendments shall be accompanied by materials setting forth the reasons underlying the proposals and their projected effects upon the racial composition of all affected schools and classrooms.

6. Review of Plans and Amendments

6.1 The Superintendent of Public Instruction (or his designee) shall promptly review plans and amendments submitted under these provisions and shall determine whether they comply with the requirements of these Rules. In making his determination the Superintendent may require School Authorities to furnish such additional information as he may deem necessary for adequate consideration of the submission.

6.2 Upon finding that a plan or amendment meets the requirements of these Rules, the Superintendent shall promptly give written notice to the School Authority to that effect, and the School Authority shall implement the plan or amendment forthwith.

6.3 Upon finding that a School Authority which is obliged to submit a plan has failed to do so, or that a submitted plan or amendment is conditionally acceptable or, wholly or in part, unacceptable, the Superintendent shall promptly advise the School Authority in writing of his findings. His communication shall specify his reasons for disapproving the plan or amendment, wholly or in part, and may set forth amendments, alternatives, or—where appropriate—an entire plan which would, in his judgment, comply with the requirements of these Rules. In transmitting a communication authorized by this subsection, the Superintendent shall notify the School Authority that technical assistance in the preparation of an adequate plan is available from his office upon written request.

6.4 If the Superintendent finds that a School Authority has failed to adopt and implement an acceptable plan within one hundred-eighty (180) days following notice of its obligation to do so under subsection 3.2 of these Rules, he shall promptly prepare and transmit to the School Authority a plan (or plans) that conforms with the requirements of these Rules, together with a directive requiring the School Authority forthwith to implement such plan. If, in the judgment of the Superintendent, an extension of the time requirement specified in this subsection will aid in resolving technical difficulties in the development or implementation of a plan, he may, either on his own motion or upon request by the School Authority, extend the time requirement by not more than sixty (60) days (to a total of not more than two hundred-forty (240) days from the original notification under subsection 3.2) or any lesser period.

7. Enforcement

7.1 Upon a finding by the Superintendent that a School Authority has failed or refused to comply with the requirements of these Rules within the time periods specified (or within a reasonable time thereafter if, in his judgment, further consultation may effect compliance), the Superintendent shall so notify in writing the affected School Authority. Not fewer than ten (10) days and more than thirty (30) days thereafter the Superintendent shall:

(a) determine that the affected school district shall be, and shall continue in, a status of Nonrecognition (NR) until such time as the Superintendent shall determine that compliance has been achieved.

(b) notify in writing the United States Department of Health, Education and Welfare that, effective immediately and continuing until further notification to the contrary, he declines to accept or expend federal funds available for allotment to such school district.

7.2 In addition to, but not in lieu of, the foregoing enforcement actions, the Superintendent may, upon a finding and notice of non-compliance as provided in subsection 7.1 above, petition the Circuit Court for the judicial district in which the affected school district is located for an appropriate order enforcing the requirements of these Rules.

7.3 Any school district that has received notice of Nonrecognition status as provided by these Rules may secure judicial review of that determination pursuant to the provisions of the "Administrative Review Act" (Chapter 11, Section 264, et seq., Illinois Revised Statutes), approved May 18, 1945, and all amendments and modifications thereof and all rules adopted pursuant thereto.

7.4 Pursuant to the pertinent provisions of Section 22-19 of the Illinois School Code, as amended, residents of a school district may petition the Superintendent of Public Instruction concerning alleged non-compliance with the requirements of these Rules. This remedy shall be in addition to, and not exclusive of, such other remedies as may be available to affected residents of school districts.

8. Effective Date

8.1 These Rules shall be effective on and after ten (10) days from the date of their filing as provided in Section 266, Chapter 127, Illinois Revised Statutes.

Chairman CELLER. Mr. Hungate.

Mr. HUNGATE. As I understand the one-way busing concept, in some cases some central city schools would be closed, is that correct?

Dr. BAKALIS. Yes, that is a possibility.

Mr. HUNGATE. That would not be inconsistent with the one-way busing philosophy.

Dr. BAKALIS. Sure, there is an inconsistency, I suppose, to the ultimate logic, because if you are going to close those schools, you might, say let's close them all, as the Congressman said.

I say that is not economically feasible. We have to do what we can with what we have got, and not be carried away with extremes or percentages that don't take into account the human elements in what we are doing.

Mr. HUNGATE. But it would be possible that some inner-city schools would be closed under a one-way busing program.

Dr. BAKALIS. Certainly.

Mr. HUNGATE. What would be your view on hospitals? We have the danger of hospitals closing if the patients don't want to go there and the doctors don't want to send patients there because the services are allegedly inferior. Wouldn't that be a similar problem?

Dr. BAKALIS. Congressman, I don't want to comment on that. I have enough trouble keeping up on educational matters.

Mr. HUNGATE. You do see the similarity in the problem?

Dr. BAKALIS. I think there is a similarity, but I don't know enough about the hospital situation to comment.

Mr. HUNGATE. You quote favorably Judge Merhige's opinion that "community resistance to change affords no legal base for perpetuating segregation." Would you support the Richmond, Va., decision?

Dr. BAKALIS. What I said in my statement was I think we don't have enough evidence yet. I want to study it.

In Illinois, we are going at it district-by-district approach. I think it is worthy of further study. I don't have all of the information to comment yes or no on that.

Mr. HUNGATE. Pardon me, as you know, Judge Merhige went on a kind of congressional-school district approach to accomplish more integration than was otherwise possible without bringing 400,000 pupils together. Would that sound like a reasonable concept to you?

Dr. BAKALIS. I can't answer that. I don't know what that would mean in terms of Illinois. I am thinking in terms of Illinois congressional districts. I don't know. We have to find a way in which we are not going to have desegregation plans which are not effective simply because whites made an exodus out, and the thrust of our plan has been that the origins have to come from the locality, the locality has to be involved in the planning of it, they have to accept it, but what is not debatable in our plan is that segregation should not exist.

That is not debatable.

Mr. HUNGATE. Do you agree there is a significant difference between desegregating and integrating?

Dr. BAKALIS. Certainly, full integration is much more than mixing of bodies. We have said that all along. It is attitudinal change. It is concern for curriculum. It is very complicated. The word I use over and over is that desegregation is a process. It is not an event that occurs when numbers of people move together. It is a process that is a complicated one and takes time. That is where we say to our school districts, we can't arbitrarily say by 1973 everybody has to have accomplished the plan. There is no way that can be done when you talk about Chicago and Peoria and Rockford and Centralia, Ill., these are vastly different kinds of communities.

Mr. HUNGATE. As I understand it, at this point you are not willing to say you would support Judge Mehrige's decision for the State of Illinois.

Dr. BAKALIS. No, I am not willing to say that at this time.

Mr. HUNGATE. Thank you.

Chairman CELLER. I want to ask one or two questions. How is your plan or program working in the State of Illinois?

Dr. BAKALIS. It has just started, Mr. Chairman. Last November we issued the guidelines. We have guidelines that require every district to come up with their own plan. That is the thrust of it. They have turned in their first reports indicating to us what they have done since 1963.

In 1963, the Illinois General Assembly passed the Armstrong Act which required school boards to review segregation in the schools and to redraw boundary lines to eliminate desegregation. We have asked them what they have done since 1963, and what the racial composition of the district was.

If we feel in terms of our judgment that that is a segregated district, we then ask them to come up with a plan on how they will move toward elimination of segregation.

Their timetable is theirs within reason. We don't say any time this has to be accomplished. The method is there. We say they have to have a plan and have to show good faith and move toward it. It is working specifically.

Chairman CELLER. You are willing to have give and take, which has worked out very well in Illinois?

Dr. BAKALIS. I think so. Thus far, we are very pleased with the response we have had. We do not force any method on anybody. We stress community involvement. No district plan is acceptable to us unless it can show evidence of widespread community involvement in the preparation of that plan, because we want it to work.

Chairman CELLER. Have there been any court cases in Illinois?

Mr. BAKALIS. No. In all fairness, we have not really dealt with the big urban areas yet in Illinois. We have the report for Chicago. We are studying it and those from Rockford and Decatur, the big urban areas with heavy concentration of minorities. We have not had time to review them because they came in in February, and those probably will be difficult. We are going to have to be reasonable and work out what we can in this area.

Chairman CELLER. You say you are opposed to the constitutional amendment relating to pupil assignments and transportation; is that correct?

Dr. BAKALIS. Yes, sir.

Chairman CELLER. Do you have any suggestions as to any particular bill that the committee might fashion? Or should we leave the subject alone?

Dr. BAKALIS. I would hope that the Constitution of the United States would not have any reference to busing or antibusing in it. Legislation which somehow would take into account and reduce arbitrary moving of people simply for the purpose of moving people and achieving percentages, certainly, if legislation is needed for that, I would support that because I think, as I said, we are talking about human beings and educational process, and too often I think thus far perhaps in our enthusiasm and zeal to bring about equality, we forget we are dealing with human beings and we are talking about people here.

I would hope no legislation would be needed, but if it is for that kind of reasonable restrictiveness, then I would be for it, but certainly not a constitutional amendment.

Chairman **Celler**. Are there any other questions?

Mr. **Poff**. Yes, Mr. Chairman.

As I understand your testimony, you are defending the concept of one-way busing. Yet I do not understand from your testimony how you translate that concept into affirmative statutory remedies.

Dr. **Bakalis**. I think I indicated in the testimony, sir, that I am not sure I know how to do that yet, but that should not prohibit me from saying that we ought to consider it as a concept which may need administrative detail to carry out.

I suggest it as a thought, but I would hope it would be considered.

As I said, one of my concerns is that we do not eliminate the tool and concept of transportation simply because there are individuals, for whatever reason, good or bad, who find it to be undesirable right now the way it is operating.

I am the first to admit in many cases it is undesirable the way it is operating now, but I don't think we should take the extreme position and say because of that, let's take out the whole option. It needs to remain an option.

Mr. **Poff**. As I read your prepared testimony—I believe you probably did not reach this part today—you are opposed to a constitutional amendment at least in part for historical reasons.

I was interested in your historical allusion, that the Constitution did not vest in the Federal Government jurisdiction over and responsibility for public education, nor did it reserve in specific language that jurisdiction and responsibility to the several States. Perhaps that is explainable because at the time the Constitution was written, there was no such thing as public education. Would you agree?

Dr. **Bakalis**. The reference to the lack of reference to education generally I think is significant; and the President's Commission on School Finance, which just reported this week, in its introduction, reaffirms the primacy of the States in education, and I think it is a principle that has been deeply rooted in American history and I would hope would be maintained.

Mr. **Poff**. Thank you.

Chairman **Celler**. Any other questions.

Mr. **Zelenko**. Mr. Chairman, I have one question.

Dr. Bakalis, the Supreme Court decisions relating to desegregation contain an implicit assumption that the burdens of desegregating public schools should fall equally on all those affected. Do you believe the notion of so-called one-way busing you outlined today would be consistent with that assumption?

Dr. **Bakalis**. I think it would. I think if one wants to consider transportation a burden to begin with—in other words, just physically being transported—certainly the burden would be on those children being transported.

If the burden is to take on extra responsibilities and extra efforts on the receiving school, that would certainly be some kind of a burden I would suppose. I think it depends on how broadly one wants to interpret the whole concept of burden.

Mr. Zelenko. Doctor, if a national program of busing only blacks to white schools were adopted as of tomorrow, considering the constraints of overcrowding available clasroom facilities, have you given any thought as to how long it would be before desegregated education could be achieved?

Dr. Bakalis. I think a national policy of busing only black children to white schools would be very unwise.

No, I haven't given any thought to how long it would take. I do know it has taken over 400 years for black people to achieve opportunities in this country, and I think what we need is to take some first steps.

Mr. Zelenko. Then you are suggesting action on a case-by-case, district-by-district basis rather than on a statewide or even nationwide basis?

Dr. Bakalis. I don't want to try to pass off our guidelines as being some kind of model for the Nation by any means, but I think: One, that the responsibility should not be at the Federal level in terms of national policy; and two, I think the more we can allow people at the local level to involve themselves in these educational decisions, the better off we are and the more success we are going to have for any kind of program that they are involved with in the beginning and the planning of these programs.

Mr. Zelenko. Finally, Dr. Bakalis, in your statement, pages 18 to 19, you state that Federal district courts and the U.S. Supreme Court do not and have not required the achievement of arbitrary racial balances in schools, but rather the elimination of racial isolation and unequal educational opportunities.

Earlier in these hearings, statements to that effect by Justice Burger have been read into the record.

How do you explain the apparently widespread feeling that court-ordered busing or court-ordered desegregation in fact has been designed to achieve racial balance; indeed, an arbitrary racial balance in some cases? How do you explain this apparent misunderstanding?

Mr. Bakalis. I can't explain it fully. I don't know. I suppose perhaps in the administration of policy, people get to the point where they forget what the original intent was, they believe somehow they can bring about equal educational opportunity by mixing bodies. We educators are responsible because we have not developed adequate and precise tools to measure educational quality.

So because we can't measure educational quality, very often the substitute becomes things. It might become a number of classes, student-teacher ratio or a number of blacks to whites. It is the external kind of things rather than equalitative measurement, and I think we carry the burden for that.

Mr. Lyons may have a comment on that.

Mr. Lyons. Mr. Zelenko and Mr. Chairman, I can't give you a definitive answer but I would suggest that there might be some parallel between the *Singleton* decision and determining that there was an appropriate distribution of minority staff, professional staff, in all districts that somehow reflected the composition of the district as a whole and to some degree that may be determined to be applicable as a criterion for students.

I offer that as a possible reason for the misunderstanding that courts are requiring racial balance of students.

Mr. ZELENKO. I gather you don't support busing to achieve racial balance, but would support pupil transportation or busing to achieve desegregation of schools?

Dr. BAKALIS. Yes, absolutely. I think that is a very valid way of distinguishing.

Mr. ZELENKO. In your opinion, has the term "racial balance" been used as a synonym for "desegregation"?

Dr. BAKALIS. I think it has. I don't believe most people think in terms of desegregation as a complex, continuing process, but they view it in terms of a percentage mixture of people at a given time. They view it as an event that occurs when I sit next to Mr. Lyons here that we are a desegregated panel. The fact that I may hate Mr. Lyons perhaps or love Mr. Lyons is not taken into account what my attitudes are about him, so desegregation is a much more difficult process and complex one than merely putting people next to each other.

Mr. LYONS. Mr. Chairman, regarding your earlier question regarding a substitute to busing, I would offer, at least for your consideration, and perhaps you are already aware of it, the Preyer amendment or the Preyer bill that is at least worthy of study.

There are a number of concepts that I think fully represent the thoughts that have been expressed by the doctor here this morning.

Chairman CELLER. Thank you.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask Dr. Bakalis a question or two, if I may.

Did you have the time to read in the paper this morning the unofficial results of the busing referendum in Florida?

Dr. BAKALIS. Yes, sir; I have.

Mr. MCCULLOCH. And those unofficial reports show that 75 percent of those voting on the question of busing opposed forced busing and that yet 79 percent of the voters favored equal educational opportunity for all children.

I would like to say this not only to our witnesses here this morning but I would like to say this to every person who is in this hearing room. You can help settle one of the most important problems in our country if you can provide us with one plan achieving both goals.

Dr. Bakalis, do you have any comment on that?

Dr. BAKALIS. No, my only comment is that I think we have touched on this. Equal educational opportunity is a vague concept, sort of like quality education, which very few people take the time to define.

Second, I think the key word as you put it, sir, is that that percentage opposed forced busing. That forced element is something that I think the American people are very much concerned about and I am concerned about it, too.

Chairman CELLER. The Chair wishes to thank you and your associates, Dr. Bakalis. I am very interested in your flexible plan.

We are grateful to you for your contribution.

Dr. **Bakalis.** Thank you. We appreciate the opportunity.

Chairman **Celler.** Our next witness is Mr. L. K. Schultz, president, Concerned Neighbors, Inc., Corpus Christi, Tex., who will be introduced by our colleague, Congressman John Young.

STATEMENT OF HON. JOHN YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. **Young.** Mr. Chairman, I am John Young. I represent the 14th Congressional District of Texas.

Among my constituency in the Corpus Christi, Tex., area is an organization called Concerned Neighbors, Inc., comprising 20,000 adult citizens and constituents of my area.

This organization is represented here today by Mr. L. K. Schultz and Mr. Calvin Clark, who is associated with him, and Mrs. Schultz who accompanied her husband is in the audience.

Mr. Chairman, Mr. Schultz has filed 25 copies of his statement with the committee with some backup material and one copy of a more extensive backup material which he hopes that the chairman will see fit to include in the record.

Mr. Chairman, Mr. Schultz has indicated he will take no more than 10 minutes of this committee's time and I commend to you and the committee your careful consideration of his statement.

Thank you, sir.

Chairman **Celler.** Thank you very much.

We shall be glad to place the statement in the record and out of deference to you, sir, we will hear Mr. Schultz out of order. I ask, Mr. Schultz, that your statement be placed in the record and that you epitomize it in your oral presentation.

(Mr. Schultz' prepared statement is at p. 890.)

STATEMENT OF L. K. SCHULTZ, PRESIDENT, CONCERNED NEIGHBORS, INC., CORPUS CHRISTI, TEX., ACCOMPANIED BY CALVIN CLARK

Mr. **Schultz.** I am L. K. Schultz, president of Concerned Neighbors, Inc., of Corpus Christi, Tex. Our organization is dedicated to the promotion of equal educational opportunity for all children, and preservation of the neighborhood school concept. We have more than 20,000 adults enrolled as members. Concerned Neighbors is a racially mixed, nonpartisan body with substantial representation from all socioeconomic levels, and reflects the views of approximately 80 percent of the citizens residing in south Texas.

Chairman **Celler.** I asked if you might epitomize your statement because we have many other witnesses to hear this morning.

We would appreciate it if you would epitomize your statement.

Mr. **Schultz.** I will try to abbreviate it, sir. I would like to point out that in presenting myself as a witness, that although I reside in south Texas, that I was educated in California and have traveled widely recently across the Nation and therefore feel that I am qualified to speak for the feelings of many of the American citizens.

As you perhaps may know, Corpus Christi is under a court order to desegregate our school system. We have been under this court order for 2 years. We have been able to avoid a massive busing program by virtue of a stay granted to us by the Supreme Court.

They considered the case on the merits. Basically what I wanted to say was that Corpus Christi, prior to the desegregation case, was a serene community without racial tension and without a history of racial tension.

Since the entrance of the case upon the scene in Corpus Christi, our community has become one of tension and we have undergone polarization of the racial groups.

Another point that I wanted to make was that our case differs substantially from the usual case in that the ruling handed down for Corpus Chisti was based on a triethnic determination, that is to say, that we were charged with having three groups rather than two, black and white being the two groups, Corpus Christi had a third element, the Mexican American minority added to it.

The Mexican-American in the city of Corpus Christi is not a minority but a majority group.

The Mexican American, Negro, and white community lived together in harmony and without overt consciousness of each until entrance of this case.

I would like to make one point here. The point of the *Corpus Christi Desegregation* case is simply this, that a peaceful community that had not practiced segregation required by law since 1954, whose schools were all integrated based on makeup of the neighborhoods, had levied upon it an onerous massive student transfer system which would not alter racial or ethnic makeup of schools in the city but at the same time would debilitate its financial base and promote tension and racial polarization within the community.

In our involvement in this case, and I have given it to you for your record, Concerned Neighbors undertook to study the school system within our city because one of the precepts upon which the desegregation case was based was that equal educational opportunity was not available to all students.

You will find, if you will study the material we have given you, that this is not the case. Neither based on monetary distribution, on staff, on teacher distribution, on equipment, on material or facilities, on none of these bases can you find in the facts that an equal educational opportunity was not available to all children.

If I may summarize my points, although de jure segregation has taken place in parts of our Nation, most of the country has been settled in a de facto manner.

Under the Constitution a man has the right to select the neighborhood in which he lives. On the other hand, the courts today are saying that if the neighborhood he has chosen has an ethnic imbalance, he has committed a wrong and his children must be bused to rectify that wrong.

The forced transportation of students out of their neighborhoods to schools many miles from their homes is no different from saying that parents should be required to reside in areas where they do not choose to reside.

In conversations with my black acquaintances, they have told me of their childhood days when they were bused passed the white school to a distant black school. They tell me how wrong this practice was and I agree it was a terrible injustice.

I ask you if it was so wrong to forcibly bus black children prior to 1954, how is it suddenly right today to force the busing of all our children?

I ask those who argue that the busing is necessary to right the wrongs of the past, is justice served now by committing the same wrongs again?

Laws which impose segregation because of race are wrong laws which forcibly impose integration are equally wrong. The laws pertaining to one's individual rights in a desegregated society are apparently not sufficiently clear to promote fairness and consistency in the decisions.

The Constitution and the surrounding legal structure seem to have the latitude under which one's fundamental rights can be jeopardized at the whim of any single Federal judge who is unresponsive to the citizenry he was appointed to serve.

We ask you, the Congress of the United States, to provide the citizens of our country with laws that are so clearly stated that they will not be misinterpreted to deny our rights as American citizens.

Thank you, sir.

Chairman CELLER. Data submitted to us by the Department of Health, Education, and Welfare shows: In Corpus Christi, in 1971, the total number of pupils enrolled was 45,900, of which only 838 or 1.8 percent were transported by bus.

In 1970, the total school population was 45,809 and the number of those bused was 628, or only 1.4 percent. So that there has not been much busing at all in Corpus Christi.

Mr. SCHULTZ. Yes, sir; that is correct and there still is not much busing in Corpus Christi. The students are now attending the neighborhood schools but we are under court order to begin a massive busing system and this order has been stayed by the Supreme Court.

Chairman CELLER. The old regime has been declared invalid but the remedy ordered by the district court has been stayed.

Mr. SCHULTZ. Yes, sir. The order is temporarily stayed while the appellate court hears our case.

Chairman CELLER. How many children would have to be transferred under the court order?

Mr. SCHULTZ. Approximately 15,000. I don't have the number of buses but the cost was about $1.7 million; 137 buses; 16,000 students, and about $1.7 million capital investment required.

Chairman CELLER. Any questions?

Mr. ZELENKO. One question, Mr. Chairman.

Mr. Schultz, in the opinion of your group, will a neighborhood school assignment plan desegregate the schools in Corpus Christi?

Mr. SCHULTZ. I am not sure I understand. Are you talking about the court order plan?

Mr. ZELENKO. No, sir. I am talking about the present system in Corpus Christi of neighborhood school assignments. Will that produce desegregated education in your town?

Mr. SCHULTZ. We don't have any segregated schools in Corpus Christi. They are all desegregated but we do not have a perfect racial balance.

Let me tell you what is going on in terms of racial mixing which, in time, will racially mix the schools. The town is broken into two segments: The South Side which is predominantly Anglo, which includes such diverse groups as Greeks, Lebanese, Chinese, and so forth, but it is still called Anglo.

The other side of town is predominantly rich in Mexican-Americans and Negroes but is an integrated portion of the town. The west side or predominantly Mexican-American, Negro portion of town is moving to the south side of town at a rate of approximately 10 percent annually.

By virtue of such Federal programs as the 235 home loan program and others. It is my opinion that this is effecting a substantial amount of mixture occurring at the present time.

Chairman CELLER. Mr. McCulloch?

Mr. MCCULLOCH. I am not particularly interested in segregation or desegregation as ends in themselves. I am interested in equality of quality education for the children of America, be they black, white, or any other color that you want to name

And there has not been equality of quality education for all children in our schools in America, not even in my own hometown. We began to study this problem long before there was forced busing and the opposition that it brought about.

Do you have a plan that will effectively bring equality of quality education to all schoolchildren in America, and bring it soon?

Mr. SCHULTZ. Sir, I am not an educator and I haven't a plan. However, I would say this. It has not been established in my mind that there is any relationship between desegregation of schools and quality of education. I have asked my black friends about this. I have told them that the courts today are saying that your child must sit in a racially mixed class in order to obtain an equal education.

Mr. MCCULLOCH. If I might interrupt you, I prefixed my question by saying that I was not primarily interested in segregation or desegregation as ends in themselves. I am interested in quality education for all of America's youth.

Mr. SCHULTZ. May I make one comment to your point then, sir.

In Corpus Christi I feel that we basically have equal educational opportunity in existence. As I say, I am not an educator but by virtue of the study which I presented to the committee, you will see that we have in our schools equal distribution of curricula, of teacher training and background, of materials and of dollars and special programs for those who have learning problems who come from minority homes and perhaps underprivileged homes to help them get started.

These are the only tools that I know that will work in this direction, sir.

Mr. MCCULLOCH. I am glad to hear you say that you are firmly convinced that you have made great progress toward this end which I have described.

Do you have any children?

Mr. SCHULTZ. Yes, sir.

Mr. MCCULLOCH. If all parents in America would dedicate themselves to the goal of quality education for all, we would soon have it in most, if not all, of our school districts.

Chairman CELLER. In the decision of Judge Seals, in June 1970, I find the following: "As to elementary schools [in Corpus Christi,] out of a total enrollment of approximately 24,389, approximately 10,178 Mexican-Americans and Negroes, (about 1,250 Negroes) attended schools where over 90 percent of the enrollment was non-Anglo Americans." 324 F. Supp. 599 (1970) footnote 37.

Mr. SCHULTZ. Excuse me, I have some record of the school enrollment. I haven't broken them down by schools but I do have it in total. The enrollment of our schools is this: Elementary schools 56 percent Mexican Americans; 38 percent Anglo; 6 percent Negro. By virtue of total numbers, many of the schools are predominantly Mexican-American because the Anglo is a minority in our system.

Chairman CELLER. You can place in the record any additional evidence you might have.

Mr. SCHULTZ. We will place that statistical package in the record.

(The information referred to follows:)

CORPUS CHRISTI PUBLIC SCHOOLS, CORPUS CHRISTI, TEX., CURRENT AND PROJECTED ETHNIC DISTRIBUTION PERCENTAGE TOTALS, 1970-71—1980-81

School	1970-71			1971-72			1972-73			1973-74			1974-75			1975-76		
	M	A	N	M	A	N	M	A	N	M	A	N	M	A	M	M	A	N
Elementary	52.85	41.40	5.75	53.15	41.10	5.75	53.45	40.80	5.75	53.75	40.50	5.75	54.05	40.20	5.75	54.35	39.90	5.75
Junior high	47.65	46.85	5.50	48.55	45.90	5.55	49.45	44.95	5.60	50.35	44.00	5.65	51.25	43.05	5.70	52.15	42.10	5.75
Senior high	41.54	53.14	5.32	41.85	52.64	5.51	42.16	52.14	5.70	42.65	51.64	5.71	43.14	51.14	5.72	43.62	50.64	5.74
District	49.01	45.40	5.59	49.47	44.88	5.65	49.87	44.43	5.70	50.40	43.88	5.72	50.83	43.44	5.73	51.32	42.93	5.75

School	1976-77			1977-78			1978-79			1979-80			1980-81		
	M	A	N	M	A	N	M	A	N	M	A	N	M	A	N
Elementary	54.65	39.60	5.75	54.95	39.30	5.75	55.25	39.00	5.75	55.55	38.60	5.85	55.85	38.20	5.95
Junior high	53.05	41.15	5.80	54.00	40.15	5.85	54.25	39.85	5.90	54.50	39.58	5.92	54.75	39.30	3.95
Senior high	44.11	50.14	5.75	44.59	49.64	5.77	45.06	49.14	5.80	45.54	48.64	5.82	46.01	48.14	5.85
District	51.82	42.41	5.77	52.34	41.87	5.79	52.67	41.54	5.81	52.96	41.17	5.87	53.23	40.84	5.93

Note: M—Mexican American; A—Anglo American; N—Negro American. (Current and Projected Ethnic Distribution for Individual Schools is retained in the committee files.)

Chairman CELLER. Any questions?

Mr. BROOKS. Mr. Chairman, will you yield for an observation?

Chairman CELLER. Certainly.

Mr. BROOKS. I would like to observe that I am delighted to see John Young here with his constituents. We appreciate Mr. Schultz' contribution to this problem and we are sure his observations can help to the solution of it.

Mr. SCHULTZ. Thank you.

Chairman CELLER. We are always glad to hear from constituents of Congressman Young because we have the highest respect for him. He is a dedicated Member of our House and we look up to him with great respect.

Mr. POFF. Mr. Chairman——

Chairman CELLER. Mr. Poff.

Mr. POFF. I underscore the tribute that has been paid to our distinguished colleague from the State of Texas. I know that both the chairman and I speak wholly without regard to the very important position that the gentleman holds on one of the most important committees of the House of Representatives, the Rules Committee.

I want to ask the witness a question for my own understanding of the legal issues involved. What is the issue in the case?

As I understand the witness, the segregation, if that is a correct term to apply, is de facto and not de jure. Yet I believe that the district court in ruling on the question found that the segregation was de jure. If that is true, I assume that this factual question is a legal one, is that correct?

Mr. SCHULTZ. Yes, sir; that is correct.

The district court found de jure segregation since 1954 in the Corpus Christi system. However, we reviewed the case ourselves. We had many legal opinions on it. They are that the case was conducted in a prejudicial manner. Justice Hugo Black of the Supreme Court before he died reviewed the case on the merits and granted us a stay based on the merits.

Mr. POFF. That was after the circuit court had declined to grant the stay?

Mr. SCHULTZ. That was after the circuit court had declined to grant the stay.

Another interesting point is that the Justice Department, which had taken the side of the plaintiffs during the trial, after reviewing the material on its merits, appeared before Justice Hugo Black and plead for the stay on our behalf.

Mr. POFF. Then what was the basis for the plea?

Mr. SCHULTZ. The basis for the plea, sir, was that de jure segregation had not been proven.

Mr. POFF. I will be glad to yield to the chairman.

Chairman CELLER. It strikes me that with such slight modifications, you ought not to have much trouble at all on this matter.

Mr. CLARK. May I say one thing, Mr. Chairman?

This figure we gave you was based on the judge's recommendation and HEW's recommendation of the $1.7 million based on children standing up and making two runs a day.

If you actually get into the figures of it, it would be more like $2.4 million to initiate the program, yet you would only change the overall racial mixture less than 5 percent.

Chairman Celler. Any other questions?

Mr. Polk. Mr. Chairman, I have a question. In view of the discussion this morning, I would like to have permission to read into the record the Court's holding in the case of *Cisneros v. Corpus Christi Independent School District*, if I may.

> The court is of the firm opinion that administrative decisions by the School Board in drawing boundaries, locating new schools, building new schools and renovating old schools in the predominantly Negro and Mexican parts of town, in providing an elastic and flexible subjective, transfer system that resulted in some Anglo children being allowed to avoid the ghetto, or "corridor" schools, by busing some students, by providing one or more optional transfer zones which resulted in Anglos being able to avoid Negro and Mexican-American schools, not allowing Mexican-Americans or Negroes the option of going to Anglo schools, by spending extraordinary large sums of money which resulted in intensifying and perpetuating a segregated, dual school system, by assigning Negro and Mexican-American teachers in disparate ratios to these segregated schools, and further failing to employ a sufficient number of Negro and Mexican-American school teachers, and failing to provide a majority-to-minority transfer rule, were, regardless of all explanations and regardless of all expressions of good intentions, calculated to, and did, maintain and promote a dual school system.
>
> Therefore this court finds as a matter of fact and law that the Corpus Christi Independent School District is a *de jure* segregated school system.

In footnote 50, the Court said:

> There is one especially noticeable example. Plaintiff's Exhibit 32, a map of Corpus Christi, shows the existing senior high school boundaries as they existed in 1967 together with the new boundary lines which were effective upon the opening of Moody High School.
>
> The Exhibit shows that students residing in the corridor were divided between Carroll, Miller and Ray prior to the establishment of Moody. The boundary lines as established by the school board walled in Negro and Mexican-American children in the Moody High School zone and withdrew significant numbers of both groups from Carroll, Ray and Miller. These boundaries diminished the degree of integration of these Negro and Mexican-American children with Anglo American children which existed prior to this time.
>
> Before 1961 the district's Washington and Hirsch elementary schools served the same geographic area, near the Northeast corner of the district. The limited freedom of choice policy allowed Negro students in the area to attend Hirsch. When Hirsch was closed in 1961, the boundary lines were drawn in such a way that Anglo and Mexican-American children for formerly attended Hirsch were assigned to Beach Elementary School, which was much farther from their homes than Washington. This action caused Washington to become more segregated.

Mr. Poff. Mr. Chairman, if I may reclaim the floor.

The chairman has just said that the circuit court is likely to accept the viewpoint of the school district with slight modification. I am not sufficiently familiar with the facts and circumstances to venture an opinion on what the circuit court is likely to do, but I assume that the case is now under appeal. Is that correct?

Mr. SCHULTZ. Yes, sir; it is under appeal at this time.

Mr. POFF. And the stay continues until the appellate process has been exhausted; is that correct?

Mr. SCHULTZ. Until the appellate process is completed or until July 1, 1972, whichever occurs first. We are waiting for a decision at this time.

Mr. ZELENKO. Mr. Chairman, at this point it may be helpful to refer to the Justice Department brief in the Fifth Circuit Court of Appeals in the Corpus Christi case. The Department of Justice does not seem to challenge the finding of the district court as to de jure segregation. It raises the question whether district court correctly held that de jure segregation was systemwide. In the court of appeals the Department of Justice questions whether the scope of the remedy ordered by the district court should be upheld. The case is awaiting decision in the Fifth Circuit.

Mr. POFF. May I inquire what is the role of the Department in the litigation?

Mr. ZELENKO. The Department has intervened and filed a separate brief.

Mr. POFF. May I ask to see the brief, please?

Now, Mr. Chairman, I yield the floor.

Chairman CELLER. Mr. Hungate.

Mr. HUNGATE. We are dealing with an opinion that is not final as I understand it. I would think if we take one brief, we should take all of the briefs.

Mr. SCHULTZ. Yes, sir; I was going to ask if I could present for the record also the dissenting opinion by Circuit Judge Bell when we asked for an en banc hearing. He makes a number of points of law relative to the case also.

Mr. HUNGATE. May we have all of the briefs.

Mr. POFF. Mr. Chairman, if I may, I believe that the requests that have been made by counsel and by my distinguished colleague from Missouri are altogether appropriate and I would join in the request that all papers in the case become a part of either the transcript or the file of the subcommittee.

(The decision and briefs referred to follow:)

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 71-2397

JOSE CISNEROS, ET AL,
Plaintiffs-Appellees-Cross Appellants,

versus

CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT, ET AL,
Defendants-Appellants-Cross Appellees.

Appeals from the United States District Court for the Southern District of Texas.

ON SUGGESTION FOR HEARING EN BANC

(October 7, 1971)

Before GEWIN, GOLDBERG and DYER,
Circuit Judges.

BY THE COURT: The Court having been polled at the request of one of the members of the Court on hearing en banc and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the Petition for Hearing En Banc is DENIED.

Before BROWN, Chief Judge, WISDOM, GEWIN,
BELL, THORNBERRY, COLEMAN, GOLDBERG,
AINSWORTH, GODBOLD, DYER, SIMPSON,
MORGAN, CLARK, INGRAHAM and RONEY,
Circuit Judges.

BELL, Circuit Judge, DISSENTING: I dissent with regret. I think that it is a serious error in judgment for the court to decline to hear this case en banc. It presents some quality of justice considerations which are of particular importance in the time of stress now existing as school boards and courts seek appropriate ways and means to desegregate urban school systems. But of more importance, it presents questions of first impression in this court in the field of a non-dual system and non-de jure segregation. We have here a Mexican-American and Anglo segregation problem in a school district where school segregation between the two groups has never been required by law. Indeed, we have a school district in which every school was integrated as between the two groups at the time of the decision in *Brown v. Board of Education*, 1954, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873.[1] The order of the district court setting forth the remedy required has been stayed by Justice Black and the matter is presently pending in this court on the merits. A copy of Justice Black's order is attached as Appendix A. This stay is based on a view that the circumstances of the case ". . . present a very anomalous, new and confusing situation."

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[1] The rights of the Negro plaintiffs are caught up in the controversy as to the legal status of the Mexican-American and Anglo students in the system, and to date they have not been accorded relief although their status rests completely on an admitted dual school premise. The United States as plaintiff-intervenor suggests remand to the district court for further evidentiary hearings regarding discrimination against Mexican-Americans

Quality of Justice Considerations

The school board moved to have this matter heard by the court en banc. The following facts demonstrate to me that justice would be better served from the standpoint of the school board, and derivatively the taxpayers and citizens of the Corpus Christi school district, believing, when the final order comes, that the matter has received the reasoned attention of the federal court system. This is not to say that the panel hearing this matter will not give it reasoned attention; it is to say that prior events might cause the school district, as it apparently has, to seek a broader forum. The following outline should suffice to make this point:

(1) Suit was filed on July 22, 1968, by Negro and Mexican-American plaintiffs. They alleged that Negro students had been segregated by law prior to 1954. As to Mexican-American students, and Negro students after 1954, it was alleged that they were segregated through the establishment of school boundary lines by the school district. The schools maintained for Negro

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and also to consider the scope of the remedy on the basis of adjusting it to the scope of such discrimination as is found. However, immediate relief is urged for the Negro students.

students prior to 1954 had been "phased out." It was further alleged that segregation existed in the form of requiring Negro and Mexican-American students to attend schools together while Anglo students attended predominantly Anglo schools. This was referred to in the complaint as de facto segregation.

The prayer for relief sought no racial balance and was in fact adjusted to the discrimination claimed. Plaintiffs sought an order to prevent discrimination on the basis of race, color or national origin through the utilization of plant, equipment and curricula, disproportionate assignment of teachers and staff, and in school building construction. They sought to enjoin defendants from establishing and maintaining school zones or boundary lines that discriminate. This prayer was expanded in a proposed pretrial order dated May 14, 1970 to require defendants to fully integrate the school system. No distinction was drawn between Negro and Mexican-American students.

The facts were that before 1954, the district was comprised of 39 schools, 3 for Negro students and 36 for the remaining students — each of the 36 having student bodies comprised of Anglo and Mexican-American students. It appears that by 1969, the demography of the system was such that one high school out of five was predominantly Mexican-American although there were some Negro and Anglo students in attendance (M-A 1363, N-168, A-58). There were 12 junior high schools and four of these were predominantly Mexican-American although each had a small number of Negro and

Anglo students. There were 43 elementary schools and 16 of these were predominantly Mexican-American.

The system-wide racial ratio in 1969 was as follows out of a total of 46,023 students: Elementary — 50.78%-M-A, 43.44%-A, 5.78%-N; Junior High — 46.71%-M-A, 48.01%-A, 5.28%-N; High — 38.87%-M-A, 56.42%-A, 4.71%-N. In 1969 there were 21,806 Anglos, 21,719 Mexican-Americans and 2,475 Negro students in the system. This was up from 13,668 Anglos, 11,883 Mexican-American and 1,342 Negro students in 1954. These statistics are based on using a school census of Spanish and Anglo surnames. (No comment is necessary on the unreliability of such an approach.)

(2) On June 4, 1970, the district court entered a "partial final judgment" enjoining defendants from discriminating on the basis of race, color or ethnic origin in the assignment of students, teachers and staff to the various schools of the district, and requiring certain affirmative action including a desegregation plan. This judgment was based on an opinion rendered on the same day, now reported as *Cisneros v. Corpus Christi Independent School District*, S.D. Texas, 1970, 324 F. Supp. 599. The court concluded that the Mexican-Americans had been relegated to dual school system status. At another point the court referred to the school system as being segregated and dual with "its . . . real roots in the minds of men" in that the school district failed ". . . to anticipate and correct the racial imbalance that was developing."

The only findings pointing to affirmative discrimination relate to the drawing of boundary lines in a total of two schools out of 61. Other discrimination found to exist falls in the category of increasing racial and ethnic imbalance through the location of new buildings (two), and through renovating existing buildings (four), in recent years on a neighborhood basis. The court also found discrimination in allowing students to transfer under "Student Emergency Transfer Applications." This involved a total of 200 transfers. Discrimination was also found with respect to one school in the use of an option assignment plan, and in failing to employ what the district court considered to be a sufficient number of Mexican-American teachers and staff. The last finding of discrimination is based on the failure of the school district to adopt a majority to minority transfer rule, a concept of recent origin in dual school system integration techniques.

At this point, June 4, 1970, the district entered the necessary certificate for an interlocutory appeal under 28 USCA, § 1292(b).

(3) On July 10, 1970, this court denied the interlocutory appeal in a two judge order.

(4) On July 13, 1970, this court denied a stay of the district court order in a two judge order.

(5) On July 2, 1971, after an extended hearing, the district court entered a comprehensive student assignment order requiring the district to transport 15,000 students out of their former places of school assign-

ment. The district had a total of nine buses transporting 400 students at the time. The district court computed the number of buses needed on the basis of two round trips daily of buses having a seating capacity of 72 students and with 12 extra students to stand on each trip. This came to a need of 96 buses costing $1.7 million. The district court was aware of the difficulty if not the impossibility of obtaining the necessary funds and of the delay in procuring the buses even if the funds could be first obtained. Nevertheless, the court deemed these difficulties insufficient in face of the need, as the court saw it, to disestablish the "neighborhood school concept of the system" and to distribute the "burden of integration" throughout the system. After decreeing that no school could have less than an 80-20 racial ratio, Mexican-American and Negro as one group and Anglo as the other, the court ruled that no stay would be granted pending appeal. As a preamble to this order, the district court had recited the fact that this court had denied an interlocutory appeal although such a course had been suggested by the district court.

The district judge in charge then left the district. This left the school board in an unfortunate position, given the denial of the stay and having in mind the uncertainty of funds and buses to carry out the order.

(6) Despite this, the school district sought a stay in the district court and the matter was assigned by the Chief Judge of the district to an available district judge who on July 16, 1971, granted a stay as to the remedy insofar as additional time was needed to obtain funds, buses, and to accomplish the remodeling of build-

ings, changes in curriculum, library facilities, and teaching assignments, all necessary under the order.

By a supplemental order dated July 17, 1971, the district court made it clear that the stay was only as to Mexican-American and Anglo students affected by the order of July 2, 1971.

(7) This court then vacated the order of the district court which had granted the partial stay. (Two judge order dated August 5, 1971).

This order had the effect of substantially mooting the appeal from the standpoint of remedy since it meant that the buses had to be immediately purchased and the 15,000 students reassigned and transported.

(8) On August 19, 1971, Justice Black reinstated the partial stay which had been granted in the district court.

(9) On August 23, 1971, the district court broadened its stay to include Negro students as well as Anglo and Mexican-Americans. See footnote 1, supra.

(10) On August 23, 1971, the appeal of the school district was set for hearing before a panel of this court on September 8, 1971.

(11) On August 25, 1971, the school district moved to have the case considered en banc by this court.

While not entitled to such consideration as a matter of denial of procedural due process, it is apparent why the school district would want to avail itself of the rules of this court as to en banc hearings so as to have a broader forum, given the denial of the interlocutory appeal presenting a question of first impression and particularly given the effective mooting of a large portion of the appeal by vacating the stay of the district court. Without more, however, this would probably not warrant en banc consideration but there is more.

Substantial questions of first impression are presented.

Justice Black noted that this case presented questions not heretofore passed on by the Supreme Court.[2] These questions are new and have not been passed on by this court.

There are in fact two new questions. First, what is to be the test in determining the question of discrimination vel non in a non-dual school system, i.e., one which has never been segregated by law? This question is confused by the fetish to give names to legal doctrines — here de jure-de facto. We generally refer to de jure school segregation as that where students are or were segregated pursuant to state statute. The district court found some discrimination in a de facto school situation (as to Mexican-Americans), and leaped across the factual chasm to find de jure status. A de jure remedy was then applied. It would seem that the more appropriate approach would be to determine in the first instance whether and to what extent discrimination exists.

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[2] See *Gomperts v. Chase*, No. A-245 (September 10, 1971), where Justice Douglas in denying a stay to plaintiffs in a de facto school situation case noted that ". . . the precise contours of de jure segregation have not been drawn by the Court. Historically that has only been where ". . . segregation was a mandate by the legislature, carried into effect by a school board, whereby students were assigned to schools solely by race."

If discrimination is found, then the second question is remedy. Should the remedy be commensurate with the particular determination found to the end of eliminating that discrimination, or should the entire school system be reconstituted notwithstanding the degree of discrimination. To put the question simply, should the school system of a large city be reconstituted in its entirety although the discrimination may have been restricted to one or only a few schools? Stated differently, do isolated instances of discrimination taint the entire system?

These are important questions. Many school children are involved. We resolved en banc most of the questions involved in desegregating de jure systems. *Singleton v. Jackson Municipal Separate School District*, 5 Cir., 1969, 419 F.2d 1211. This proved to be an effective approach in an area of law much in the public interest and involving one of our most important social institutions — public shools. We should do the same now that new questions involving non-dual systems are presented.

Moreover, under the teaching of *Swann v. Charlotte-Mecklenburg Board of Education,* 1971, 402 U.S. ______, S.Ct. ______, 28 L.Ed.2d 554, there is also the question in this case as to whether the remedy may include an obligation to continuously reconstitute a school system where non-discriminatory resegregation occurs due entirely to changes in residential patterns. *Swann* would seem to teach otherwise. 402 U.S. at ______, ______ S.Ct. at ______, 28 L.Ed.2d at 575.

In the interest of stability in the field of public education, I would meet and resolve these questions now as a whole court.

APPENDIX A

SUPREME COURT OF THE UNITED STATES

CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT et al. v. JOSE CISNEROS et al.

Application For Reinstatement Of Stay Ordered By
The United States District Court For The
Southern District Of Texas

[August 19, 1971]

Mr. Justice Black, Circuit Justice.

The district judge in this case ordered the Corpus Christi Independent School District to stop alleged historical practices of discrimination against school children on the basis of race or color. He directed how this was to be accomplished, saying at the same time that he would grant no stays of his order. The school district asked the court to stay its order and a stay was granted by a different district judge who had been assigned to hear the application. The plaintiffs, parents of the students allegedly discriminated against, then asked the United States Court of Appeals for the Fifth Circuit to vacate the stay. A panel of two Circuit Court judges did vacate the stay. The school district then applied to me as a single Justice to reinstate the District Court's stay. The Solicitor General of the United States has joined in requesting me as a single Justice to reinstate that stay. If I reinstate the stay, the District Court's order will not go into effect until the Fifth Circuit or this Court has had an opportunity to pass on it.

It is apparent that this case is in an undesirable state of confusion and presents questions not heretofore passed on by the full Court, but which should be. Under these circumstances, which present a very anomalous, new, and confusing situation, I decline as a single Justice to upset the District Court's stay and, therefore, I reinstate it without expressing any view as to the wisdom or propriety of the Solicitor General's position. The stay will be reinstated pending action on the merits in the Fifth Circuit or action by the full Court.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

No. 71-2397

In The United States Court of Appeals for the Fifth Circuit

Jose Cisneros, et al., plaintiffs-appellees

United States of America, plaintiff-intervenor-appellee

v.

Corpus Christi Independent School District, et al.,
defendants-appellants

Brief for The United States

STATEMENT

1. Procedural History

This school desegregation class action was brought by black and Mexican-American parents of children in the Corpus Christi Independent School District on July 22, 1968. The complaint alleged that the defendant School District operated a racially-segregated school system in violation of the Fourteenth Amendment.[1] Following defendants' answer denying the main allegations of the complaint, and discovery by both parties, trial commenced on May 14, 1970. Eleven days of testimony were taken and over sixty exhibits were introduced, and on June 4, 1970, the district court, Seals, J., entered a memorandum opinion and "partial final judgment" on the merits,[2] finding that Mexican-Americans constituted an identifiable minority group entitled to Fourteenth Amendment guarantees against school segregation, and further finding that, on the evidence, both blacks and Mexican-Americans were unconstitutionally segregated in the Corpus Christi School District, as a result of various documented official actions by the defendants.

Following this Court's denial of defendants' petition for permission to appeal this interlocutory order of the district court,[3] various desegregation plans were submitted by the parties in the district court, and a hearing on these plans and objections thereto was held in the district court from September 2 to September 16, 1970. Further testimony was taken and further exhibits were introduced at this time.

On October 16, 1970, the court requested the assistance of the United States Departments of Justice and Health, Education, and Welfare (HEW) and on November 30, 1970, the Department of Justice applied for leave to intervene, which was formally ordered by the court on January 15, 1971. Various consultations took place between the parties and the School District's Human Relations Committee, and on June 2, 1971, a desegregation plan prepared by HEW was filed. Objections were filed to this plan by both the plaintiffs and defendants, and on July 2, 1971, the district court issued a memorandum opinion and ordered the implementation of the court's own plan, prepared from the plans submitted by the parties wtih certain alterations made by the court.[4]

On July 13, 1971, the defendants moved for a stay of the July 2 order insofar as it concerned Mexican-American desegregation, and on July 16, 1971, a hearing wah held before District Judge Cox (Judge Seals being out of the country). Judge Cox ordered a stay on July 16, 1971. Plaintiffs appealed this stay and on August 5, 1971, this court vacated the stay order of the district court, and on August 10 denied defendants' motion for rehearing. Defendants then sought reinstatement of the district court's stay order from Mr. Justice Black, sitting as Circuit Justice, and on August 19 this was granted "pending action on the merits in the Fifth Circuit or action by the full Court." On August 23, 1971, District Judge Cox granted a stay of the July 2 order with respect to black students coextensive with his previously entered stay for Mexican-American students.

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[1] More specifically, besides general allegations of discrimination in boundary lines, construction policies, faculty assignments, etc., the plaintiffs alleged that defendants had taken some steps to "desegregate" several predominantly black schools by integrating black and Mexican-American students, without substantially affecting the predominantly Anglo schools.

[2] Judge Seals' memorandum opinion is reported at 324 F. Supp. 599 (S.D. Texas, 1970).

[3] This petition was filed on June 15, 1970 and denied by this Court on July 10, 1970. Defendants also applied to this Court for a stay of the district court's order on July 9, 1970; this was denied on July 13, 1970.

[4] This July 2 Order further noted that "the final judgment is to be entered immediately and will not be stayed by this court pending appeal."

2. *Decisions of the Court Below*

This appeal is from the district court's orders of June 4, 1970, and July 2, 1971. The June 4, 1970 opinion and order concerned several threshold questions raised in this litigation and was only peripherally concerned with relief. Specifically, the district court found that (a) Mexican-Americans are an identifiable ethnic minority group; (b) as such they are entitled to relief from segregated schools within the decision of the Supreme Court in *Brown* v. *Board of Education*, 347 U.S. 483 (1954); and (c) that the defendants had discriminated against both blacks and Mexican-Americans in their operation of the school system. The court below found that such discrimination took various forms such as gerrymandering attendance zone boundaries, discriminating in construction and location policies for new and existing schools, discriminating in faculay assigment policies, promoting segregation in transfer policies, and failing to take reasonable steps to promote desegregation generally.

The July 2, 1971 order of the district court concerned the relief to be given plaintiffs and outlined the steps defendants were to take. The court considered the desegregation plans filed by the plaintiffs (2), the defendants, and the Department of Health, Education and Welfare. It further considered the evidence adduced at the hearing of the previous September, regarding various educational, financial, administrative and other practical problems connected with various plans. Finally, the district court considered the recent decisions of the Supreme Court regarding the remedial aspects of desegregation plans.[5]

The district court ordered into effect a desegregation plan which it designed, drawing upon al the plans in the record and making its own alterations where it deemed necessary, finding that its plan "has a realistic chance of creating a unitary school system, will not be an undue economic burden and will not disrupt the educational process more than is necessary to secure rights guaranteed under the Constitution." In substance, the plan paired 32 elementary schools in grades 1–6 and left nine schools unchanged except for the receipt of additional Mexican-American pupils formerly assigned to the Travis Elementary school. The plan also modified the attendance zone areas for ten of thirteen junior high schools, and drew new attendance zones for the five senior high schools.[6]

The July 2 Order also included a provision expanding the School District's Human Relations (tri-racial) Committee to 18 members, and included a standard reporting provision such as was required by this Court in *Singleton* v. *Jackson Municipal Separate School District*, 426 F. 2d 1364 (5th Cir. 1970).

DISCUSSION

Inasmuch as the United States came into this case (at the request of the Court) after the basic evidentiary hearings had been held and the findings of fact had been entered, we are not in a position to provide a detailed analysis of the facts. Therefore, we confine our discussion to some of the legal problems involved. This is a case of first impression in this Circuit, involving, as it does, not only a dual system of state-imposed segregation of white and black students, but also a holding of *de jure* segregation of Mexican-American students from other white students. As to Mexican-Americans there is no claim that state law required this separation or that the separation was effected by operating three separate systems of schools in Corpus Christi—one for each group. The difficult question presented to this Court is whether the court below recognized and properly took into account the differences between a case of dualism and a case involving claimed racial or ethnic discrimination in an otherwise unitary sytem. Where there has been dualism, it is normally assumed that the entire operation of the school system is infected; where the system is unitary, the evidence may establish discrimination in one area without warranting a conclusion that all aspects of school operation are discriminatory. For this reason whether the relief appropriate in a case of dualism is appropriate in a case such as this depends upon the extent of the proved discrimination.

The question of whether Mexican-Americans can be found to be an ethnic class entitled to the equal protection guarantees has been foreclosed by prior decisions of the Supreme Court and this Court. *Hernandez* v. *Texas*, 347 U.S. 475 (1954); *Alvarado* v. *El Paso Independent School District*, No. 71–1555 (5th Cir., decided June 16, 1971); *cf. Brown* v. *Board of Education*, 347 U.S. 483 (1954); *Yick Wo* v. *Hopkins*, 118 U.S. 356, 369 (1886).[7]

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[5] *Swann* v. *Board of Education*, 402 U.S. 1 (1971) and companion cases.

[6] The court estimated that 15,000 students would require transportation under this plan, and estimated the cost of implementation at between $1.4 and $1.7 million.

The district court found that plaintiffs had met their "initial burden" of showing that "persons of Mexican descent constitute a seperate class distinct from 'whites' " in Corpus Christi, *Hernandez, supra*, 347 U.S. at 479, on the basis of expert testimony,[8] other documentary and testimonial evidence concerning Mexican-Americans as a class in Texas and in Corpus Christi,[9] governmental studies, reports and policies on this subject, judicially noticed,[10] and other cases.[11] The district court's findings on this issue are voluminous and basically uncontroverted.

The district court found a number of specific acts of discrimination against Mexican-American students. Beyond the question whether those findings are supported by the evidence (which we do not address) there is a further legal question not discussed by the district court: whether the effects of that discrimination can be alleviated by ordering relief directed at correcting the specific acts and policies found discriminatory; or, expressed another way, whether the scope of the remedy ordered by the court is consistent with the nature of the violation it found to exist. In this case, the issue for this Court is to determine whether the district court's findings of discrimination against Mexican-Americans and blacks infect the whole school system so as to justify the comprehensive relief ordered by the district court, or whether more limited relief might be appropriate. This is basically a factual inquiry, and while we note that the court's findings cover several acts of the defendants in several areas of operations, it made no specific finding on this point. A remand, then, may be proper for further consideration of this question.

It is, of course, necessary for this Court to review the district court's remedial order of July 2, 1971, only if this Court affirms the district court's ruling on *de jure* segregation and discrimination on a system-wide basis against black and Mexican-American students in the operation of the Corpus Christi schools. The following discussion is therefore submitted for this Court's consideration should it reach the question of the propriety of the remedy ordered by the district court.

The desegregation plan adopted by the district court was the court's own, fashioned from elements of the HEW plan and the plaintiff's plans,[12] with certain modifications made by the court.

The government has misgivings about the type of plan adopted by the district court. However, as we read the decision in *Swann* v. *Board of Education*, 402 U.S. 1, the scope of this court's review of the plan is limited to a consideration of whether the district court proceeded under an erroneous legal standard (such as viewing racial balance as constitutionally required) or whether the remedy is so extreme as to constitute an abuse of discretion. It may be, as defendants argue, that such a plan might be an abuse of discretion if the scope of the violation is limited. This would depend on whether the district court correctly held that the black and Mexican-American schools are *de jure* segregated system-wide.

The defendants also raise the question of timing for the implementation of the court-ordered plan, having sought and obtained a stay of implementation in the district court and having it reinstated by Mr. Justice Black after this Court had vacated it. Particularly, the defendants raised the question of whether transportation can be provided for those additional students requiring transportation under the court-ordered plan should this Court affirm.[13] If that question is reached, we think this Court could remand to the district court for an immediate hearing to determine whether all or part[14] of the plan can be implemented forthwith and, if any part cannot, the earliest practicable date that such parts can be implemented. The district court could then enter appropriate orders based on its findings.

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[7] See also, *Mendez* v. *Westminister School District*, 64 F. Supp. 544 (S.D. Cal. 1956); *aff'd* 161 F. 2d 774 (9th Cir., 1947); *Delgado* v. *Bastrop Independent School District*, C.A. No. 388 (W.D. Tex., June 15, 1948) (not reported); *Gonzales* v. *Sheely*, 96 F. Supp. 1004 (D. Ariz. 1951); *Romero* v. *Weakly*, 226 F. 2d 399 (9th Cir. 1955); see generally, Note, *Mexican-Americans and the Desegregation of the Schools in the Southwest*, 8 Hous. L. Rev. 929 (1971).

[8] See notes 30, 38–45, 324 F. Supp. 599 at 606–07, 612–15.

[9] Id., see also notes 31–33, 324 F. Supp. at 607–08.

[10] See note 34, 324 F. Supp. at 608.

[11] See 324 F. Supp. at 608.

[12] The plaintiff submitted tow plans on Aug. 17, 1970, one prepared by its expert and one, dealing only with elementary schools, prepared by a local school patron. The defendants submitted a plan based on equidistant zoning on July 15, 1970, which was rejected sua sponte by the district court on Aug. 26, 1970. On Aug. 31 the defendant submitted a new plan based on equidistant zoning and natural boundaries. After the intervention of the United States in January 1971, and following a conference of all parties with the district court on April 30, discussing, inter alia, the Supreme Court's decisions in *Swann*, supra, and companion cases, HEW submitted a plan on June 2, 1971. The plaintiffs and defendants filed objections thereafter, and on June 10 the district court granted the defendants until June 21 to file an additional plan. On June 16 the defendants declined to submit another plan, despite urgings from the triracial committee to do so. See district court order of July 2, 1971, especially footnote 2.

For these reasons we think that an appropriate disposition would be a remand by this Court for further findings and, if necessary, the taking of further evidence regarding discrimination against Mexican-Americans. However, under the Supreme Court decision in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), immediate relief should be accorded the students in the black schools.

Respectfully submitted.

ANTHONY J. P. FARRIS, *U.S. Attorney*
DAVID L. NORMAN, *Assistant Attorney General*.
BRIAN K. LANDSBERG, *Attorney*.

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 1970, I served the foregoing brief for the United States on the parties to this appeal by mailing two copies to each of the attorneys of record named below, by United States Mail, postage prepaid: James DeAnda, Esq., Edwards & DeAnda, 12th Floor, Wilson Building, Corpus Christi, Texas 78401; Dixie, Wolf & Hall, Suite 401, 609 Fannin Street Building, Houston, Texas 77002; David T. Searls, Esq., Donald Howell, Esq., Vinson, Elkins, Searls & Smith, 21st Floor, First National City Bank Building, Houston, Texas 77002; Richard A. Hall, Esq., Branscomb, Gary, Thomasson & Hall, Hawn Building, Corpus Christi, Texas 78401.

JOHN D. LESHY, *Attorney*.

THE UNITED STATES COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 71-239-7

JOSE CISNEROS, ET AL, PLAINTIFFS-RESPONDENTS,

v.

CORPUS CHRISTI INDEPENDENT SCHOOL DISTRICT, ET AL, DEFENDANTS-PETITIONERS

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, CORPUS CHRISTI DIVISION

BRIEF OF CONCERNED NEIGHBORS, INC., AS AMICUS CURIAE

To the Honorable Court of Appeals:

INTRODUCTION

This Amicus Curiae Brief of Concerned Neighbors, Inc., is filed subject to leave being granted pursuant to their Motion.

For the purposes of this Brief, Concerned Neighbors, Inc. adopts the nature of the case and statement of facts relevant to the issues presented as set out in the Brief of Defendant-Appellants, Corpus Christi Independent School District, et al, whose position Concerned Neighbors, Inc. supports. In this respect, Concerned Neighbors, Inc. joins and supports the position of the School District and the arguments and authorities presented by the District in their brief. No attempt will be made by Concerned Neighbors, Inc. to represent those arguments and authorities, but rather Concerned Neighbors, Inc. will address itself to the broader social issue involved in this Appeal, that is, whether or not local school boards representing their citizens may hereafter choose and implement the neighborhood school concept. More directly, is the neighborhood school, regardless of the non-discriminatory intent by a district in its implementation, to go the way of "freedom of choice" and be prohibited as an educational method?

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[13] Brief for appellants, pp. 72-73.

[14] For example, it may be that the problems involved in implementing that part of the plan relating to secondary schools are different from those with elementary schools.

ARGUMENT AND AUTHORITIES

1. The Trial Court's finding that de jure segregation of Mexican-Americans exists in the Corpus Christi School District, if allowed to stand, is destructive of the neighborhood school concept

In its Memorandum Opinion, the Trial Court found that de jure segregation of Mexican-American students permeated the entire district system and that as a result thereof the district was not maintaining a "unitary schol system". The Trial Court stated that the evidence supporting this finding was the fact that racial imbalance resulted because of "administrative decisions by the School Board in drawing boundaries, locating new schools, building new schools and renovating old schools in the predominantly Negro and Mexican parts of town; and providing an elastic and flexible subjective transfer system that resulted in some Anglo children being allowed to avoid the ghetto, or corridor schools, by busing some students, by providing one or more optional transfer zones which resulted in Anglos being able to avoid Negro, Mexican-American schools and not allowing Mexican-Americans or Negroes the option of going to Anglo schools; by spending extraordinarily large sums of money which resulted in intensifying and perpetuating a segregated dual school system; by assisting Negro and Mexican-American teachers in disparitive ratios to these segregated schools; and further failure to employ a sufficient number of Negro and Mexican-American school teachers; and the failure to provide a majority to minority transfer rule; . . ."

When examined carefully, the evidence cited by the Court supporting its finding of de jure segregation against Mexican-Americans is really a finding that regardless of the District's intent in the implementation of the neighborhood school concept long used in Corpus Christi, the use of such neighborhood school concept is in itself, when applied to the shape, size, density, residential patterns and student concentration patterns of Corpus Christi, a dual school system. As pointed out in the Appellant-Defendant District's Brief, there was no evidence the District intended to segregate Mexican-Americans or from which such an intent could be inferred other than the statistical showing of student concentrations in the various schools, elementary, junior high and high school. When examined closely, any district geographically shaped as the Corpus Christi District and containing the same residential patterns as Corpus Christi, would have to be found to be maintaining a dual school system, since any implementation of the neighborhood school concept in Corpus Christi would result in substantially the same racial and ethnic imbalance.

As pointed out in the evidence, the Corpus Christi School District is crescent shaped, Corpus Christi being built around a bay and being long and narrow running north and south. By examining the maps introduced in evidence at the trial showing the boundaries of the various elementary, junior high and high schools attendance zones, and examining the overlays introduced to show the effect an equa-distant neighborhood school plan would have on the racial and ethnic make-up of the schools, it is obvious that even a wholly non-discriminatory implemented neighborhood school plan (one in which each elementary, junior high and high school was built so that each one is an equal distance from the other and the boundary lines being drawn accordingly) would result in essentially the same racial and ethnic imbalance. It cannot be said that had the Corpus Christi Independent School District ignored all other factors, that is, traffic hazards, housing density, etc., and maintained its neighborhood schools strictly on the basis of locating each school at an equal distance from each other school, that such an implemented neighborhood school plan would be a dual school system. Under such a plan no intent to discriminate could be inferred, as each student would be assigned to the school nearest his home, regardless of his race or ethnic background.

In its purest form the neighborhood school concept requires that elementary schools of a desired size be built in neighborhoods so that the youngest children in the schools are able to walk only a few blocks to their school. As the children get older and reach junior high age, the junior high schools are built in areas and with attendance zones designed to accommodate the children coming from various elementary schools and are a greater distance from any given student's home. This is so, since as a child reaches junior high age he is more able to cope with the problems of traveling greater distances without harm to himself and with a maximum convenience to his parents. Likewise, as the child reaches the high school age, the various high schools are located, and the attendance lines drawn, so that children coming from various junior high schools are assigned to a particular high school. Again, these high schools are at a greater distance from any given student's home than their original elementary schools solely for educational, academic reasons in providing the necessary curricula for these advanced students, and because at their high school age they are again able to cope with the longer distances traveled to schools without hazards to them and without a great inconvenience to the parents.

When applied to Corpus Christi in its purest form, the evidence shows the neighborhood school concept with attendance zones drawn under an "equal-distant plan" would necessarily result in essentially the same racial and ethnic imbalance as found by the Trial Court to exist under the District's present neighborhood plan. If this is so, it is impossible to infer that the manner of drawing boundaries for the various schools was intended to discriminate against Mexican-Americans or anyone else. The fact that drawing of the boundaries resulted in a racial or ethnic imbalance could not be avoided since a wholly objective drawing of such boundary lines unrelated to considerations of traffic hazards and student density, would likewise result in essentially the same racial and ethnic imbalance.

Likewise, no inference of intent to discriminate should have been drawn by the Trial Court from the District's location of new schools, building of new schools and renovation of old schools. In most instances, the evidence presented to the Trial Court showed that the locations for new schools were obtained many years in advance of the schools actually being built. To infer that acquisition of these locations were done at a time when the School Board then governing the School District intended to discriminate against Mexican-American students or anyone else would be to find that the School Board Members were then clairvoyant or greater prophets than can be reasonably expected of anyone in anticipating the residential patterns which would thereafter develop in the District. Again, under any type implementation of the neighborhood school concept, good judgment and economic reasons dictate that a school board acquire school location sites far in advance of their actual need. Regardless of how these locations had been selected in Corpus Christi, had the pure neighborhood school concept been followed, as is suggested in the earlier part of this Brief, and implemented on an equa-distant basis, the same or essentially the same racial and ethnic imbalance would have resulted. To again infer that an intent to discriminate resulted from the renovation of old schools, simply means that the Court found that the implementation of a neighborhood school plan in Corpus Christi, in effect, resulted in a dual school system.

It is likewise evident that no inference of segregation can be drawn because of the transfer policy followed by the Corpus Christi Independent School District. In the implementation of any neighborhood school plan, it is inevitably desirable for various educationally sound reasons that students be allowed to transfer from one school to another. These reasons include transportation problems, curricula problems, student health problems and other hardship reasons. The evidence before the Trial Court did not disclose that there was any transfer granted or denied with the intent to discriminate against any student because of his race or ethnic background. The fact that a student transfer policy actually existed cannot reasonably lead to an inference that the Board intended to discriminate, since there was no showing that any of the transfers actually granted either increased or decreased the racial and ethnic imbalance in any school.

For the same reasons given above, the Court's finding that the creation of one optional attendance zone evidenced an intent to segregate Mexican-Americans from the Anglo students in the school system is not a reasonable inference from the evidence presented. In the implementation of any neighborhood school plan, space requirements and school capacities are necessarily going to fluctuate as new schools are built in developing residential neighborhoods. Without providing for optional attendance zones to offset overcrowding of the older school and undercapacity of the new school, a School Board would be remiss in its duties to maintain a system providing the best educational opportunity for all and still be consistent with good economic practices. To infer that to do so is evidence of de jure segregation is to say that following good economic and educational practices is evidence of discrimination. It is obvious that any optional attendance zone to offset the effects of the building of new schools as stated above will result in some students staying at the old school and some going to the new school. To say that because the adoption of an optional attendance zone resulted in a change in the racial balance of either the old or the new school is evidence of an intent to discriminate is erroneous. Again, had an equi-distant plan been in use by the School District without regard to other educational and safety factors, essentially the same racial and ethnic imbalance would have resulted regardless of the adoption of the optional attendance zone discussed in the case.

The Court pointed to evidence presented before it of the expenditure of extraordinary large sums of money to renovate older schools containing a relatively large percentage of Mexican-American and Negro students. The Court pointed to this fact as evidence of de jure segregation. Again, when the neighborhood school concept in its purest form is applied to a growing city, shaped and populated as the Corpus Christi area is, it becomes necessary from time to time to renovate old schools in the older sections of town to maintain quality facilities in those areas. Whether this plan had been implemented on an equi-distant plan, which is wholly non-discriminatory, or on the plan used by the Corpus Christi District, there would still remain that requirement that the older schools be renovated. To say that to renovate the older schools to provide more modern facilities for their students is evidence of an intent to discriminate, is to say that the implementation of a wholly non-discriminatory neighborhood school plan is evidence of intent to discriminate when it results in a racial and ethnic imbalance.

As can be seen from the above discussion, in every instance in which the Court pointed to evidence supporting its finding of de jure segregation, it was simply because of the racial and ethnic imbalance which resulted from the implementation of a neighborhood school plan which the Court found to be objectionable. This is obvious when it is kept in mind that the implementation of the wholly non-discriminatory equidistant neighborhood school plan would have resulted in essentially the same racial imbalance.

2. *The neighborhood school concept and its non-discriminatory implementation is constitutional and an accepted method of education*

"Racial imbalance in a particular school does not in itself evidence a deprivation of constitutional rights. Zoning plans fairly arrived at have been consistently upheld, though racial imbalance might result." ***Broussard vs. Houston Independent School District***, 395 F.2nd. 817 (5th Cir. 1968). The decisions do not require that "a school system developed on the neighborhood plan, honestly and conscientiously constructed with no intent or purpose to segregate the races" or *ethnic minorities* need be abandoned simply because the result is racial imbalance. *Bell vs. School City of Gary, Indiana*, 324 F.2nd. 209 (7th Cir. 1963) cert.den. 377 US 924, 84 S.Ct. 1223, 12 Law.Ed. 2nd 216. And a school district is not under a constitutional obligation to destroy its neighborhood schools to eliminate imbalance which did not result from intentional conduct. ***Downs vs. Board of Education of Kansas City***, 336 Fed.2nd 988 (10th Cir. 1964) cert.den. 388 US 914, 85 S.Ct. 898.

It therefore becomes apparent that unless this Court is prepared to hold that the neighborhood school concept, when non-discriminatory in its implementation, results in racial or ethnic imbalance, is unconstitutional and must be destroyed, then this Court must find in the Corpus Christi case that there was no evidence presented to the Trial Court from which he could reasonably infer the de jure segregation he found to exist. The judgment must be reversed.

3. *The neighborhood school concept should be preserved*

For many, many years school districts all over the United States have adopted and implemented the neighborhood school concept. The advantages to students of any given community are obvious in its implementation and its implementation has been consistently advanced, not only in the South where State imposed dual school systems formerly existed, but likewise in the Northern, Eastern, Midwestern, and Western States of these United States. It cannot be said that the educational advantages of the neighborhood school concept, when implemented in a nondiscriminatory manner, should be destroyed simply to achieve ethnic or racial balance in the schools. In every community in the country, racial and ethnic groups tend to congregate and reside in their chosen areas. These concentrations inevitably result in the very nature of man himself. It is a way of life for American citizens to reside in communities in which they feel at home and with others of similar cultural and ethnic backgrounds and to desire that their children attend schools in their own neighborhoods closely situated to their homes. To destroy this heritage of America by transporting students out of their neighborhood is to destroy American tradition and community life at its roots. To force transportation of students out of their neighborhoods to schools may miles from their homes is no different from saying that parents should be required to reside in areas where they do not choose to reside. Racial and ethnic balance in the schools can be achieved with the use of the neighborhood school concept by simply requiring families to move to other neighborhoods in which they do not choose to live in such fashion as to achieve racial and ethnic balance in the neighborhoods. This, of course, would be recognized immediately as tyranny, and a complete destruction of the freedoms traditionally known by the citizens of this country. It is no less a destruction of traditional freedoms of the citizens of this country to require their children to travel great distances from their home to attend schools simply to alter a racial or ethnic imbalance not brought about by any discriminatory intent on the part of those governing the various school districts.

CONCLUSION

Because the Trial Court found de jure segregation of Mexican-American and Negro students in the Corpus Christi School District, because racial and ethnic imbalance resulted from the implementation of its neighborhood school concept and because essentially the same racial and ethnic imbalance would have resulted from the implementation of a wholly non-discriminatory equa-distant plan, there is no evidence to support the Court's finding of de jure segregation. Absent evidence to support a finding of an intent to discriminate against Mexican-American and Negro students, the Court was without authority to order implementation of its student assignment plan and other remedies. For this reason, the judgment of the Trial Court must be reversed and rendered.

Respectfully submitted.

HARRIS, COOK & BROWNING,
By SCOTT T. COOK,
Attorneys for Concerned Neighbors, Inc.

CERTIFICATE OF SERVICE

I certify on this date copies of the foregoing Brief of Concerned Neighbors, Inc. as Amicus Curiae was served upon the following attorneys of record in this cause by depositing the same in the United States Mail, Air Mail-Postage Prepaid, addressed as follows:

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Bruce Davis, Justice Department, 550 11th Street N.W., Washington, D.C. (Attorney for United States of America)

Dated the 31st day of August, 1971.

SCOTT T. COOK.

Mr. MIKVA. Mr. Chairman, may I inquire?

Chairman CELLER. Mr. Mikva.

Mr. MIKVA. I appreciate your testimony and I appreciate the concerns you are raising. I assume that the thrust of your testimony is in support of House Joint Resolution 620?

Mr. SCHULTZ. Yes, sir.

Mr. MIKVA. How would there ever be any improvement in Corpus Christi? I realize that you don't agree that there ever was de jure segregation in Corpus Christi. The court found that there was, and you say there wasn't; but there clearly is separateness.

Most of the schools are either black or white and that is a fact. One can argue about how that came to be.

Mr. SCHULTZ. You are making an assumption there. It is a varied mixture.

Mr. HUNGATE. I understand, but there are a lot of schools which are identifiable on basis of race?

Mr. SCHULTZ. There are no schools in the Corpus Christi system that are not integrated. None of them have a perfect racial balance. Some of them are predominantly Mexican-American and some of them are predominantly Anglo. The Negro population makes up only 5 percent of the total.

Mr. HUNGATE. What do you mean by "predominantly?" Are there some schools 100 percent white or 99 percent white?

Mr. SCHULTZ. Let's look up the facts.

My memory isn't that good. I am sorry. There are none that are 100 percent. Here is a school with 65 percent Anglo, 35 percent Mexican-American.

Another one that is 90 percent Mexican-American, 5 percent Anglo, 5 percent Negro.

Here is one that is 75–25 Mexican-American.

Here is one that is 35–65. It varies.

Mr. MIKVA. There are some that are 90 percent one way or another, right?

Mr. SCHULTZ. One.

Mr. MIKVA. Just one in the whole city?

Mr. SCHULTZ. No, sir, I am sorry. There are two.

Mr. MIKVA. Is that chart a part of the briefs?

Mr. SCHULTZ. Yes, we will present it to you as evidence, yes, sir.

Mr. MIKVA. My question was this: Getting back to House Joint Resolution 620, that resolution says that no public school student shall because of his race, creed, or color be assigned or required to attend a particular school. It doesn't just have to do with busing. It would prohibit busing but it would also prohibit walking, as I said before ox cart transportation, if it was based on race.

Let's put Corpus Christi aside. If there were a town that had a lot of 90 percent schools, how would you ever generate any movement there if this amendment to the constitution were to become the law of the land?

Mr. SCHULTZ. I think, sir, what we are dealing with at least in my mind in this case and in the whole problem, we are dealing with equal educational opportunity and the right of an individual to live and go to school where he wants to under the Constitution of the United States.

And you are saying that if a fellow wants to live in a segregated neighborhood, that he has committed a wrong and he has to bus his children out to pay for that wrong.

I say that is not right, that a man has the right to live where he wishes.

Mr. MIKVA. Does he have the right to insist that no children of another race go to his child's school?

Mr. SCHULTZ. No, sir; he has not the right to say that a person of another race cannot live next door to him.

Mr. MIKVA. But he has the right to insist that his child go to a school that is overwhelmingly of his race?

Mr. SCHULTZ. No, I say he has the right to live in a neighborhood and send his children to the local school regardless of the racial mix of the neighborhood.

Mr. MIKVA. Doesn't it come out the same way?

Mr. SCHULTZ. No, sir.

Mr. MIKVA. If children go to school on buses for some other reason, that is all right?

Mr. SCHULTZ. Yes, sir, and buses are useful tools. Once again we get back to the business of being forced into a system, being forced to send your children somewhere to school out of the neighborhood.

The next step is then to force you to live in a specific neighborhood.

Mr. MIKVA. Let me stop you a moment, sir. If you have two neighborhoods that are equally close to two schools, and a child could conveniently go to either of the schools, under House Joint Resolution 620 the school board could not assign a child to the equally close school, another neighborhood school, if the assignment would be to achieve any measure of desegregation.

Mr. SCHULTZ. It could not force transfer of students based on race, that is right.

Mr. MIKVA. So then it isn't just the neighborhood school. Let's get our facts straight. At least according to what the court found in Corpus Christi there were more than two schools that were 90 percent. I count five schools. So it is more than two.

Mr. SCHULTZ. I was looking at the elementary pages. I don't know where you got your figures.

Mr. MIKVA. I am reading from Judge Seal's opinion, 324 F. Supp. 599, (1970) at page 618. I would urge you to go back and read that opinion.

Mr. SCHULTZ. I know as a matter of fact that King High School is not a 90-percent school.

Mr. MIKVA. Do you know what the figures are?

Mr. SCHULTZ. I don't seem to have them.

Mr. MIKVA. Moody Senior High School is only 3.65 percent Anglo-American. Mr. Chairman, I wish to place note 51 from the court's opinion in the record at this point.

51. The following is a list of the schools the district built since 1960, along with the approximate percentage of each ethnic group's student enrollment in 1969-1970:

School	Negro	Mexican-American	Anglo-American
King Senior High	0.24	9.23	90.53
Moody Senior High	10.57	85.78	3.65
Cullen Place Junior High	0	6.18	93.82
Tom Browne Junior High	0	8.68	91.32
Haas Junior High	0	10.99	88.66
Martin Junior High [1]			
Garcia Elementary	27.81	72.19	0
Los Encinas Elementary	12.46	74.47	13.07
Meadow Brook Elementary	0	8.46	91.37
Schannen Est. Elementary	0	3.28	96.55
Smith Elementary	1.03	12.66	86.31
Yeager Elementary	0	6.70	93.30

[1] Since this school was not scheduled to open until the fall of 1970, no enrollment figures were available. However, the school site lies in an area with a very high concentration of Mexican-Americans.

As the figures reflect, the Negro and Mexican-American students either represent a very high or a very low percentage of the total enrollment in each of the schools listed above. The schools are extremely imbalanced, ethnically.

The following schools have had major renovations and/or additions made since 1960. The percentage of each ethnic group's 1969–70 enrollment is also listed:

School	Percent		
	Negro	Mexican-American	Anglo-American
Miller High	13.70	65.61	20.69
Solomon Coles Junior High	36.95	57.97	5.08
Wynn Seale Junior High	.75	92.07	7.18
Crockett Elementary	6.39	90.69	2.92
Evans Elementary	6.48	93.06	.46
Kostoryz Elementary	0	36.14	63.59

With the exception of Kostoryz Elementary School, the above figures show that the combined percentages of enrollment of the Negro and Mexican-American students represent a disproportionately high or low percent of the total enrollment in each school.

Promoting integration of the Negro and Mexican-American students with the Anglo-American students clearly was not considered by the district's school board as a factor in its decisions as to where new schools were to be located, the size the new schools should be, or whether old schools should be renovated or enlarged. The district did not consider, and consequently did not pursue, viable alternate locations for schools which, even using a form of neighborhood school plan, would have resulted in a much more favorable ethnic and racial balance.

Mr. SCHULTZ. All right. You are very close, 88 percent for King High School.

Chairman CELLER. You still support the constitutional amendment, is that correct?

Mr. SCHULTZ. Yes, sir. I am not an attorney and I don't understand the law but it seems to me that the constitutional amendment is one way to make the law perfectly clear so that the rights of American citizens will be guaranteed.

Mr. McCULLOCH. Mr. Chairman, I should like to make this observation.

There are many of us interested in quality education for all. We are only secondarily interested in segregation or desegregation—as a means. Do you have a plan to bring quality education to every student in American schools? And if you do—and that isn't a humbling question—if you do, I will call you blessed when you submit it to this committee.

Mr. SCHULTZ. Sir, I have not developed a plan. I am not qualified to develop a plan. But once again I would have to cite our experiences in Corpus Christi. Equal distribution of materials, people and money seems to be the first step. But that is not a plan.

Mr. McCULLOCH. In Ohio we have felt that was necessary for quite some time.

Chairman CELLER. Thank you very much, sir, for your contribution.

Mr. SCHULTZ. Thank you, sir.

STATEMENT OF L. K. SCHULTZ, PRESIDENT, CONCERNED NEIGHBORS, INC., OF CORPUS CHRISTI, TEX.

I am L. K. Schultz, President of Concerned Neighbors, Inc., of Corpus Christi, Texas. Our organization is dedicated to the promotion of equal educational opportunity for all children, and preservation of the neighborhood school concept. We have more than twenty thousand adults enrolled as members. Concerned

Neighbors is a racially mixed, non partisan body with substantial representation from all socio-economic levels, and reflects the views of approximately 80% of the citizens residing in South Texas.

As the current President of this organization, I personally exemplify the nature of its broadly based membership. A native Californian, educated at the University at Berkeley, I am a corporate nomad who has resided in numerous localities in the South and West. My work has taken me to all parts of our country where I have had the opportunity to sample the views of a representative cross section of the American citizenry. Because of the foregoing factors, I believe I am qualified to speak with authority on the public attitude toward forced busing and the need for legislative action to prohibit it.

The City of Corpus Christi is under court order to forcibly alter the ethnic ratios of its schools through the vehicle of student transfers which can only be accomplished by massive busing. This situation has been brought about through a suit entitled *Cismeros* vs. *Corpus Christi Independent School District*, S.D. Texas, 1970, 324F. Supp. 599. The Plaintiffs alleged that the District had implemented since 1954, de jure segregation involving three ethnic groups in violation of the Constitution. Our case is different than others, it does not involve just the black-white situation. The alleged segregation involved three separate ethnic groups: negro less than 6% of the population; Mexican American and Anglo with a little more than 47% each. The anglo group includes such diverse ethnic sources as Italian, Chinese, German, Czech, Irish, Lebanese, Greek, and others.

Federal District Judge Woodrow Seals ruled, for the first ime, that three separate and identifiable ethnic groups did exist and because ethnic concent rations had occurred in some schools, segregation of these groups had been practiced in Corpus Christi. Based in this ruling, Judge Seals ordered a massive student transfer plan involving some 15,000 students and 60 public schools. The busing system necessary to provide transportation under the judge's order was estimated to involve 1.7 million dollars for the initial capital investment with an annual operating expense in excess of $400,000.00.

Review of the Corpus Christi case leads us to the opinion that the case was conducted in a prejudicial manner, that segregation by law did not exist, that ethnic groupings in the Corpus Christi School System were a result of neighborhood housing pattenrs and that Mexican Americans were no more an ethnic minority than were the Greeks, Italians, Chinese, Czechs, and Germansin the community.

The School District has appealed the case to the 5th Circuit Court where it is now to be considered on its merits. The Fifth Circuit Court refused to stay order. The Supreme Court granted a stay order. It is interesting to note that the Justice Department, who had been aligned with plaintiff in the trial court, joined with the School District in seeking a stay from the Supreme Court.

Prior to the desegregation case, Corpus Christi was a serene community of 200,000 persons. Although some dissatisfaction with school boundaries existed, true racial strife was unknown. All the races existed in harmony, the neighborhoods were open and school children were able to transfer freely. Segreagtion by law had not existed for blacks in this community since the Brown decision in 1954. It never existed for Mexican Ameircans. In recent years, approximately 10% of the families in the predominantly negro and Mexican American neighborhoods move each year to predominantly anglo neighborhoods. Actually, the only real deterents to complete mixing of the community in a short period of time are the economic levels of its residents. Open housing is guaranteed by city ordinance.

Since the desegregation case entered upon the scene, the once serene city of Corpus is the site of racial tension. Polarization of ethnic groups has taken place to the detriment of harmony in the community. Children who once had little awareness of racial difference are now imbedded in an environment of class-race distinction.

The point of the Corpus Christi desegregation case is simply this: A peaceful community that had not practiced segregation required by law since 1954, whose schools were all integrated based on the make up of the neighborhoods, had levied upon it an onerous massive student transfer system which would not substantially alter the racial or ethnic makeup of the schools, but at the same time would debilitate its financial base and promote tension and racial polarization within the community.

We in Concerned Neighbors have addressed ourselves to the Corpus Christi case from all sides of the issue. During the court proceedings, we listened to the charges that an equal education was not available to all our children. Others stated that some of the schools in the older neighborhoods were rundown and that better teachers, equipment, curricula, and more money were available in the new and more affluent areas only. My first action as President of the organization was to undertake an unbiased study of all aspects of our school system. This study was accomplished by more than 60 mothers of school children of diverse racial backgrounds and socio-economic levels. Interest in the study was so high that a number of proponents of forced busing joined in the effort.

The study resulted in two reports which we have combined into a package we call the comprehensive school report. The results of the study were very enlightening. We found that we did in fact have some schools that were physically below par: 6 in the older neighborhoods, and 2 in the new.

We found on the other hand that teacher experience and training were well distributed throughout the system and the student teacher ratios were generally lower in the less affluent parts of the city. The distributions of special programs, equipment and materials also favored the less affluent and the dollar distributions from district funds were approximately equal. When federal contributions were included, however, we found that the older neighborhood area schools received approximately $100 per child year more than the newer neighborhood schools. A curricula review indicated some special remedial and bilingual programs are being provided to the disadvantaged, otherwise the same basic programs are available to all. We were forced to conclude that an equal opportunity to learn is and has been available to every child within the Corpus Christi School System. Since the study, the District has called a bond election to raise funds to renovate the older schools. In fact, the programs calls for the closing of one of the oldest schools. This proposal brought a storm of protest from the citizens and parents residing around the school. The very people the court has found are being segregated are now protesting the closing of the school in their own neighborhood and demanding that it be left as it now exists. They do not feel that a better facility located some distance from their homes will improve their childrens' education.

Based on our experience in Corpus Christi and our contacts with similar problems across our country, we would like to make the following observations and pose some questions. First of all, we in Concerned Neighbors believe in a free and open society without restraint. That is to say each man should have the opportunity to achieve whatever social and economic goals he desires to pursue and should have the right to live where he chooses regardless of race or ethnic background. I ask you if a man chooses to live in a neighborhood rich in members of his own ethnic group is it not a violation of his rights as a free American to force him to send his children across town or into another city or county for an education when there are schools available nearby?

Although de jure segregation has taken place in parts of our nation, most of the country has been settled in a de facto manner. Under the Constitution a man has the right to select the neighborhood in which he lives. On the other hand, the courts today are saying that if the neighborhood he has chosen has an ethnic imbalance, he has committed a wrong and his children must be bused to rectify that wrong.

To force transportation of students out of their neighborhoods to schools many miles from their homes is no different from saying that parents should be required to reside in areas where they do not choose to reside.

In conversations with my black acquaintances they have told me of their childhood days when they were bused past the white school to a distant black school. They tell about how wrong they feel this practice was and I agree that it was a terrible injustice. I ask you if it was so wrong to forcibly bus black children prior to 1954, how is it suddenly right today to force the busing of all of our children. I ask those who argue that the busing is necessary to right the wrongs of the past, is justice served now by committing the same wrongs again? Laws which imposed segregation because of race were wrong. Laws which forcibly impose integration are equally wrong.

Numerous court decisions have been rendered in the past 2 years ordering forcible desegregation of schools through massive student transfers. The decisions have varied in intensity and direction leaving the people of our country bewildered and suspicious of the integrity of the judicial process.

The laws pertaining to one's individual rights in a desegregated society are apparently not sufficiently clear to promote fairness and consistency in the decisions. The constitution and the surrounding legal structure seem to have the latitude under which ones fundamental rights can be jeopardized at the whim of any single Federal Judge who is unresponsive to the citizenry he was appointed to serve.

We ask you the Congress of the United States to provide the citizens of our country with laws that are so clearly stated that they will not be misinterpreted to deny our rights as American Citizens.

SUMMARY OF A COMPREHENSIVE REVIEW OF THE CORPUS CHRISTI SCHOOLS

Concerned Neighbors, Inc., a non-profit organization was formed in 1970. In the process of incorporation, this organization undertook as one of its goals the preservation and promotion of quality education in Corpus Christi Schools.

As the case against the School District progressed through the courts during 1970 and 1971, a great deal of criticism of the Corpus Christi Independent School District was aired both in the courtroom, publicly via the news media, and in public forums. These criticisms alluded to gross inequities in distributions of educational equipment, personnel, dollar contributions and maintenance and placement of modern physical plants. These alleged inequities were indicated to have been perpetrated to favor certain portions of Corpus Christi at the expense of other sections of the city.

In order to develop a position regarding the many allegations, it became necessary for Concerned Neighbors to separate fact from innuendo. A Task Force was formed in July, 1971 whose principal objective was to gather factual data about the Corpus Christi School System. The result was the recent submittal of two basic reports to the Board of Trustees of Concerned Neighbors.

One of the reports dealt with data gathered from School District files. The data were prepared by a group headed by Mrs. Alice Hammond. Her group concerned themselves primarily with dollar distributions, staff experience, training, and assignment; ethnic groupings; equipment disbursements, and federal fund allocations.

Another section of the Task Force headed by Mrs. Kay Holtby engaged in a comprehensive on-site physical inspection of the school plants and grounds. This group was composed of mothers in all neighborhoods of our city. These mothers worked on a paired basis. That is to say, the mothers in the schools paired under Judge Seals plan, met together and inspected each other's schools *together*. This procedure provided objectivity as well as understanding among mothers of their mutual problems. The volunteers in this group were not all members of Concerned Neighbors, and in fact included some proponents of student transfers and forced busing.

The report prepared by this second group provided us with facts about the physical school plants, their condition and state of repair. Additional data regarding safety equipment, learning centers, bilingual programs, library and nursing facilities, educational equipment, etc., have also been provided.

The two reports submitted by the Task Force are too complex and detailed to be fully treated in this summary. Nonetheless, there are a number of observations which should be made relative to the alleged unequal distributions within our School System.

Although the leadership of Concerned Neighbors prefers to treat our city and school system as a unit, we have, because of the allegations, separated our schools into two areas: (1) those located on the west side of town enrolling approximately 21,000 students, and (2) those located on the south side of town enrolling approximately 25,000 students.

Our observations based on comparisons of these two areas are as follows:

CATEGORY I—STAFF DISTRIBUTION

The student to adult educator ratio varies from a low of 13 to 1 at Zavala School to highs of 30 to 1 at Cunningham and Cullen Junior High Schools. Seven west side schools have ratios below 20 to 1, while all south side schools have ratios of 20 to 1 or higher.

Average teaching experience varies from 6 years for Sanders School to a high of 21 for Fisher School. Although experience varies widely from school to school, the overall average in the two areas is approximately 13 years.

CATEGORY II—SPECIAL SERVICES

A. *Librarians*

Each of our High Schools and Junior High Schools has a full-time Librarian, whereas only 20 of our Elementary Schools have full-time paid Librarians. The remaining schools provide library services as they can with volunteer mothers. The distribution of full-time paid Librarians is as follows: South side, 5; West side, 15.

B. *Nurses*

Nurses are assigned to Corpus Christi Schools on a limited basis. One west side school has a full-time Nurse for Headstart students. The remaining schools have part-time Nurses. Many are attended by Nurses only one day a week.

C. *Elementary Learning Centers*

Nineteen of our forty-two elementary schools have learning centers. They are reasonably well distributed with 8 in south side schools and 11 in west side schools.

D. *Bilingual Programs*

There are 8 Elementary Schools which offer bilingual programs. All eight of these programs are held in west side schools.

E. *Kindergartens*

The Corpus Christi Independent School District operates 18 Kindergartens. These are distributed: South side, 3; West side, 15.

CATEGORY III—PHYSICAL PLANTS (SCHOOLS)

A. *Air Conditioning*

Although all Corpus Christi High Schools are air conditioned, only 14 Elementary and Junior High Schools have air conditioning. These are distributed as follows: South side, 9 schools; West side, 5 schools.

B. *Portable Buildings*

Twenty-three of our schools utilize Portable Buildings to accommodate the enrollment. Westside schools using portables number 12; Southside Schools, 11.

C. *Condition of Schools*

The Task Force carefully investigated the condition of each school in the city. They found many instances of poor conditions such as bad plumbing, inoperative restroom fixtures, broken sidewalks, drainage problems, interiors in need of refinishing and playgrounds with holes and dangerous debris in the form of broken glass and metal. The parents in two Elementary School Districts complained of the location of taverns near or adjacent to their schools. The report also indicates that 6 West side and 2 South side Elementary Schools should be replaced as soon as possible with an additional 7 Elementary Schools and 4 Junior High Schools in need of immediate repairs.

CATEGORY IV—DOLLAR DISTRIBUTION

A. *District Funds*

Operating funds are distributed on the basis of average daily attendance figures. Elementary school contributions for the School Year 1970–71 ranged between $376 per student per school year and $492 per student per school year. West side schools received an average of $432 per student, while South side schools received an average of $416 per student. The Junior High and High Schools received higher average contributions with the South side schools averaging $526 per student and the West side schools $532 per student.

School District records show total expenditures for educational equipment as follows: West side schools—$271,000 for 21,000 students; South side schools—$260,000 for 25,000 students.

B. *Federal Funds*

The Federal Government provides financial assistance to the Corpus Christi Independent School District in the form of Title I and Title II funds. These funds are distributed on a per school basis and are dependent upon the needs of the students enrolled in the school. The Federal disbursements during the School Year 1970–71 were as follows: South side Junior High and High Schools totaled

$24,903, or approximately $2.00 per child; West side Junior High and High Schools totaled $55,452, or approximately $6.00 per child; South side Elementary Schools totaled $8,416, or approximately 66 cents per child; West side Elementary Schools received $1,297,668, or more than $100 per child.

CONCLUSIONS AND RECOMMENDATIONS

In conclusion, the two reports show little evidence that any segment of our School System deprives any select portion of our children of an equal opportunity to learn. There are some evident unequal distributions indicated; however, most of these are in favor of that portion of the system alleged to be deprived. The obvious inequity is the distribution of Federal Funds. While the leadership of Concerned Neighbors supports the philosophy under which the disadvantaged receive special aid, we would like to re-emphasize its magnitude to those among our community who continually try to convince the disadvantaged that they are not receiving their share of the educational dollar.

We have noted the poor conditions in a number of our schools. Although the School District has previously indicated their attention to these problems, we re-emphasize the need for immediate action. The leadership of Concerned Neighbors therefore urges the School Board to take the following actions:

1. Replace the following Elementary Schools: Allen, Austin, Furman, Fannin, Houston, Southgate, Travis and Zavala.
2. Effect needed repairs in these Schools: Carroll Lane, Fisher, Fraser, Lozano, Menger, Oak Park, Washington, Baker, Coles, Cullen and Driscoll.
3. Provide air conditioning for all Corpus Christi Schools.
4. Review our Study of Educational Plants and direct the attention of our Maintenance and Custodial Staffs to the problems indicated therein.

Another matter of concern to those of us interested in our schools is the limited number of full-time Librarians and Nurses. We direct your attention to this problem and request correction.

We are aware that our recommendations are much easier to state than they are to carry out. It is also evident that the indicated actions will require funds beyond the limits of the present District Budget. The leadership of Concerned Neighbors is aware that we, the citizens of Corpus Christi, must share the responsibility for the needs of our School System with our elected School Board Members. Every citizen of this community must prepare himself to support the needed Bond Issues or other economic measures necessary to improve the condition of our schools.

L. K. SCHULTZ,
President, Concerned Neighbors, Inc.

SOUTH

Calk
Carroll Lane
Casa Linda
Central Park
Fannin
Fisher
Fraser
Houston
Kostoryz
Lexington
Meadowbrook
Menger
Montclair
Moore
Parkdale
Sanders
Schanen
Smith
Wilson
Windsor Park
Woodlawn
Yeager
Baker
Browne
Cullen
Haas
Hamlin
Shannon
South Park
Carroll
King
Ray

WEST

Allen
Austin
Chula Vista
Crockett
Crossley
Evans
Garcia
Gibson
Lamar
Los Encinos

WEST—Continued

Lozano
Oak Park
Prescott
Savage
Shaw
Southgate
Travis
Washington
Furman
Zavala
Barnes
Coles
Cunningham
Martin
Seale
Driscoll
Miller
Moody

Chairman CELLER. The next witness is Mr. W. Harry Davis, member, Minneapolis Board of Education.

Mr. Davis.

STATEMENT OF W. HARRY DAVIS, MEMBER, MINNEAPOLIS BOARD OF EDUCATION, ACCOMPANIED BY FRANK KNOLL, EXECUTIVE DIRECTOR OF THE URBAN COALITION ACTION COUNCIL

Mr. DAVIS. Mr. Chairman, with me is Mr. Frank Knoll, who is the executive director of the Urban Coalition Action Council, of which I am the vice chairman.

Mr. Chairman and distinguished members of the subcommittee, my name is Harry Davis. I am from Minneapolis, Minn. I am the president of the Urban Coalition of Minneapolis and I am the only black member of the Board of Education of Minneapolis public schools.

Chairman CELLER. Do you speak for the Board of Education of Minneapolis?

Mr. DAVIS. I am not speaking for them today. I am speaking in my capacity as vice chairman of the Action Council of the Urban Coalition, but I am a member of the Board of Education of the city of Minneapolis.

I am appearing today in my capacity as vice chairman of the Minneapolis Urban Coalition Action Council, the organization which sought and obtained from Judiciary Committee Chairman Emanuel Celler an invitation for me to appear before you today to present a statement giving my views and those of the action council concerning the proposed constitutional amendment aimed at banning or making impossible the integration of the public schools by means of busing.

I also appear before you today both as a product of and representative of one of the finest school systems in the country. It is a system which, when I made my way through it as a student, was essentially unsegregated. Today, in spite of having tried nearly every possible volunteer program for desegregation and integration, it is a system more segregated than when I graduated from it 30 years ago.

And it is a system which finds itself confronted with the fact that a sick, racist society is willing to tamper with perhaps the greatest political document ever written—the Constitution of the United States of America—in order to deny the very equality that it guarantees.

If the busing that is at issue here today was not busing for the purpose of achieving integration in the schools, it would not be at issue.

The controversy surrounding busing is not really a controversy over busing, it is a controversy over integration of the schools. Busing is not the issue. It is not the constitutional issue, the statutory issue, or the moral issue. Integration is the issue.

Students have been bused to schools for years, both to schools near their homes and far from their homes.

The half-truths about busing must be cleared up. As Senator Mondale from my home State pointed out recently:

> Busing is the way the overwhelming majority of schoolchildren outside our central cities get to school. Twenty million elementary and secondary schoolchildren are bused; 40 percent of our schoolchildren—65 percent when those riding public transportation are included—ride to school every day for reasons that have nothing at all to do with school desegregation.

No one has ever raised busing as a constitutional issue until it was suggested as one tool to achieve integration in the schools. In fact, many people pointed with satisfaction to the fact that busing is the safest way for children to get to school, and that it significantly reduces tardiness and absenteeism.

No one ever questioned the constitutionality of busing farm children to schools far from their homes.

No one ever questioned the constitutionality of busing suburban children to schools not so far from their homes.

No one ever questioned busing crippled children to special schools designed to accommodate their handicaps either near or far from their homes.

What we're talking about today when we talk about busing to achieve integration in the schools is, in a sense, very similar to the busing of crippled children to special schools, for any student who does not have the opportunity to associate with other students of different races is potentially educationally crippled and socially crippled. And this applies to majority race students as well as to minority race students.

The Supreme Court of the United States made this very clear 18 years ago. In 1954 the Court said a separate education is inherently an unequal education.

The Court further recognized that a separate education resulted in inequality not only in the strict educational sense, but also that it had a serious negative effect on the social development of the child.

The President of the United States is on record clearly as agreeing that a separate education is inherently unequal.

Yet all over this country we continue to have essentially separate and unequal schools.

Educational equality is what leads to all other forms of equality in this country. Without educational equality there can scarcely be equality of jobs. Without equality of jobs there can be no economic equality. Without an education equal to that of his white peers, there is little opportunity for the black, the Chicano, the Puerto Rican, the Indian, the Asian-American to achieve any measure of economic equality with his white peers.

It is said by some these days that the racial makeup of public schools ought to mirror the racial makeup of the neighborhoods surrounding those schools. We know what that means for the schools of Harlem, the schools of Detroit, the schools of Birmingham, or even the schools of my hometown of Minneapolis.

In many cases it means that blacks will be attending all-black schools, that Chicanos will be attending all Chicano schools, that Puerto Ricans will be attending all-Puerto Rican schools, or, conversely, it means that most whites will be attending all-white schools.

If the racial makeup of the neighborhood is all black, all Chicano, all Puerto Rican or what have you, it means a separate education for the children of that neighborhood. It means a separate and unequal education.

Open housing is the answer, some people say. By this I take it that they mean a black earning $8,000 a year is supposed to buy a house in a neighborhood of people earning $15,000 a year. We know what the color of those people earning $15,000 a year will be—99 percent of them will be white.

I wonder if anyone who makes this suggestion has taken a serious look at the income levels of blacks and other minorities in this country.

The reason why income levels of minorities in this country are far lower than those of whites is because they are denied equality of jobs. The reason why minorities are denied equality of jobs is because they have been denied equality of education.

It all comes back to the same place, education, equal education. And equal education means integrated education.

Recently Sol M. Linowitz, chairman of the National Urban Coalition, said:

> There are already enough forces at work in this country to pull us apart without adding still another. We are committed to an integrated society, but we are steadily becoming more divided, more separate and more unequal.

Until we have equality of education there will be few racially mixed neighborhoods, and, as a result, few racially mixed schools.

What we have today, largely, is whites and blacks and other minorities living in separate neighborhoods—neighborhoods which more and more are becoming enclaves where people from groups other than those living in the neighborhood are not safe to go.

This is supposed to be a free country, a country where people are free to go where they please. But I wonder if the members of this subcommittee feel free to walk the streets of Harlem during the day, let alone at night.

I can tell you the blacks of the city of Minneapolis do not feel free even to drive their automobiles through its upper middle-class suburb of Golden Valley, as is so clearly justified by the case of Oliver Lyle who was stopped and harassed by white policemen on several occasions as he drove through the suburb on his way to work.

Look at the sales of handguns, the proliferation of security devices, the popularity of marksmanship, judo and karate classes. The longer we stay apart the further we will grow apart and the worse it will be.

Is an America where people live behind bolted doors in guarded enclaves connected by high-speed highways the kind of America you want to see?

The only way we're going to achieve racially integrated neighborhoods is by providing an equal education for all the races. Then, in the future, minority children will be able to achieve a measure of economic equality as adults that their parents never achieved. Then you may finally get integrated neighborhoods into which blacks and other minorities will be able to move because they are on the same economic level with whites living in the neighborhood.

Integration of the schools must come before there will be integration of the neighborhoods.

You know, during World War II, at the height of the anti-Japanese hysteria when this Government put thousands of its citizens who happened to have had ancestors from Japan in concentration camps, the Government made a study of the entire country to find a place where it could establish a military intelligence service school where it could teach those Japanese-Americans who had volunteered for service and who had a knowledge of the Japanese language the techniques of military intelligence.

The purpose of the study was to find the place where the Japanese-American could be brought and receive the best welcome—or the least amount of opposition—from the civilian population. I'm proud to say the area selected was the Minneapolis-St. Paul area.

The reputation Minneapolis had as a prejudice-free city has grown over the years and is perhaps part of the explanation why the population of blacks in the city has risen dramatically in the past 10 years from around 12,000 to nearly 19,000 today.

But it strikes me as no odd coincidence that, in the face of this increase in the number of blacks, 3 years ago the white citizens of Minneapolis elected—and have since reelected—as mayor a man who today says he has a public mandate to try to prevent the Minneapolis Civil Service Commission from following a U.S. district order—substantially reaffirmed en banc by the Eighth Circuit Court of Appeals—to hire minorities for the city's all-white fire department—an organization which has not had a black or other minority person in it for as long as anyone can remember.

Meanwhile, during the past year the administration of the Minneapolis public schools has been in the midst of trying to work out ways to achieve integration in the city's schools. Apparently in response, a great hue and cry was raised by many of the city's white citizens and manifested itself in the last school board election in the victories of two individuals who campaigned on no platform other than that they opposed busing to achieve integration in the schools.

Yet I have the feeling that up until 3 or 4 years ago many Minneapolis citizens who are complaining today had been sitting back rather gleefully watching the Federal Government force integration on an unwilling white population in the South. Many of these citizens, I believe, stopped chuckling when it appeared they would be faced with prospect of desegregating public schools in Minneapolis. The change of heart seems to be true in cities all throughout the northern United States.

For years it appeared quite clear that northerners thought integrated education was fine for the South. I can't remember hearing a single northern Member of Congress raise a word in opposition to desegregation of schools in the South, or to the ways integration was carried out there—including busing. No, in the North scarcely a word was raised in opposition until it began to be required of the North as well. That is when we started hearing people talking about the "unconstitutionality" of busing.

Instead, what we should be hearing today is courageous men of government talking about the necessity and the propriety of equal education.

As Senator Mondale has said:

We're at a crosroads. School desegregation in the South is largely completed. But we in the North are now beginning to feel the pressure to abandon the course set by the 14th Amendment.

In the face of the kind of pressure we're seeing today in Minneapolis and all around the country, I will not deny that it takes men of courage and a clear vision of the future to resist the temptation to pull one of the blocks out of the foundation of law that has served white citizens of this country so well for so many years.

I would remind you that in so doing you will be destroying the one thing we minorities have clung to for years—the certainty that, be it not so in fact, equality is at least guaranteed in law, and surely ultimately will come to us.

It is much easier to talk instead about devoting government expenditures to insuring modern, clean, well-lighted, well-heated schools with alert, well-trained teachers. No one who calls for integration of the schools would deny the desirability, the necessity, of achieving such conditions in the schools.

But what we know and what we can see from what is happening all around us today is that there is more to education than just a building and a teacher. A true education is also—and perhaps most importantly—an experience in associating with and interacting with one's peers.

As long as the group of students one's child associates within class are all of the same race, the Supreme Court has said—and four Presidents have agreed—his education will be seriously lacking. As long as the group of students one's child associates within class are all of the same race, the more this will result in separation, misunderstanding, fear and hatred among the races as they grow to adulthood.

I cannot believe that any of the members of this subcommittee—nor any of your constituents—want to live in a country pervaded by fear and hatred. That is not the promise the founding fathers held out to the millions of immigrants who have poured into this country. That is not the promise we as parents hold out to our growing children.

It will be the promise of the future, however, unless we begin at the beginning—in the schools—to learn to understand one another.

Mr. Chairman, members of the subcommittee, as Sol Linowitz said so well recently, it would be "foolish and tragic" to discard the mechanism of busing as one tool to be used in achieving integration of the schools.

It is vital to the national interest and to our whole concept of an integrated society, as he put it, that this subcommittee not recommend the passage of a constitutional amendment designed to prohibit busing to be used to achieve integrated and equal education.

Thank you, Mr. Chairman.

Chairman CELLER. Thank you very much, Mr. Davis. We appreciate your coming and we thank your associate.

Chairman CELLER. Our next witness is Mr. Alan R. Perry, chairman, Winston-Salem/Forsyth County Board of Education, Winston Salem, N.C., who will be introduced by our colleague, Congressman Wilmer Mizell.

STATEMENT OF HON. WILMER DAVID MIZELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. MIZELL. Mr. Chairman, I want to thank the committee for extending an invitation to Mr. Perry to appear here personally and testify because of his practical knowledge of dealing with almost an impossible situation in the Forsyth County Winston-Salem School System. He certainly has shown leadership with wisdom and compassion in dealing with this situation.

So I thank you, Mr. Chairman and the committee for inviting him to come. I am sure that what he has to offer will be of benefit during the deliberation of this subcommittee on this very vital issue today.

Chairman CELLER. We appreciate your presenting your constituent. Mr. Perry, we are glad to hear from you.

STATEMENT OF ALAN R. PERRY, CHAIRMAN, WINSTON SALEM/FORSYTH COUNTY BOARD OF EDUCATION, WINSTON-SALEM, N.C.

Mr. PERRY. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to testify before this subcommittee on a subject of national importance. It is a particular honor to appear before Members of Congress who have compiled such a distinguished record in support of constitutional rights, and I appreciate the introduction by our most able Congressman, Mr. Mizell.

My name is Alan R. Perry, and I am chairman of the Board of Education of the Winston-Salem/Forsyth County School System. I have been an elected member of this board since 1968 and its chairman since December 1971.

In private life I am vice president of Booke and Co., employee benefit consultants and actuaries.

The Winston-Salem/Forsyth County School System is one of the largest school districts in the Nation under Federal court order requiring total pupil integration. To my knowledge, it is the only school district in the Nation ever to be invited by a Federal court to reduce the amount of cross-busing ordered previously by that same court. It is, to put it bluntly, a school district in which considerable confusion exists as to what the Constitution of the United States requires with respect to pupil assignment.

My purpose here this morning is to present to this subcommittee a factual summary of the situation now existing in our school district, in the hope of facilitating your deliberations. To the maximum extent possible, I shall attempt to serve as a spokesman for our board; nevertheless, it should be pointed out that each member of our board has his or her own personal opinions on the various aspects of this complex question.

Our board members, our excellent administrative and teaching staff and countless volunteers have worked hard this year to implement the present pupil assignment plan in the best manner possible for the sake of all pupils. Despite the many problems involving transportation, the school year to date has been a good one for many students and their teachers, although the rosy picture presented by the U.S. Civil Rights Commission is far from accurate or complete.

The new grade structure offers definite educational advantages, especially at the secondary level, and our professional educators believe that it should be continued next year, with improvements, pending more complete evaluation.

The questions that I cannot answer affirmatively are whether the massive cross-busing that exists today in our school district will achieve the equalization of educational opportunity which its proponents and the courts believe it will achieve, and whether massive cross-busing is the best path to equal educational opportunity in the metropolitan school systems of the entire Nation. I believe that more viable alternatives can and must be found.

Mr. McCulloch. May I interrupt the witness there, and I do not do it with any feeling of animosity. Will you suggest to us some of those approaches that might solve the problem for us?

Mr. Perry. Yes, Mr. McCulloch, I will.

Mr. McCulloch. Thank you. We will appreciate it and we will give your answer every due consideration.

Mr. Perry. Thank you, sir.

There are significant educational disadvantages in our school system's present structure, too. It has been necessary to use buildings not designed for the grade levels assigned to them and sometimes lacking necessary facilities (e.g., laboratories).

Extracurricular activities have been curtailed because of the difficulty many students face in finding transportation if they remain after school. Principals, responsible for supervising complex busing operations, have less time to spend as instructional leaders. Black and white parents, some of them with children attending four or five different schools, show less support for a particular school or for the public schools in general. Federally funded compensatory education programs have been weakened by the dispersal of eligible pupils.

But the principal problem, as I see it from my vantage point as chairman of the Board of Education, goes well beyond these matters. It is a crisis of public confidence in the ability of local, State, and National Government to deal fairly and uniformly with a national issue of major importance to the future of public education and the future of the nation itself.

This crisis of confidence is compounded by confusion and uncertainty as to what the Federal courts actually require in the realm of pupil integration, as to the will and intent of the Congress, and as to the unreal distinctions between school systems in the South and school systems in the North.

Elsewhere in my testimony, I will present details of the pupil assignment and busing plans now existing in our school system. At this point, however, I would like to outline a chronology of recent developments that have added to the confusion and uncertainty in our own school district and further eroded the base of public support which we so desperately need to improve our educational program.

The Winston-Salem/Forsythe County school system, the second largest in North Carolina, is a consolidated school district with an enrollment of approximately 48,000 pupils at the beginning of the

1971–72 school year. The systemwide ratio of black pupils to white pupils is approximately 29 percent, and most of the black pupils live within the city limits of Winston-Salem.

Prior to 1968, the school district had not been involved in desegregation litigation.

The school system has consistently adhered to guidelines set up by the Department of Health, Education, and Welfare pursuant to the Civil Rights Act, HEW representatives visited the school system and approved its pupil assignment plans and attendance area maps on every occasion until, by reason of lawsuits filed against the system in 1968, the submission of plans was no longer required.

The present pupil assignment plan under which the district is operating was ordered by the U.S. District Court for the Middle District of North Carolina as a result of one of the two desegregation suits filed against the board: *Catherine Scott, et al.* v. *Winston-Salem/Forsyth County Board of Education.* Following the decision of the U.S. Supreme Court in *Swann* v. *The Charlotte-Mecklenburg Board of Education*, the Court of Appeals for the Fourth Circuit, on June 10, 1971, remanded the *Scott* case to the U.S. district court with instructions to obtain from our board a revised pupil assignment plan.

The district court told the board:

> Despite the substantial difference between the findings of this Court . . . and the findings which form the predicate of the decision of the District Court in Swann, it is apparent that it is as 'practicable' to desegregate all the public schools in the Winston-Salem/Forsyth County system as in the Charlotte-Mecklenburg system and that the appellate courts will accept no less. Consequently, this Court can approve no less.

Acting in good faith, the board developed a plan for submission to the Court. The board unanimously advised the Court that, although "this is the least expensive, least disruptive, least burdensome and most equitable plan the board has been able to devise and still accomplish the required objective of achieving a racial balance in the public schools of Forsyth County which will be acceptable to the Court, it is not a sound or desirable plan, and should not be required, because the residential pattern of Forsyth County makes the accomplishment of such objective impossible without massive, expensive busing which imposes an otherwise unnecessary financial burden on the public and a tremendous burden of inconvenience and time consumption on pupils and parents, and traffic hazard on pupils."

On July 26, 1971, the district court ordered the plan into effect. It resulted in approximate racial balance in every school in our school district. The plan, in the opinion of the Court, was neither more nor less than was required by the law.

On August 31, in response to a request from the board for a stay, the Chief Justice of the United States handed down an in-chambers commentary that, while denying the stay, suggested that the district court had required something that was indeed more than the Constitution required. I have been told that copies of this 10-page opinion were dispatched to every district and circuit judge in the United States.

The board asked the district court to vacate its order, in view of the Chief Justice's statement. Meanwhile, the plan was implemented at the start of the 1971–72 school year.

On October 4, less than 6 weeks after the start of the school year, the board's counsel received a letter from the district court saying that the Court had become "increasingly concerned about the children being bused on the interstate" (Interstate Highway 40) and adding that there was serious question as to whether the Court "should continue to require implementation of a plan that involves busing so many children on this highway." The board replied that it needed more definitive guidelines.

On December 3, the district court issued a lengthy memorandum order which cited the school system's numerous good faith attempts to comply with relevant court decisions and stated that it was clear, "by any standards, that the Board of Education is now operating a unitary system."

In a sharp criticism of cross-busing, the court said:

> The fact that the practice of "cross-busing" existed to achieve segregation in dual school systems prior to *Brown*—and was condemned in *Brown*—does nothing to support its validity now.

The board was given the opportunity to submit a revised assignment plan for the 1972–73 school year, a plan which "need not result in any particular degree of racial mix in any school in the system." However, the Court firmly reminded the board that its previous assignment plan for 1970–71 was not accepted on appeal and that "adequate consideration" should be given to busing and split zoning.

Today, as I sit here before this committee, in district court, the board is submitting a revised plan that would halt cross-busing of elementary school children except for voluntary majority-to-minority transfers. The plaintiffs in the case have said they will appeal if the district court accepts the revised plan.

Under the present plan, a total of 32,000 pupils are being bused—or approximately two-thirds of the pupils in the system. If assignments were made with regard to residence but without regard to race, approximately 21,000 pupils would be bused because of the distance between their homes and schools.

Therefore, approximately 11,000 pupils are now being transported for the purpose of pupil integration. In addition 8,000 pupils are being transported greater distances and over more heavily traveled roads and highways than would otherwise be the case. To achieve the racial ratios required by the present plan, about two-thirds or about 9,250 of the system's black pupils are required to attend schools outside of their neighborhood areas at any given time, and one-third or about 11,250 of the system's white pupils are required to attend schools outside of their neighborhood areas at any given time.

The school system operated 216 buses in 1969–70 and 276 the following year. The board estimated that implementation of the present plan would require as many as 314 additional buses, if the schools were to operate on the same opening and closing schedules, and up to 157 additional buses if opening and closing times were to be staggered.

With local tax funds for the purchase of new buses severely limited, the Board has had to "make do" with a total, at the present time, of 366 buses—including more than 100 vehicles that are 12 or more years old and "borrowed" from other school districts' discards.

The inadequacy of the present supply of buses has resulted in many scheduling and operational difficulties that affect white and black children alike. No immediate improvement in the school system's financial difficulties is in sight; last year, the board found itself $1.3 million short of the revenue it believed necessary to offer a sound educational program for the current school term, irrespective of transportation.

The total estimated cost for transportation this school year is in excess of $1.4 million, double last year's expense. While increased State aid has become available, the local share of the total cost has increased by more than $360,000—principally because, under North Carolina law, the local district is responsible for initial purchase of schoolbuses, and because the State makes no provision for salary supplements for adult busdrivers.

While the burdensome cost of the present assignment plan was a factor in the board's judgment that it is neither sound nor desirable, it was by no means the only factor, or even the principal factor. The board is also concerned with the amount of time spent by pupils involved in cross-busing, up to 3 hours per day in a few instances, and an average of an hour and 20 minutes throughout the system, and the board is concerned with the traffic hazards that are inevitable in the transportation of 32,000 pupils.

Because of the geographic size, about 420 square miles, and residential patterns of the school district, it is necessary under the present pupil assignment plan to transport some 8,500 pupils daily on 4-lane expressways including Interstate 40 and U.S. Highways 52 and 421.

Under the present plan, loaded schoolbuses travel more than 1,000 miles per day in 65-mile-per-hour traffic zones at a speed limited by State law to 35 miles per hour. While the risk of several types of accidents, like intersection collisions, is reduced on limited-access expressways, the risk of collision between slow-moving vehicles and high-speed traffic does exist.

The board has made every possible effort to protect the pupils who must ride these expressways. Newer buses with better warning devices have been assigned to these routes, and the board successfully blocked an attempt by the State highway commission to increase the speed limit on portions of the Interstate 40 west of Winston-Salem to 70 miles per hour.

Unfortunately, the State highway commission has shown a callous disregard for the safety of the schoolchildren of Forsyth County by refusing to post schoolbus warning signs on Interstate 40 and Highways 52 and 421.

Despite repeated requests by the board and concerned citizens, the matter is apparently still "under review" in Raleigh 7 months after the initial request.

At one point, State highway officials said that Federal restrictions would prevent such warning signs on Interstate 40. The board communicated with the U.S. Department of Transportation, which helpfully advised us that it did not recommend the use of interstate highways by schoolbuses.

Mr. Chairman and members of the committee, if I could leave with you today only one basic point, one request, one expression of need on behalf of the people of Forsyth County, it would be this:

We respectfully urge you to do whatever may be required to end the seemingly endless confusion and uncertainty over what constitutes a "unitary" school system in these United States of America.

If a constitutional amendment is what it takes, then let us move as rapidly as possible toward its passage by seeking appropriate language that protects the rights of all.

However, the amendatory process is a slow one, and the need for clear, fair, and uniform national law, to be applied throughout the 50 States, exists right now. It is my own belief that, side by side with the search for appropriate constitutional revision, should go a top priority search for legislation that would:

(1) Provide a single definition of a unitary school system that would be uniformly applicable in all regions of the Nation.

(2) Define in understandable terms what the Supreme Court meant in Swann when it said:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.

(3) Provide for alternate methods, other than cross-busing, to achieve equality of educational opportunity, methods that would include maximum incentive for substantial additional investment of local, State and Federal funds for schools, especially elementary schools, wherein achievement levels, not racial levels, are below systemwide norms.

I personally feel, that in order to provide equality of educational opportunity across an entire school district, it is necessary today to focus large and substantial amounts of money and other resources at the elementary and preelementary level. I think classroom teacher ratios at the elementary level should be far, far below what they are now. I think only in this way will we achieve truly equal educational opportunity.

I think until we are able to do that, the great burden of long-distance trips on buses will not help to achieve that equality we seek.

Thank you, Mr. Chairman.

Chairman CELLER. I understand that before your new plan was devised, 15 schools were all black, seven schools were all white.

Now, we are informed by the Civil Rights Commission of the following: As a result of the change, there are no all-white schools. There are no all-black schools. In other words, there are no longer 10 schools all black. There are no longer seven schools all white. This is what the Civil Rights Commission says of the new plan:

> The Superintendent's office describes the interaction of blacks and whites in the high school and senior high schools as phenomenal. The Superintendent's office reports that there have been fewer disturbances and problems this school year than in the past several years. There have been no confrontations, one small walk out of white students at a junior high. No riots. No occasions for calling police in school grounds.
>
> However, this winter quite a comprehensive survey of teachers and pupils was conducted by the Superintendent's office to see how the staff fee's about modifying the current plan. The survey indicated widespread approval of the current plan and an overwhelming desire to continue it.

Now, do I understand that your views run counter to what I have just read?

Mr. PERRY. Mr. Chairman, in part my views certainly do run counter to what you have just read. I first read of the study that was released by the Commission on Civil Rights in my morning newspaper. I don't want to be presumptuous but it was almost analogous of the members of this distinguished committee finding that another Government body had written a report about the committee without ever having contacted the chairman of the committee or any of its members.

We are not contacted. The chairman of the board of education was not contacted nor any of the board members by any representatives of the Civil Rights Commission. We were disturbed to hear in Father Hesburgh's testimony that "experienced members of the staff had been sent to five cities in which busing had been used extensively."

As far as we can determine no representative of the Civil Rights Commission has ever visited the Winston-Salem/Forsyth County school system.

My immediate reaction to the report was that it was not a balanced report. It overlooked things that should be included. The statement was made that there had been no racial fights. There are racial fights this year. There will be racial fights next year and probably for the next 10 years to come in any school system.

Chairman CELLER. Do you think that the teachers support the plan? Apparently the information is that the teachers of these schools are now supporting the new plan.

Mr. PERRY. Mr. Chairman, the fact of the matter is that the grade structure, and I say in my written testimony, it is in material that has been submitted, that the grade structure we went to in order to implement this plan has received considerable endorsement and enthusiasm by a number of parents and teachers. The thing we are asking for is action to end the state of confusion that exists over what is required of our school district and others in the area of long-distance cross-busing.

In reacting to the Commission report, I am not taking a position that it is completely wrong. I am taking the position that it was an unbalanced report and I think that it is just as bad to tell people that everything is wonderful as it is to tell people that everything is terrible.

Mr. POLK. Mr. Chairman.

If I may make one comment at this point, Mr. Perry, you mentioned that a constitutional amendment is necessary and that you are in favor of it. However, it doesn't seem to be necessary in light of what the Chief Justice wrote in his in chamber opinion of August 7, 1971.

I don't know if the Chief Justice knew something he wasn't telling us, but in his footnote he says:

> Footnote 1. By way of illustration, if the record showed, to take an extreme example of a patent violation of *Swann* that the average time was three hours daily or that some were compelled to travel three hours daily when school facilities were available at a lesser distance, I would not hesitate to stay such an order forthwith until the court could act, at least as to the students so imposed on.
>
> The burdens and hardships of travel do not relate to race. Excessive travel is as much a hardship on one race as another. The feasibility of a transfer program to give relief from such a patently offensive transportation order as the one hypothesized, would also be relevant.

It seems to me that this patent violation of *Swann* is not a hypothetical but is the situation you say exists in Winston-Salem.

Mr. PERRY. Mr. Counsel, we have very few bus runs that are in total 3 hours per day. The average is less than that. It seems to us the court in asking us to submit or inviting us to submit a revised plan was concerned more about traffic safety than it was about time and distance.

We are concerned about traffic safety and time and distance.

I hope, gentlemen, we are also concerned about equal educational opportunity. I know that many people who oppose busing are opposing busing which may be a mile in distance because they actually oppose integrated schools.

Our board has not taken that position and I hope they will not.

Mr. POLK. Thank you.

But it seems in view of the circumstances you described and in view of the statements of Chief Justice Burger and the Court, you will get relief long before a constitutional amendment could be passed, isn't that so?

Mr. PERRY. There is a question about that because the Fourth Circuit Court of Appeals remanded our case to the district court with instructions to desegregate all of the schools in the system in accordance with the *Swann* and the *Mobile* cases.

This is when we got our orders. Our district court had found de facto segregation existing in the school system, not de jure segregation. They found that the district lines had been drawn in good faith but despite those findings, he felt compelled to order integration that amounted to approximate racial balance throughout the system.

Mr. POLK. Excuse me. Did you say the board found that or the court did?

Mr. PERRY. No; the court found that.

Mr. HUNGATE. Mr. Chairman.

Chairman CELLER. Mr. Hungate.

Mr. HUNGATE. Do I understand that you are chairman of the board of education and that despite some investigation you have been unable to ascertain that anyone in the community was interviewed by the Civil Rights Commission?

Mr. PERRY. Yes; we know of individuals on the staff who were interviewed. We were troubled, Mr. Hungate, that the chairman of the board or none of the members of the board were contacted. In one place in the study it indicates that the board——

Mr. HUNGATE. They did send representatives there?

Mr. PERRY. No, sir; we have not been able to discover any indication. They did this on the telephone.

Mr. HUNGATE. Oh, the telephone.

Thank you.

Mr. PERRY. Yes, sir. I think the study was very interesting. There are many things in it that were accurate.

Mr. HUNGATE. Then so far as you know, all of the inquiries they made were by telephone?

Mr. PERRY. Yes, as far as I can determine a call was placed to the superintendent long distance and he was asked to submit certain material, the court documents and instructions to principals, and so forth. He did so. The call was made back after that material was looked at and those calling, I don't know their names, talked with an associate superintendent. I understand they also talked with people in the community but we have not been able to determine with whom they talked.

Mr. HUNGATE. Was this on the phone or in person?

Mr. PERRY. Apparently on the telephone. We can find nothing to indicate there was an actual visit made to the school district.

I understand they are coming to visit us next week.

Mr. MIKVA. Mr. Chairman.

Chairman CELLER. Mr. Mikva.

Mr. MIKVA. Mr. Perry, I appreciate your testimony and I think that the way you have described it your board has made some good faith efforts.

I am troubled with what seems to be an inconsistency in your statement. If you don't want to answer this for certain reasons, you can take the fifth amendment and I will withdraw the question.

I am troubled how you could make recommendations 2 and 3 and give the reasonable approaches that you have given to this problem and still urge on us as constitutional amendment. Because if we approve that, you are out of business as far as trying to achieve any manner of desegregation in your schools.

You won't be able to do it. There will be no assignments on the basis of race allowed.

Mr. PERRY. Our board has voted on several occasions unanimously in support of the majority to minority transfer with free public transportation. Because of this, if conditional amendment language would prohibit that, that would not be in keeping with the spirit of our board.

Mr. MIKVA. It flatly would.

Mr. PERRY. If that was the case, we would hope that language would be amended.

Mr. MIKVA. One of the reasons I have concern is that I come from a town with a board which on its own and without court order achieved a measure of desegregation in schools by busing. If this amendment passes, the board has to disengage completely and go back to the all black schools and all white schools. Again, from the tone and reasonableness of your statement, I take it that your board does not want to go back to separate schools, that you are looking for a way to find some better educational system.

Mr. PERRY. That is exactly right. We have no desire to return to separate but unequal schools.

Mr. MIKVA. I don't want to belabor the point, but I would hope you would look again at the constitutional amendment and I hope you would modify your views on that in the future because this is one of the problems the subcommittee must face. A lot of schools are telling us that we are not for segregated schools but we want Congress to approve the constitutional amendment.

Mr. PERRY. The amending process is slow and I think congressional action is needed prior to that. However, I also said in my statement that if you decide the amendment route is the way you as a committee would like to go, let's make sure that language does protect the rights of all including the rights of all students and the minority who would like to transfer.

Chairman CELLER. We have three more witnesses.

We are very grateful to you for your testimony.

Mr. PERRY. Mr. Chairman, I appreciate the opportunity to be here today.

Chairman CELLER. Our next witness is Dr. Nolan Estes, superintendent of schools of Dallas, Tex., and also Mr. John Plath Green, president of the school board, and Mr. Ben Clark, general chairman, Council of Citizens for Neighborhood Schools.

Our distinguished colleague Congressman James Collins wishes to introduce you.

STATEMENT OF HON. JAMES M. COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. COLLINS. We brought with us our distinguished superintendent of schools, Dr. Estes, the head of the school board, Mr. Green, and a businessman that represents concerned citizens.

I might say this about the group that we have with us. I particularly wanted this group to hear Dr. Estes because he has been known as the most progressive and most innovative man in the South. He certainly is the most open-minded of any man. He was with HEW and he has had experience with the U.S. Office of Education in Washington and in every suggestion and in every idea that has even been brought forward.

I wanted you to have the advantage of his testimony.

STATEMENT OF DR. NOLAN ESTES, SUPERINTENDENT OF SCHOOLS, DALLAS, TEX.

Mr. ESTES. I am Nolan Estes, the superintendent of schools for Dallas, Tex. I represent the eighth largest city school system in the Nation which employs 12,500 people to provide educational services for 180,000 students on 184 campuses and in a school district that encompasses more than 351 square miles on a budget that is in excess of $150 million.

Of course we are here today to talk about something that is of great concern to adults in general but to parents in particular. I think this is evidenced by the result of the Florida primary. We think that the response of this Congress to this particular issue may well spell the differences between a soaring and scintillating 1970's and one that might be sorry and sinking.

Particularly we are here to talk about the provision of equally effective education for all children of all people.

Having made a number of appearances before congressional committees of this kind during my tenure as the Associate Commissioner of the U.S. Office of Education, I know you have had a number of witnesses appearing before this committee making emotional pleas, both for and against the busing of boys and girls to achieve integration.

But as a man who helped write and enforce the original guidelines under title IV of the Civil Rights Act and a person who was responsible for administering the Elementary and Secondary Education Act in the U.S. Office of Education and other acts calling for an expenditure of more than $4 billion a year, I cannot tell you as a result of that experience—which involved attempting to find innovative approaches to providing desegregated education and equally effective schools—that the tools that are commonly in use at the present time by our courts and others actually achieve increased achievement on the part of boys and girls.

In fact, there is mounting evidence, Mr. Chairman and members of this distinguished committee, which indicates that desegregation is counterproductive and I would like to just review briefly a report which has been published on seminars that were held at Harvard University financed by the Carnegie Corp., involving numbers of experts, both inside and outside the field of education.

I think you can understand that, because Mr. Moynihan and Dr. Thomas Pettigrew cochaired these seminars, that they have put the academic seal of approval on these findings.

The purpose of the Harvard seminars was to reanalyze and reexamine the findings of the Coleman report.

I would like to summarize, briefly, three or four of the high points.

In the first place, this recently published report says that as a result of such study—that is of the Coleman findings—the support of several of the conclusions of equal educational opportunities report seem much weaker than before.

A good illustration appears in Cohen, Pettigrew, and Riley's chapter in this book.

Mr. Brooks. Mr. Chairman, I want to bring to the attention of the committee that our distinguished colleague, Congressman Earle Cabell from Dallas, is here and that it is at Jim Collins' request that we were able to hear Dr. Estes and Mr. Green.

Our colleague from Texas, Congressman Teague, has been chairing the caucus this morning and could not be here. Our Texas Democratic delegation meets at 12:30 where he and I must go shortly.

To Ben Clark, I say, we are delighted to have you here. Mr. Teague was very insistent that you have an opportunity to testify and not just submit your statement.

Chairman Celler. We are trying to hear everybody but the bells have rung. We will have to meet tomorrow morning unless these gentlemen wish to return this afternoon.

Can you gentlemen return here at 2 o'clock?

Mr. Estes. Yes, sir.

Chairman Celler. The bells have rung and we have to answer the quorum call.

Therefore, we will adjourn at this moment and resume at 2 o'clock.

(Whereupon, at 12:25 p.m., the committee adjourned, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

Mr. Brooks (presiding). The subcommittee will come to order.

The Chair recognizes the gentlemen from Dallas. We are pleased to have you.

You may proceed, Dr. Estes.

STATEMENT OF DR. NOLAN ESTES, SUPERINTENDENT OF SCHOOLS, DALLAS, TEX.—Resumed

Dr. Estes. Thank you, Mr. Chairman and members of the committee.

At the time of our recess shortly before lunch I was talking about the report that has just been published as a result of seminars conducted at Harvard University by leading experts both inside and outside of education on a reanalysis of the Coleman report.

Much of the testimony that this committee has heard from various sources has been based on finding of the Coleman report. So I think these conclusions as a result of this Harvard study are extremely important.

Let me summarize them briefly for you.

In the first place the report says that as a result of such study the support of several of the conclusions of the equal educational opportunity report seems much weaker than before. A good illustration of that appears in the Cohen, Pettigrew, and Riley chapters of the Harvard report.

They try to check whether integration of schools directly benefits the academic achievement of the Negro child. It is fair to say that on the basis of their past work that they formerly believed it does. They now find that the equal educational opportunity report and other studies have not been successful in untangling the effects of race on social class.

We go on to say that although the equal educational opportunity report concluded that the characteristics of the other members of the student body influenced verbal achievement of individual students, that is, although the report indicated that integrating students increased achievement, Smith, like Cohen, Pettigrew, and Riley, found no evidence in the equal educational opportunity report to support the position.

In addition, as you know the equal educational opportunity report that was published by the Office of Education while I was serving as associate commissioner said that much of school achievement, in fact 80 percent of minority students', is attributed to the home.

Christopher Jencks finds after reanalyzing it that more, rather than less, of the achievement of the student is attributed to the home.

Two or three other comments. They go on to report in their analysis that we really don't know that integration will boost the achievement of disadvantaged children. In other words, neither school upgrading nor school integration will close the black-white achievement block that was hoped for in the *Brown* decision in 1954.

Mr. ZELENKO. Excuse me, Dr. Estes, but is there any evidence that segregation improves the achievement of minority students?

Dr. ESTES. We have evidence that we are going to present in just a moment that will indicate to you that the most effective approach that we have found is compensatory education in the neighborhood school.

Mr. ZELENKO. That is in a segregated setting?

Dr. ESTES. That is in a program that provides for a confluence of cultures.

Mr. POLK. Mr. Chairman, Mr. Estes, didn't the report also indicate that compensatory education was the least promising way?

Dr. ESTES. Yes, but I would point out that his report was based on our experience in the last 6 years in title I in which we have provided $5 to $6 billion for compensatory education for more than 9 million children and 41,000 school districts.

As you probably know, when we implemented title I program in September 1965, the instructions to us at the office of education were to involve as many students as possible with the limited funds that were made available at the time. That is, spend a little money on a lot of kinds in order to tool up for this massive program because it was anticipated at that time that the appropriation for title I would be increased significantly.

The authorization at that time was $3 to $4 billion. Tragically, that was never obtained. Therefore, the compensatory programs that Christopher Jencks is talking about would be not comparable to the programs we have implemented now in the Dallas system which do provide for critical mass and concentration of efforts.

Mr. POLK. You disagree with that part of Jencks report then, which downgrades compensatory education but agree with that part of the report that indicates the strength of parental influence and homelife as important?

Dr. ESTES. Yes, sir.

Mr. POLK. Thank you.

Dr. ESTES. Mr. Jencks goes on to say as a part of the Harvard study that the most promising alternative, and I might add here, is not forced busing, is not racial mixing, is not satelliting, it is not closing inner city schools but the most promising alternative would be to alter the way in which parents deal with their children at home.

I am aware that this committee has had a lot of testimony which gives evidence of research studies that have been conducted.

In order to save you time, I would like the entire testimony as well as our research findings to be included in your report.

Mr. BROOKS. Without objection we will include your statement and your appendices in the record.

(Dr. Estes' statement and attachments are set out at p. 925.)

Mr. ESTES. I would summarize the evidence we are submitting to suggest that the evidence this past year in Dallas supports the findings of this path-breaking report developed at Harvard University which suggests that integration, particularly where there is great economic distance, does not increase achievement.

Actually we find that in many instances your achievement has decreased. It does not provide for greater confluence. It develops greater hostility. We have evidence now to suggest that it does not provide for desegregation, rather it accelerates the time when our city will be resegregated.

I think it is not important at this point that I underscore the fact that I am not an opponent of integration. My 20 years in the profession of education indicates quite clearly that I believe that racial integration of American society is necessary and imperative—that we have got to protect, we have to enhance, the cultural pluralism within our society—that desegregation of schools can contribute when feasible to this process. But most important of all, the primary job that society has given to us as public school people is to provide equally effective educational opportunity and that is of prime importance.

If we do not do this well, then other institutions in our society simply cannot perform their functions. You don't need someone with chalk dust on them to come up and tell you how to run your business. You don't have time to listen to a lot of opinions. That is the reason we are trying to provide evidence that will assist you in making an appropriate decision with regard to this House joint resolution.

My job in the Office of Education involved working directly with the 30 major school districts across this country. I agree with the president of the school board in Seattle, who at that time was chairman of the Council of Great City Schools, when he said: "The tragic shocking fact is that most big city schools are going downhill and at a rapid pace."

I left Washington to go to Dallas because I thought that Dallas had an opportunity and chance to show that quality and bigness could go hand in hand. I was fortunate to be able to move to a city like Dallas because it was a healthy city that had a healthy school system. It has the human resources to do the kind of job and meet challenges we were facing in the 1970's.

Dallas had the financial resources that were necessary and fortunately it had a little bit of time in order to do this. It has successfully complied with court orders in 1961 and 1965, and moving toward elimination of the dual school system that was State imposed on the local school district.

I would like to indicate in summary some of the accomplishments that we have made in the last 3 or 4 years.

One, we have made tremendous progress in individualizing our instructional program. We have added ethnic studies, expanded bilingual programs, moved toward nongraded and team teaching programs.

Our citizens recently voted $41 million to air-condition all of our educational facilities.

Second, our compensatory education program has moved toward developing a critical mass and concentration of effort spending, focusing resources on a few children rather than a little bit on many children.

We have more than 50 innovative programs that are attempting to determine cost effectiveness of educational programs.

Not too long ago we received a $2.4 million grant from a businessman to assist us in this project. We have been pioneers guaranteed student achievement which uses the systems approach. This effort is proving to be particularly helpful in the area of reading.

We were the Nation's first large city to conduct a comprehensive survey of our drug problem and since that time we have implemented a K–12, kindergarten through grade 12, drug program.

We have involved 70,000 of secondary school students in leadership training program in an attempt to utilize student activism and energies to help build rather than wreck.

We have reduced dropouts by one-third according to recent surveys. We have involved more than 2,000 citizen volunteers in our programs.

We are well on the way to providing kindergarten education for 15,000 5-year-olds. We have recently moved into the world's largest, most comprehensive, and best equipped secondary school. That is our Skyline Career Center which encompasses 600,000 square feet of floor space, and was built and equipped at a price tag of $21 million.

We are working with businessmen, some 250 of them, in developing programs that would help us relate input to output. Of course, our research and development program is one of four of five in the Nation that is designed to help our taxpayers determine whether or not they are getting an adequate return on our investment.

We could go on. I know time is limited. I simply want to indicate that I feel that Dallas still has a chance to make urban education work and I think that is the big challenge.

However, we have been distracted, Mr. Chairman and members of the committee, in our efforts. Just about the time we were getting off the ground, we encountered further court orders. Beginning August 2, 2 weeks before school was to start, we had our first court order and then a dozen more orders, stays, modifications, clarifications of the court order which resulted in considerable chaos and confusion in the operation of our schools.

Our court order is very similar to those that you find in other school systems throughout the country. It used transportation, closing the schools, gerrymandering zone lines and involves 7,000 students being transported from one secondary school to another.

We are not here to complain. We are simply here to indicate that our board, our staff, our teachers have done a commendable job. They have gone the third mile. What we do want to say is that there is substantial evidence in our school district to support the Harvard study on the Coleman report.

There is substantial evidence to indicate that the expectations of the *Brown* decision in 1954 were based on faith and not on evidence.

I give just a few examples. No. 1, our public support has been seriously weakened as a result of this court order.

Our greatest asset was of course great support and great confidence of the people in our school system. A recent survey indicates that there is an increase in polarization within our community. People are fearful. They are concerned about the prospect of forced busing. Sadly we have to report that the public support and endorsement for the school system in Dallas as a whole has been and is being seriously weakened. In short, instead of confidence, we have a disturbing number of people who feel that the situation will get worse instead of better.

Second, there has been a dramatic increase in outmigration of citizens in our school district. We traditionally have lost about 1 percent of our white population on the average over the last 10 years.

With the advent of court order forced busing, that number has increased some five times. Some 4,000 to 5,000 white students have moved out of our school district. The most disturbing part of this, however, is that if the experience in other school districts is any indication of what is to come in Dallas, then Dallas, too, has started on a downhill slide.

Third, authority of the local school board and school district has been usurped by the courts. Just when we were beginning to make real progress, the rug was pulled out from under us. We are now involved in second-guessing the courts. For all practical purposes, long-range planning is at a standstill. We can't set goals. Our construction program has been halted. We can't realistically develop a budget for next year because of the uncertainty. Only chaos and inferior education can result.

Fourth, integration has taken a serious setback. We find in our desegregated schools, students are segregating themselves. It is understandable that young people, subjected to these kind of strains, react violently.

Fifth, disruptions and teacher abuse have increased. We have had school districts that have been free of disruption and violence in the past. This year to date we have had some six high schools that have had serious disruptions.

Our suspension rate has more than doubled; and although we have had no need to keep a record of physical abuse of our teachers in the past, this year already we have had 20 teachers who have been physically attacked.

Mr. McCulloch. May I make a leading inquiry at this time? Has this attitude, in your opinion, been encouraged in any way by parental influence, interest, or comment?

Dr. Estes. No; I think we have an enviable record in Dallas in 1961 and in 1965, by indicating that we intend to comply with the law. The court order was handed down, and our community again said that we shall comply.

I think we can commend our parents for their cooperation and in attempting to make the best of a difficult situation.

Mr. McCulloch. Mr. Chairman, I am glad to hear the witness say that, because in so many places in our country, that cannot be truthfully said. There are too many people in this country interested in maintaining the status quo rather than improving the conditions with which we are faced.

Dr. Estes. I could not agree more, and from my experience, this is true in far too many instances. We are gratified that this is not true in Dallas.

My sixth point is that costs have been staggering. We have spent more than $3 million this year.

Mr. McCulloch. Let me ask you this question. Could interest on outstanding debts have had any bearing on that figure?

Dr. Estes. No, sir. Obviously, it could have a bearing. We do not have any evidence to suggest that this plays any part of our current chaotic situation.

We do have the costs that are staggering, some $3 million in direct costs in implementing the program this year. These are noneducational costs, mind you.

Another $3 million in direct costs. Five to 10 percent of our budget is going to this noneducational function, and I was not surprised when in preparing this testimony, one of our staff members reviewed my calendar and found that two-thirds of my time has gone into attempting to implement court-ordered desegregation rather than attempting to improve the quality of education.

Mr. McCulloch. Mr. Chairman, I have nothing but praise for that kind of activity. But in our representative republic, there comes the time, if not in all places in America, in most places in America, when we must give our time in different proportions and to different ends than we thought we would have to give them when we were 21.

Dr. Estes. Mr. Congressman, your point is well taken, and I subscribe to it wholeheartedly. I would gladly give 100 percent of my time to this cause if the evidence based on the Harvard study and our evidence indicated that it helped increase student achievement.

My point is that it is disfunctional, and why go on continuing to use these tools and these methods when they have been disfunctional.

Mr. McCulloch. Sometimes such methods are the only methods which are available. Do you have anything to give to this committee that would show what other means could be used to bring quality education to all students, not only in Dallas, Tex., but in Piqua, Ohio?

Dr. ESTES. Yes, sir; that is my next point. We think we do have the solution. While we oppose the tools that are presently being used because we have 18 years of experience now, plus our Harvard study that shows that these tools have not been effective, we indicate that the expectations of the court in the *Brown* decision is based on faith, we have three programs that we think provide an acceptable option, an alternative, to massive forced busing.

Mr. MCCULLOCH. Let me ask you this mean question, and I do it with a smile. How did you describe busing?

Dr. ESTES. Massive forced busing?

Mr. MCCULLOCH. Isn't any busing that would be by decree of court forced busing?

Dr. ESTES. I would guess so. We are not opposed to busing. In fact, our third alternate here is going to involve busing. There is nothing wrong with busing in and of itself.

Our first point is that in our options, and this is in direct reply to your question. We would agree with the President's Report on School Finance published this month. We would agree with President Johnson's report on civil disorders which indicates that we must have a strong compensatory education program which provides for critical mass. The President's Report on School Finance says we ought to probably double our expenditure on disadvantaged children. This means extending kindergarten to all children. Perhaps early childhood education below the 5-year level. It means providing guaranteed student achievement in reading and math.

We now have a program that provides guaranteed student achievement in reading. We have doubled the amount of time that the disadvantaged children are spending in reading instruction. We have reduced significantly the adult-pupil ratio. We are using the systems approach that has been so effective in business and industry in this area.

We are now beginning to produce results that indicate that those children can and do learn in their neighborhood schools with a compensatory program.

Our bilingual program which teaches English as a second language is another approach to compensatory education that is going to be required if we increase achievement of minority students.

Second, in addition to the compensatory program, we believe that the achievement of quality desegregated education calls for a revision of our social education program which would bring about a greater understanding of the contribution of all ethnic groups to this great society. We are proposing to do that.

In fact, we have submitted it to the local trial court. This has been approved by the court. We are proposing to have team teaching and pairing of individual classrooms. These pairing would represent a variety of ethnic groups by educational television; and for at least 16 percent of the time each day, these students representing different ethnic groups would be in some sort of educational activity with students representing an ethnic group other than their own.

In addition to this, there would be a cultural exchange between schools for at least 3 hours per week that would provide for the confluence of cultures that we desire, rather than the conflict.

The third point that I think provides an acceptable—in fact a very attractive—alternative is providing centers of excellence through our educational facilities. This is not a proposal. This is a reality. Our $21 million comprehensive secondary school is just such a facility. Now, before the court order, we had students from all over the city from our 18 high schools volunteering to attend this center of advanced study, riding a bus on a voluntary basis across the city in order to increase educational achievement.

These are the three options that I think we ought to consider carefully and seriously as we think about the direction that education ought to take in this country during the 1970's.

Let me conclude by saying again that the job of our schools is quality desegregated education. That means equally effective education for all children. It means the schools assisting and helping us rise above the level of conflict to achieve confluence. It means the enhancement of cultural pluralism. The key is not stating the goal. The key is in the methods that we use; and *Brown* I and II, and subsequent court decisions, were based on the expectation that integration would benefit achievement of black students.

I have indicated that the Harvard study, as well as our own experience, does not substantiate that. Indeed, that expectation has to be based on faith because the experience that we have had in the last 18 years does not substantiate it.

The evidence exists at the present time that the current methods, the current tools, that the courts are using, lead to resegregation, not desegregation; lead to greater hostility, not a greater confluence; lead to more disastrous results for deprived children, not increased achievement; and effect negatively other components of city life.

In conclusion, then, the methods that we have been using lead away from our desired goals; that is, increased achievement and pluralistic society. It seems to me that they ought to be abandoned. The shocking fact again is that our big city schools are on downhill slide at increasing rate.

If experience elsewhere is any indication of what is to come, then Dallas has started on that same downhill slide. The tragic point is that this dangerous trend is unnecessary. We think we have some options that will correct the problem of achievement. How are we going to do it? Some have suggested that Congress ought to act. Some have suggested an Executive order. Others have proposed judicial action. Others have proposed constitutional amendment.

I would suggest that we need all of these. Congress ought to use every bit of its power to eliminate the devastating tools that are wrecking our schools. The executive branch of Government ought to proceed to provide the proper checks and balances as were originally proposed when this great Nation was established.

The judicial branch ought to recognize that its expectations were based on faith, not on evidence. We need a constitutional amendment to make sure that this lack of checks and balances does not occur again. Democracy is on trial; and our students, particularly our big city schools, have been challenged as never before to make democracy work.

I would suggest that the response of this Congress to this proposal will determine to a great extent whether or not we are effective in meeting this challenge. Thank you very much.

Mr. Brooks. Thank you very much, Doctor.

I might say in my years of experience in Texas, I have found the public schools excellent in many respects. I might have been more fortunate having gone to that school myself.

I read the last page of your prepared statement. I did not hear you say this. I know you were summarizing, but I do want to understand you. You say that you hope that a route less time consuming than a constitutional amendment can be successful, but you are for getting back to the pursuit of quality education as quickly as possible, whatever that takes.

Dr. Estes. Yes, sir. Time is of the essence. I fear our city may be lost if we have to wait for an amendment, although that is the surest and best way.

Mr. Brooks. You think time is of the essence?

Mr. Estes. Yes, sir.

Mr. Brooks. And you understand a constitutional amendment would be a more lengthy procedure than legislation which might accomplish the same result?

Mr. Estes. We do believe that now.

Mr. Brooks. Mr. McClory.

Mr. McClory. I was listening to your testimony and looking at your prepared statement at the same time, Dr. Estes, and you added to your written statement that you support all three approaches: The constitutional amendment, an Executive order, and legislation.

Mr. Estes. Yes, sir.

Mr. McClory. It seems to me from the testimony you have presented here today that you believe that there are rather comprehensive alternatives to busing in order to effect desegregation and in order to provide quality education.

It would seem to me that with your experience and with the very strong position that you hold and with the resources available to you, you might well be able to provide some concrete suggestion to this committee of possible legislative action, especially since you are now responding that that would be a much more expeditious way of handling the problem with which we are concerned.

Would you endeavor to do that? I am thinking, for instance, of legislation that might provide for alternatives that you have mentioned. For if we could effect desegregation and provide quality education for all without busing, we could then avoid the consequences of busing which you have outlined—the people moving away, the children leaving public schools, the exacerbation of racial tension that you have referred to.

Would you be willing to do that? Do you think that your board has that capacity? Would you be interested in doing that?

Dr. Estes. We have that capacity, and we would be delighted to do this. The sort of things I have been talking about are not inconsistent with the concepts of our commissioner of education. We will be delighted to respond in an appropriate manner.

Mr. McClory. You have probably heard testimony earlier today by the superintendent of public instruction for the State of Illinois who commented on a number of subjects. When I inquired of him as to whether or not he preferred desegregation to compensatory education I gathered from his answer that he did not favor removing the disadvantaged from their special programs just to mix them racially.

So I assume that it would be important for us, if we are going to have any legislation at all, to legislate in a manner which would permit these alternatives.

Dr. Estes. Yes, sir. Your point is well taken, Congressman. In fact many of the guidelines developed by the Department of Health, Education, and Welfare require concentration of minority groups particularly, for instance, bilingual education.

You must have from 50 to 90 percent Mexican-American students in a particular school in order to qualify for those funds.

Mr. McClory. Don't you feel that such legislation is more advantageous to minority groups than busing them long distances to obtain a standard-style education?

Dr. Estes. If you distribute these students throughout our school district, then it makes it much more difficult for us as professionals to provide appropriate educational treatment in order to help them overcome their disadvantaged background.

By providing a concentration of effort and resources in their neighborhood school, we have found this to be very successful and very encouraging.

Mr. McClory. Thank you.

Mr. Brooks. Counsel.

Mr. Zelenko. Dr. Estes, you stated that the Dallas School District had achieved desegregation. As of 1970, is it not true that approximately 97 percent of the black students of the Dallas School District were concentrated in predominantly black schools. In 1971, 10 percent black?

Mr. Estes. Yes, sir, almost.

Mr. Zelenko. That is 97 percent of approximately 65,000 black students were enrolled in a 100-percent black school or in a school with 80 to 100 percent black students?

Dr. Estes. More than 40 percent of those, more than 20,000 of those 65,000 black students are now enrolled in 20 schools in South Oak Cliff which in 1965 were predominantly white.

Our school board did not change one attendance zone line from 1965 to 1970 and yet the neighborhood patterns changed and as a result, it is true that we have a concentration of black students attending those formerly all-white schools.

Mr. Zelenko. In 1970 approximately 97 percent of all black students were concentrated in predominantly black schools. In 1971, 10 percent of the black student population is in a 100-percent black school and more than 85 percent, of 47,000 black students are enrolled in schools which are over 80 percent black.

What then do you mean in your statement that Dallas had achieved racial desegregation of the school system? What is your standard of measurement?

Dr. Estes. I am saying that the courts in 1961 ordered the elimination of the State-imposed, separate-but-equal program. Our school district complied in good faith with that order and in fact reduced the time for implementation by one-half.

The 1961 court order said you shall comply within 12 years, a grade a year at a time. So successful was the program in Dallas that by 1965 we went back to court and said we will reduce that implementation time by one-half, so by 1967 we were in compliance with the court order and that order wes upheld by the Fifth Circuit Court.

Now, what happens is that private housing patterns have changed from 1965 to 1970. We have a new order, the *Swann* decision was handed down and all of a sudden, we now find ourselves not in compliance. It depends on whose definition you use as to what constitutes a unitary system.

We have eliminated the dual school system root and branch.

Mr. ZELENKO. The Federal district court did not agree with that conclusion. That is your conclusion?

Dr. ESTES. The court agreed with it in 1961. They agreed with it in 1965. Even the Fifth Circuit agreed with it.

In 1971 based on the new *Swann* decision, they did not agree. They said we were not in compliance. Our new order has eliminated, according to the court response, all of our all-white secondary schools.

Mr. ZELENKO. Dr. Estes, how much busing actually goes on in the Dallas School District?

Dr. ESTES. The tragic point is that our school district never operated a busing program.

Mr. ZELENKO. Why is that tragic, sir?

Dr. ESTES. Because we are now forced to go into a massive program of transportation for which we are not equipped, for which we do not have the funds, which we are not organized to handle. We have purchased this year 105 72-passenger buses. Unlike many school districts, such as in *Swann*, which already bused over half of their students, we have been forced to create a transportation system. They were of a city-rural district. But we have not had that experience. We have not had a transportation program in our district. Now we have got to devote large amounts of time to busing students many miles from their home which has been disastrous.

Mr. ZELENKO. Dr. Estes, will you supply for the committee, the average time students are on a bus in Dallas under the proposed plan, and the average mileage a student travels on a bus in Dallas under this plan?

The record should show, Mr. Chairman, that in 1970, 5,000 students out of a population of 157,742 were bused in Dallas, Tex., or 3.2 percent.

And in 1971, 12,000 students were bused, or approximately 7.7 percent of the enrollment which is substantially less than the State average for rapid transportation in the State of Texas which is over 20 percent.

Dr. Estes, your statement says you have a substantial experience in the lack of success of desegregation on minority achievement. But how much desegregation have you had? Ninety-seven percent of the black students attend predominantly black schools. What is your experience in Dallas? What are you talking about?

Dr. ESTES. In order to move toward a confluence of cultures, I am not sure you can go by percentage point. It seems to me we ought to provide all of our young people with an opportunity to have experience with students that represent an ethnic background other than their own and this is what I would maintain is an appropriate posture for achieving a true confluence of cultures.

Mr. ZELENKO. Of course I should point out, Dr. Estes, as you know, that the 1968 *Green* decision of the Supreme Court said freedom of choice is fine as a means of desegregating so long as it works. Statistics don't really show, do they, that in Dallas there was any perceptible desegregation of the races?

There was a concentration, was there not, of black students in black schools in 1968, 1969, and 1970? In fact, even in 1971, 94 percent black students are still attending schools that are 80 percent or better black.

Now is that evidence that freedom of choice is working?

Dr. ESTES. I am glad you pointed this out, Counsel. I am delighted because it once more indicates the good faith, the intent of the Dallas citizenry to comply with Court orders. Freedom of choice has never been a part of our desegregation plan in Dallas.

In 1961, this was not a part of our plan. We said we are going to eliminate the dual school system and this we did. We drew an attendance zone around an elementary school and we said every one in that attendance zone must attend that neighborhood school.

We did not have, as many other school districts in the South had, the freedom of choice which, as you say, did not work. It did not accomplish its purpose.

Our job in our society is providing equality effective schools and you see if we don't do it as an institution, no one else will. The court orders have denied us the opportunity of performing our basic function for this society.

Mr. ZELENKO. Now, Dr. Estes, in the most recent decision of the U.S. district court in Dallas, rendered on August 17, 1971, U.S. District Judge Taylor wrote:

"This neighborhood school concept alone," referring to Dallas, "failed to establish a unitary school system."

In other words, they, like the Green court, which found that "freedom of choice," had not worked, the court in Dallas apparently found that the neighborhood school plan did not work.

At various places in your statement, you characterize the district court order as a court order to achieve racial balance.

Did the court characterize this order that way or is that your own characterization?

Dr. ESTES. That is my characterization. When the plaintiffs took us to court, they used this as one of their charges to bring about an appropriate balance and that is the reason we derived this kind of concept.

Mr. ZELENKO. Do you know of any decision of any Federal court that has ordered reassignment of students to achieve racial balance?

Dr. ESTES. No, sir, the *Dallas* case comes as close to doing that——

Mr. ZELENKO. You are not suggesting to this committee that the district court in Dallas proposed a plan to achieve racial balance in the schools, are you?

Dr. ESTES. No, sir. We are before the Fifth Circuit and the plaintiffs are proposing that. You talk about the *Green* decision and *Singleton* decision and *Swann* decision. That points out exactly what I am talking about. All of these court decisions are based on the expectation that desegregation will increase student achievement.

Obviously 18 years of experience indicates that that expectation is false.

Mr. BROOKS. Mr. Hungate.

Mr. HUNGATE. Thank you, Mr. Chairman.

I want to be sure I have the testimony in mind. I thought I understood you to say that you had no transportation program for your schools.

Dr. ESTES. That is correct.

Mr. HUNGATE. If I understood counsel correctly, they transported 5,000 in 1970, or am I wrong?

Dr. ESTES. In our State we have 20 cities that by law provide county transportation for those students living more than 2 miles from the school and more than 2 miles from a city busline or commercial transportation. The county provided those 5,000 students with transportation because they lived way out in the country.

Mr. HUNGATE. In Dallas County instead of Dallas City?

Dr. ESTES. That is right. Our independent school district has not provided transportation.

Mr. HUNGATE. Is the county a part of your school system?

Dr. ESTES. We are one of several school districts in the county.

Mr. HUNGATE. Do they pay tuition when they come in or are they entitled to come in from the county on the buses?

Dr. ESTES. No; they are in our school district. Our school district is about 35 miles long and several miles wide. Our district lines are not coterminus with the city. These students are in our district but live in the county.

Mr. HUNGATE. I see. Was the total enrollment figure count about 155,000?

Dr. ESTES. Our average daily attendance is the number on the right. We are the eighth largest city system in the country.

Mr. HUNGATE. Those students that live in the city, how do they get to school?

Dr. ESTES. They either walk or pay 15 cents to get on a city bus to go down the street to school.

Mr. HUNGATE. That is not reimbursable?

Dr. ESTES. No, sir; the State in the past has precluded reimbursement.

Mr. HUNGATE. Did you have a transportation budget as such then?

Dr. ESTES. We had no transportation budget. We passed on funds to the county from the State for transportation.

Mr. HUNGATE. But in the city there was none?

Dr. ESTES. No, sir.

Mr. HUNGATE. How many students are in the city and how many in the county?

Dr. ESTES. We have about 10 to 12 percent that would be in the county.

Mr. HUNGATE. We have had earlier testimony that, in fact, many of these court decisions do not result in any substantial increase in busing or any more expense and that the mileage in some cases would not be less. That would not be true in your district, would it?

Dr. ESTES. No; nor do I know of a court order that would support that evidence.

Mr. HUNGATE. You are buying or you have bought how many buses?

Dr. ESTES. We are buying 105 buses. We are buying a million dollars worth of buses.

Mr. Hungate. Do you have an estimate on your operating expense?

Dr. Estes. It costs $3,000 a year to operate those buses so we are talking about operating expense of 3 or $400,000 a year which is another penny on our tax rate.

Mr. Hungate. Thank you, Mr. Chairman.

Mr. Polk. Your testimony, Dr. Estes, has confused me somewhat. I think that time and again you stated that you favor integration in the area of education. Did I read you correctly?

Dr. Estes. There is no mistake about it, we must have, if our democracy is to survive, quality desegregated education.

Mr. Polk. But you seem to say just as often that you felt that the *Brown* decision was unsound.

Dr. Estes. Yes, sir; that is right and that is what the Harvard study says.

Mr. Polk. To me those two statements are contradictory. I wondered if you could explain it.

Dr. Estes. No; I think not. I am in favor of quality desegregated education. The *Brown* decision, the *Green* decision, *Singleton* decision, and the *Dallas* decision do not result in quality desegregated education.

Rather than desegregation, they are leading to resegregation; 16,000 white students have moved out of Miami. You know what the story is in Atlanta; 8,000 students out of Nashville; 9,000 out of Houston; 4,000 out of Fort Worth.

These court decisions are not leading to desegregation. If they did, we would be here testifying before this committee in an entirely different light. They lead to resegregation and that is inconsistent with what you and I believe.

Mr. Polk. I take it then that you do believe in the concept of integration or desegregation?

Dr. Estes. Yes, sir.

Mr. Polk. But you feel that the courts have incorrectly applied the concept?

Dr. Estes. The tools that the courts have used without any basis of evidence, based on faith, have not proven to be effective in 18 years, as I have said.

We think that rather than continuing to use these tools, what we ought to do is look for other options and we think we have found some options.

Mr. Polk. Then I take it that your position would not support House Joint Resolution 620?

Dr. Estes. No, my testimony says we need congressional action. We need executive action. We need reversal of the judicial action based on faith and not on evidence.

In addition to that in order to permit this kind of imbalance in checks and balances in our system of Government, we need some sort of constitutional amendment.

Mr. Polk. But not House Joint Resolution 620?

Dr. Estes. No, House Joint Resolution 620 would be an appropriate vehicle to bring this about.

Mr. Polk. But House Joint Resolution 620 would stop or roll back integration. It would prevent further desegregation.

Dr. ESTES. No, I am sorry that I have to disagree. This would not prevent us from implementing our program of desegregation, our program of confluence of cultures in Dallas.

Mr. POLK. Is your program of confluence of cultures based on race?

Dr. ESTES. Our program is based on providing equally effective schools for all children of all people.

In order for these students to get to the centers for advanced study, it requires voluntary busing and, as our records show here, this last year without the court order, our center for advanced study, our Skyline Center, had about 20 percent black students, about 10 percent brown students, the remainder were Anglo.

So on a voluntary basis, you see, it was an integrated setting.

Mr. POLK. But House Joint Resolution 620 does not permit a voluntary program. It forbids racial assignments, voluntary or involuntary, with regard to the school board.

Dr. ESTES. Section 1 of House Joint Resolution 620 says students may not be assigned solely on the basis of race. We are not. We would not propose to assign them on the basis of race but rather on the basis of providing a quality program.

Mr. POLK. I think we can carry on this conversation at some length. Let me conclude by saying that other witnesses have given a different construction to that language and indicated they feel it would prohibit even a voluntary program if it involved the making of racial assignments.

Dr. ESTES. It occurs to me that section 2 of the proposed amendment would take care of that when it says the power to implement this amendment shall rest with the Congress and with the several States, and of course the return of authority to run our schools to the Congress and to the various State legislatures is very definitely a need.

Mr. POLK. House Joint Resolution 620 would prohibit the making of racial asignments by a school board without qualification or limitation. It would thus prohibit voluntary programs as well. I don't think Congress would have power under section 2 to do what section 1 prohibits and this is the point that the Supreme Court made in footnote 10 of *Katzenbach* v. *Morgan* where it said that under section 5 of the 14th amendment Congress can enlarge section 1 rights but cannot contract or contradict them.

Thank you.

Mr. BROOKS. Doctor, we appreciate your being here.

(Dr. Estes' prepared statement and attachments follow:)

STATEMENT OF DR. NOLAN ESTES, SUPERINTENDENT OF THE DALLAS INDEPENDENT SCHOOL DISTRICT

Mr. Chairman and honorable members of the committee, my name is Nolan Estes, and I am the Superintendent of Schools for the Dallas, Texas, Independent School District. The district I represent covers most of the City of Dallas, as well as other portions of Dallas County. Nearly 180,000 students are enrolled, making it one of the ten largest school districts in the country.

I am here today to talk about something of great concern to parents in every corner of this great country . . . something that, in fact, holds significance for all citizens of these 50 United States . . . and even more, something that will have a direct bearing on the future of this nation . . . specifically, I'm here to talk about providing equally effective education for all children and youth of all people.

Now I'm quite aware that your proceedings here on House Joint Resolution 620 have become popularly known as the anti-busing hearings. And having made numerous appearances before congressional committees during my tenure as an Associate Commissioner in the United States Office of Education, I am certain you have witnessed a parade of emotional pleas both for and against the busing of boys and girls to achieve desegregation.

But as a man who helped write and enforce the original guidelines for Title IV of the Civil Rights Act, and who had various experiences with the tools designed to bring about the desegregation of schools, I cannot in clear conscience tell you that those tools, including busing, work. The truth of the matter is, there is no one who has data to prove that in our big cities, the tools commonly used by the courts and others actually advance the goals originally enunciated in the Brown decision—to improve the quality of educational opportunity.

I am aware that many others appearing before this subcommittee have presented court decisions and research findings as testimony. But to save your time and mine, we have filed a complete review of the evidence thus far available on the tools commonly used in the desegregation process—a careful review of this material will show that its inconclusiveness is apparent.

But before I get too far, let me make it perfectly clear that I am not an opponent of integration. In this respect, I have four points to make:

The racial integration of American Society is an absolute and imperative necessity;

The protection and enhancement of cultural pluralism within that society is equally imperative;

The desegregation of schools, along with other social institutions, should contribute when feasible to the accomplishment of the two previous goals; and

As an educator, my primary allegiance is to the belief that American Society has charged its public schools with providing quality education for its clients.

As veteran legislators and attorneys, you certainly don't need an egghead with chalk dust in his veins to tell you your business. In addition, you don't have time to listen to opinions and feelings on this issue. To be able to make an appropriate, informed decision, you need evidence—my purpose for appearing here is to give you this evidence, as it exists in Dallas.

I left Washington and the Office of Education in 1968 to become superintendent of schools because I knew that Dallas was one big city school system that had a chance to demonstrate that quality education and bigness could go hand in hand. I felt at the time that America's public schools were facing a full generation of conflict which would probably be focused in urban areas.

In my first address to the teachers of Dallas on September 14, 1968, I told them that "the quality of urban education will determine the choice our children make. Thus, sharing in the task of improving and developing urban education is one of the highest responsibilities that can be assigned a man in our time."

As I approached this responsibility, I considered myself fortunate, because I knew that the Dallas Independent School District was a very healthy school system. The District was one of few in the country which had not been forced to go on double sessions because of overcrowded classrooms during the war baby boom of the 50's and 60's. During the previous year, citizens had approved a $65 million construction bond issue. Financially, the District had some $18,050 assessed valuation per student. Unbelievably, the District was relatively free from the chaos and conflict which was victimizing other urban systems. Integration-wise, Dallas had been under court order since the early 60's to eliminate a State-imposed system of dual schools. The process had gone smoothly and quietly . . . the long-range plan of the court had been completed ahead of schedule . . . and the district was declared to be in compliance with the law of the land.

THE DALLAS STORY

If the District was to escape the fate of other great cities, the first major job was the development of a blueprint for the future. Realizing that quality education depended upon effective long-range planning, the Dallas Board of Education set out to fashion a goals program for the Decade of the Seventies. The Board asked the school staff and the community-at-large to offer ideas on top objectives for the Dallas Independent School District. After several months of collecting and sifting through a myriad of suggestions, the Board of Education established seven priority goals designed to provide maximum efficiency and educational opportunity in the District. These included individualization of instruction, communications and community relations, early childhood education, career education, adequate financing, staff development, and research and development. To insure continuing progress of the goals program, a manager was appointed for each general area and assigned the duty of developing specific objectives and program budgets for five-year periods. Since then, literally thousands of persons have been involved in the continuous updating and modification of the specific goals objectives.

Particularly significant has been the District's efforts in helping each child to progress at his own rate of speed and in his own individual way. The District has strived to offer more relevant curricula—ethnic studies, ecology, a new program of bilingual education, expanded career programs, humanities and law. Flexible organizational patterns are used—non-graded classes, middle schools, modular scheduling, and schools without walls. New teacher methods have been and are being tried—team teaching, computer assistance, and programmed instruction. We also provide appropriate resources such as supplemental materials, media centers, teacher aides, instructional television, and open space facilities. Modern evaluation techniques include behavioral objective grading, computer management, and parent conference.

As other big cities have done, an inner city program was established and an administrative department was activated to work toward the solution of special learning problems faced by students coming from disadvantaged and deprived homes. Because of the obvious communication problems faced by impoverished children, a $1.2 million reading program was implemented in the District with a variety of innovative, individualized learning approaches.

During the 1970–71 school year, the District operated over 50 major innovative projects and programs and numerous smaller projects. Through a grant from a private benefactor, a special research, development, and demonstration center was established to assist the District in unlocking the door to solutions to the educational problems of the disadvantaged child. The educational change strategy of the Center provides for the development of a cost-effective total learning system with appropriate adaptations for economically deprived Black, Mexican-American and Anglo pupils, ages three, four, and five, and grades one through six.

A Bilingual Curriculum Development Center, an adjunct to an innovative Bilingual Education and Cultural Enrichment Program, is a curriculum development, research and demonstration center in early childhood and elementary education. This program involved inner city Mexican-American and other impoverished students.

The District became one of the country's pioneers in the area of guaranteed performance contracting—an effort to improving learning through the application of systems approaches designed by businesses with unlimited resources. The Dallas program, which involved inner city children at all grade levels, proved successful—in spite of the evident failures of similar efforts in other parts of the country.

The District also took the first steps to implement an education program on drug abuse which was recommended by a blue-ribbon citizens advisory committee which conducted the nation's first scientific and comprehensive survey of drug abuse among students in an urban setting. A full-time director was hired for the program and a K through 12 curriculum was developed for students and teachers. The drug program has become a model for the State.

The raw energy of student unrest—often an explosive device in many school districts—was harnessed and redirected toward meaningful activities. A special leadership training program, based upon the group dynamics approach, involved laterally thousands of youths in positive projects in every high school throughout the city. Leadership classes were offered as credit courses, and a special law program—sponsored by the Bar Association and funded by the Justice Department—has received national attention. Even the Superintendent meets regularly with a special advisory committee composed of two students from each of our 21 high schools.

But all the emphasis isn't on student leaders . . . special individualized schools have been established for those who cannot adjust to the traditional school setting, and have in fact dropped out. Special centers have been set up for students under suspension, and teenage girls who are expectant mothers. Even truants and part-time dropouts are counseled by school, police, and juvenile officials working out of 20 strategically located Youth Action Centers.

The community is involved in school programs through a variety of activities and a compresensive information program is directed at both internal and external publics. Communications strategy is considerd a significant part of management at all administratvie levels, and a model for shared decision-making among administrators, teachers, students and citizens, is being developed. Citizens groups serve on various committees in an advisory capacity in the areas of food services, air conditioning, Mexican-American affairs, and Home and Family Life Education. Nearly 2,000 citizens work as volunteers in a variety of school programs.

The Administration knows that children's success in school can be enhanced through early educational experiences. Therefore, a step-by-step kindergarten program is on schedule. Also, special programs for three and four-year-olds are underway, and both English and Spanish are taught as a second language. Parental involvement is a key program element.

In the area of career education, it was felt that every student must be prepared to successfully deal with his next step in life—whether college, the world of work, or whatever. As a result, a program of career orientation is being developed for students at all levels, career experiences are offered in all secondary schools, new advanced programs are being pioneered in a $21 million Career Development Center, with business and industry involvement providing necessary support and relevance. We'll talk about this far-reaching effort—which has become a national model—later in the testimony.

Another goal is providing fiscal responsibility through a broad and secure financial base, as well as sound management procedures. As a result, funds are actively sought in our District from a variety of sources. Efforts continue to provide equity in State funds for urban schools, new program budgeting procedures promise more efficient administration at all levels, and management techniques are updated through the advice of business and industry leaders. In fact, the efforts of a Chamber of Commerce-appointed management team in helping to improve seven major areas of Dallas School District management, has nationally become a classic example of a mutually-beneficial alliance between business and education. A Chamber-appointed, blue ribbon panel is still assisting the District in a special study and projection of school costs, and revenue sources.

Since a modern school system must develop and maintain an effective program of keeping employee skills up-to-date, on-the-job time is devoted to staff development programs each week. Employees diagnose individual needs and prescribe personal programs of improvement. A variety of workshops and training sessions are available. Special features include teacher education centers for intensive re-tooling, administrative internships, sabbaticals, and a cooperative college graduate center. A consortium of colleges and universities has joined with the Dallas Schools in developing new and creative ways of educating future teachers, as well as the teachers of teachers.

As Congressmen, I know you appreciate the importance of research, and we are particularly proud of our efforts in this area. You can count on one hand the number of school districts in this country with an effective research and development component . . . we consider ourselves a part of that small group. I say that because of the district's record in developing and testing new programs; its progress toward building a program management information system—with the assistance of the nation's only U.S.O.E. grant in this area; and its amazing ability to generate effective programs of evaluation.

While our goals have served us as a beacon through this stormy period in American education, all energies have not been focused on curriculum and management. Substantial efforts have been directed at human needs, with emphasis on the strengths of cultural diversity. In our search for a true confluence of cultures, the District has provided awareness training for all employees, many students, and even parent leaders. Toward this end, appropriate modifications and additions have been made in the curriculum.

I could go on and on relating the story of educational progress in Dallas. But, believe it or not, I have tried to be as brief as possible. In short, let me simply say that in contrast with most urban centers in this country, the potential for educational success in Dallas is unlimited—the necessary imagination, energy, and ability are present, and the resources are available. After nearly four years of sweat and tears as a big city superintendent, I am still convinced that Dallas has a chance to make urban education work.

BIG CITY EDUCATION DISTRACTED

But I must admit that this past year has been the most trying and challenging of my more than 20 years in the business. It's sad, but true, that the precious little time we and others have to try and turn American education around has been further reduced by the courts. Just as the efforts of ours and many school districts were beginning to bear fruit, the sincere but devastating efforts of the judicial system have sidetracked this country's public schools.

After extended and complex litigation lasting some 10 months, the courts began issuing on August 2, 1971 a series of orders, stays, supplementary directives, and clarifications relating to desegregation in the Dallas School System. These orders used tools commonly used throughout the South—transportation, pairing, satelliting, closing schools, gerrymandering zone lines, etc. These orders imposed massive changes, to be accomplished almost overnight, upon our school system. Among other things, they called for the reassignment and transportation of nearly 7,000 secondary school students, and imposed other formulas and rules familiar to all who have experienced similar efforts to re-make a city's society in a few days and weeks. I am not here to complain about our particular set of judicial impositions. The Board of Education, the administration, and the teachers of Dallas have done more than could normally be expected in carrying out these orders in good faith.

What I do want to offer is the evidence we have collected from our experience with the tools—busing, satelliting, etc.—that were prescribed.

PUBLIC SUPPORT WEAKENED

The greatest asset for quality education in Dallas has been a remarkable degree of citizen support for, and confidence in, the public school system. The issue of busing, however, became a preoccupying concern of nearly all citizens. Recent District studies we have conducted show a significant increase in polarization within our community. Fears and rumors have mounted as the prospect of forced transportation has been faced. Sadly, we have to report that public support and endorsement for the school system as a whole is being weakened. In short, instead of confidence that the schools are going to get better, we now have a disturbing volume of expressed belief that the schools will get worse.

OUT-MIGRATION OF CITIZENS

In addition, out-migration of citizens to the suburbs increased dramatically with the issuance of the court order. For the past decade, our overall percentage of white students has been dropping about one per cent annually. However, after the announcement of our court order, the percentage of whites for the 1971–72 school year dropped by five per cent. And this phenomenon has not been restricted to homeowners. Apartment vacancies are rising even as rent declines. The court's efforts to impose racial balance have encountered further resistance via intra-city mobility as some whites apparently have elected to move away from the areas most directly affected by the court order. High rates of absenteeism early in the year indicate that some parents simply refused to accept the assignment of their children to district schools. Only one-third of the white students originally reassigned to black schools are now enrolled.

Most disturbing, however, are the reports from other districts with similar experiences over a longer period of time . . . if these are indications of what is to come, then we in Dallas have started on a downhill slide.

AUTHORITY USURPED

One of the most frustrating aspects of the entire experience has been the undermining of essential processes necessary to bring about quality education. Just when we felt we were making real progress, the rug was pulled out from under us.

The Board of Education and the Administration have been put in a position of second guessing the courts and their appointed arms. For all practical purposes, our successful long-range planning program is at a standstill. We can't set goals when we don't even know what schools will be open next year, not to mention who and how many will be attending them.

Our construction program has been halted for some months now, and funds approved for badly needed facilities are rapidly becoming inadequate. Having never faced half-day sessions—we may soon face this terrible prospect—if halts and delays are not eliminated. We can't even realistically plan next year's budget because of the uncertainties. In brief, the authority which traditionally and legally belongs to duly elected school trustees, has been usurped. Only chaos and inferior education can result.

INTEGRATION SET BACK

Our experience also indicates that the assignment of large numbers of students to accomplish set racial ratios has set back actual integration by several years. This is evidenced by the fact that both black and white students have segregated themselves within each school setting. Many have demonstrated—in a variety of ways—their dislike for being forced to leave old schools and old friends.

Of course, it is understandable that young people subjected to the strains of such experiences are going to react violently—and we are beginning to experience this in spite of a variety of student-centered human relations activities.

DISRUPTIONS AND TEACHER-ABUSE INCREASE

There appears to be a feeling of distrust between black and white students—partly due to economic and social differences, and also because of understandable frustrations and anxieties. The end results of these deep-seated problems are reflected in a growing number of disruptions, a sharply rising suspension rate, and an unprecedented wave of teacher abuse.

Last year, we experienced no major disruptions in our schools. This year, six high schools have had serious disturbances. Our suspension rate, which was nearly 5,000 through February last year, was more than 10,000 through the same date this year. And while in the past we have never had a need to record incidents of physical abuse on teachers, this year we have experienced 29 cases.

Of course, we are just beginning to experience these symptoms—and again, if we follow in the footsteps of others, the problems will increase.

COSTS STAGGERING

One of the most frustrating results of our experience thus far has been the diversion of essential financial and human resources for non-educational purposes. Although we in Dallas are fortunate enough to have our heads above water financially, the court orders heightened the burden on our already dwindling resources. The orders necessitated the additional spending of several hundred thousand dollars just getting ready for school to open last fall. More than $3 million has been set aside during the current school year for additional personnel, equipment, materials, supplies, and of course transportation.

But these are direct costs. The indirect costs—which are almost impossible to determine—are undoubtedly staggering. For example, it has been estimated that the time invested in desegregation by staff members adds up to more than $3 million in salaries. I recently asked an assistant to review my calendar for the past eight months to determine how much of my time was being spent on desegregation-related matters. I wasn't surprised to learn that I had invested approximately two-thirds of my work in the desegregation process.

The tragic point is, all of this time, money, and energy could be going toward the improvement of educational quality.

NEIGHBORHOOD SCHOOL BEST

And finally, our evidence indicates that students can learn, and probably learn better, regardless of race, in neighborhood-type schools. The truth of the matter is, when students with similar backgrounds and needs are spread throughout the city, the educational treatment is more difficult to deliver. In fact, most federally-funded approaches to compensatory education hinge upon a critical mass and concentration of effort. Some programs would have to be eliminated by federal regulation if the concentration of certain types of students was dissipated. We've already seen the grief of students who were no longer eligible for ESEA Title I benefits because they were reassigned from their inner city schools to more affluent schools.

Our special reading programs, bilingual efforts, performance contracting, and other neighborhood-based efforts were beginning to pay off. We are concerned that such breakthroughs might be lost in a massive shuffle to create artificial and temporary ratios.

There is ample experience which shows that the job of desegregating, as well as educating children in an urban area is at best a formidable task. Even the U.S. Commission on Civil Rights in its *Racial Isolation in the Public Schools*, notes that the "success some small cities have experienced in desegregating their schools has not been matched in the nation's larger cities where obstacles to desegregation are greater."

If our experiences continue in a similar fashion—and a quick review of happenings in other cities make such a projection almost certain—Dallas will become a majority, minority school district. The threat of losing emotional and pyschological support will have changed to a weakening condition. In fact, if the trend continues, I can forsee nothing other than a decline in education. As an educator, I consider this a dangerous trend . . . and even more, an unnecessary one. If tools commonly used by courts and others in big cities have not been effective, why continue to use them. There must be a better way to provide equally effective schools and cultural pluralism.

OPTIONAL TOOLS

In Dallas, we think we have found a new direction with which to accomplish the task without massive forced busing. Two promising and viable programs have been designed—one at the elementary level and another for the secondary schools. The first, calls for implementing a new social education program through pairing of classrooms and team teaching via two-way television; systematic weekly cultural exchanges, involving students from majority and minoriity schools; a wide use of new materials and audio-visual aids; and an innovative new administrative and parental involvement pattern. Our secondary program utilizes busing—but it is voluntary busing and for educational, not racial purposes. It involves the creation of strategically located career and advanced academic centers which students can attend on a full-time or part-time basis.

Our experience with one such center has already proved successful both academically and in terms of providing desegregation—and all on a voluntary basis and in the name of quality education.

Getting back to the elementary proposal for a moment, after much searching and study, we believe it might be the only sound solution to the problem of providing both quality education and cultural pluralism for elementary students in urban areas. Evidently, we are not alone in our thinking. In his desegregation position paper of March 24, 1970, President Nixon referred to this concept as an "innovative approach." If I may, let me quote the President: "Most public discussion of overcoming racial isolation centers on such concepts as compulsory 'busing'—taking children out of the schools they would normally attend, and forcing them instead to attend others more distant, often in strange or even hostile neighborhoods. Massive 'busing' is seen by some as the only alternative to massive racial isolation. However, a number of new educational ideas are being developed, designed to provide the educational benefits of integration without depriving the student of his own neighborhood school. For example, rather than attempting dislocation of whole schools, a portion of a child's educational activities may be shared with children from other schools. Some of his education is in a 'home-base' school, but some outside it . . . by bringing the children together on 'neutral' territory friction may be dispelled; by limiting it to part-time activities no one would be deprived of his own neighborhood school; and the activities themselves provide the children with better education. This sort of innovative approch demonstrates that the alternatives are not limited to perpetuating racial isolation on the one hand, and massively disrupting existing school patterns on the other. Without uprooting students, devices of this kind can provide an additional educational experience within an integrated setting. The child gains both ways."

We not only agree with the President, but have gone beyond the basic concept through a new social education program which pairs classrooms and provides for team teaching through the use of television. This program was approved by the U.S. District Court of the Northern District of Texas as a workable desegregation plan, and is currently before the Fifth Circuit Court of Appeals. We feel it has great merit and would recommend your exploration of the idea . . . I have filed a complete description of the program with my testimony for your perusal.

Our secondary concept is not on paper. It is reality—at least a model is. Our model is a $21 million career development center which exemplified how desegregation can be achieved when quality education is offered.

Known as Skyline Center, this joint venture between our school district and the business community of Dallas, is an extension of every high school in Dallas. Buses run from each high school to Skyline on a shuttle basis at scheduled times during the day. Consequently students have the option of attending neighborhood schools on a part-time basis, and the career center on a part-time basis. Or they can enroll full-time.

The Center itself is organized into 28 clusters of closely related interests with each Cluster encompassing several "families" of careers. These "families" in turn are made of many options. If a student is interested in any area of the arts, humanities, science or technology, he has the opportunity of exploring many careers that are related to his area of interest, instead of being channeled into the usual one narrow, specific field. For example, within the clusters involving visual communications there are several "families" of careers—graphics, writing, product development, fine arts, and television. Within each of these "families" are an even larger number of more specific career options. But the beauty of the program is that it is geared for everyone . . . not just those going to college or those interested in getting a skill to market. The school prepares everyone for a successful next step . . . whether he's going on to college, or whether he's entering the job market.

We have developed the kind of career education program that your outstanding Commissioner of Education Sidney Marland has been calling for . . . a program that does away with another kind of dual school system—one for the academically talented and one for the also rans. With the help of companies such as RCA and others, we have made career education work. Even Dr. Marland himself has said, "if you want to see what's going on in career education, go to Dallas." I have included a booklet describing this program in my filed testimony.

I bring our career education story to this subcommittee because it has not only improved education in Dallas, it has also assisted in desegregation. Prior to our current federal court order, the Center was integrated voluntarily because of the program offered, not by artificial means. The student enrollment scheduled for the Center—before the court bused in many who did not want to be there—was 71% white, 19% black, and 10% brown.

We believe this is significant. And because the demand for the program has far exceeded the building capacity—even before the court zoned more students in—we have other similar complexes on the drawing boards. Unfortunately, due to the many constraints caused by court orders, we may find it impossible to continue such innovative new programs. But this doesn't change our belief that such an approach is effective in achieving both educational quality and desegregation.

In light of the information I have presented, some of you may wonder what I am testifying for. Am I for the amendment, or opposed to it?

CONCLUSION

In essence, I am testifying that the pursuit of quality education is the chief business of big city school systems. In our times, quality has new dimensions. It means education that integrates Americans in common respect for each other, and in open access to all the good things our society has to offer. It means education that enhances the advantages of cultural pluralism, but also seeks to encourage a constructive confluence of diverse cultures. It means equal opportunity to learn, and is satisfied only when unequal children become equally successful in acquiring the learning to which they are entitled. Pursuit of these ends is difficult, but absolutely necessary.

We educators know, however, that stating ends is not enough. The crux of pursuit lies in the methods that are used. All too often, methods become red herrings that lead pursuit away from the quarry. The use of racial and ethnic desegregation of schools as one device to pursue quality education is *not*, in my opinion, a red herring. But, the employment of massive required busing and other blind, drastic tools *is* a red herring. I have tried to show this is a method that is destructive of quality education. Its destructive effects are apparently cumulative, rather than temporary. Those effects are most disastrous for the very students so long deprived of quality education. And, this method affects negatively many components of city life other than education alone. Even when token desegregation of schools is used as a measure of success, this method is clearly failing and is accelerating re-segregation of metropolitan areas. A method which leads so clearly away from the ends we pursue, it seems to me should be abandoned.

How can this method of imposed, massive, mechanistic futility be abandoned? Some say Acts of Congress can accomplish it. Others prefer Executive Orders from the President of the United States. A few say that what the Judicial Branch has wrought it can undo, retreating from its usurpation of that governance of schooling so long bestowed upon the states and Congress. Others are convinced that an amendment to the Constitution of the United States is the surest route. I pretend no superior wisdom regarding the means to use. I would hope that a route less time-consuming than a Constitutional Amendment can be successful. But, I am for getting us back to the pursuit of quality education as quickly as possible, whatever that takes.

APPENDICES

A. SUMMARY OF COURT ORDERS

We have lived for eighteen years since the historic Supreme Court decision of 1954 which stated "We conclude that in the field of education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal" (Brown vs Board of Education, 74 S.Ct. 686). This decision declared unconstitutional those states' statutes requiring or permitting separate public schools for white and minority children. However, the court left undecided the manner in which the transition from dual to unitary systems would be accomplished. One year later the court announced its opinion in Brown 2 (75 S.Ct. 753), stating that the primary responsibility for abolishing the system of segregated schools rested with the local authorities. The changes necessary to convert the dual school systems were to be made "at the earliest practical date" and with "all deliberate speed."

It was nine years later in 1964 that the court explained that the "time for mere deliberate speed has run out" (Griffin vs County School Board of Prince Edward County, 84 S.Ct. 1226). Despite this mandate, and those before it, many school systems did not make significant progress in desegregating their schools until after the 1964 Civil Rights Act permitted the United States Department of Health, Education and Welfare to withhold federal funds for education from segregated school systems. In many school districts this legislation produced desegregation plans based on freedom of choice or a variation known as free transfer.

The freedom of choice method of desegregation suffered a setback in 1968 when the Supreme Court in Green vs County School Board of New Kent County, Virginia (88 S.Ct. 1689) and two related cases acknowledged that freedom of choice could be a valid remedial measure in some circumstances but said that it there are reasonably available other ways promising speedier and more effective conversion to a unitary non-racial school system, freedom of choice is unacceptable. In other words, the burden was placed on local school boards to come forward with a plan that promised realistically to work. In spite of rulings regarding time limits for desegregation and the affirmative duty placed on school boards by the Green decision, lower Federal Courts differed on what constituted a desegregated school system. Supreme Court decisions rendered in 1971 shed some light on the Court's opinion relative to this question.

The major Supreme Court decision in the field of school desegregation in 1971 was the Swann vs Charlotte-Mecklenberg Board of Education (91 S.Ct. 1267). The school district in question had been operating under a 1965 District Court approved desegregation plan when Negro students sought further relief from segregated schools on the basis of the Green decision. The District Court found that the schools were being operated in an unconstitutional manner and gave the school board at least three opportunities to come forward with an acceptable plan. The failure of the board to submit a plan creating a unitary system, in the Court's opinion, obliged the District Court to appoint a consultant to fashion such a plan. The final plan adopted by the District Courts started with mathematical ratios and utilized pairing, non-contiguous zoning, grouping, cross bussing and other techniques resulting in a completely desegregated system. The Court of Appeals for the Fourth Circuit affirmed the order of the District Court except as it related to the elementary schools were the Appellate Court believed that the pairing, grouping, and transportation required would place an unreasonable burden on the board and on the pupils.

On appeal, the Supreme Court reinstated the District Court plan, including the portion affecting the elementary schools. The Court then turned to the probsocioeconomic classes. In this same vein, Pasamanick and Knobloch (1958), after summarizing more than a dozen studies, concluded that both socioeconomic factors and neurological factors are responsible for educational retardation. They assert that nutritional factors seem to be implicated in complications surrounding pregnancy and in prematurity, factors which presumably are directly related to socioeconomic status.

Thus educational development has been shown by the above listed authors and by the classic Ebert-Simmons (1943) study to be dependent upon the preparation for schooling that the child received prior to school years. Any results obtained from the few desegregation studies reviewed should be considered in the light of the aforementioned statement.

The effects of desegregating schools in the South and border states upon academic achievement have been the subject of much controversy. Little straightforward evidence exists because of the many variables that intervene in the process.

One of the first school systems in the South to be desegregated was Louisville, Kentucky. Stallings (1959) studied the records of the Louisville schools to determine the effects of desegregation on scholastic achievement with what he considered to be relevant variables held constant. Gains were found in the median scores for all pupils for the grades tested, with Negroes showing greater improvement than whites. Unfortunately, the report gave no indication of whether the gains for Negroes were related to amount of actual change in the racial composition of the schools. In fact, the measured gains were greater where Negro pupils remained with Negro teachers. A later survey conducted by Knowles (1962) indicated that Negro teachers in Louisville had not been assigned to classrooms having white students during the period covered by Stallings' research. This finding means that the greatest Negro gains observed by Stallings were made by children who remained in segregated classrooms, and can only be attributed to factors other than desegregation, such as general improvement in educational standards.

In both Washington, D.C., and Baltimore, where legal segregation was totally abolished in 1954, the United States Commission on Civil Rights found evidence to suggest that the scholastic achievement of Negroes was improved, with no evidence of a resultant reduction in the achievement of white students. A contradictory opinion was presented by the House Committee on the District of Columbia. Following an investigation of desegregation in Washington, D.C., during the 1956-57 school year, the committee concluded that desegregation had worked immense evils on the Washington public school system and its children. Opponents of the committee maintained that these findings were biased and exaggerated (Muse, 1964).

Hansen (1960a, 1960b, 1963) has reported on the results of desegregation of the Washington, D.C. schools. The record would appear to be favorable to the hypothesis of an improved school system since desegregation. Hansen, however, insists that the improvement was not primarily the result of desegregation itself, but rather the result of continuing efforts to improve the school system. The fact that one of the major components of the plan was a controversial four-track plan that tended to segregate within classes would seem to support Hansen's contention. In addition, by 1960 approximately 76% of the students in the Washington system were black, thus providing minimal desegregation experiences for the majority of Negro children.

Little relevant data have been published on other Southern states where desegregation has been initiated. In 1960, twelve administrators of desegregated school systems testified at a federal hearing relative to whether or not integration had damaged academic standards (The United States Commission on Civil Rights, 1960). They unanimously replied in the negative, but only the official from Louisville mentioned gains in the achievement of Negro pupils.

There are a number of relatively recent studies that have attempted to document the effects of desegregation on academic achievement. The results of these studies are contradictory. One series of studies that can best be represented by the Hartford Study is characterized by results that are very favorable to desegregation. The salient characteristics of these studies is, however, a very low proportion of minority group children being placed in majority group schools. Daniel Moynihan stated in 1967 that the evidence suggests that if minority students are to receive a quality education in this generation they must be sent to majority white schools. This is in effect what has been done in the series of studies represented by the Hartford Study. Unfortunately, it is difficult to maintain stable majority-minority ratios in urban centers that already are characterized by a high proportion of minority group students and private schools and residential mobility remain options to the ever decreasing majority students.

The results of other studies reviewed range from reported gains in achievement after desegregation (Anderson, 1967; Mahan and Mahan, 1969; Frary and Goolsby, 1970) through no significant effect of desegregation (Long, 1968; Marcum, 1968; Vane, 1966; Robertson, 1967; Klein, 1967; Geiger, 1968; Laurent, 1969). Few major published studies exist that document losses in minority group achievement due to desegregation.

In examining the literature relative to attitudes it becomes apparent that early in his life the child develops an awareness of racial differences and attaches values to these differences (Clark, 1955; Dentler and Elkins, 1967; Greenwald and Oppenhein, 1968; Landreth and Johnson, 1953; Morland, 1958).

No matter at what point in his school life desegregation takes place—kindergarten through high school—the child does not approach integration in vacuum. This early awareness of racial differences plays a part in the formulation of the stereotypes which the child carries with him through his school years. Such racial evaluations are manifest or latent, and are modified or reinforced from the child's perception of racial attitudes held by those who at the moment for that child are most influential. Generally, for the young child, it is the parent who is most influential; for the older child, it is the peer group. Singer (1967) studied black and white fifth-graders in segregated and unsegregated schools and found that desegregated blacks were more accepting of whites than segregated blacks and that desegregated whites see blacks as more aggressive and non-achieving. It has been suggested (Singer, 1967; Campbell and Yarrow, 1958) that desegregation may reinforce rather than lessen negative stereotypes among the whites. Further studies have shown that the child's initial attitude towards desegregation are concordant with his perception of parental attitudes (Alexander and Campbell, 1964; Graham, 1967; Pettigrew, 1964).

There appears to be general agreement that where there is a marked discrepancy in the educational standards of Negro and white schools, or where feelings of inferiority are acquired by Negro children outside the school, minority-group newcomers in integrated classrooms are likely to have a low expectancy of academic success and scholastic motivation will generally decline (Atkinson, 1958; Murstein and Collier, 1962; Rosen, 1961).

Studies of actual interracial contact have produced seemingly conflicting results. Some have found that, with contact, there is more interracial acceptance, less prejudice, and a raising of Negro self-esteem (Campbell and Yarrow, 1958; Kinnick, 1967; Singer, 1967). Other studies have not supported these findings, noting instead that there is less interracial acceptance (Anderson, 1967; Dentler and Elkins 1967; Graham, 1967). Some studies have reported little, if any, change in attitudes after interracial contact (Grossman, 1967; Kupferer, 1954).

It is obvious that racial attitudes are formed and mediated by social and group processes. Sherif (1967) has noted that prejudice is a social institution, "a product of group membership," derived from community membership and from contact with an individual member of the group against whom the prejudice is directed. We know that very young children are aware of racial differences and make value judgments based upon them. We know these attitudes are maintained through parental and peer attitudes and the perception of these attitudes. As a child enters school and is able to participate in group activities, his awareness of differences and prejudicial attitudes become a part of his self-identity and of his identity as a group member. Proshansky (1966) has pointed out: "School desegregation by legal fiat does not by any means insure social integration between racial groups in a genuine sense. Cooperation and equal-status interracial contacts in the school setting can, but will not necessarily, reduce ethnic prejudice." Katzenmeyer (1963) suggested that integration per se is not enough; and Dentler and Elkins (1967) reported that attitudes found in a naturally desegregated school are not prototypes of the attitudes one finds in a planned desegregated school. This appears to be reflected even in the types of social contacts which occur; in a planned desegregated school they appear to be more formalized.

Drake and Cayton (1962) wrote: "Almost mystical faith in 'getting to know one another' as a solvent of racial tensions is very widespread. It is undoubtedly true that mere contact is likely to result in some degree of understanding and friendliness. It is equally true, however, that contact can produce tension and reinforcement of folk-prejudices." Mack (1965) listed three conditions for conflict: intergroup contact, intergroup competition, and visibility. All three are present in the desegregated school.

Katz (1968) when discussing implications for educational practice states that if the Negro student comes from a background that has oriented him toward scholastic achievement, the presence of a white teacher and white age peers may have strong emotional and motivational impact. He warns, however, that "the integrated situation is likely to be double edged in the sense that failure will be more devastating and success more rewarding than similar experiences in the segregated school." Moreover, whether the Negro child succeeds or fails will depend to a great extent not only on his actual ability but on his expectations. If he expects to fail, his actual chances of failing will be greater than they would be in an all-Negro setting, because his fear of failure will be more intense. On the other hand, if he has high expectation of success in the integrated school he should be aroused to greater effort than he would be by a similar expectation of success in the segregated school.

The Dallas Independent School District has recently completed a survey of major Southern school districts that have recently desegregated. The purpose of the survey was to attempt to determine the methods that other districts used in dealing with problems encountered while desegregating. The thirteen Districts contracted all had similar desegregation plans and achieved similar results. The major components of their desegregation plans included general busing of students, school pairing, and changing attendance zones.

All districts contacted experienced similar problems. In general, quality education suffered and the overall goal of integration of the races was not appreciably affected. Among the factors reported were increased absenteeism among both minority and majority students, increased discontent and militancy among teachers, disruptions and riots, and extreme emotional involvement on the part of parents and community pressure groups. In addition, the previously documented white flight occurred in all cases, thus making the future of racial integration within the confines of the cities doubtful. In short, resegregation is occurring at a rapid rate at a cost of disruption and erosion of the educational programs in the various schools and seemingly without benefit of any guarantee of achievement increases on the part of minority students.

In agreement with the results of the Dallas Survey, census and school enrollment data indicate that the trend in the nation's metropolitan centers is toward a non-white population. United States census data show that in 60 of 67 U. S. cities whose 1970 population was greater than 200,000 the proportion of non-whites increased from 1960 to 1970. The differences between the 1960 and 1970 per cent of non-white population in these 60 cities ranged from 1% to 22%. As of 1970 the following cities were already more than 40 per cent non-white: Newark, Washington, D.C., Baltimore, Birmingham, Atlanta, New Orleans, Jackson, Richmond, Oakland, Detroit, and St. Louis. Tables 1 through 5 present the non-white proportions for all 67 U. S. cities whose 1970 population was greater than 200,000 (See Appendices).

School enrollments within these cities show even more dramatic population patterns. It is most unfortunate that racial composition of school district populations is not available prior to 1968. The U. S. Office of Civil Rights within the Department of Health, Education, and Welfare has compiled racial composition enrollment data for 1968 and 1970.[1] In 59 of the districts located in the 67 large cities the proportion of white enrollment decreased from 1968 to 70. The differences between the 1968 and 1970 per cent white enrollment ranged from one per cent to 15 per cent.

It is probable that many large city school districts will be composed almost entirely of non-white enrollment. As of 1970 the enrollment of 25 of the large city districts was already more than 50 per cent non-white. In 12 of the 25 districts the enrollment was about equal to or greater than 2/3 non-white.

The loss of white enrollment has been most dramatic in the schools of the South. Only Nashville, Charlotte, and Little Rock have school enrollments that are more than one-half white in racial composition, and Nashville's white enrollment appears to be due to a vast influx of population between 1960 and 1970. Outside the South, San Antonio, San Francisco, Oakland, Chicago, Detroit, Cleveland, St. Louis, New York, Jersey City, Newark, Baltimore, Philadelphia, and Washington, D.C. have school enrollments that are about equal to or greater than 2/3 non-white.

A few cities which received court orders to desegregate the schools several years ago, deserve special mention. In Atlanta, New Orleans, Baltimore, and

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[1] United States Commission on Civil Rights directories of school enrollment listed in References.

Washington, D.C., the per cent white enrollment as of 1970 was 31, 29, 33, and 4, respectively. It is interesting to note that Richmond was the only Southern city to experience an increase in white enrollment, from 31 per cent to 35 per cent, from 1968 to 1970. Tables 6 through 10 present enrollment data for the school districts located in the 67 U. S. cities whose population is greater than 200,000 (See Appendices).

The trend is clear. Large cities and their schools, particularly their schools, are becoming increasingly non-white. Methods of providing quality integrated education must be found that do not cause vast numbers of white parents to withdraw their support and children from the public schools. Opposition to current Court desegregation methods remains firm. Recent Gallup Polls range from 69 to 76 per cent of persons 18 and over reporting being against the most visible current tool of desegregation, busing. Even a plurality of the Negroes contacted were opposed to busing.

The major difficulty faced by large city school systems must be one of maintaining a quality educational program while at the same time helping in an overall societal thrust to achieve integration of the races. The U. S. Commission on Civil Rights' report Racial Isolation in the Public Schools emphasizes that the schools alone cannot achieve an integrated society. All major institutions must aid in bringing this about. If, however, Court ordered desegregation serves only to resegregate the major urban centers and their school districts, the schools will lose the major urban centers and their school districts, the schools will lose the opportunity to provide meaningful social contact among the races. Thus, it is essential at this crucial point in the history of American education that more imaginative alternatives be embraced than have emerged from past litigation.

C. TRENDS IN DALLAS

In Dallas today one has only to read the news in order to observe the emergence of the syndrome of social problems which seem inevitably to result from judicial attempts to accelerate desegreation in the public schools. "White flight" has begun in Dallas; recent news items indicate, in fact, that this phenomenon has no been restricted to homeowners. Apartment vacancies are rising even as rent declines. The court's efforts to impose racial balance have encountered further resistance via intra-city mobility, as some whites apparently have elected to move away from the areas most directly affected by the court order. High rates of absenteeism observed early in the year indicate that some parents simply refused to accept the assignment of their children to distant schools.

It is not difficult to assess the long-term effects of "white flight" as they relate to the District's tax base and to problems of school financing. The immeditae resource crisis imposed upon the District by the court's intervention is perhaps less obvious. Direct costs incurred in the implementation of the court order have been substantial. Even more substantial, however, are the resources which the District has been forced to divert from instruction, curriculum development, and administration in order to fulfill court-imposed reporting requirements. The District's efficiency in discharging its functions has been hampered in other ways, as evidenced by overcrowding in the schools while urgently needed construction projects await court approval.

There are some who would argue that the intermingling of the races in an atmosphere of peace, harmony, and mutual trust is a goal of sufficient importance to justify the price being paid for it. The experience of Dallas and other cities, however, suggests that massive coercive efforts to advance toward this goal have only carried us further from it. Incidents involving racial friction have increased since the implementation of the court's desegregation order. Indeed Dallas is experiencing more racial violence among students, more abuse of teachers, more disruption, and more necessity for student suspensions than ever before.

D. CONCLUSION

In reviewing efforts to remedy educational disadvantage through desegregation, the U.S. Commission on Civil Rights reported that the effectiveness of any school desegregation technique depends in part upon (1) the Negro proportion of the school population, and (2) the size of the city (USCCR, 1967). The greater the Negro porportion of the school population, the more extensive will be the changes necessary to accomplish desegregation. Cities with relatively small areas of high-density Negro population may find it easier to desegregate by such devices as strategic site selection, redistricting, or the enlargement of attendance areas.

The Nation's larger cities have not been successful in desegregating their schools. Current Court guidelines appear to offer little promise for future success. On the contrary, they tend to initiate a vicious cycle. As previously mentioned, the greater the Negro porportion of the school population the more extensive the necessary changes. Unfortunately, the more extensive the proposed changes, the greater the likelihood of white flight. The greater the likelihood of white flight, the larger the Negro porportion of the school population. Thus, the phenomenon of slowly increasing minority group proportions until a certain point, followed by exponential growth in such proportions.

Surely the time has come to ask whether the path which the courts have taken does in fact lead to the goal of ending racial isolation and discrimination. There is ample evidence to indicate widespread failure of the methods which have been invoked in the past decade. Even more distressing is the fact that it is not possible to cite a single example of a large-city school system which could serve as a model of the effectiveness of bussing, pairing, etc. To persist in policies which generally fail—which indeed have not even once truly succeeded—can hardly be considered rational.

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TABLE 1.—PERCENT NONWHITE POPULATION OF EASTERN CITIES

City	1960	1970	Trend
New York	15	23	+8
Buffalo	14	21	+7
Rochester	8	18	+10
Yonkers	4	7	+3
Jersey City	13	22	+9
Newark	34	56	+22
Washington, D.C.	55	72	+17
Baltimore	35	47	+12
Philadelphia	27	34	+7
Boston	10	18	+8
Pittsburgh	17	21	+4

TABLE 2.—PERCENT NONWHITE POPULATION OF SOUTHERN CITIES

City	1960	1970	Trend
Birmingham	40	42	+2
Mobile		36	
Little Rock	23	25	−2
Atlanta	38	52	+14
New Orleans	37	45	+8
Jackson, Miss	36	40	+4
Memphis	37	39	+2
Nashville	38	20	−18
Charlotte	28	31	+3
Richmond	42	42	0
Norfolk	26	30	+4
Louisville	18	24	+6
Tampa	17	20	+3
Miami	23	23	0
Jacksonville	41	23	−18
St. Petersburg	13	15	+2

TABLE 3.—PERCENT NONWHITE POPULATION OF SOUTHWESTERN CITIES

City	1960	1970	Trend
Austin	13	13	0
Corpus Christi	6	6	0
Dallas	19	26	+7
Houston	23	27	+4
Lubbock	8	8	0
Fort Worth	16	21	+5
San Antonio	7	9	+2
El Paso	3	4	+1
Tulsa	10	13	+3
Oklahoma City	13	16	+3
Albuquerque	3	4	+1
Phoenix	6	7	+1
Tucson	4	5	+1
Denver	7	11	+4

TABLE 4.—PERCENT NONWHITE POPULATION OF WESTERN CITIES

City	1960	1970	Trend
Los Angeles	17	23	+6
San Diego	8	11	+3
San Francisco	18	29	+11
Oakland	26	41	+15
Long Beach	4	8	+4
Sacramento	13	18	+5
San Jose	3	6	+3
Portland	6	8	+2
Seattle	8	13	+5

TABLE 5.—PERCENT NONWHITE POPULATION OF MIDWESTERN CITIES

City	1960	1970	Trend
Chicago	24	34	+10
Detroit	29	44	+15
Cleveland	29	39	+10
Columbus	17	19	+2
Cincinnati	22	28	+6
Akron	13	[illegible]	+5
Dayton	22	31	+9
Toledo	13	18	+5
Indianapolis	21	18	−3
Kansas City, Mo	18	23	+5
St. Louis	29	41	+12
Milwaukee	9	16	+7
Omaha	9	11	+2
Minneapolis	3	6	+3
St. Paul	3	5	+2
Wichita	8	11	+3
Des Moines	5	6	+1

TABLE 6.—CITY SCHOOL DISTRICTS IN EASTERN CITIES

City	City percent white, 1970	School percent white			Total enrollment	
		1968	1970	Trend	1968	1970
New York	77	44	38	−6	1, 053, 787	1, 140, 359
Jersey City	78	44	39	−5	37, 083	38, 430
Newark	44	18	14	−4	75, 960	78, 456
Washington, D.C	28	6	4	−2	148, 275	145, 330
Baltimore	53	35	33	−2	192, 171	192, 458
Philadelphia	66	39	36	−3	282, 617	279, 829
Boston	82	68	64	−4	94, 174	96, 696
Buffalo	79	61	65	+4	72, 115	70, 305
Rochester	82	68	62	−6	47, 372	45, 500
Yonkers	93	83	81	−2	30, 794	30, 632
Pittsburgh	79	60	59	−1	76, 268	73, 481

TABLE 7.—CITY SCHOOL DISTRICTS IN SOUTHERN CITIES

City	City percent white 1970	School percent white			Total enrollment	
		1968	1970	Trend	1968	1970
Birmingham	58	49	45	−4	66,434	61,994
Mobile	64	58	55	−3	195,000	190,000
Little Rock	75	64	61	−3	24,854	24,451
Memphis	61	46	48	−2	125,813	148,304
Miami	77	58	54	−4	232,465	240,447
Louisville	66	54	52	−2	55,212	53,197
Atlanta	48	38	31	−7	112,227	105,598
New Orleans	55	31	29	−2	110,783	109,856
Jackson	60	54	39	−15	38,773	30,758
Richmond	58	31	35	+4	43,115	47,998
Nashville	80	76	75	−1	93,720	95,313
Charlotte	69	70	69	−1	83,111	82,507
Norfolk	60	57	54	−3	56,029	55,117
Tampa	80	74	74	0	100,985	105,347
Jacksonville	77	72	71	−1	122,637	122,493
St. Petersburg	85	83	83	0	78,466	85,117

TABLE 8.—CITY SCHOOL DISTRICTS IN SOUTHWESTERN CITIES

City	City percent white 1970	School percent white			Total enrollment	
		1968	1970	Trend	1968	1970
Austin	87	66	64	−2	49,177	50,750
Corpus Christi	94	48	45	−3	46,110	46,292
Dallas	74	61	57	−4	159,924	164,736
Houston	73	53	49	−4	246,098	241,139
Fort Worth	79	67	64	−3	86,528	88,095
San Antonio	91	27	23	−4	79,353	77,253
El Paso	96	42	40	−2	62,105	62,545
Tulsa	87	83	82	−1	79,990	77,822
Oklahoma City	84	78	72	−6	74,727	70,042
Albuquerque	96	56	58	+2	79,669	83,781
Phoenix	93					
Elementary		33	32	−1	11,156	10,994
High school		78	77	−1	28,218	28,513
Tucson	95	68	68	0	53,667	58,346
Denver	89	66	62	−4	96,577	97,928

TABLE 9.—CITY SCHOOL DISTRICTS IN WESTERN CITIES

City	City percent white, 1970	School percent white			Total enrollment	
		1968	1970	Trend	1968	1970
Los Angeles	77	54	50	−4	653,549	642,895
San Diego	89	76	75	−1	128,914	128,783
San Francisco	71	41	37	−4	94,154	91,150
Oakland	59	31	28	−3	64,102	67,830
Long Beach	92	85	83	−2	72,065	69,927
Sacramento	82	66	64	−2	52,545	52,218
San Jose	94	68	69	+1	35,417	37,176
Portland	92	89	88	−1	78,413	76,206
Seattle	87	82	80	−2	94,025	83,924

TABLE 10.—CITY SCHOOL DISTRICTS IN MIDWESTERN CITIES

City	City percent white, 1970	School percent white			Total enrollment	
		1968	1970	Trend	1968	1970
Chicago	66	38	35	−3	582,274	577,679
Detroit	56	39	34	−5	296,097	284,396
Cleveland	61	42	40	−2	156,054	153,619
St. Louis	59	36	34	−2	115,582	111,233
Columbus	81	74	73	−1	110,699	109,329
Cincinnati	72	57	55	−2	86,807	84,115
Akron	81	74	72	−2	58,589	56,426
Dayton	69	61	59	−2	59,527	56,609
Toledo	82	71	70	−1	61,684	61,699
Indianapolis	82	66	64	−2	108,587	106,239
Kansas City, Mo	77	53	50	−3	74,202	75,503
Milwaukee	84	73	70	−3	130,445	132,349
Omaha	89	80	79	−1	62,431	63,516
Minneapolis	94	89	87	−2	70,006	66,938
St. Paul	95	91	89	−2	50,338	49,732
Wichita	89	85	83	−2	68,391	63,811
Des Moines	94	91	91	0	46,532	45,375

COMMUNICATION CLUSTERS PROGRAM FOR ELEMENTARY SCHOOLS

INTRODUCTION

The following is the Communication Clusters Program for Elementary Schools of the Confluence of Cultures Desegregation Plan.

The proposal contains no radically new ideas about education but, instead, makes a new and unique application of sound ideas to the problem of moving toward a quality Confluence of Cultures in a major urban area.

This plan is designed to bring about introductory educational and social contacts between students of different races at the elementary level. Such preparation is needed if students are to interact successfully later with one another at the departmentalized secondary level.

This plan will strive for parity between all students of all races without changing the current attendance pattern of elementary students. Because schools will thus presumably continue to be racially identifiable (in attendance at least), every aspect of the student's education, school activity, and social development must be altered to enhance development of a true Confluence of Cultures.

This plan will center itself in an administrative restructuring at the elementary level around the high school cluster. In addition the plan will:

1. Maintain the neighborhood school concept.
2. Provide for faculty assignment in the same ratio of Black to White as is the employment ratio of the District.
3. Afford majority minority student transfers.
4. Feature desegregated student contact between varied groupings of pupils by television and other audio and video mediums.
5. Provide for student inter-visitation through field trips, extra-curricular events, special events and lunch visits.
6. Require the establishment of a tri-ethnic advisory committee for each cluster.
7. Utilize as a part of its instructional program the concept of Guaranteed Student Performance.
8. Implement an extensive Staff in-service education program for intercultural education.
9. Stress and provide opportunities for parental involvement.
10. Emphasize cooperation with area colleges and universities in the training of intercultural teachers.

This plan is recommended because it is educationally sound, administratively feasible, and financially plausible.

Emphasis in the Communication Clusters Program for Elementary Schools will center on quality education for all pupils of all people. It will greatly enhance the primary Goal of DISD "to provide equally effective quality schools for all children of all people."

PROGRAM OF INSTRUCTION

Quality, effective instruction is dependent on individualization of instruction, a priority goal of the DISD.

Individualized instruction is oriented foward the child with appropriate learning experiences assigned each student. It is not just assigning different tasks, nor is it ignoring some students while others perform. Individualized instruction means employing procedures and techniques which allow, even foster, student activities that are right for particular individuals at particular times in terms of their own respective individual readiness, aptitudes, goals, interests, and needs. This applies to pupils of all ethic origins. This goal is to be the number one priority in all of the endeavors of the Confluence of Cultures Communication Clusters Program.

IDENTIFYING COMMUNICATION CLUSTERS

Geographic zones have been identified with senior high school zones to be known as "Confluence of Cultures Communication Clusters" hereafter called Clusters. Each Cluster will have an appropriate and feasible representation of ethnic groups. Each Cluster will be designated by the name of its area high school.

STUDENT ASSIGNMENT

Each high school cluster will have four or more regularly designated elementary attendance zones. Students in each cluster will have periodic desegregated educational contact with students of another ethnic group as supervised by an integrated and racially balanced faculty and administrative staff. Neighborhood attendance zones will continue to exist and a pupil residing in a designated elementary zone will continue to attend the neighborhood school presently located in each zone.

CLUSTER DIRECTOR

Under this plan a new position of Cluster Director will be created. This person shall be the chief administrator of all faculties, programs, and schools in a specific cluster. He shall report to the Assistant Superintendent-Elementary Operations. The building principal shall report to the Cluster Director.

The creation of these new positions will represent a net gain in persons employed by the district and reflect an increase in the operating budget.

Special Training for Cluster Directors

All Cluster Directors will receive an appropriate training program designed to enable them to implement this plan. Continuing training and planning sessions for all Cluster Directors will be held during the year in accordance with guidelines and programs established by the Development Division of the DISD.

DESEGREGATION THROUGH THE USE OF TELEVISION AND OTHER AUDIO VISUAL RESOURCES

Consistent with sound and effective educational practice, this plan will use a variety of audio visual instructional materials including 8mm and 16mm films, filmstrips, maps, globes, charts, posters, records, radio, instructional telephone, television and other materials.

These materials, to be used only after careful planning and selection, will play a major role in achieving the goals of this Confluence of Cultures Desegregation program.

The use of these instructional materials will be the result of a specific need in the educational program.

Teachers shall proceed with careful planning. Pupils will be provided with specific purposes for the operation involved before these devices are used. During the use of these media, pupils will have some guidelines to follow. After the presentation there will be a discussion or summarization which will allow pupils to understand and consolidate the learning that has resulted from their observations.

Teaming of schools, classrooms, and students by television and other means of audio visual communication under this plan provides an opportunity not only to enhance the quality of instruction but provides a means to facilitate a confluence of cultures by direct cultural and ethnic interaction in the curricular activities of students. One example of this communication grouping may be explained through the process of implementing an exemplary unit of study. A summary unit follows:

Built around a cluster lead school concept a unit of study would be introduced via television by one cluster school which would assume a leadership role for the duration of the unit. This leadership role will be rotated so all schools will become lead schools regularly. All children would have leadership opportunities. The lead school would be responsible for planning the unit, doing background work, introducing and organizing the unit, and in general managing the work assignments for other cluster schools.

After the lead school introduces the unit, other cluster schools respond in individual short telecasts which are viewed by all cluster schools. This gives each group a chance to interact with all other groups. Initial planning, work assignments, and proposed work schedules are developed in a manner such as a teacher might utilize in a classroom.

As part of the unit students will plan to make lunchtime visitations to other schools for in-depth planning sessions face to face. (For this unit, schools are paired for visitation; pairings will change and other plans will be developed for future units.) Previsitation contact is made with other schools via television, audiotapes, videotapes, and other media.

An important activity of the unit is a field trip shared by all cluster schools. Planning for this trip, dispersal of information, schedules, and other pertinent facts are discussed via television communication. For the actual trip, students utilize cluster vehicles furnished by the Dallas Independent School District.

Follow-up reactions to the field trip, sharing of further information, and culminating activities will be carried on for the remainder of the unit utilizing the cluster lead school concept and two-way television contact between schools.

As the unit is designed, students from all schools will come into contact with students from other cultures by way of television, visitations to other schools, trading audiotapes, sharing videotapes, and taking a combined major field trip. As future units are implemented, each school will assume a role of leadership and all schools will remain in close contact with each other by way of television communication.

Other potential uses of television communication

The television communication system inherent in the Cluster Program has numerous other uses such as:

Staff orientation, development, and briefing. Advanced training of teachers through such systems as TAGER (The Association for Graduate Education and Research of North Texas).

Community civil defense communication.

Special clusterwide or systemwide programs.

Adult education programs as an adjunct to the regular school day.

Other utilization might include contact by parent and community groups from the cluster schools similar to the student contact, thus, moving the entire community toward a confluence of cultures on all levels.

DESEGREGATION THROUGH SCHOOL TEAMING FOR EXTRA-CURRICULAR ACTIVITIES

Desegregation through school teaming for extra-curricular activities will facilitate the development of a confluence of cultures. Opportunities for additional personal contact will be afforded by activities such as the following:

Lunc Visits.—Pupils and teachers will exchange lunch visits.

Field Trips.—Field trips will be arranged to visit newspaper plants, fire stations, water treatment facilities, bakeries and other industries and public utilities.

Arrangements will be made for combined groups to visit the various museums.

Performing Arts.—Symphony and theatrical performances will be attended by primary or middle grade pupils from the cluster schools.

Special Events.—Science-Math Fairs, Inter-school Assembly programs, Field Days, Art Exhibits, Square Dance Festivals and special observances will offer opportunities for additional interschool participation.

Speech and Literary Contests, Performances or Activities.—Picture memory, prose reading, poetry reading, number sense, spelling, story telling, and one-act play contests, performances or activities provide means for bringing the various cluster schools together.

Music.—Vocal and instrumental music departments will arrange for programs to be shared and for programs to be presented by combined groups. Music festivals, concerts, and contests expedite such activities.

Physical Education.—Intramural programs will be organized on a scheduled basis for boys and girls. Usually a class section is the basis for organizing teams and arranging leagues. This program will be extended where possible to provide for contact between schools during the school day.

The present extended day program begins with the opening of school and ends approximately two weeks before the close of school. From one to two leaders work in each school for approximately two hours immediately after the close of the regular school day. Extramurals are for students desiring competition with other schools. Schedules are arranged in a round robin tournament with scheduled games being worked around the school calendar. This type of schedule will be followed in scheduling football for boys, volleyball for girls, basketball for boys and girls and soccer for boys and girls resulting in a total 192 games being matched. In addition track and field events would be scheduled for both boys and girls.

Benefits to be derived from desegregated extra-curricular activities

The above listed special activities are suggested as part of the cluster program to:

Give pupils from different races and different schools an opportunity to share community and cultural activities together.

Give pupils opportunity to know each other and to form interracial friendships.

Offer the opportunity for aesthetic expression and the development of artistic discrimination.

TRANSPORTATION

A modest amount of transportation will be needed to provide for teaming of cluster schools for the desegregated educational activities. This transportation will be provided by the County Board of Education Department of Transportation and requires no additional equipment purchases.

FACULTY ADVISORY COMMITTEE

Each Cluster Director, in conjunction with cluster principals, will appoint a representative committee of teachers working within the cluster to serve as a Faculty Advisory Committee on matters of curriculum, extra-curricula programs, acquisition of teaching materials, classroom methods, desegregated television contact work, and interschool visits. Each elementary school will be represented on such a committee which will be multi-ethnic in its make-up.

PARENTS ADVISORY COMMITTEE

In a similar manner, each Cluster Director will immediately appoint a multi-ethnic committee to serve the Cluster in an advisory capacity, only. Each committee will be so constituted as to give equal representation to each elementary school and each ethnic group in proportion to that ethnic group's representation in the total enrollment of the Cluster as of October in any current academic year.

The advisory committee serving a Cluster will be required to meet a minimum of one time each month and make monthly reports of its recommendations to the Assistant Superintendent-Elementary Operations and the Cluster Director.

No parent will be permitted to serve more than two years on such a committee.

PARENTAL ACTIVITIES

All P.T.A. or other parent organizations serving an individual elementary school campus will be encouraged and enthusiastically supported as being essential to quality education. Formation of one cluster organization of this type to serve all the parents and all the schools of an entire cluster will be recommended.

EQUALITY OF PROGRAM AND SUPPLIES

Within a Cluster there should be equality of program and teaching materials. The programs as compared between Clusters might vary when viewed across the district as a whole. Parity between schools within a cluster is an integral basis of this plan. Optimum opportunity for each pupil through individualized instruction is the focal point of the efforts of the DISD.

PROGRAM REPORTING

The Cluster Director will submit monthly management reports for review by the Assistant Superintendent-Elementary Operations. These reports will reflect and confirm the various schedules of groupings, television contracts, and other pupil-to-pupil inter-actions for purposes of quality integrated education.

GUARANTEED GRADE LEVEL PERFORMANCE FOR ALL ECONOMICALLY DEPRIVED STUDENTS

The Board of Education will adopt whatever educational programs, techniques, or contractual assistance is necessary to guarantee grade level performance in reading for every economically deprived child in the target area at the date of his promotion from the sixth grade provided he has attended a Dallas Independent School District school for six years. This means an economically deprived pupil completing the sixth grade at any cluster school must be able to read at the sixth grade level or at a level commensurate with his abilities as evidenced by independent evaluation procedures.

In this manner, the oft lamented lower standards of racially identifiable schools will be prohibited as a matter of Board of Education policy and every economically deprived student entering the secondary level of Dallas Independent School District will be on parity with the Anglo majority students.

Thus, economically deprived students, then able to compete and to perform, would cease dropping out prior to graduation and would be fully able to seek higher education in college or obtain gainful employment at wages which would reduce welfare costs, enhance real estate values, and increase local, state, and national taxes to be paid by these economically deprived citizens.

DESEGRETATION TEACHER EDUCATION CENTERS

This plan provides for the establishment of Desegregation Teacher Education Centers in six areas throughout the city. The centers would utilize the resources of children, parents, teachers and university personnel, in the development and implementation of the Confluence of Cultures Communications Cluster program for the elementary schools.

The purposes would be to facilitate personalized instruction and create a greater cultural awareness on the part of teachers, students and parents in the cluster area. Specifically, the primary function is to teach teachers to successfully cope with the myriad of problems associated with the total Confluence of Cultures program.

HUMAN RESOURCE LEARNING CENTERS

This plan provides for the establishment of six Human Resource Learning Centers in conjunction with the Desegregation Teacher Education Centers. These centers are school buildings that are located geographically convenient to all campuses. Professional personnel as well as student groups, parent groups, civic organizations, etc. will be able to make use of these centers.

Each Center will contain materials and cultural exhibits that are designed to assist participants in developing a genuine understanding of people with an ethnic background different from their own.

These Centers will be equipped with materials and supplies, exhibits and demonstrations which will emphasize self-understanding, respect for other ethnic groups and will serve as a library and museum specializing in the area of the Confluence of Cultures.

The Centers will serve as meeting places for large and small group seminars and will be staffed with ethnic specialists trained in the field of cultural awareness. A well-organized and keenly-structured program will be developed during the first year of operation with emphasis on bringing together people of a multi-ethnic background. A close relationship between the Coordinator of the Center and the cluster schools will be the key to a successful beginning.

MAN IN HIS ENVIRONMENT

(An Exemplary Unit for the Cluster Program)

Learning Focus

Developing a confluence of cultures while studying conservation and protection of community resources with emphasis on the Fire Department.

Title

People learn to use their environment.

Rationale

People of all cultures have contributed to the development of present-day ideas, beliefs, and customs. Generally speaking when two or more cultures meet, each culture makes some changes, forming a new culture, often evolving into a third, apart from and yet similar to, the contributing ones.

Since members of various ethnic groups are brought more and more into close association with one another, it seems appropriate for each group to become familiar with the ways that other groups interact with their environment.

While each group is becoming better acquainted with all other groups, opportunities will be provided for the individual to recognize the contributions of his own ethnic group to the new group and, hopefully, strengthen his self-image.

Goal

The student will be able to gain knowledge of how people utilize resources in their environment to protect themselves.

Objective

The student will demonstrate his understanding of why people organize and maintain a fire department.

Procedure for implementing a unit of study utilizing the Cluster Lead School Concept:

A lead school will be identified for each unit of study (i.e. School A is designated as the school primarily responsible for the leadership role in introducing and implementing a unit on "A Trip to the Fire Station".)

The lead school would serve as the director of learning activities for other cluster schools for the unit utilizing TV communication and other resources.

Other schools in the cluster would assume the role of researchers, reporters, evaluators, etc.

A sample schedule of cluster activities utilizing TV communication and the lead school concept, is indicated below:

WEEK NO. 1

Monday, A.M. (9–12)

The lead school presents a 30-minute telecast as an introduction to the unit of study.

Activities

1. Small class discussion is conducted in cluster schools in order to develop unit organizational plans on what we want to know and how we can find out.
2. Cluster schools prepare reports for the p.m. telecast.

Monday, P.M. (1–4)

Activities

1. In 10-minute telecasts, cluster schools will present reports on morning activities.
2. From 2:30–4:00 p.m., the lead school will utilize input in order to develop strategy for the unit.

Tuesday, A.M. (9–12)

1. The lead school presents a 30-minute telecast outlining strategies and unit organization based on input from cluster schools.
2. The cluster schools will conduct small group meetings to determine the role of each school.

For Example.—School B chooses to inquire into the qualifications of the Fire Department employees. School F chooses to inquire into the number of fires controlled in a given period of time.

Activities of the fireman on duty could be used for several other inquiries.

Tuesday, P.M. (1–4)

1. Within a 10-minute telecast the cluster schools present their choice of unit-related activities.
2. From 2:30–4:00 p.m. the lead school compiles the input, assigns activities and develops a work schedule.

Wednesday, A.M. (9–12)

1. The lead school presents a telecast to outline responsibility of each cluster school and presents a schedule. (This includes lunch visitation on Thursday, and cluster schools are paired for visitation.)
2. Field trip is announced for Monday P.M.
3. Cluster schools will form small groups in order to begin carrying out responsibilities in visitation.

Wednesday, P.M. (1–4)

1. At 1:00 p.m., cluster schools present 10-minute telecasts outlining plans for visitations.
2. From 2:30–4:00 p.m., cluster schools continue to work on specific responsibilities.

Thursday, A.M. (9–12)

Visitation Day (transportation by Cluster vehicle) Schools paired as follows:

Host	*Visitor*
School A	School E
School B	School F
School C	School G
School D	School H

Thursday, P.M. (1-4)

The cluster schools prepare for and react to visitors from other schools and prepare reports for Friday telecasts.

Friday, A.M. (9-12)

1. Cluster schools present 15-minute telecasts reporting on Thursday's visitation
2. From 11:00 a.m.-12:00 noon, cluster schools prepare report on the background information concerning areas of study for which they volunteered.

Friday, P.M. (1-4)

At 2:00 p.m., in 10-minute telecast, cluster schools report on background information prior to field trip on Monday. Lead school explains the plans for the field trip Monday P.M.

WEEK NO. 2

Monday A.M.

From 9:00-9:30 a.m., lead school makes final TV presentation outlining field trip plans for P.M.

Cluster schools discuss individual plans in small groups.

Monday P.M.

Field Trip to Fire Station(s)—transportation by cluster vehicle.

Tuesday A.M.

From 9:00 a.m.-12:00 noon, all cluster schools have group meetings to discuss Monday's field trip and to prepare report for afternoon telecast.

Tuesday P.M.

At 1:00 p.m., lead school presents 30-minute etelcast reacting to field trip. Other cluster schools follow up with short presentation(s).

Wednesday A.M.

From 9:00 a.m.-12:00 noon, all cluster schools work on final report on areas of study in the unit.

Wednesday P.M.

At 1:00 p.m., all cluster schools present 15-minute telecasts, reporting on areas of study.

All schools begin evaluation of unit.

Thursday P.M.

At 1:00 p.m., all students report in a 15-minute telecast on evaluation of unit. Lead school will make tabulation of reports.

Friday A.M.

At 9:00 a.m., lead school makes final telecast—culminating activities.

RATIONALE OF CLUSTER LEAD SCHOOL CONCEPT

By giving each cluster school an opportunity to become a lead school in developing and implementing units of study, students are expected to develop and exercise special leadership qualities. Each student will be able to experience the leadership role displayed by other cluster schools in a similar role. All students will have an opportunity to exercise leadership.

The schedule takes into consideration that much time is spent in individual research, viewing films, writing reports, and other related activities in each cluster school. Since, by necessity, much individualization must take place in each classroom, these activities cannot be included in a master schedule. These are an integral part of the cluster program.

In addition to the opportunities for leadership, this concept provides opportunities for direct interaction of cultures and ethnic groups.

ADDENDUM

Lunchroom visit activities

Planning for the visit.

The students will obtain a menu of the meal in order to discuss:

The parts of the country in which the foods are grown (use examples of food).

The vocations of the persons who have made the food available.

The cost and problems of the production of the food.

How each child's parents may contribute a service to the noon meal being shared.

How the food may be a favorite food of one ethnic group.

How people must depend upon other people for the food shared.

The transportation used to share the lunch with other students.

Activities during the lunch

Each student will:

Select a partner to visit during lunchtime.

Share information concerning his or her family (Father's work, Mother's work, Brothers and Sisters, etc.).

Discuss his or her choice of career in life.

Activities after returning to home school

Each student will:

Give his oral opinion about the visit.

Name three persons he or she met. (Perhaps each could write a letter or forward an audio tape to one student in the host school.)

Write, or prepare an audio tape, what he or she liked and disliked about the visit.

Make a list of ways the class could help to make students who visit their school feel more at home.

Elect one student to write a letter to the Principal and express thanks for the invitation to have lunch in the school.

Prepare an audio tape to forward to the Principal.

Resources

Motion Pictures: I–202, City fire fighters; H–1111, Fire; Hx–1112, Fire Prevention in the Home; Hx–1123, In Case of Fire; H–1121, More Dangerous Than Dynamite (Fire); H–1124, One Match Can Do It (Fire); H–1141, Then Came July 5th (Fire and Fireworks); Hx–1142, Tony Learns About Fire.

Filmstrips: Hf–1106, Controlling Fire; Hf–1141, Preventing Fires in Your Home; Hf–1142, Preventing Fires in Your School and Public Buildings; Mf–1108, Fire Safety; Mf–1113, In Case of Fire.

Community Resources: Dallas Fire Department, Fire Prevention Division, Local Fire Station.

Equipment: Portable Tape Recorders, Filmstrip Projectors, Record Players, Overhead Projectors, City Maps, Bulletin Boards, Display Tables, Transportation.

TEACHER RESOURCES

Motion Pictures: Jx–276, The Summer Children; Jx–130, New Tools for Learning; J–166, Bulletin Boards; Jx–156, Discovering Individual Differences; Jx–269 to Jx–273, How to Provide Personalized Education in a Public School, Parts I–V.

Filmstrip Kits: Rj–105, Educational Objectives; Rj–106, Perceived Purpose; Rj–107, Motivation in Teaching and Learning.

Filmstrips: Jf–101, Series—Teaching with Visual Materials.

Tape Recordings: Tj–110, Language of the School and the Language of the Child; Tj–115, Purposeful Questioning; Bulletin 548, Sec. 4 and 8, Texas School of the Air and Tapes, Texas Education Agency.

BOOKS

Pj–114, Designing Instructional Visuals; Pj–115, Instructional Display Boards.

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PROPOSED CONFIGURATION FOR A MULTICHANNEL, CLOSED-CIRCUIT TELEVISION SYSTEM LINKING A CLUSTER OF ELEMENTARY SCHOOLS

This configuration for a multichannel, closed-circuit television system linking a cluster of elementary schools envisions in each elementary school a "studio-classroom," in which class activities could be televised, and four "monitor-classrooms," in which pupils and their teachers could view activities being televised in studio classrooms at other schools in the cluster, and could participate in those activities by means of "talk-back" facilities incorporated in the system.

The studio-classroom would be equipped with two monochrome (black-and-white) television cameras. These would be mounted inconspicuously near the ceiling, at locations permitting full coverage of the room, and would be remotely controlled from a small adjacent room, in order to minimize the distracting effects of the televising process.

A program originating in the studio-classroom at an elementary scshool would be transmitted on a coaxial cable, of the type used in CATV systems, to the high school associated with the cluster. At the high school the program would be routed, by means of a switchboard, to another CATV-type coaxial cable leading back to the originating school and to the other elementary schools in the cluster. The high school's facilities would enable it to receive and redistribute a maximum of four programs at any given time. Thus as many as four elementary schools in the cluster could originate programs simultaneously, and each of these programs would be distributed to all elementary schools in the cluster. The high school's role would be limited to that of a switching center, although it could be given a larger role at some future date if this should become desirable.

Each of the four monitor-classrooms in an elementary school would be equipped with two large-screen television receivers. These would display the televised program material coming from a distant studio-classroom via the switching center at the cluster high school.

Each monitor-classroom would also be equipped with a "talk-back" microphone, which would enable the pupils and teacher in the monitor-classroom to talk to the pupils and teacher in the distant studio-classroom. Special provisions in the circuitry would enable the pupils and teachers in other monitor-classrooms receiving the same program to hear the talk-back conversation. There would thus be, in addition to the visual and aural links from the studio-classroom to each monitor-classroom connected to it, an aural link joining all of the monitor-classrooms to the studio-classroom and to each other.

The cable system linking the clustered schools together would consist of three cables. Two of these, one carrying programs from studio-classrooms in elementary schools to the switching center in the high school and the other distributing programs from the switching center to monitor-classrooms in the elementary schools, have already been referred to as being of the CATV type. The third cable would be a multi-pair communication cable of the telephone type, and would carry talk-back signals between elementary schools via the switching center at the high school. The three cables would run concurrently, lashed to an aerial "messenger" or sharing a conduit or trench in areas, if any, where underground construction might be required. Amplifiers would be inserted at intervals in the CATV–type cables, but would not be required in the telephone-type cable.

The number of elementary schools in a single cluster would range from 4 to 14. The system serving a single cluster would be a relatively small and simple one, involving a maximum of 14 studio-classrooms, 56 monitor-classrooms, one switching center, and approximately 19 miles of "cable plant." For the overall complex of 17 clusters envisaged, there would be a total of approximately 130 studio-classrooms, 520 monitor-classrooms, 17 switching centers, and approximately 165 miles of cable plant.

The operating requirements imposed by the system design would not be severe, and it should be feasible to utilize students undergoing training in technical high schools to man the studio control rooms in the elementary schools and the switching centers in the high schools. Maintenance requirements would be more stringent, and would demand the employment of well-trained, full-time technicians. Some of these would be stationed at a central maintenance facility equipped with sophisticated test equipment. Others, with simpler test equipment, would work out of selected high schools, performing on-site maintenance in one or more clusters of elementary schools, and delivering equipment to the central facility for more extensive repairs.

ADVANTAGES OF SOCIAL EDUCATION BY CLOSED-CIRCUIT COMMUNICATION AND OTHER AUDIO AND VIDEO MEDIUMS

Increased Inter-Cultural Involvement

Students would be interfacing with larger numbers of students from more diverse cultures than is provided by a single class

Joint after-school activities would be stimulated.

There would be much sharing of cultural characteristics derived from disparate traditions and ethnic customs.

Personal interaction would be provided through joint school activities, such as joint field trips and lunch visits.

Ease of Adjustment to Desegregation

Students would become acquainted with children of a variety of ethnic groups in a non-threatening environment, so that when personal contract is established, friendship will have been formed already.

Preservation of the Neighborhood School While Still Effecting Desegregation

There would be: A saving of time lost in busing students; less expense than total busing; after-school activities which are eliminated or hindered by busing; maintenance of an attendance level that is higher than in busing arrangements; parent participation in neighborhood PTA groups, which would be greatly reduced if parents had to travel across the city.

Improved Individualization of Teaching and Learning

Partnerships in learning between small groups in different schools would be encouraged, thus making children naturally available to one another for help as needed and for expanded activities.

Opportunities for children to share common interests, problems, and aspirations would be enhanced.

Impetus for Team Teaching

The partnership arrangement would necessitate, and hence lead to increased attainment of: The effective use of team contributions to large groups of students; a concentration of resources in one classroom that can be shared with others; Equalization of leadership roles, with each school taking a turn at being the lead school; Continuous interchange between members of a teaching team; Collaboration in the pursuit of common goals and objectives in diverse situations.

Improved Teacher Education

Broad and intensive personnel development would be facilitated because of joint endeavors and derivation of needs.

There would be much opportunity for such teacher to observe other teachers at work, thus enabling increased skills in working with various ethnic groups.

Increased responsibility on the part of the teachers for good planning and teaching would be recognized.

There would be continual monitoring of classroom activities for evaluation and feedback.

Continuous interaction between faculties and central staff would necessarily be obtained.

Increased Parental Involvement

Bilingual adult education would be facilitated because of the presence of facilities and joint community endeavors.

Sharing parents as resource persons would be naturally invited in the intercommunity focus.

PTA meetings between several schools could be held around common concerns, thus bringing about much adult acculturation.

Mr. BROOKS. The next witness is Mr. John Green, president of the school board in Dallas; and following Mr. Green, we hope to hear from Mr. Ben Clark.

At this time we will hear Mr. Green.

STATEMENT OF JOHN PLATH GREEN, PRESIDENT, SCHOOL BOARD, DALLAS, TEX.

Mr. GREEN. Mr. Chairman, I am appreciative of the committee inviting us to come up here and making our presentation to you. We are deeply interested in the subject, as you can guess from hearing Dr. Estes talk.

I had hoped that I could have put my speech before his, because when we planned it, I was to give some basics that would lead to more or less an introduction to Dr. Estes.

I want to tell you a little bit about my community. I think Mr. McCulloch will understand some of the answers Dr. Estes gave you regarding the history of what we have down there.

You heard Dr. Estes say we feel that the very best thing that the board of education can do is get a staff of educators together who will guarantee to the community that each child, regardless of race, color, or creed, will get a quality desegregated education for himself.

There is one other phrase or thought or idea I would like to add to that, that I didn't hear this morning and haven't heard yet today. That is, that we must, when we do it, do it with dignity to all the children.

Now, let me tell you this 1971 court order was not our first one. Our first one began in 1961 when I went on the board. In 1961, we were told to get rid of the dual system. Thurgood Marshall was the attorney for the plaintiffs in that cause that brought it about.

When the court gave us its final decision, the community of Dallas got together, formed a committee of 14 people, seven blacks and seven whites, in which we said, now, let us have some expertise in guiding us through this transition.

As a result of it, this group advised and the people of Dallas carried out, and we desegregated our hotels. We desegregated our eating places. We desegregated our transportation equipment. We desegregated everything that had any public overtone to it.

One of the reasons for that was to take the focus off of the September opening of schools so that the public would not have its wrath vented on the schools, but they would already have these other areas desegregated.

Do you follow me? We did this voluntarily. There was no court order requiring us to do it. We are glad to do it. Instead of having Little Rock at the time and other areas of controversy, Dallas was the model, or it was held up as model, for getting rid of a dual system, not with force but with love.

Now, for many years I was a law partner of Barefoot Sanders. I am sure you know who Barefoot Sanders is. Barefoot Sanders in 1961 was U.S. district attorney for the northern district of Texas. I was on the school board. Bobby Kennedy, the Attorney General of the United States, sent down some people to investigate what was going on at Dallas.

The investigators went over and talked with Barefoot and said, "Barefoot, either we have got the biggest snow job we have ever had in our lives, or this thing is working."

And Barefoot was able to tell them it is working. There is no hypocrisy to it at all. We are trying to make it work. I tell you this to show you the community spirit, how we try not to tell the kids the things you were talking about awhile ago, Mr. McCulloch.

Now, let me go one step further to something else.

In 1968 we knew, before 1968 we knew, that we were going to have to get a new school superintendent. We know what our problems are and what we expected them to be. We are a large school district, and we wanted to get the best qualified person to come in to be our superintendent.

So we went to a wonderful friend of mine, Dean Askew at the University of Texas, and I asked Dean Askew how could we best assure that we are going to get the finest superintendent and educator and administrator for our school.

He said:

> You do it this way: You get Stanford University, Harvard University, University of Chicago, Ohio State, University of Texas—there were seven of the schools—you get them together, pay them on consultant basis to come together, screen the various known candidates for superintendent of the Dallas Office of Education, and we will do all of the screening of them and will deliver to you the names of five people, anyone of whom we would recommend to you as topflight school suprintendent for your city.

To my knowledge, this has never been done before to find a superintendent in this manner. Dr. Estes headed the list. We interviewed over five of them, and we settled and had unanimous vote to bring Dr. Estes in here. He got his doctorate from Harvard University. He is a great friend of Harold Hunt. Probably that was the reason we got him, because Harold Hunt was on the committee representing Harvard at this particular study we had. He was in the Office of Education as Associate Commissioner of Education here in Washington, D.C. He helped participate in the writing of the 1964 Civil Rights Act.

To me, had Dallas wanted to roll back the clock on segregation, on integration, surely we would not have picked a person with the background of Dr. Estes, but we thought that he had the vision, that he had the youth and background, to come in and take the leadership for us at this particular time. We do not regret it one little bit.

Regarding compensatory education, over 10 percent of our entire operating budget, which is in excess of $100 million, is in compensatory education, the majority of which is not Federal funds. They are local funds. We don't think that we can teach a little Mexican-American child who comes into our first grade and he can't even speak English, for us to teach him with an English-speaking teacher alone. We think for us to try to do it is folly anyway.

But in addition to that, it hurts the dignity of the child. The little child thinks something is wrong about him. He has learned his Spanish at home. Yet it is ruled out at school. So instead, we put Spanish-speaking or Anglo or Mexican teacher who will teach in Spanish with English as a secondary, so that when he gets up to get his good firm foundation, he will be much better able to keep with his processes.

I think one of the things that the Supreme Court has overlooked and one of the things that the Congress and most of the people who have meddled in education, is that they have overlooked this dignity of the individual child. I can cite you instance after instance in Dallas where that dignity has been hurt.

Socrates said that the teacher-pupil relationship is the first or is essential to the learning process on the part of a child. So you can have the best teacher in the world. You can have the best classroom in the world. But unless that child is rightly motivated, he is lost. So that we must do everything we can to focus in on the child to try to give him the dignity that he yearns for. Massive busing cheapens the dignity of that particular child.

Another thing. The first grade is the most important. The first grade is the most important grade in a child's educational life, because in the first grade his attitudes toward the educational processes are formed.

If he is put off, taken up out of his neighborhood and put into a strange neighborhood, he starts off more behind than he was before.

I am sure you are acquainted with human relations commissions that we have in several cities and communities. Dallas has a human relations commission operating through the city of Dallas. When some of the high schools began to explode a bit, we noted Dr. Estes asked this human relations commission task force to come in and make an evaluation, because there were things that needed to be considered.

There was transportation. There was the court. The delay in bringing a child in to trial. Now, this I quoted in my report to you that I hope you do make a part of the record, because I am talking and trying to get as fast as I can within my time.

Mr. BROOKS. Mr. Hungate has a question.

Mr. HUNGATE. Mr. Green, I wanted to be sure that I understood you. You said that massive busing tends to degrade the students?

Mr. GREEN. The children think so. We had a young black boy come before the school board, and he said it is humiliating. He said, "I am here before you because you make me bus." He said, "No, it is not because you make me bus. That Federal court made me bus, but I don't want to be bused." It is humiliating.

You will find this all over the system. When these kids are having to be bused, the court ordered them out of the underprivileged subeconomic level into suburbs where you have the highest economic level, and the children see——

Mr. HUNGATE. Certainly we have a real problem here. But I wonder how much of it is busing.

My wife rode a bus 20 miles a day for 4 years in high school, and I never heard her complain. Is it something more than just busing?

Mr. GREEN. Your wife, I am sure, if you will ask her, she did it voluntarily. No court ordered her to do it.

Mr. HUNGATE. Of course, this "voluntarily" makes a difference then?

Mr. GREEN. Yes. I went to Judge Taylor myself, and I asked Judge Taylor, and he said, the courts are not educated in the field of education. They are not schooled in education. It seems to me it would be very wise if we had a study made for what are the alternatives to busing that would be educationally sound. I went to the school board, and Dr. Estes hired Stanford University, and Stanford University brought back a report that gave us 10 alternates to busing, any one they feel was educationally sound.

If you would like to have that, I am sure Dr. Estes would give you the Stanford report which, Mr. McCulloch, is along the lines of questions you asked.

Mr. Brooks. We would appreciate that.

Mr. Green. I wanted to mention this humiliation. It is humiliating. I could give you some of the intimacies of his thought. The other one was the word "cruel."

In July when this case was tried, the sociologist who testified as an expert for plaintiffs, testified that busing is cruel; and it is massive busing so far as, if only one child is bused, if he is the one who is bused, the expert said it is cruel.

So, to me, busing is cruel. Busing is humiliating. To my mind, busing hurts or harms the personal image that a child has of himself, and I think this destroys his motivation and increases the rate of dropout in the school.

I would ask that you consider favorably a constitutional amendment that would correct this. Thank you.

Mr. Brooks. Thank you very much. Any questions?

Mr. Green. Pardon me. We have some famous people from Texas. You may not know who they are, but to me they are important.

Mr. Brooks. We would be pleased to have you introduce the people who came.

Mr. Green. We have Ike Harris, State senator. We have Bill Breckline, member of the State legislature. Jesse Price, who is a former city councilman and who is candidate for Congress from one of the new congressional districts. Mr. Roy Orr is our new State Democratic executive committee chairman. He is also one of the county commissioners of Dallas.

Those are people who are very much interested in this problem.

Mr. Brooks. We are glad to have you here. Mr. Green, your prepared statement will be placed in the record at this point.

Statement of John Plath Green, Esq., President of the Board of Education, Dallas Independent School District

Mr. Chairman and honorable members of the committee, may I express my thanks for the opportunity to appear before you today to express the collective views of the citizens representing the Dallas Board of Education.

My name is John Plath Green. I am president of the Board of Education of the Dallas Independent School District in Dallas, Texas. I am now serving my tenth year as a trustee, I am an attorney by trade, and have long been interested in the civic affairs—particularly the educational affairs—of Dallas.

No matter which side of the political or ideological fence one may happen to be on, all sides agree upon one key issue: the importance of good schools to the community.

After all, America was the first nation on earth to base its hope on the general intelligence of its people.

The dream of most Americans since Revolutionary times has been: "To give my children the best possible education, so that they might enjoy the good things in life."

The premise is a valid one—that a good education is the principal avenue by which a citizen, regardless of his background, may achieve economic success in life. Further, that without enlightened citizens, no community or nation may long survive.

We are now witnessing a national erosion of the foundations upon which our American educational system was built: control at the community level. And, as the cracks in this foundation widen, the differences between our people appear to grow more intense. Some cities perhaps have already reached the point of no return. We are grateful that Dallas has not.

Our economy is still strong. Our social growth continues to accelerate. And although we have seen pockets of polarization develop, the community as a whole is stil poised to achieve its finest hour. If we can maintain the integrity of our educational system, through continued local control, I have no doubt that our community and its citizenry will yet achieve our common goals: A better education, and a better life for all.

In opening, let me remark that Dallas has never had any special advantages either natural resources or geography to stamp it with the mark of destiny. From its beginning, Dallas' major resource has been its people. And its development into a metropolis of one and a half million people has been due only to the resourcefulness and cooperation among its first settlers and handed on from generation to generation.

Our belief that the people of Dallas can make things happen has paid consistent dividends. We have helped Dallas to become a vital center for trade, transportation, culture and education. And every single advantage gained we have made the springboard for other, more ambitious efforts. One of Dallas' most important assets has always been a highly diversified economy. No segment of industry dominates this economy as is seen in other cities such as Wilmington, Delaware, or Flint, Michigan. And this widely based stability, achieved by not having too many eggs in one basket, is reflected in one of the most sustained growth records of any major metropolitan center.

But Dallas has also benefited throughout its history from a continuous infusion of new citizens of diverse origins and cultures. Because it developed as a melting pot, Dallas is neither typically southern or south-western but is distinctively metropolitan in its outlook. But in the process of blending traditions and cultures from other parts of America, the community has still retained a strong spirit of unity which is perhaps its chief heritage from its own frontier origin. At present, and greatly as a result of this community attitude, in recent years a number of major corporate relocations have stimulated Dallas' growth and added to the breadth of community attitudes.

In 1970 Dun & Bradstreet's Million Dollar Directory listed 619 Dallas-based companies with assets of a million dollars or more, a total exceeded only by New York, Chicago and Los Angeles. 319 of Fortune's Top 500 corporations have offices, distributions centers and factories in Dallas. But Dallas' appetite for economic growth has never obscured concern for the quality of life in the community. That same tradition which has played such an important part in achieving a succession of difficult goals affecting economic development has been repeatedly directed toward building the community's educational, cultural and spiritual resources.

With the encouragement and support of our business community, there has been a growing spirit of innovation among Dallas educators. We have intensified our efforts to achieve high levels of excellence at all levels of the educational system and for all classes and individuals therein.

Today, the Dallas Independent School District is operating one of the most remarkable educational facilities in the country—a model program made possible only through the financial support and cooperation of the entire Dallas business community. We call it Skyline—a 20 million dollar facility which offers programs of study beyond the conventional curriculum, especially in the areas of science, arts, technology, and industry. The curriculum ranges from aviation and electronics to optics and television. It is the largest secondary facility in the nation with 4,000 day students and another 4,000 night students. Our advisory roster includes names such as RCA, Thiokol, Philco-Ford, Atlantic Richfield and in each particular career field Skyline is guided by outstanding leaders whose responsibilities include constant review of the curriculum, counseling and placement help, on-the-job training, and coordination with the business community. I am telling you all this to emphasize the fact that there is a positive attitude on the part of all Dallas to provide solutions to the problems in education that confront us.

I have not yet spoken of race relations in Dallas. In 1957, very shortly after the first disruptions in Little Rock, the black and white civic leaders of Dallas formed a group known as The Committee of Fourteen. Briefly, it was composed of seven whites and seven Negroes dedicated to working together to begin a harmonious move into desegregation. From the beginning our Dallas citizens have faced the prospect of integration and seized the initiative of their own accord.

Calmly and without furor we desegregated our public facilities, our transportation, amusement areas and schools—and we did it all with commendable grace.

We have had no race riots. No fire bombings. No vicious confrontations—and no violence.

Now, I am not saying for one minute that we have not had our share of racially inspired incidents. We have had picketing, but nothing on the scale of Jackson. We have had boycotts, but nothing to remotely compare with Birmingham. We have had no Watts—no Harlem. No bus burnings, even now. What troubles we have had, the black and the white community have faced shoulder to shoulder through the due process of the law. To the extent that we have made progress, we have done so through fierce and faithful effort. Courageous men and women have spent months and years of effort, endurance and frustration in pursuit of the highest order of unity for each and every person who lives and works in Dallas.

But, all of this effort, all of this climate of support, will be in vain if we find ourselves on the disastrous path so many others have followed. No matter what steps we take to improve the quality of education for all our children, a massive, compulsory busing operation is not the solution. You have seen in your own city of Washington the horrendous results. In Atlanta, when desegregation began 13 years ago, the school system was 70 percent white and 30 percent black. Today, it is 70 percent black and 30 percent white. During the 1970–71 school year, the district lost 7,000 white school children and gained 1,000 blacks. The St. Louis school district has gone from 78 percent white to 63 percent Negro, and the same observation applies in varying degrees to just about every other city with 40 percent or more of Negro children in its schools.

White flight is not a demagogy's flight of fancy—it is a viable and very real threat to the ends we have so vigorously tried to pursue.

In February of this year, Dr. Nolan Estes, General Superintendent of the Dallas Independent School District, who just appeared before you, became concerned over an apparent and very visible increase in polarization within our communities. He turned to the Greater Dallas Community Relations Commission, asking for their help in uncovering the true state of affairs. The Commission is a private agency, chartered as a Texas nonprofit corporation and funded by gifts from charitable foundations. It is not a governmental agency and has no legal authority. It can neither subpena witnesses nor compel testimony. It can take no legal action. Yet its members who are broadly representative of all racial, religious, ethnic, social, economic, and geographic sectors of the community, are committed to use their collective and individual influence to create a more wholesome moral climate in Dallas.

In response to the request by Dr. Estes, the Commission agreed to undertake a study of the problems of the Dallas Independent School District and the community as a whole were facing. To do this it created a special task force composed of twenty-one members comprising whites, blacks and chicanos.

Based on its investigations, the conclusion the Commission reached is as follows, and I quote from the Report of the Commission: "* * * that within our community the relationship between blacks and Anglos is deteriorating rapidly. It seems quite clear that Anglos are growing more fearful of blacks and blacks are growing more distrustful and resentful of Anglos. Out of this climate of distrust, fear, and hostility, and possibily because of a vacuum of positive leadership, segments within both the Anglo and black communities are too quick to apply racial overtones to any situation or incident. Rumors are accepted as fact and without substantiation. Generalizations are drawn from the most isolated incidents. If this situation continues, our community is building a bonfire of inevitable social conflagration. This deterioration of relations between the races is reflected in, but not caused by, those public schools now in the throes of racial integration for the first time on any significant scale. Unless the whole community recognizes the seriousness of this deterioration and mobilizes its total resources toward slowing its advance and reversing its trend, we shall soon have two separate, hostile communities—one white, one black."

It has been privately expressed to us by one member of the Commission that the whole experience of busing in Dallas has effectively set our race relations back ten years.

And there, gentlemen, is where we stand today.

We do not come before you reiterating the old cry of separate but equal. But we do say that the results so optimistically predicted have certainly not been attained—even in a school district with no history of racial disharmony and a strong goodwill to comply. Quite the opposite. We appeal to you instead to allow us to develop some rational alternatives for the current national crisis in the schools through the kind of leadership that can be provided only by the schools themselves. For only the school district knows what is educationally sound, what is administratively feasible, and what is economically possible.

What was begun—in all good faith—to bring us together, is now inexorably driving us apart. Before it is too late, let us begin to think—not politically—but in terms of whether our schools are being allowed to do what they are intended to do—educate our children.

Compulsory busing because of the color of a child's skin is cruel, humiliating, and is educationally unsound. We oppose it. If a constitutional amendment is the only way to stop it, so be it.

Mr. BROOKS. Now we would like to recognize Congressman Teague to introduce, our next witness, Mr. Clark.

We are delighted to have you introduce him.

STATEMENT OF HON. OLIN E. TEAGUE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. TEAGUE. Ben is a good old American, a good Texan, a friend that I am proud to call a friend.

Ben has a lot of good old common horsesense and has taken a big interest in this subject and done a great job. I haven't read his statement but I know it will be a good one.

While I am talking, Jack, I would like to say to this group here how much I appreciate this committee having stayed here hour after hour and listening to testimony on this very important subject. We appreciate it.

Mr. BROOKS. We are always glad to hear from you, Congressman.

Mr. Clark, you may proceed.

STATEMENT OF BEN CLARK, GENERAL CHAIRMAN, COUNCIL OF CITIZENS FOR NEIGHBORHOOD SCHOOLS, DALLAS, TEX.

Mr. CLARK. Thank you, Mr. Chairman and members of the Judiciary Committee. Congressman McCulloch had asked earlier as to some of the citizens' views and I would like to elaborate a little bit here.

The citizens really feel that if we define quality education in Dallas or through our Nation to its highest excellent point, what have we accomplished if we have destroyed the learning environment within the classrooms. Really what I am saying is the excess baggage of social progress and desegregation of the school can't be totally carried upon the narrow shoulders of our children and we need to put it back in the adult world, put a little more support on our square shoulders than on our children.

I appear before you at the invitation of the committee to present the citizens of Dallas opinions regarding the forced busing of American schoolchildren to achieve racial balance.

By way of preface to my remarks on this grave issue, let me provide you with some background information on the Citizens for Neighborhood Schools Organization.

First, let me say that this organization is not opposed to quality education for all students. We are, however, opposed to forced busing to achieve racial balance and have searched vigorously for reasonable alternatives to this obviously unworkable plan.

The Citizens for Neighborhood Schools was organized to present the people's point of view to the courts. The organization is presently managed by a multiracial executive committee elected by the people of the community to represent the high school of their area. This committee represents all the Dallas area.

This organization has always worked in compliance with the law; exercising all legal means available to bring out a judicial solution to the forced busing problem.

In addition to the court actions, this group has, within a 10-day period, obtained over 200,000 signatures on petitions and letters supporting neighborhood schools and opposing forced busing.

Mr. Brooks. Mr. Clark, what was the date of your organization?

Mr. Clark. We are trying to catch the horse after it was out of the race in July and August of 1971 last year, sir.

These 200,000 signatures were sent with a letter from U.S. Senator John Tower to the personal attention of President Nixon at the White House. In addition to the trip to Washington during which these petitions were delivered, members of this organization have made five additional trips and delivered another 135,000 petitions and personal handwritten letters.

My point in mentioning all of this, is to put the feelings of the people of Dallas into the proper perspective of disillusionment and disappointment with the approaches taken thus far and to mention the animosity caused by the courts' rulings.

We feel that the courts have gone beyond any powers given them in existing civil rights legislation and that any future legislation forbidding forced busing to achieve racial balance would simply be overturned by the courts. How can the citizens believe anything else? The Civil Rights Act of 1964 states:

> Provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards.

Mr. Polk. Mr. Chairman, if I may inquire?

Mr. Brooks. Yes, Counsel.

Mr. Polk. What in the language that you have quoted would prohibit busing?

Mr. Clark. I am afraid I am not technical on the courts and the laws. May I refer this to the attorney, Mr. Green?

Mr. Green. I didn't get your question. What do you mean, sir?

Mr. Polk. The witness read some language from title IV of the 1964 Civil Rights Act in order to indicate that the language would prohibit busing.

Mr. Green. It is my understanding, and I am not going to pass the buck to him, but Dr. Estes was there when it was written and that was intended to eliminate forced busing.

Mr. Polk. But that language was not written——

Mr. Green. The Supreme Court in the *Swann* case says that it would not impinge upon, as I understand Chief Justice Burger's opinion, that would not impinge upon the equitable jurisdiction of the Supreme Court, this congressional language.

Mr. Polk. I don't believe he said that in the *Swann* decision. I think he did refer to the question of impinging on remedial powers in the *North Carolina* case, decided the same day.

Mr. Clark. Yet the courts have ordered forced busing.

Compatible with this feeling, is the strong support we wish to give this constitutional amendment.

According to a recent Gallup poll, the majority of people in Dallas, and in the country, oppose the forced busing of American schoolchildren simply to achieve a racial balance.

To bring the problem to a point of very sharp focus, let us consider the problem of Dallas specifically.

Dallas is the eighth largest city in the United States. The forced busing of Dallas schoolchildren represents the first time the courts have ordered this action in a school district of our size. Dallas is the hub of the Southwest and consequently what is ultimately resolved regarding the busing issue in Dallas would undoubtedly provide a guidepost for the rest of the United States.

With these possible alternatives, with the mechanism in Dallas we can come up with a possible first step toward a national policy.

The destiny of Dallas is the destiny of the country. To turn the analogy around, and provide an even better insight into the problem, one must consider the Oak Cliff section of Dallas. Oak Cliff is the section of Dallas in which I live.

Oak Cliff is a community of 350,000 which comprises 35 percent of the Dallas population. Fifty-five percent of the city's black population live in Oak Cliff and 64 percent of the homes owned by blacks in the city are in Oak Cliff.

Much work has been done in Oak Cliff to achieve the level of community education and social responsibility necessary to make this a successfully integrated area.

The effect forced busing has on the people of Oak Cliff will surely be mirrored and magnified by the people of Dallas and the country as a whole. Massive busing plans, such as those proposed by TEDTAC, would serve only to make this major problem one of unimaginable proportions. The effect busing has had in Oak Cliff can be stated very simply—it has not provided what it was designed to, namely quality education for all students regardless of color.

The students and parents have tried to arduously, with all good conscience, to comply with the Court's ruling. It has not worked. You may ask why not? After all this theory seemed very reasonable on paper, that is, provide a valid mathematical proportion of each ethnic group at each facility and a good balance would result. The fallacy in this theory, of course, is the very incomplete definition of quality education.

A complete quality education system really has two integral parts. One in the classroom and one outside the classroom—because the education of our children involves more than just the academics found in class, it also involves all of the outside activities offered in school which help mold our children into responsible productive members of our society.

All of our children—black, brown, and white—need high quality education and they need it now. They need better facilities, schools which create a learning environment, and improved teaching techniques.

Our children need sports activities and school clubs to make them complete individuals. What they don't need is forced busing which destroys the total education system by taking them out of their neighborhoods, out of their cultural environments, and out of their natural learning environment.

Mr. **Zelenko.** What do you mean by natural learning environment?

Mr. **Clark.** We find through many of the complaints that we have received in Dallas, like children that are being bused out of their neighborhood, what they consider their heritage, into the classroom, once they are called on a discipline matter on anything that is a little different from the way they conducted themselves, they feel they are being discriminated against.

It is really a misunderstanding as to either group as to what discipline should be and what culture and heritage is.

Mr. **Zelenko.** One of the points you make in your statement is that extra-curricular activities are eliminated because of a busing program. Would your objection to pupil assignment transportation for desegregation be reduced if there were provision for busing for extra-curricular activities?

There are many districts which have adopted busing programs and provide transportation for extra-curricular activities.

Mr. **Clark.** I think the citizens of Dallas would be more happy if assignment would be a schedule so that it is not a continuing entire year in and year out operation, and they need the roots of the neighborhood, and then to answer your question, an extended time period within a day or maybe within a week.

Mr. **Zelenko.** The reason I ask that is because Pontiac, Mich., which is a school district smaller than Dallas and which has undergone desegregation, apparently is providing bus transportation for students for extra-curricular activities, not only sports activity but non-sports activities as well.

Mr. **Clark.** This is one of the areas that people of Dallas probably would be favorable to if they could do it by choice and I think they would be in favor of exceptional education and sports, especially some of the sports such as swimming.

Mr. **Zelenko.** If there were buses available to assure students a continuation of their extra-curricular activity, do you think that would diminish some of the objection now being expressed to the busing of pupils?

Mr. **Clark.** I think students would feel as long as they can go and participate in these and not be forced to participate in the activity no matter where they are, that attitude would reflect favorable conditions. But if they are going to be forced to participate, it is not going to work.

Mr. **Zelenko.** Thank you.

Mr. **Clark.** Busing places the children into a situation which distracts them, makes them feel insecure by eliminating a very real part of their world, and makes it impossible for them to take part in afterschool activities. This distorts their personal development.

Forced busing attacks both the classroom and nonclassroom aspects of education and destroys them both, rather than providing quality education for all students. In essence, forced busing guarantees that no student will have the opportunity to obtain a quality education and generally causes social attitudes to revert to a preintegration viewpoint.

Forced busing, then, is obviously not the tool to provide quality education to all students. But that is not all.

In addition to destroying our children's opportunity for quality education, busing creates some new grave problems of its own. These include people who are incensed at the idea of their children being used as guinea pigs in a socioeconomic experiment that, from all indications, seems doomed to failure. These feelings breed a lack of support for our public schools which adds to, rather than solves, the problem.

All of the evils that have accompanied forced busing elsewhere are trying to seep into Dallas. There are, as I am sure you are aware, a long list of maladies including such things as "white flight," resegregation, student suspensions, and on and on.

To lend credence to the fact that this cancer is growing in Dallas, I have included in appendix form:

One, a statement from the Oak Cliff Chamber of Commerce which states in part:

> Forcing a student to attend a particular school because he is of a specific race will only aid in resegregating an integrated area of Dallas . . . The economic catastrophe which follows resegregation is well known to business . . .

Two, in a statement from a concerned mother that is typical of the current mood in Dallas.

Mr. Chairman, may I ask one other request. We are trying to convey the citizens' feeling here and I think the concerned mothers are the ones that really have a feeling about their children. This woman that we have her testimony included here, whose name is Joyce DeHaven is here today and I would not want to take a lot of time and I am closing now. But would it be possible if we listen to 3-minute testimony of hers just as an average concerned mother about her children on the forced busing issue. May I ask that, Mr. Chairman?

Mr. BROOKS. I think if the lady is here and won't take but 3 or 4 minutes, we can accommodate you.

Go ahead and conclude.

Mr. CLARK. Three, a group of sworn statements from a cross section of homeowners in Dallas County stating that they would sell their homes and move to avoid the forced busing of their children which definitely makes the prospect of "white flight" an imminent reality.

To summarize, busing deprives our children of the right to quality education and is creating very real problems in areas where none existed before. The American people are opposed to busing. What busing does is to provide a numerically even distribution of ethnic groups to learning facilities, but it destroys quality education at the same time.

The Constitution guarantees the right of every citizen to life, liberty and the pursuit of happiness. Forced busing has been shown to be in direct violation of our Constitution by denying freedom of choice.

Gentlemen, only a constitutional amendment will insure this freedom of choice and thus provide all children their inherent right to quality education.

Our social problems will not be solved by the forced busing of our children, but by parents. We must take this burden from the narrow shoulders of our children and place it squarely on our own broad backs.

Gentlemen, I urge you as a concerned parent and citizen to bring House Joint Resolution 620 out of this committee and to the floor of the House for a vote.

Thank you very much.

(The appendixes referred to follow:)

APPENDIXES

(1) Oak Cliff Chamber of Commerce Statement.

(2) Statement of (Joyce DeHaven) Concerned Mother of Dallas.[1]

(3) Random Survey of a Cross Section of Dallas County Homeowners on Implementation of Massive Forced Busing.[2]

OAK CLIFF CHAMBER OF COMMERCE

POSITION ON THE FORCED ASSIGNMENT OF SCHOOL CHILDREN

The Oak Cliff Chamber of Commerce of Dallas, Texas supports the efforts of Superintendent of Schools of the Dallas Independent School District and John Plath Green, President of the Dallas Independent School District to be given before the House Judiciary Committee on March 15, 1972.

Oak Cliff, a community of 350,000 people, an integral part of the City of Dallas comprises 35% of the population of the city. Fifty-five percent of the black population lives in Oak Cliff and 64% of the homes owned by blacks in the city are in Oak Cliff.

Oak Cliff is achieving integrated neighborhoods. Forcing a student to attend a particular school because he is of a specific race will only aid in resegregating an integrated area of Dallas. Further, the economic catastrophe which follows resegregation is well known to business and industrial leaders throughout the United States.

The Oak Cliff Chamber of Commerce believes in quality education for all people. However, such an education can only take place in an atmosphere which allows individuals a chance to grow without disruption and unnecessary pressures.

It is the position of the Oak Cliff Chamber of Commerce that forced assignment of school children is counter productive to quality education for all of our children, not just in Oak Cliff, but the whole Dallas Area School System.

CARIE E. WELCH, *President.*
BILL MCCALIB,
Executive Vice President.

Mr. BROOKS. Mr. Clark, we appreciate your testimony.

Congressman Hungate.

Mr. HUNGATE. Mr. Clark, I feel I must take issue with one thing you say, that the hub of Texas is in Dallas.

My son lives in Fort Worth. Could we agree that the hub is near Love Field.

Mr. CLARK. I think Dallas and Fort Worth have grown to the point that they are overlapping so much it is hard to decide where the hub is.

Mr. HUNGATE. Thank you.

Mr. MCCULLOCH. Mr. Chairman, may I ask a question?

Mr. BROOKS. Mr. McCulloch.

Mr. MCCULLOCH. May I inquire how old you are?

Mr. CLARK. Yes, sir; I am 33.

Mr. MCCULLOCH. How many children do you have?

Mr. CLARK. Two, sir. One will be 3 this April and the other child will be 6 in May. I have one boy and one girl.

Mr. MCCULLOCH. Is the youngster approaching 6 years of age in kindergarten or in the first grade of school?

Mr. CLARK. Not at this time, sir.

Mr. MCCULLOCH. What is your occupation?

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[1] Mrs. DeHaven's statement appears at p. 968.

[2] Signature sheets are retained in committee files.

Mr. CLARK. Well, sir, I work for Electronic Systems.

Mr. MCCULLOCH. Have you a plan whereby we might bring quality education to all children?

Mr. CLARK. Yes, sir, as a committee and working with citizens of Dallas we have worked on various proposals. We felt that, being my expertise is not as an educator, we have given most of these to our administration and to the school board and hopefully they can determine themselves if they are educationally sound.

I think some of these points have been brought out briefly in Dr. Estes' alternatives.

Mr. MCCULLOCH. I am pleased by your efforts. We are struggling with answering this question in a way that satisfies not only you but tens or hundreds of thousands of other parents in America.

I am interested, in the first instance, in seeing that all our children get a quality education in accordance with the best traditions of America. We are glad to hear you say these things.

Mr. CLARK. Yes, sir, that is why I feel Dallas can be a turning point toward a mechanism that may lead to a policy that will suffice.

Mr. MCCULLOCH. Our representative system and our Federal system have made it possible for one jurisdiction to instruct others. This is perhaps the most difficult problem that we have experienced. We are glad you are here.

Mr. CLARK. Thank you, sir.

Mr. BROOKS. Thank you, Mr. Clark.

Congressman McClory.

Mr. MCCLORY. I would like to make a few comments and then ask one or two questions if I may.

I want to observe that you come under very good auspices when you come under the auspices of the gentleman from Texas, Mr. Teague, the very able Chairman of the Veterans' Affairs Committee in the House of Representatives.

Mr. CLARK. We also think very highly of Congressman Teague.

Mr. MCCLORY. I am interested in your organization, Mr. Clark. I would like to know what kind of a constituency it represents. Do you have any figures on the number of members you have? Is it representative of blacks and whites? Does it include Mexican-Americans or Spanish-speaking people?

How generally held is this position that you are stating?

Mr. CLARK. The organizational structure, this is a question of the Citizens of Neighborhood Schools. The first trip to Washington we came as a delegation of five with two attorneys, myself, Poco, who is a Mexican-American, and Rev. Jarrell from South Oak Cliff High School, who is a supporting teacher and minister in the area.

These people are members and active people working on this committee.

Reverend Jarrell is of the black community and is a Negro.

To answer your question as to the number of people that belong to our organization, we have a very hard time defining our membership because we have never asked, only on given programs within the Citizens for Neighborhood Schools, for a membership and we are very cautious of getting a list of people's names because we are nonpartisan.

We are nonprofitmaking and we would rather not have a list that would be accessible to any political ramifications.

Mr. McClory. Do you feel that your organization is representative of the views of blacks and whites and Mexican-Americans?

Mr. Clark. Yes, sir; we had worked with these communities. As a matter of fact, the Gallup poll taken in Dallas on forced busing issues, white was 9 to 1, and the Negro community was over 50 percent against forced busing.

Mr. McClory. Thank you.

Mr. Brooks. Would you introduce the lady?

Mr. Clark. This is Joyce DeHaven, Mr. Chairman. She lives in the North Dallas area of our city.

STATEMENT OF MRS. JOYCE DeHAVEN, NORTH DALLAS, TEX.

Mrs. DeHaven. Mr. Chairman and members of the committee, I thank you for letting me give my statement.

Mr. Brooks. It is irregular procedure but we are present and we will hear you now.

Mrs. DeHaven. It is very short and I hope to the point.

I am here because I am a very concerned mother. I am concerned because I have four children and I want the best possible education for these children. I am tired of all the strife, tension, and the violence that exists in Dallas today. I want my children to have the best possible education in an atmosphere of cooperation and understanding.

Discipline is something you cannot teach nor can you teach responsibility nor can you teach integration in an atmosphere of violence and tension which exists in the public schools today.

Since our courts have ordered racial mixing by busing, tension and violence permeate the atmosphere of our schools in Dallas today. Since September when Dallas started forced busing because someone felt we needed this racial balance in the public schools, the quality of education has gone from mediocre to practically impossible. The grade standards have been lowered not only for learning but for extracurricular activities. In other words, if you want to try out for cheerleader or try out for something like this, the standards have been lowered, and if you have gotten a "C" last year, you probably will get a "B" this year.

Whole grades have been moved from one building to another because of court orders and teachers have been changed after 2 or 3 weeks of school to achieve a color balance. These things are happening to blacks and to whites and to Mexican-Americans.

Some teachers in my two daughters' junior high school classes have taken the entire class period to explain to children what to do in case of a riot.

Classes have been completely disrupted many times while the teacher tries to discipline a student instead of the teacher teaching the course.

Busing just to achieve a racial balance in a community should not be the sole responsibility of the public schools in this country. It is futile to force people to come together with tensions and animosities under the false assumption that they will learn better.

You cannot force a child to learn. He does not learn by osmosis. He must be taught in an atmosphere of cooperation. And this school year has been chaotic, disruptive, tension-filled, and even violent. The education of the students has been more on self-preservation and tactics.

The students of Dallas have for all practical purposes missed this year in their lives. They have been moved to black or white schools and the quality of education has dropped as a result of forced busing.

Teachers are moved to get a perfect racial balance regardless of their qualifications. Tensions are created because of a student who is forced into an unfamiliar surrounding, and violence results from these tensions.

Discipline problems arise because teachers are afraid to discipline.

I would like to ask this committee how they can assure all of the mothers, black, white, and Mexican-American, that their children will develop into mature, socially well-adjusted adults who can control the destiny of this country and obviously forced busing is not the answer.

Mr. BROOKS. Thank you.

I will ask you one question.

I noted that you stated in the middle of your second to last paragraph "students have for all practical purposes missed this year in their lives. They have been moved to black or white schools and the quality of education has dropped as a result of forced busing."

Do I take it that you feel there are schools which are segregated in your mind as black schools and others as white schools?

Mrs. DEHAVEN. As Dr. Estes pointed out, there are areas in Dallas, because of housing patterns and because of changing patterns, you would term more black and more white than you would both.

Mr. BROOKS. Any questions, gentlemen?

I want to say we thank you very much, Mrs. DeHaven, for coming here. We enjoyed your testimony.

Mr. TEAGUE. May I ask the people from Dallas who have not been introduced to stand?

Mr. BROOKS. Please do so.

Mr. TEAGUE. I will tell the committee a large group of them left Dallas last night at midnight and arrived at the Rayburn Building at 9 o'clock this morning.

Mr. BROOKS. We are delighted to have you here. We hope it has been a fruitful and successful day for you.

Thank you.

Mr. BROOKS. I will include in the record the following communications: A statement of Hon. William L. Dickinson, a U.S. Representative in Congress from the State of Alabama.

A statement of Hon. Louis Frey, Jr., a U.S. Representative in Congress from the State of Florida.

A statement of the Philadelphia Urban Coalition, Education Task Force.

Letter to Chairman Celler from Mrs. Barbara Soltis, executive secretary, Parents Rights Organization, Parma, Ohio, dated March 8, 1972.

Letter to Chairman Celler from R. Lee Davis, Nashville, Tenn., dated March 8, 1972, enclosing his letter to the editor of the Nashville Banner of March 6.

Letter to Chairman Celler from Jean Fair, President, the National Council for the Social Studies, Washington, D.C., dated March 10, 1972.

Letter to Chairman Celler from Judson Bemis, Minneapolis, Minn., dated March 7, 1972.

Statement of the American Baptist Board of Education and Publication and the American Baptist Home Mission Societies.

Statement of Council of Chief State School Officers.

Statement of Mrs. Kay Copeland on behalf of the Citizens for Neighborhood Schools of Dallas.

Statements of Mrs. Jeanette Guest, on behalf of Citizens for Neighborhood Schools.

(The correspondence and statements referred to follow:)

STATEMENT OF HON. WM. L. DICKINSON, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman, it is a privilege to come before your committee in support of legislation to prohibit the forced busing of school children. Two years ago last month, I led a special order on the floor of the House of Representatives to present the South's position on busing to the members of the House. At that time, I predicted this problem would inevitably spread throughout this country, and I believe my predictions have proven true. Now it seems that the hue and cry against busing has grown—and hopefully now that the rest of the nation is suffering we will see some concrete result to stop this arbitrary and artificial requirement that various schools come up to a certain percentage of racial enrollment, totally disregarding the neighborhood school concept.

I am unalterably opposed, and always will be, to busing school children away from their homes and away from their normal schools, sometimes as much as 10 or 15 miles, to schools where they are strangers and where they are out of their natural habitat—schools which they do not wish to attend. Mr. Chairman, I refer to both black and white students who want to go to their neighborhood schools and who want to stay with their families and friends. These students do not want to be bused.

It is not my intention to debate the merits, or not, of integration as opposed to segregation. We recognize what is the law of the land, but it is my contention that some bureaucrats in the Federal government, while they might recognize what is the law of the land, choose to ignore the law of the land.

I contend that busing to achieve integration is contrary to laws already on the statute books. Title IV of the 1964 Civil Rights Act states: "Desegregation does not mean assignment of students to schools in order to overcome racial imbalance and nothing in the title shall authorize a court or any official to order the transportation of students from one school district to another in order to achieve racial balance." In succeeding years, the Court has invented the artificial distinction between "de facto" and "de jure" segregation, and claimed that language in the Civil Rights Act which forbade the assignment of students to public schools in order to overcome racial imbalance referred only to "de facto" segregation. In point of fact, the intention of Congress in including this language was exactly the opposite of the Court's interpretation. Without question, the Courts have flagrantly distorted the legislative intent.

The Supreme Court in its 1954 decision ruled that students have a right to quality education regardless of race, creed, or color. Now the courts seem to say that regardless of your race, creed, or color, quality education is out—a goal of the past.

It has been the custom for generations for the public schools to be the center or focal point of the community. When one moves into a new neighborhood, the first consideration is the proximity of the neighborhood school and the quality of the education that is offered. At least, that used to be the prime consideration. Today one has to determine whether or not busing will play a part of their child's daily routine.

Forced busing not only has a detrimental effect on children who are taken from their familiar environment where they have established good friends, but it is most expensive to maintain a massive busing system. Education costs are rising fast enough, so why should we accelerate those costs by instituting and maintaining massive forced busing systems that the parents and children do not want in the first place?

As parents, we are concerned about our children's education. We want the best education available for them, but, at the same time, we want our right under the Constitution—freedom of choice—the law of the land. Under the forced busing system, if a child chooses to go to a school two blocks from his home, he may be denied that right and be bused 20 miles to another school. We must secure for all the citizens of the United States their inalienable right—freedom of choice. Forced busing is not the answer.

Nothing could be fairer than freedom of choice, for it is the freedom of every school child and public school teacher (or other public employee), black or white, to choose the school (or job) of his or her choice. The government should not have the power to compel one to attend a distant school purely for sociological reasons. Isn't it about time we started concentrating on educating children where they are?

I am sure, Mr. Chairman, that my many colleagues who have appeared before this committee to testifby in favor of anti-busing legislation have ably stated the case for these bills and, therefore, I will not take any more of your time. I will only offer my sincere hope that the conclusion of these hearings will bring legislation to the floor of the House of Representatives proposing an amendment to the Constitution to end arbitrary forced assignment to schools or jobs because of race, creed, or color.

Thank you, Mr. Chairman.

STATEMENT OF HON. LOUIS FREY, JR., A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I appreciate having the opportunity to appear before this committee to present my views on the use of busing as a means to achieve integration of our public schools.

Similar to other resolutions before this Committee, H.R. Res. 75, which I introduced prohibits the issuance of an order by any U.S. official or court requiring the transportation or busing of pupils from one school to another or one school district to another to attend any other school against the choice of his or her parents "where such school is not established purposely to perpetuate segregation."

It is now 18 years since the Supreme Court held in the historic *Brown v. Board of Education* case that state-compelled racial segregation in public schools is a violation of the equal protection clause in the 14th amendment. The underlying rationale was that each American regardless of race, creed or color is entitled to the best education possible.

Any form of state-compelled segregation is inherently discriminatory and abhorrent to our constitutional form of government. However, in the intervening years since that landmark case, successive court decisions and administrative actions have not only set back the movement toward integration, but also led to a deterioration in the quality of education in this country.

Most recently, the Supreme Court last year in *Swan v. Charlotte-Mecklenburg Board of Education* held that school boards have an *affirmative* duty to arrange all aspects of their school policies—assignment of pupils, faculties and staffs, transportation, school construction, and zoning—to remove all racial identification in the system and "extensive busing is within the remedial powers of the court."

This recent decision culminating a long line of decisions and administrative rulings by HEW acting under the Civil Rights Act of 1964 have, as I mentioned, actually retarded the movement toward integration.

Our objectives, it seems to me, have become confused. Since 1954 the principle of segregation has been effectively denied, those who held it have been made to repudiate it, and the rigid legal structure that embodied it has been destroyed. But, as experience has shown, to dismantle the official structure of segregation, even with the good faith cooperation of local authorities, does not necessarily create integrated schools, anymore than integrated schools are produced in the North by the absence of an official structure of school segregation.

By going beyond disestablishing segregation and forcing integration by the use of "extensive busing" and other methods we have produced the absurd result of *resegregation*. Integration reaches a tipping point. If whites are bussed or sent to constitute a minority in a school that is largely black, or if blacks are sent to constitute something near half the population of a school that was formerly white or nearly all white, the whites flee and the school becomes all or nearly all black. Resegregation sets in, blacks simply changing places with whites. The whites move within a city or out of it into the suburbs so that under a system of zoning they are in white schools because the schools reflect residential segregation, or they flee the public school system altogether into private and parochial schools.

Not only is "extensive busing" actually harming the cause of civil rights by "resegregation" and heightening racial tensions, but it is also diminishing the quality of education which our children receive.

Who is to pay for all this busing? The Supreme Court in its decisions does not authorize or appropriate funds to implement desegregation plans. And the costs are substantial, both in dollars and energy and time devoted to administering such schemes.

For example, a school board official from Vero Beach, Florida writes:

"In our county the busing of the small children in the elementary schools up to grade 5 has been a real problem and an additional cost to the taxpayer that does not reap any real benefit, other than to say that we have integrated schools . . . The actual cost at the time we had to go to busing was an additional 10 new buses, staggered hours of the schools, with all buses making additional runs and of course running up more mileage in a shorter period of time, which will make us have to buy new buses every 7 years rather than the 10 year period that we have used for years."

And, Mr. Chairman, pursuit of a policy of integration especially in metropolitan areas where whites are fleeing to the residentially segregated neighborhoods or suburbs, is going to eventually require pursuit of the whites with busloads of inner-city black children. Very substantial resources would be needed that have, as yet, not been committed by any city.

Let's stop this insanity before the penchant to rearrange our social system destroys the very foundation upon which our society is built: *quality* public education for all our citizens.

Instead, energies and resources could be more effectively used to train teachers, improve facilities, and fund experimental attempts to improve the quality of education.

It might also be noted, Mr. Chairman, that the burden of financing through taxes the buses, drivers, and new consolidated schools which replace the neighborhood school falls the hardest on those who can least afford it and also those for whom improvement in educational quality would mean the most.

Furthermore, our children are being used as pawns in a national chess game called "social engineering." Anyone who has seen a group of weary little children laden with lunchboxes and books waiting in the dark or in the snow for the long ride home, must have doubts about busing. One letter typical of the many I receive, reads:

"In our case, our child will be traveling 14 miles to school having to arise 2 hours earlier than usual, also possibly having to stand on this bus, and will not be able to participate in sports which is also an important part of his education. No one ever learned anything riding on a bus which no doubt will tire the child to the extent that upon arrival at school, he cannot concentrate on studies. . . ."

Moreover, more buses and longer drives to school increase the chances of accident. The number of bills introduced in this Congress on safety standards for school buses reflect the inadequacy of present standards and the national concern for the safety of our children.

By abolishing the neighborhood school, we are also, Mr. Chairman, in effect widening the "generation gap" between parent and child. Busing to distant schools makes parental concern and involvement with the education of their children all the more difficult. The involvement of cohesive communities of parents with the schools not only results in closer ties between parent and child, but also results in more responsive education. The cooperation of school officials and parents, furthermore, produces a more socially stable, disciplined school environment.

In summary, once the official structure of segregation has been dismantled and a parent has the freedom to choose where to send his or her child, any attempt to use artificial means such as busing to achieve numerical integration becomes self-defeating. Less economically and socially costly means such as residential zoning and pairing are available to stimulate integration. The objective, it seems to me, is to improve the quality of education for all our citizens and not the achievement of a ratio or percentage that bears no relation to educational needs.

THE PHILADELPHIA URBAN COALITION—EDUCATION TASK FORCE

POSITION PAPER ON BUSING TO ACHIEVE RACIAL INTEGRATION

The score of Anti-Busing resolutions which have been inundating the United States Congress is a blatant attempt to circumvent the Supreme Court decision on May 17, 1954, which calls "segregated schools inherently inferior." It gives those who are segregated a false sense of inferiority while imposing a false sense of superiority on the segregator.

The hue and cry about busing to achieve balance is an attempt to switch the real issue—integration. This sudden concern about the busing of children smacks of racism because more than 256,000 yellow school buses transport 20,000,000 pupils, which is 65 percent of the nation's public school pupils, 2.2 billion miles annually.

Busing is an everyday fact of life in both rural and suburban communities. Busing has just become an emotional issue since the Black pupil population has passed that of the white in the major cities across this country. It is ironic that at a time when "Law and Order" is on the lips of so many people, and it has become a political expedient that such a massive attempt to circumvent the law of the land by these same devotees is endeavored.

The public must not be fooled or caught up with this rash of resolutions which have been introduced in both chambers of the Congress. The concept of neighborhood schools, freedom of choice, and the prohibition of busing to achieve racial balance are the niceties which attempt to disguise appeals to fear and prejudice.

Politicians must stop using the busing issue to inflame people to gain political favor in this presidential election year. It is even more unfortunate that the President of this country has felt constrained to join in this campaign.

Each of these proposed constitutional amendments allows six years for passage of same which indicates the political expediency of their being introduced at this time.

WILLIAM O. MILLER, *Cochairman.*

LEE DAVIS AND ASSOCIATES, INC.,
Nashville, Tenn., March 8, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Rayburn Office Building,
Washington, D.C.

DEAR MR. CELLER: Please enter this as my testimony in the hearings before your Committee regarding busing legislation.

I am opposed to forced busing to obtain racial balance and I urge your Committee to recommend the strongest possible legislation which will stop the busing as soon as possible.

Attached is a copy of my letter to the editor of the *Nashville Banner* of March 6th. As a long time Methodist layman, I get calls from Methodist laymen, as well as others, asking, "What can we do?". My letter to the editor was to help some of the silent majority express their opinions through proper channels.

We are proud that our Tennessee Senators, Baker and Brock, supported by our Congressman Dick Fulton and all the other Tennessee Representatives, as well as the Governor and the Mayors have already expressed themselves loudly in an effort to stop the busing.

I would like to say in the strongest language possible that our children cannot afford to pay the price of the damage to their education, health, and morale through the forced busing. They will never be able to relearn what they have missed in this frustration and confusion.

Very sincerely yours,

R. LEE DAVIS, *President.*

Enclosure.

[From the Nashville Banner, Mar. 6, 1972]

To Help Halt Busing

On Wednesday morning I got seven telephone calls from Methodist laymen, objecting strenuously to the contents of an item in the morning paper, stating that Dr. Joseph Yeakel, General Secretary of the Board of Evangelism, United Methodist Church, planned to testify before Rep. Emmanuel Celler's Judiciary Committee in Washington on March 9. Dr. Yeakel was quoted as saying he would testify in favor of busing and against the anti-busing legislation now pending. The laymen were asking what can we do to off-set this kind of testimony, especially the implication in the item that Dr. Yeakel represents the Methodist Church. I am sure Dr. Yeakel would state very positively that he is speaking as an individual and not for the Church. I agree with the Laymen that because Dr. Yeakel is a minister and an employee of the Methodist Church, that he should be more sensitive to the possible implication in the news media.

My answer to the Laymen as to what to do is, first, let's agree with Dr. Yeakel that the ultimate goal must be "quality, integrated education." Secondly, let's agree that Dr. Yeakel as a citizen has a right to express a personal opinion before any representative body, but also every other citizen has the same right and, I feel, strong responsibility and duty to make his wishes known through all proper political channels.

In the history of our state and nation, I do not know of any matter on which almost everyone agrees that busing to force a racial balance is not justifiable and is doing irreparable damage to children and the school system in the community. When every elected representative in Tennessee, including our two Senators, nine Congressmen, the Governor, the Mayor, Metro School Board, supported by President Nixon's recent statement, and the recent debates in Congress, pending legislation, it means that they have gotten the message from the homefolks and are going to do something about it.

They know and we all know that this great nation was built around the family and the community. Every neighborhood consisted of a group of homes, churches, and schools and every neighborhood represented its government through precincts, wards, and districts. The P.T.A.'s in every community have been the principal source of communication between the home and the school. The long haul busing, simply to create an artificial balance between the races makes the work of the P.T.A. and all other neighborhood activities impossible. This is the real damage being done to our nation. It is not changed quickly, the damage to the children and the educational system will require years or generations to recover, if ever.

Here is what I am doing and I urge everyone to do the same. Write a short letter to Representative Emanuel Cellers, Chairman, House Judiciary Committee 2137 Rayburn Bldg., Washington, D.C. and say you want to express your opinion before the Committee in writing to go into the record of the hearings and you want to vote against busing and for anti-busing legislation. Write another letter or send a copy to both our Senators, Baker and Brock, and to your Congressman and congratulate them for the strong effort they have already made in this matter and urge them to redouble their efforts, which they will be glad to do, knowing they have your full support. Then write a letter to President Nixon, congratulate him for his recent courageous effort to build a bridge for peace throughout the world, but remind him also that a bridge of peace must have a solid foundation in this nation and that begins with the neighborhood school system and urge our President to take immediate action to bring the forced busing to an end.

R. LEE DAVIS.

JUDSON BEMIS,
Minneapolis, Minn., March 7, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: Your Committee has before it a number of bills, including proposed amendments to the Constitution of the United States, relating to busing public school students for purposes of achieving racial balance within the school system.

I would respectfully like to request an opportunity to testify before your Committee on this subject, but unfortunately I have to be out of the country for a period during the next thirty days and my remaining travel schedule is such that even if you were to grant me that favor, the chances of my being within reach of Washington at the convenience of the Committee are slight; consequently I would like to present my views to the Committee in the form of this letter, and will hope that they may be of interest.

First, perhaps I should present my qualifications: For thirty years I have been closely associated with minority education through service as a Trustee of Fisk University, Nashville, Tennessee, a liberal arts college with a predominately, but not exclusively, black student body. Also I have been involved in secondary education having served a few years ago several terms as a Trustee and also as president of the board of trustees of an independent school. I was one of 14 Minneapolis businessmen who assisted in the birth of the Minneapolis Urban Coalition, subsequently serving on its board of directors, executive committee, as its treasurer and for a term of one year as its chairman. Until last year I was president and am now chairman of one of Fortune's 500 largest industrial companies. One of my associates in our company is serving a 6-year term on the Minneapolis School Board and currently is chairman of that body.

Appropriate education of high quality surely is an essential ingredient in preparing our youth for a responsible constructive place in our society today. I say "appropriate" education because it seems to me that differing kinds of interests and careers call for differing kinds and levels of education. Appropriate education of high quality surely should be available to all our youth regardless of race.

Because of the extensive history of low quality education existing in segregated schools, we have drawn the conclusion that all we have to do to improve the quality of that education is to integrate our schools. While I agree that "separate but equal" is not by any means enough, it does not follow that common, or integrated schools of poor quality is an adequate answer either.

The thrust of our long-range solution to the problem of educating properly *all* our children must be in the direction of *quality* education *and* student body racial balance. Neither one by itself is sufficient.

It is most unfortunate that "busing" has become such a highly charged, emotional issue because certainly in any over-all well conceived plan to achieve *both* quality education *and* racial balance in our schools in any practical, economic way, busing in some degree is an essential tool. Like any other tool, it can be used excessively. Sensibly used it, in itself, obviously cannot be harmful in any way. If it can be, then we should concern ourselves immediately with the dangerous plight of all our rural children to whom a 45 or even 60 minute bus ride is as natural as corn. We would then, of course, also have to re-establish the Little Red Schoolhouse—the "neighborhood school" of country areas, which incidentally were abandoned, over considerable dissent, for *economic* reasons. Apparently, "neighborhood schools" must go when budgetary considerations indicate, but must stay when considerations of racial bias indicate.

I respectfully but deeply hope that the Congress will rise above emotion, above politics, above pettiness and recognize a school bus for what it should be, a ride to an educational opportunity of the highest quality.

As for amending the Constitution of the United States to prohibit school busing, for whatever reason, what a travesty on and insult to that great document drawn to implement the principles enunciated in the Declaration of Independence, including the concepts of equal opportunity and freedom of the individual! Did we learn nothing from the fiasco of the 18th Amendment The Constitution must treat "what", not "how". Busing is a "how". Try translating that "how" into its "what" counterpart—the basic principal involved—and see how it would look as part of The Constitution of the United States, that document dedicated to protecting the rights of each and every citizen against intolerance, bigotry and even simple human failing.

Sincerely,

JUDSON BEMIS.

STATEMENT OF THE AMERICAN BAPTIST BOARD OF EDUCATION AND PUBLICATION AND THE AMERICAN BAPTIST HOME MISSION SOCIETIES

Mr. Chairman, my name is Leonard L. Smalls. I am pastor of the Fifty-Ninth Street Baptist Church and Chairman of the Haven House Community Service Center in Philadelphia (alternate witnesses are: The Reverend Mr. Amos Johnson, Director, Fellowship House, Philadelphia, Pennsylvania, and Dr. E. Theodore Jones, Associate Vice President of Student Affairs, Temple University, Philadelphia, Pennsylvania). I am presenting this testimony on behalf of the American Baptist Board of Education and Publication and the American Baptist Home Mission Societies. These organizations are two of the national agencies of the American Baptist Convention, a national church of 1.5 million members.

I would first like to summarize the position of our two agencies on the issue before this committee. You are considering a number of proposed Constitutional amendments designed to prevent or limit the transporting of public school students. Such amendments reject the transporting of students as a way of overcoming the racially discriminatory assignment of students to certain schools. (1) We believe that this is not the kind of issue that should be dealt with by a Constitutional amendment. (2) We support all moves to provide integrated education in all sections of our country because we believe the best education will result from multi-cultural exposure and through equalizing educational opportunities. (3) We believe that the transporting of students is one legitimate and often necessary way to equalize educational opportunity. (4) We believe that the debate about transporting students should not cloud the issue of the needing to invest much more of our nation's resources in the improving of our public schools. Our position is based on a number of resolutions of our American Baptist Convention passed by delegates from our churches. These resolutions favor desegregation of all public facilities and equal opportunities for all races and reject the concept that equal education can be carried out in so called "separate but equal" facilities. So that you can understand the tone and content of some of our resolutions, let me quote from a few:

In 1964, the American Baptist Convention in its resolutions said: "We recognize that during the past ten years in America and that it was a logical next step for the Supreme Court to declare two years ago that our public schools must be integrated to assure equality of educational opportunity.

"We fully support the Supreme Court decision and deplore the resistance to this decision in certain states where integration of public education has met organized opposition.

"Our Convention has spoken out against segregation and has repeatedly urged church leaders to work as unceasingly for a nonsegregated church as for an integrated society." On the same matter in 1965, the American Baptist Convention said:

"We confess that un-Christian housing practices have offered racial ghettos; that un-Christian employment practices have placed severe econmic restrictions upon the non-white; that un-Christian educational practices have created segregated schools often of poor quality, which have left many young people educationally handicapped; and that un-Christian community life has excluded the non-whites from participation in the political and civil life of the community and the nation. Discrimination in housing and segregated schools have prevented children from having playmates and schoolmates of a different racial background and have left them ill-prepared to live in an integrated world. The poor education that Negro children have often received both in the North and in the South and discrimination in employment have prevented adults from having coworkers of a different racial background who carry responsibility on an equal or higher level.

"Thus barriers of racial discrimination have kept people from knowing each other as friends and equals and have placed upon the non-white an unjust burden of poor housing, meager job opportunities, limited income, restricted participation in national life, disfranchisement and unequal treatment by law."

And again in 1971, the American Baptist Convention said: "Our communities are divided into a variety of fragments; e.g., white middle class families in suburban developments, the poor in slums or housing projects, the elderly in high rise apartments, racial and ethnic groups in confining and limited neighborhoods.

"All people are bound into one interdependent economic/political community. This existing oneness is denied and fractured by many separate municipalities, disparate tax rates, housing codes, educational systems, and inadequate transportation. Inner city areas frequently are abandoned to deterioration and exploitation by unscrupulous interests with high density of population, poor schools and inadequate public services. Competition for basic services pits one group against another in unhealthy tension."

Let me now expand upon the points summarized above. We believe to use the Constitutional amendment route to deal with this issue is unwise and unjustified. The Constitution is a document of great principle set in a general form that can be adapted and applied to changing circumstances. To approve such an amendment is to clutter up the Constitution with details that will weaken it in the long run.

We further believe that to use the Constitutional amendment route is to bypass the checks and balances system built into our form of government. Beginning in 1954, the courts have taken significant steps in interpreting the Constitution and in ordering the integration of public facilities. Our Convention has many times welcomed and affirmed these developments. Martin Luther King, Jr., who was one of our pastors and many more of our pastors and laymen and laywomen, gave of their very lives to the cause of freedom for all people. If it be the case that political considerations now dictate a temporary reduction of the pace in carrying out the 1954 Supreme Court decision and subsequent court decisions, to embody this into a Constitutional amendment and thus to declare it as the highest belief in the land would advertise the beginning of a second period of Reconstruction.

However, the issue before us is not just one of transporting of students, the real issue is the need to provide adequate, meaningful, quality public education opportunities for students of all races. We believe that when there are segregated schools, there will be unequal distribution of resources with the resultant inequity in educational opportunity. So we come down on the issue of the need for the best possible kind of education for all students and believe this can be accomplished only when schools are integrated.

We are aware that since 1954 schools in the South have desegregated at a faster rate than those in the North and that the present flurry of attempts to stop courts from mandating integration of schools in the North is indicative of the resistance to this move. Most of our churches are in the Northern states and we are not unaware of the tensions that such moves cause. Yet we cannot change our conviction that integrated education is for all citizens because high quality education is for all and the quality of all school will be improved when persons from varying economic and cultural backgrounds can learn from each other.

We do feel that each of us has knowledge and abilities to contribute to the welfare of the whole. Thus, the majority members will benefit as much as the minority in integrated educational experiences. In this day few if any of our minority ethnic groups want to deculturize, but rather want to contribute to the whole out of their ethnicity. People of all economic brackets of all races have significant resources and values to share. If one of the goals of our nation is to have various ethnic, cultural, and economic groups understand each other and contribute out of their strengths, integrated education is necessary to achieve this.

To set the issue of equalization of public education opportunities in some perspective, we do not advocate unnecessary transporting of students far from their homes. We would hope that options such as the pairing of schools, the building of educational parks and other type schools to serve larger, more economically diverse areas, the redrawing of attendance zone boundaries, and even more innovative ways to provide equal educational opportunities for all would be attempted. We do see the value of the neighborhood school but we feel its values are being overdrawn. All students deserve the same rights and privileges and we must design our educational system to this end.

And finally, it is our hope that the present debate about the transporting of students will not confuse us. The public education issue that must be dealt with by the federal, state, and local governments, industry, business, voluntary organizations, including churches, and the private citizen is the upgrading of our public education system. We must find ways to support it more adequately. We must find ways to redistribute our support so students from poor districts will receive the same educational opportunities as those from wealthy districts. We must find ways for urban and suburban areas to share the same educational opportunities. We must encourage educational innovation and reform so that once again our public educational system can be the road for any person to better himself. Education should be not only a privilege but a joy and we must find ways to make it such. We must find ways for all citizens to participate in our public education enterprise so that it can serve all people.

STATEMENT OF THE COUNCIL OF CHIEF STATE SCHOOL OFFICERS ON SCHOOL DESEGREGATION AND BUSING OF STUDENTS

Mr. Chairman and Members of the Subcommittee. The Council of Chief State School Officers, founded in 1928, is an organization of state superintendents and commissioners of education entirely independent of any other professional or official organization. Its membership consists of, and is limited to, the fifty state school officers plus the heads of education agencies in American Samoa, the Canal Zone, Guam, Puerto Rico, the Virgin Islands, and the Trust Territory of the Pacific Islands. Since all state constitutions recognize that the primary responsibility for public education lies with the state, the members of the Council are state officials as well as professional leaders. They are responsible for administration and development of education in their states and territories.

The Council has an Executive Secretary and a small staff in Washington, operating under the direction of a Board of Directors in accord with basic policies adopted by the full membership. The Council appreciates the opportunity to present this statement to this subcommittee.

Mr. Chairman, as you can readily see from the above description of the Council organization, the individual members have been vitaly concerned with and directly involved in the problems of school desegregation and busing of children since the Supreme Court's landmark decision in 1954. As the chief state school officer in each state the members of the Council have worked with local school districts in trying to bring about a smooth transition of changes required by degegregation orders and some of them have been made parties to desegregation suits. The resolutions which appear below grew out of the experience of members in working with these problems during the past 10 years. They were presented to and approved by the membership at the annual meeting held in Louisville, Kentucky, November 17, 1972.

It should be pointed out that the Council, speaking on issues in American education through its basic policies, resolutions and statements by its officers or staff, does not speak specifically for any state department of education or for any individual state. It makes representations generally on educational issues of material importance through policies officially adopted by the Council as a whole and these policy statements may not represent the views of individual states. The officers and staff of the Council do not represent or speak for any state or state department of education specifically unless requested to do so by the chief state school officer of that state. For these reasons the Council's policy statements are presented below just as they were approved by the Council without further comment. There is a general preamble which serves as a background statement for three separate policy statements expressing the position of the Council's membership on the question of desegregation and busing of school children. The statements follow:

A POSTURE OF LEADERSHIP—SCHOOL DESEGRATION

Preamble

"The American system of universal education is unique in world history and is a distinguishing characteristic of our society. Dedicated to the principles of equality of opportunity and democracy, this system safeguards the freedom and unity of our people and is one of the best guarantees of their social and economic well-being. Improved education of successive generations of citizens is among our most important local, state, and national responsibilities" (*State and Local Responsibilities for Education, the Council*, 1968)

Background and rationale

"A court decision in 1954 (Brown vs. Board of Education Topeka) and a law in 1964 (Civil Rights Act of 1964) directed desegregation of public elementary and secondary schools to provide equality of educational opportunities. Some leadership in achieving desegration has come from local school districts and a limited number of state education agencies. However, the major impetus for change has been provided by direction from the Courts and the Department of Health, Education and Welfare.

It has been said that, 'Wars are made in the minds of men.' So it can also be said that segregation, desegregation, and integration are made in the minds of men. In our free society we still do not commend or condemn men for the thoughts that motivate them. We do note actions that seem to imply motive, intent and premeditation. It seems appropriate that the Council of Chief State School Officers as an institution and its members as individuals seek to establish goals, means and methods of desegregating schools in compliance with the law of the land.

The alternatives before state education agencies seem to be these:

1. Respond to decisions of the courts based upon adversary action by aggrieved parties.
2. Assume a posture of leadership by making decisions leading to desegregation of schools.

This statement of policy is based upon the second alternative.

Two higher court opinions, and several cases pending seem to imply the direction for tomorrow for applying this basic position. Cases in California and Michigan challenge the propriety of using property taxes within school district boundaries as a substantial means for the support of public schools. In several states there are cases that seek to change school district boundaries in order to promote effective unitary school districts."

School Desegregation

"As chief state school officers we believe that desegregation carried out with integrity and adequate financial resources provides better educational opportunities for all youth and does not result in a deterioration of the quality of that educational experience."

Transportation of Students

"Although transportation of students as a method of achieving desegregation has become a highly controversial issue throughout the Nation, the members of the Council of Chief State School Officers believe it is a viable means of achieving equal educational opportunity and should be supported."

Resistance to Desegregation

"State and Federal legislative and executive efforts to impede or prohibit school desegregation are increasing. The Council believes that state education agencies should continue to resist all efforts to prohibit implementation of school desegregation."

Employment of Members of Minority Groups

"Where state or local education agencies have few or no staff members from racial and ethnic minority groups, they should move aggressively to employ qualified minority group staff members."

Statement of Mrs. Kay Copeland on Behalf of the Citizens for Neighborhood Schools of Dallas

Chairman Celler, members of the committee, ladies and gentlemen: It is truly an honor and a bit scary to speak before this committee. As you sit here and make laws and pass judgment about what should take place in education all over our great country, it is unfortunate that you cannot visit school districts throughout the land so you could have first hand information on the effects of forced busing. Many of your children are happily situated in private schools. Mine cannot and will not be in private schools. I am a firm believer in the public school system. However, my children have just wasted a year in school, and this I resent. The quality of our education, and I include in that curriculum, teaching staff, discipline, etc., has diminished considerably this year. Grade standards have been lowered so the militants and trouble makers can participate. No longer is it an honor to have good citizenship and good grades because there are no rewards for that.

I have read in the newspaper that you want testimony from experts and professionals in the field. I can give you test results from many professionals you have not heard . . . studies conducted on interpersonal attractions between members of differing cultural and ethnic groupings. And these studies substantiate my viewpoint. And, what better experts can you ask for than the students who are living with this chaos day in and day out now?

The forced busing of children has done nothing but polarize the students in our area. Blacks who have gone to our school since 1964 when we became integrated are now leading the demonstrations against the school. These were the outstanding students!

I fear for the safety of my children and all children in our schools. Are security guards conducive to a healthy learning situation? My answer is NO, emphatically!

Have you gentlemen once considered the feelings of the students you are dealing with? Do you think they can perform better when they are a statistic? As I understand the three main concerns of many of the school superintendents today are motivation, spirit and attendance. Would you be motivated after a long bus ride? Would you attend school? And would you cheerfully support a school with the same spirit you supported one in your neighborhood that your family had attended and you had long looked forward to attending?

There is no way that the public school system can survive if the federal courts are going to dictate to our school boards and administrators. A constitutional amendment is the only positive action they will understand. Any other kind of legislation will be interpreted as many different ways as we have courts to do the interpretations. I beg of you: Help us save our public schools. This generation of children deserves more than they are getting. They are truly being short changed and in many ways but the most important is in education and you people have the key to that in your hand now. Please act positively and affirmatively now. Thank you.

STATEMENT OF MRS. JEANETTE GUEST ON BEHALF OF CITIZENS FOR NEIGHBORHOOD SCHOOLS

Gentlemen,

The Dallas Independent School District had been complying with the integration guidelines set forth by the courts and had gone to very considerable expense to provide equal school facilities and education for all. This past year 21 plaintiffs filed suit against the school administration and busing was ordered. The school district has been functioning under this federal ruling for seven months. There are no facts or figures to prove this has been advantageous to any child. It has caused great emotional stress for students and faculty.

The school administration has been hampered in many endeavors to achieve quality education and discipline in our schools by court orders and court ordered committees who are not qualified in any respect to determine what is best for all school children.

As of the first of February, 17 teachers had been assaulted, and the schools have not operated without incident among students. Tensions are very high thereby creating an untenable learning situation. Students don't want to be used as tools and parents are resentful of their children being used as pawns for political reasons.

In my children's school they have been integrated since 1965 due to boundary lines and this was without incident until this year when the courts of this land began to remove from its people of Dallas and other cities the democratic privilege to attend neighborhood schools.

There are many people who have moved from Dallas and others who have enrolled their children in private schools. Should the courts order massive busing I'm sure there would be many more leave Dallas creating white flight thus causing an extreme economic crisis in our All-American city plus creating a demise of the public school system.

I implore you to halt using the children of this great nation as a tool for political reasons and restore the neighborhood concept of schools. Please remember it is not economically feasible for all people to avail the use of private schools as many of our noted politicians do. Halt the courts from destroying our public school systems and cities.

Thank you.

PARENTS RIGHTS ORGANIZATIONS,
Parma, Ohio, March 8, 1972.

Re Anti-forced-busing amendment.

EMANUEL CELLER, M.C.
House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: Parents of every race, color, creed and national origin are overwhelmingly opposed to the insanity of forced busing of school children away from their neighborhood schools to achieve racial integration.

It is immoral, unjust, and downright cruel to force children to ride buses for long distances, into strange—perhaps hostile—neighborhood to attend a school other than the one closest to their homes. It is raw abuse of usurped power for insensitive federal judges to upset and endanger children in this manner, and to lessen the respect for law in everyone who is tyrannized by forced busing orders. No amount of legal sophistry can legitimate the unwarranted usurpation of authority by the federal government over what has historically been regarded as the epitome of a purely local concern—the determination of what schools American children will attend. Nothing but bitterness and resentment is engendered by these illegitimate forced-busing edicts of unrestrained judicial tyrants, with life-time appointments making them unresponsive to the people, whose government this, after all, is.

Any federal judge who sends his own child to an exclusive, private, segregated school, but who decrees forced-busing of the children of decent, hard-working Americans who form the backbone of this nation, should be impeached.

Since impeachment is not likely, the only check and balance on such oligarchs is a Constitutional Amendment forbidding forced-busing. They have defied Congressional legislation against "assignment of children to public schools in order to overcome racial imbalance". Only a Constitutional Amendment spelling it out so clearly that even a federal judge can understand it will ensure the end of forced busing.

It is not overlooked that those members of Congress who want the average American's child bused, against his parents' will, themselves pay high tuition to send their precious darlings to exclusive, private, segregated schools. Their hypocrisy is only exceeded by their callous indifference to the concern other parents have for their children. It is the same aristocratic indifference which led to the French Revolution: "If they can't afford the private schools we can on our fat government salaries and other emoluments of our office, let their children face the dangers, inconvenience, and harm of forced-busing."

Respectfully yours,

BARBARA SOLTIS,
Executive Secretary.

NATIONAL COUNCIL FOR THE SOCIAL STUDIES,
Washington, D.C., March 10, 1972.

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR MR. CELLER: The National Council for the Social Studies supports equal opportunity for quality education for all young people of all races and backgrounds.

Busing students has been one means used to make progress toward this goal. Consequently, we are alarmed by any flat prohibition against using this means and against the flexibility of fruitful local school decisions.

Segregation in schools ought not to be encouraged through mandatory prohibition against busing.

Sincerely,

JEAN FAIR, *President.*

Mr. BROOKS. The committee stands adjourned.

(Whereupon, at 3:55 p.m., the committee adjourned to reconvene at 10 a.m., Thursday, March 16, 1972.)

SCHOOL BUSING

THURSDAY, MARCH 16, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Present: Representatives Celler, Brooks, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel, and Herbert E. Hoffman, counsel.

Chairman **Celler**. The meeting will come to order.

The Chair wishes to make this statement. Today the subcommittee conducts the 11th session of hearings on House Joint Resolution 620 and related proposals dealing with pupil assignment and transportation.

The hearings began on February 28. At the conclusion of today's session, the subcommittee will have received testimony from approximately 85 witnesses. A number of requests to be heard are still pending before the subcommittee. These involve Members of Congress, individual citizens, and various professional and civil organizations.

In addition, the Chair has written to the Department of Justice and the Department of Health, Education, and Welfare requesting views and comments on the proposed amendments to the Constitution and other legislation respecting pupil transportation and assignment which are before the subcommittee.

Furthermore, the public press reports that the President plans to submit his views on pupil assignment and busing in a message to Congress. Copies of my letters to former Attorney General Mitchell and Secretary Richardson requesting departmental views on these proposals will be placed in the record at this point.

(The letters referred to follow:)

Hon. John N. Mitchell,
Attorney General of the United States,
Department of Justice, Washington, D.C.

Dear Mr. Attorney General: Subcommittee No. 5 of the House Committee on the Judiciary will begin public hearings March 1st on proposed amendments to the Constitution, and other legislative proposals, respecting the transportation and assignment of public school pupils.

The Committee now has before it approximately thirty different types of proposals. A list of these measures (copies of which are attached) includes:

H.J. Res. 30
H.J. Res. 43
H.J. Res. 75
H.J. Res. 79
H.J. Res. 94
H.J. Res. 150
H.J. Res. 179
H.J. Res. 561
H.J. Res. 579
H.J. Res. 587
H.J. Res. 600
H.J. Res. 607
H.J. Res. 620
H.J. Res. 628
H.J. Res. 636
H.J. Res. 854
H.J. Res. 855
H.J. Res. 983
H.J. Res. 1035
H.J. Res. 1039
H.J. Res. 1043
H. Res. 135
H.R. 65
H.R. 66
H.R. 159
H.R. 1295
H.R. 5670
H.R. 11401

The subject of pupil assignment in the context of an amendment to the Constitution raises serious and complex issues. Accordingly, the Committee earnestly seeks your views and comments on these proposals.

Sincerely yours,

EMANUEL CELLER, *Chairman.*

Hon. ELLIOT L. RICHARDSON,
Secretary, Department of Health, Education, and Welfare,
Washington, D.C.

DEAR MR. SECRETARY: Subcommittee No. 5 of the House Committee on the Judiciary will begin public hearings March 1st on proposed amendments to the Constitution, and other legislative proposals, respecting the transportation and assignment of public school pupils.

The Committee now has before it approximately thirty different types of proposals. A list of these measures (copies of which are attached) includes:

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H.J. Res. 1043
H. Res. 135
H.R. 65
H.R. 66
H.R. 159
H.R. 1295
H.R. 5670
H.R. 11401

The subject of pupil assignment in the context of an amendment to the Constitution raises serious and complex issues. Accordingly, the Committee earnestly seeks your views and comments on these proposals as they affect the responsibilities of the Department of Health, Education, and Welfare in the areas of civil rights and education.

Sincerely yours,

EMANUEL CELLER, *Chairman.*

Hon. JOHN N. MITCHELL,
Attorney General of the United States,
Department of Justice, Washington, D.C.

DEAR MR. ATTORNEY GENERAL: With further reference to my letter of February 7, I enclose copies of H.R. 10614, H.R. 10693, H.R. 12827, and H.R. 13024, four additional measures which will be considered at forthcoming public hearings on proposed amendments to the Constitution ond other legislation respecting the transportation and assignment of public school pupils.

It will be helpful to the Committee to have the views of the Department of Justice on these measures as well as those referred to in my earlier letter.

With cordial greetings,

Sincerely yours,

EMANUEL CELLER, *Chairman.*

Hon. Elliot L. Richardson,
Secretary, Department of Health, Education, and Welfare,
Washington, D.C.

Dear Mr. Secretary: With further reference to my letter of February 7, I enclose copies of H.R. 10614, H.R. 10693, H.R. 12827, and H.R. 13024, four additional measures which will be considered at forthcoming public hearings on proposed amendments to the Constitution and other legislation respecting the transportation and assignment of public school pupils.

It will be helpful to the Committee to have the views of the Department of Health, Education, and Welfare on these measures as well as those referred to in my earlier letter.

With cordial greetings,

Sincerely yours,

Emanuel Celler, *Chairman.*

Chairman Celler. In this context, at the conclusion of today's testimony the Chair will recess the hearing subject to call. The public hearings will resume on the first Wednesday, April 12, following the conclusion of the Easter recess of the House.

Our first witness this morning is Mr. Roy Wilkins, chairman, Leadership Conference on Civil Rights. I understand he is accompanied by Nathaniel R. Jones, Esquire, general counsel, NAACP.

Mr. Wilkins, we are very glad to hear from you and your associate. You are always welcome before this committee.

Mr. McCulloch. Mr. Chairman, may I say that I am particularly glad that Roy Wilkins and the general counsel of the Leadership Conference are here this morning. They have been in the forefront of the battle for minority rights for many, many years, and they have been helpful to those forward-looking people who seek to make this a nation with justice and equal opportunity for all.

Thank you.

STATEMENT OF ROY WILKINS, CHAIRMAN, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, ACCOMPANIED BY NATHANIEL R. JONES, ESQ., GENERAL COUNSEL, NAACP

Mr. Wilkins. Thank you, Mr. Chairman, and members of the committee. My name is Roy Wilkins and I am the executive director of the National Association for the Advancement of Colored People with headquarters in New York City, and chairman of the Leadership Conference on Civil Rights, a body with more than 100 national organizations as members, with headquarters here in Washington at 2027 Massachusetts Avenue NW. I wish to thank the committee for both organizations and for myself for permission to testify at this hearing today.

I asked that my associate, the general counsel, Mr. Nathaniel R. Jones, accompany me and add to my remarks.

Urban issues affecting the whole population have a sharpened effect on the Negro American citizen, not only because he, too, lives in the cities of the Nation, but because color prejudice influences State and national policies in a wide variety of activities, including public education, housing and employment. It might help to talk a few minutes about why the Negro is in what is now called the inner cities.

The Negro is living where he lives because he was put there by a combination of racial prejudice and property-owner greed. He is there by no happenstance. Similarly, his "hard way to go" in securing an education is not a happenstance, as far as he is concerned, but an integral part of a deliberate plot to keep him as ignorant as possible for as long as possible.

It is necessary, in considering today's highly emotional issue of the busing of schoolchildren, to go back to the first sizable migration of southern Negroes to the industrial cities of the North during and after World War I.

Northern industry, dependent on immigrants from Europe, found itself in a crippling labor shortage as Old World nations kept their people at home to fight. The muscles of Negro workers from the plantations in the South were drafted by industry in the face of opposition reminiscent of the runaway slave period.

These new workers in the plants of industrial centers were herded into ghetto districts and kept there by unpublicized, but tightly binding agreements between mortgage money suppliers, landlords of deteriorating property, real estate boards and individual real estate dealers.

School boards, as one instrument of the power structure of the cities, became allies in the nationwide scheme. They gerrymandered districts, manipulated pupil transfers from school districts, intrenched a system of teacher assignments, curriculum procedures, textbook approvals, et cetera. They beat the drum, of course, for the neighborhood-school concept, finding parents and parent-teacher groups dedicated in keeping our children away from them.

The neighborhood school thus became a reflection of the ghetto around it—black. In a short time it became, and remained, inferior. Its teachers were substitutes, fresh out of teacher training schools. Its physical plants were old and its textbooks, if furnished by the school authorities, several years behind the texts being used by white schoolchildren.

In Boston, Mass., for example, a report by the school committee's own engineers branded eight schools, seven of them predominantly black, as "unfit for school use." Many others had no libraries and cafeterias and gymnasiums. Some predominantly black high schools had no science laboratories.

Now comes schoolbusing which is being opposed by those who either designed and perpetuated the black ghettoes or who nurtured their class and racial feelings in the security of their neighborhood's whiteness.

It is being opposed, too, by those who do not bother to conceal or to camouflage their personal or political emotions. These latter have a naked anti-Negro feeling and especially recent what they term as interference by the Federal Government with the methods which they have devised for the control of the black population.

The opponents, too, have a small scattered contingent of Negro Americans, some whose antibusing position is tied directly to what they call "community control" of education.

Few in this number were ever identified in the past with the problems of education and the suspicion will not down that they are interested primarily in getting their hands on school funds and in dictating the content of textbooks and the personnel and methods of teaching.

The truth of the busing controversy, in the light of the Negro's history of forcible relegation to ghetto existence, is that the opponents still want to confine him to the black neighborhoods and they still want his children to have no escape from inferior education. They are not a bit concerned that opposition to busing practically nullifies the Supreme Court's unanimous opinion in the *Brown* case in 1954. Their opposition, if successful in this election year, will also repeal or nullify legislation on equal rights.

Once a section of the Civil Rights Act of 1964 is effectively bypassed, the incessant effort to make a dead letter of the Voting Rights Act of 1965 and of the Fair Housing Act of 1968 will proceed with new ingenuity and new vigor.

Antibusing is but another way of restating racial segregation.

Chairman CELLER. Those acts, Mr. Wilkins, were processed by this committee, were sponsored by this committee, and Mr. McCulloch on my right and I floor-managed those bills. I can assure you we are going to do all we possibly can to prevent any result of the type you have just described.

Mr. WILKINS. We remember with pleasure, sir, your stalwart work in behalf of this legislation. We remember especially the work of Congressman McCulloch who had been an outspoken advocate in the civil rights field.

As for the proposed constitutional amendment prohibiting busing, Dr. Kenneth B. Clark of the faculty of the College of the City of New York, has well written that it would make the Constitution "an instrument for the perpetuation of racism . . ."

He characterizes the proposal to forbid the courts to issue orders to employ busing in this language:

> Any attempt to curtail the power of a judicial branch of the Federal Government to protect the rights of minorities . . . is a threat to the foundation of a dynamic democracy, an invitation to authoritarian government and a serious danger to civil rights and liberties.

Negro Americans ask access for black children to the best possible available education. If that requires a bus ride, then so be it. They believe that opponents of busing would bar children from quality education as surely as if they stood in the door of a school and physically turned away blacks.

Since the busing of schoolchildren to achieve desegregation has usurped the places of all other items in public education and has become one of the two or three principal issues on which a candidate for the office of President of the United States is judged, it would be well here to quote the latest busing ruling from the Supreme Court.

In a unanimous opinion, the Court ruled in *Swann* v. *Charlotte-Mecklenburg Board of Education* on April 20, 1971:

> Bus transportation has been an integral part of the public education system for years and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the nation's public school children, approximately 39 percent, were transported to their schools by bus in 1969–1970 in all parts of the country.
>
> The importance of bus transportation as a normal and accepted tool of educational policy is readily discernible. . . . The District Court's conclusion that assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system is supported by the record. . . .

> In these circumstances, we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation.

And the Court concluded:

> Desegregation plans cannot be limited to the walk-in school.

All of which means, in the mind of the average black citizen, that if the present public hysteria and legislative squeeze plays prevail, the United States will employ the bus transportation of schoolchildren for any purposes except that of promoting racial desegregation. This will be the same old racial deal and the same cheating of black children.

Public education, of course, is more than busing, although from the current clamor one would not think so. The excellence of elementary and secondary education, the inclusion of contributions of minority groups and individuals to the Nation in textbooks and reference reading, the increase in black teachers and administrators, the revamping of the college admissions procedures, fair treatment and financial assistance for predominantly black colleges, and access to vocational and specialty training, especially in medical and dental schools, are all part of the whole picture of education.

Education remains high on the list of priorities, if not in the No. 1 spot, of Negro Americans, just as it has since post-Civil War days when the ex-slaves were revealed as the outright owners of more than 500 schools used for the education of their children. Out of their slender resources they contributed to the Freedmen's Bureau one-seventh as much in dollars as did the U.S. Treasury.

As they struggle in 1972 toward parity, they and their friends have no intention of settling for anything less than equitable treatment from their local, State, and Federal governments.

There is one factor in the present busing controversy which Negro American citizens bitterly accept, but with a vow that it shall strengthen rather than weaken their resolve to secure the best education for their children. That factor is that the President of the United States has climbed down from his high post of Chief Executive of all Americans to convene the authors of various antibusing proposals, including the plan, House Joint Resolution 620, for an amendment to the U.S. Constitution which is before this committee. In this action, he differed from that of the courageous and principled Governor of Florida, Reubin Askew, who risked his political career to campaign in support of school busing in a State where such a position was unpopular and was destined for defeat.

The 22 millions of loyal black Americans have contended with every imaginable obstacle as they have made their tortuous way forward. They have met and conquered greed and contempt and cruelty and deception and lies. They have known trickery and betrayal. They have struggled to escape life's ghettos, but each time they have been beaten back. They, too, have met and conquered death, both in body and in the spirit.

But, even with their experience with crude and refined deterrents, they were unprepared for the partisan action by their President. They were (and are still) incredulous at his alinement with the supporters of racial segregation. In this year of our Lord, despite all rhetorical excuses, that is what most of these people are, particularly those who propose a constitutional amendment. And they are more by far. They are enemies posing, in this time of hysteria and stress, as friends of the America we love. They are Brutus, even now plunging the dagger of ease and compromise into America's back.

Our President has made his choice. He is leading the mob which is tearing at the concept of equal protection of the law.

Each of us in this room must make his choice. Are we for the high, hard road where man adds to his freedom each time he reaches another plateau? Or are we for the low road of political expediency where each alluring poison is tasted and no thought given to the certain dying inside.

We Negro Americans are not afraid. We tremble for our country's course, but we are not afraid. We strive with all our power to restrain here. But if we fail and she stumbles, we will be there at the end of the nightmare of error steadying the strays, out of the strength of our suffering and of our certainty.

Chairman CELLER. Mr. Wilkins, it has been reported that the recent National Black Convention in Gary, Ind., went on record opposing busing to desegregate public schools. Does this mean the black community repudiates efforts to desegregate public schools?

Mr. WILKINS. No; it does not, nor does it mean even that the Black Convention repudiates such efforts because the same reports detailed that Mayor Richard Hatcher, of Gary, one of the convenors of the Black Convention, held a press conference yesterday in which he attempted to single out two resolutions, one of them the antibusing resolution, which he said did not mean that the Black Convention was against busing.

And the other was the resolution on Israel which he termed "unfortunate." Now, several reports have come from Gary and one of them is, and this was borne out by Mayor Hatcher, that some of these resolutions were snuck in, to use his expression, that is, they used the old technique of waiting until most of the delegates were out of the hall for one excuse or another, then the resolutions were passed by acclamation, by voice vote, nobody taking authority for anything.

And in this way the antibusing amendment and the anti-Israel amendment were passed. But Mayor Hatcher has officially disclaimed and we do not know what the other sponsors of this convention will do, but Mayor Hatcher made the opening speech. He welcomed the people to Gary. He was one of the convenors of the convention, and so his opinion must be accepted, it seems to me, when he says that the convention did not intend to repudiate busing as a method of achieving school desegregation.

The black caucus, Mr. Chairman, yesterday reaffirmed its support of busing. This would tend to indicate that the reported convention attitude was not actually like the statement.

Chairman CELLER. Some of the witnesses at these hearings have charged that the racial assignment of pupils to overcome school segregation demeans black children and imposes feelings of inferiority. Would you care to comment?

Mr. WILKINS. Yes. It is inconceivable to me that this kind of an excuse could be thought up because I remember the story of a black boy who was trying to get an education in rural Georgia and he said each day the schoolbus bearing white children went by him and he had to walk 6 miles to get an education.

If that isn't demeaning, I would like to know what is.

Chairman CELLER. It has also been charged that the abandonment of all black schools, especially high schools, adversely affects black communities' spirit, black pride, and accomplishment.

Mr. WILKINS. My view on that, Mr. Chairman, would be that the Coleman report, which is the one which the Government relied upon and still quotes, the Coleman report had as its central theme, that the performance of black children in the classroom was dependent in large measure, completely on their contact with other pupils in the same school.

Thus, it is difficult for me to, although I can understand the black pride argument and the desire to prove that Negroes can do this, that, and the other, it is difficult for me to understand the argument that the abolition of all black schools would be a harm to the Negro community.

Let me tell you just one minute a story from Indianapolis, Ind., regarding the establishment there, in 1930, of the Crispus Attucks High School. Indiana, at that time, had a permissive policy. It could either have segregation, or could have integration, as each school board chose.

Crispus Attucks High School was constructed with the idea of being an all-black high school and the argument was made to the black community that now instead of having just a few janitors, you can have the principal, the vice principal, and the supervisors and teachers, and so on and so forth, on down to the custodians and you will have many more jobs.

Our association did our best at that time to persuade the people of Indianapolis, the black community, that this was a sellout, but we were unable to prevail against the idea of more jobs, more dignity, and more occupied position.

And no parent stepped forward to ask for a lawsuit. But 20 years later in 1950, a Negro boy wanted to become a geologist and he needed to take a course in topography. He inquired at Crispus Attucks High School and they had no course in topography.

They said, we have a course in topography, but it is over at the white high school and you can't go there because you are black. Then his parents came to us and asked our legal department, represented here by Mr. Jones today, to enter a suit so that their boy could become a geologist and could study topography and we did enter a suit and the boy was admitted to the class and went on to become what the boy concluded then that he wanted to be, a geologist; he was on his way to become a geologist.

But this only proves 20 years later, too late, that segregation breeds exclusiveness and breeds inferiority and lack of opportunity.

Chairman CELLER. Any questions?

Mr. MCCULLOCH. I would like to say this comment. It has been my pleasure and my good fortune to have known about Roy Wilkins and to have been associated with him in various matters over many years. He has made a great contribution, not only to minorities but to the entire Nation.

Mr. WILKINS. Thank you.

Mr. McCulloch. As I said before, I am glad you are here this morning.

Mr. Wilkins. Thank you.

Chairman Celler. Mr. McClory.

Mr. McClory. I would like to ask a question, if I may. Mr. Wilkins, you have made some very sharp and very blunt statements here this morning in your testimony. I am wondering if you feel that there is no need for any legislation with regard to desegregation or with regard to the subject of busing? Do you feel we should just do nothing?

Mr. Wilkins. It is my feeling, sir, that the Federal courts, which have never released their custody of these cases, and which are considering each day new approaches, should be left to proceed in the same way they have. I would much rather see that than to see the Congress, for example, enact a bill forbidding the courts to rule on legislation that would be immediately challenged.

Mr. McClory. Do you not feel that if this committee does nothing, it will further polarize the situation and further exacerbate it, or do you think it would allow some kind of reconciliation to develop?

Mr. Wilkins. I hope, perhaps vainly, but I hope, nevertheless, for reconciliation. I think this is a terrible issue on which to divide our people. The children themselves in handling the busing issue that has been decreed by the courts in various parts of the country have given a little less on the adults in adjusting to the situation, in discovering new playmates, in discovering, indeed, new knowledge about other peoples and in all of the discussions, Mr. McClory, nothing has been mentioned about what is one of the most important dividends from integrated education, and that is, that white boys and girls get to know blacks boys and girls, and vice versa.

This is the strength on which our country depends. You cannot have polarization with one thinking white and one thinking black and both with two chips on each shoulder. I hope that this will be resolved. I would hate to see the issue perhaps add to the pressures on the committee which are such that I don't appreciate it.

Mr. McClory. Even in the *Swann* case, which has caused so much discontent, there are indications that there are valid limits to busing. These limits could be refined and codified. I note that black political leaders, including one of my colleagues from Illinois, have suggested that with regard to the subject of busing a legislative solution is possible.

Mr. Wilkins. I think it is an appropriate area, but I hesitate to recommend it across the board because it will be used as an umbrella under which to promote various other types of disobedience to the busing theory.

Mr. McClory. Regardless of what we do or don't do, the solution will require some guidelines which take into account the particular difficulties of various communities; isn't that so?

Mr. Wilkins. Yes; I think so. I think so. I can imagine a black mother feeling that her child's health is in danger by busing. I can imagine a white mother feeling the same reluctance. Mothers very often don't like children to get too far away from the home and the yard and the neighborhood and I can see any exceptions which are made on the ground of health or convenience, how far is too far? Was too far by horse and buggy 2 miles?

But is it too far by automobile today?

Mr. McClory. Mr. Wilkins, you don't know what the President is going to say in his message, do you?

Mr. Wilkins. I have the underground information and I hasten to say that it is not reliable and, perhaps, it is as reliable as any channels open, but the President, I understand, will not go for a constitutional amendment.

Mr. McClory. That will be good; won't it?

Mr. Wilkins. But in our estimation, he will go for just as bad.

Mr. McClory. I would like to reserve judgment on the President's message until I have heard it and I have had an opportunity to study it.

Mr. Wilkins. I, too, will reserve judgment until I see.

Mr. McClory. You have made some rather strong charges here and I hope that we can find that the President's judgment is again very praiseworthy. Thank you very much.

Chairman Celler. We will be pleased to hear from you, Mr. Jones.

Mr. Jones. Thank you, Mr. Chairman and members of the committee. I am Nathaniel R. Jones, general counsel of the National Association for the Advancement of Colored People. I appreciate this opportunity to supplement Mr. Wilkins' testimony with the following statement.

In a long series of school cases from *Gains* to *Swann*, the U.S. Supreme Court has consistently held that the constitutional right of Negroes to an equal education is solemnly vested and must be protected even in the face of community hostility.

Building on these decisions have been significant Northern cases aimed at dealing with the proliferating evil of Northern school segregation. These cases have had the tendency to reinforce the faith of black Americans in the efficacy of law as a corrective instrument.

Northern judges have merely resorted to the same remedial toolbox that Southern judges utilized to dismantle dual systems. One tool has been busing. Busing has come in for attack by opponents of integration. Blacks view these attacks as thinly veiled forms of racism.

One such form comes from white persons with the audacity to attempt to speak to and interpret the mood of black Americans with regard to busing. They insist that Negroes are opposed to having their children transported to schools in connection with the dismantling of dual school systems.

The other forms of racism come from black separatists. Do not be misled by them either. Aside from the fact that their voice volume exceeds their numbers, in considering the question of constitutional rights, it must be remembered that numbers are not the crucial test.

A constitutional right to a quality education is a personal right not conditioned upon white or black segregationists' desires. In the enforcement of this personal right, courts do not, and I am sure will not give any greater quarter to black separatist sentiment than they have to white hostility.

For one thing, blacks know that their children are not getting a good education in the overwhelming number of school systems in the North and West. And they want to see the systems deal with this denial in a meaningful and effective way.

As general counsel of the NAACP I am presently involved in litigating cases in San Francisco, Indianapolis, Grand Rapids, Benton Harbor, Detroit, and Kalamazoo. Lawsuits are in preparation; in fact, one was filed in Boston yesterday. We anticipate filing suits in Dayton, Springfield, Ill., and Waterloo, Iowa.

Requests are pending for branches in Flint; Cleveland, Columbus, Cincinnati, and Mansfield, Ohio. I wish to emphasize these requests emanate from black parents. This certainly reflects their continuing faith in law and the courts as a means of changing practices and policies which offend them and the Constitution.

The Detroit case is most instructive on the question of Northern culpability. There, our lawyers clearly established that a dual school system has been in operation in that community. Both white and black children understand in Detroit that they are largely contained in racially separate schools and that a stigma of inferiority attaches to the so-called black schools. Both black and white communities generally perceive the white schools as superior and the black schools as inferior.

You should also know that although almost all of the schools in Detroit were below the nationwide norm, predominantly black schools by the eighth grade were in the average two or more grade levels behind predominantly white schools, as measured by standard achievement test scores.

As a group and on the average, black and white children arrived in school with the same potential and much of the same levels of test achievement. Only thereafter, with the experience of school segregation, did this tested achievement disparity appear and grow, with the final result being systematically inferior education for black children as compared to white children in the Detroit district.

In that case, it was conceded by the school authorities that racial discrimination, past and present, resulted in adverse effects on disproportionate numbers of black pupils. The effect was clearly observable. Similarly, the segregated educational experience had cumulative effects on the attitudes and behavior of the children.

We also established by our proofs that Detroit systematically discriminated against black children and black schools in the provision of objectively measurable educational resources. For example, although teacher-pupil ratios were the same, more emergency substitutes, fewer higher paid and experienced teachers and more inexperienced and low-paid teachers were assigned by black schools than to white.

Even in the allocation of the district's own funds, the average expenditure per teacher in black schools was between $1,800 and $1,400 less than the average salary of teachers assigned to the white schools.

In short, we were able to prove that black children in Detroit were being cheated. This pattern perpetuates the twin cancers of racism and segregation in our society and denies Negro children and equal educational opportunity.

The foregoing testimony, when added to the proof of the transportation policy utilized by the school district; the way in which the school attendance patterns built upon existing racial segregation; the creation and maintenance of optional attendance zones in neighborhoods undergoing racial transition and between high school attendance areas of opposite predominant racial compositions; the utilization of intact busing which saw black youngsters segregated in schools to which they were transported and the construction of new schools in such a manner as to perpetuate and further distort residential segregation all combined to lead the court to conclude, as a matter of fact and law, that the State of Michigan, through its various entities, did, to a significant degree, contribute to school segregation.

I may interject this observation also. The court went on to find that residential segregation and school segregation were interdependent phenomena, incapable of separation.

With that finding, the court concluded that it had to intervene and fashion a remedy. To now deny a Federal court in such a case, on such a record, the power to use the busing tool, if it is found appropriate to correct the constitutional violations, is to grant a license to the North—now denied to the South—to continue segregating and depriving black children of their constitutional right to an equal education.

It is clear to an increasing number of Negroes that what antibusing people are doing in tampering with the Constitution is attempting to repeal the 14th amendment. These moves of antibusing advocates, constitute attempts to change the rules halfway through the ball game.

If they succeed, the power of courts to enforce other rights for racial minorities will be in serious jeopardy. Limiting the authority of a Federal court to correct constitutional violations, in the same way that judges did in dealing with southern segregation, will guarantee that no meaningful desegregation will occur in the North.

Should congressional action be taken to impair or diminish the power of a court to deal with the problem of segregated education, it will constitute a severe blow to methods used by organizations such as the NAACP. Damaging the credibility of the approach we espouse will be intepreted as a clear signal to Negroes that the battle for change must be taken underground.

And the Congress as well as the executive branch, if they succumb to or continue to exploit the mass hysteria of the moment will have contributed to the undermining of the constitutional form of government that an increasing number of black people were beginning to respect and trust.

Chairman **Celler**. We want to thank both of you gentlemen for a very helpful statement.

Mr. **Poff**. Mr. Chairman, I have no questions, but I asked for the time simply to make an explanation and offer apologies to the witnesses. I was absent not by choice, but because I was testifying before another subcommittee of the Committee on the Judiciary.

Mr. **Polk**. Mr. Chairman, Mr. Wilkins, members of the subcommittee have, in the course of these hearings, attempted to determine if there are available effective alternatives to court-ordered busing to achieve desegregation.

Several theories or approaches have, in turn, been proposed by witnesses. The first is the open-housing theory: since open-housing laws are now on the books, the way to solve the problem is to allow the black to move up in economic status and to buy a home in a white neighborhood so that when the neighborhoods become integrated, the neighborhood schools will ipso facto also be integrated.

Could you comment on that approach?

Mr. **Wilkins**. I would be interested in what our general counsel would say on that, but I certainly believe that it would take too long to integrate a neighborhood dependent upon the ability of black purchasers to get together and get the mortgage money available so that they could move, provided they had the desire to move, into this neighborhood.

What seems to be overlooked is that each year we delay this, some kind of a summary adjustment, the black children are being systematically cheated of the access to adequate education. They are only 11 years old once. They are only 13 years old once. When they pass that, they are passed, and something that may happen in 1980 won't benefit the kids in 1977.

This is my only comment.

Mr. POLK. Another approach that has been suggested is compensatory education. There has been testimony that millions of dollars are spent to buy schoolbuses and to maintain and operate them. If that money were poured into compensatory education, it is suggested that that would do much more to upgrade the quality of education for blacks than busing does.

Could you comment on that?

Mr. JONES. If I may address myself to that, Mr. Counsel, each of these suggestions have been presented to courts in the various cases that have been before the courts and the courts have found that they have not been an effective remedy.

The Supreme Court has mandated in the *Green* case and in *Alexander* that the remedies that must be applied to dismantle the dual school systems and to correct the constitutional violations must be remedies that will work and work now. The voluntary open enrollment notion, the compensatory education route, all of these have been tried. They were tried in Detroit and they were found to be woefully inadequate to meet the problem.

If I may just follow up on what Mr. Wilkins said, to show you how all of this ties together, last year Mr. Wilkins had me go to West Germany to investigate the complaints of black GI's concerning discrimination in housing, promotion, and administration of justice.

We were concerned because over 50 percent of the GI's who were in the stockade were black and a disproportionate number of courts-martial that were meted out and article 15 punishments being handed out were being handed out to black GI's and disproportionate number of dishonorable discharges were being given to black GI's.

We found a lot of this was rooted back into our school system because these black servicemen were tested when they entered the service. They took an AFQT test and because they performed poorly, because their reading skills were not adequate they were put in certain job career fields which did not permit very rapid advancement and so they became very disenchanted and they were, in effect, in segregated units over in West Germany.

Because they could not advance and they saw their white counterparts of their same age group moving much faster than they were, they took the position that they were crippled and that they could not advance.

The fact that they did perform poorly on their AFQT test went back to our school system. When you tie that in with what we found in Detroit, that when a youngster reaches the eighth grade in a predominantly black school, his reading skills are 2 to 3 years behind those of students in a white school, then you see he can't wait 3 or 4 or 5 years to correct the situation.

Mr. Polk. A third approach was suggested by a witness yesterday, and that is the approach of one-way busing. Would you comment on the wisdom or legality of that approach?

Mr. Jones. One-way busing is an insult to the black community.

Mr. Polk. Why is that?

Mr. Jones. It is an insult because it says to the black youngster the only way you can learn is to go out into a white milieu. We take a position that when seats are vacant, when there is space available in solid physical plants and they are located within the black community, there is no reason why these buildings should not be used as well.

In Detroit, for instance, at a time when there were 26,000 vacant seats in schools located in the inner city of Detroit, the Detroit School Board was contemplating constructing a new high school and the court enjoined that construction because it took the position that if there were overcrowding in these various outlying schools, it could have been met by transferring some of those students into the inner city schools.

But the way to cure that situation is to provide schools of superior quality throughout a system and then you no longer have identifiable white schools and identifiable black schools. That is what the courts are talking about. If you eliminate identifiability of schools, then you don't have any problem of one-way or two-way busing. You move kids around without any stigma involved.

Mr. Polk. Why is one-way busing demeaning to blacks whereas two-way busing is not?

Mr. Jones. For this reason. If schools are brought up to snuff, if the schools in the inner city have been good enough for black youngsters, then there is no reason why they should not be open to the white youngsters.

Mr. Wilkins. The truth of the matter is of course that the so-called black schools which we complain about and talk about as inferior, the white parents are just now finding out by means of this two-way busing that their children are being sent not only to a neighborhood school that they have learned to distrust but to schools which are in fact inferior.

Our contention is that the true integration of the school system embodies the quality education of every child. You either have to bus them to where the good education is or you have to leave them to wallow in the inferior education.

We have found, for example, that when you bring white kids into a heretofore black school and the parents find out that they are not getting this and they are not being taught that, and so forth, they become very vocal to the school board and improvements have taken place in the black school because the whites are there and because they refuse to be satisfied with the standards that were in effect.

Mr. Polk. You are suggesting this would not happen otherwise?

Mr. Wilkins. It hasn't happened. Let's put it that way. The best proof of whether it will happen is whether it has happened and there is no record anywhere in America. Take Boston. Boston is a prime example. Take Pasadena, Calif. Pasadena is a prime example. Take Chicago. Take any city in the North or West and they have dragged their feet on improving the quality of all of the schools.

Mr. POLK. Thank you, Mr. Wilkins.

Chairman CELLER. We are grateful for your testimony, both of you gentlemen. We thank you.

The committee is in a bit of difficulty. One of its bills is to be considered this morning and the House goes into session at 11. We still has five witnesses. The chairman must leave shortly because I am scheduled to speak on one of these bills and the gentleman from Texas will preside.

Meanwhile, I am going to ask all of the other witnesses to be as brief as possible. We will accept their statements for the record and request that they epitomize them.

Our next witness is Mrs. Larnell A. Cleveland who will be accompanied by Mrs. Geraldine Urbonas.

I know that you have a statement of 30-odd pages. We will include your statement and data for the record and files and ask you to epitomize your position.

(The prepared statement referred to is at p. 1001.)

STATEMENT OF MRS. LARNELL A. CLEVELAND, ACCOMPANIED BY MRS. GERALDINE UREONAS, ROCHESTER, N.Y.

Mrs. CLEVELAND. Could I read my statement? It will not take long.

Chairman CELLER. We have asked you, if possible, to give it to us orally, not repeating it word for word, because we will have to cut you short; not that we want to do that, but the exigencies of the morning require something of that nature. Otherwise, we will be unable to hear all of the witnesses before we go to the floor.

Mrs. CLEVELAND. If I may take 10 minutes, that will be all right.

Chairman CELLER. Just do the best you can.

Mrs. CLEVELAND. All right. Representative Celler and members of the committee, I am Mrs. Larnell A. Cleveland. My companion is Mrs. Geraldine Urbonas and we are both from Rochester, N.Y. Mrs. Urbonas is chairman of the committee and cochairman of the united council of education.

I live at 566 Hayward Avenue in Rochester, a neighborhood which is thoroughly integrated. We do not own our house and cannot afford to buy. I have two daughters and a son, all teenagers, attending schools in the Rochester School District.

My husband and I voluntarily bused our youngest daughter for 3 years under the open enrollment plan to an integrated school. We do not belong to any antibusing organization or school organization although we sympathize with their cause.

I am here on behalf of myself and many, many parents and children of Rochester who are undergoing hardships and anxiety brought on by compulsory busing. This busing program separates brothers, sisters, and friends, and takes children long distances from their homes.

I am in favor of voluntary busing and voluntary transfer, but vehemently opposed to compulsory busing to achieve racial balance in our schools. Compulsory busing has polarized our cities. Mothers of children in both black and white schools do not want their children bused.

The ultraliberal or left is sympathetic to the cause of the anarchist whose goals are to demolish the social structure and undermine our Government which appears to be succeeding by the mere fact that I am here pleading for my constitutional right of freedom of choice guaranteed under our Constitution.

These innercity parents are against busing when they see their children short-changed in education in order to pay $11 million this year alone for busing. Next year as more loans are implemented the busing costs will be greater. See exhibit 1 and 1–A, please.

And then also the cost of monitors who are actually riding shotgun. The citizenry of Rochester has been fighting this fight against the compulsory busing since 1967, at which time Superintendent Herman Goldberg introduced his park plan which included compulsory busing at a school board meeting at East High School.

The programs proposed by Mr. Goldberg were defeated and it was then the open enrollment and voluntary transfer program was born. The racial problems started in our schools thereafter.

After boycotts by both teachers and parents, violent outbreaks in the schools, the board still voted in the reorganization plan. In 1970, two elementary organization plans, A and C zone consisting of seven schools were implemented under the first phase of this plan.

All children involved in these zones were within walking distance. Under the reorganization plan, elementary schools were broken down into categories K–3 and 4–6, 7 through 8, and 9 through 12.

In reorganizing in this fashion, it compelled children to walk farther distances from home and at the same time pass their neighborhood school on their long journey to the reorganized schools.

It was explained to the community by Commissioner Thomas Frey that this was an experimental program that had to be evaluated before implementing further zones. Exhibit 2. But in 1971, the following year, they implemented the junior and senior high schools and one more elementary zone.

Rochester consists of 36.44 square miles and a school population of over 44,000 children. Due to its peculiar geographical shape, the bus runs up to 45 minutes one way in good weather, so gentlemen, you can imagine the time involved in rainy or snowy weather. Under poor conditions and good conditions bases run late and children are left standing in rain or snow and zero temperature.

In view of this fact and the fact that oftentimes children miss a bus, truancy has spiraled upward. Parents and children are undergoing hardships because of busing due to the early hour a child has to arise in the morning. He gets home late and he is therefore unable to participate in extracurricular activities.

Parents who have more than one child often find their program in as many as five different schools. Reorganization's prime function was to integrate our schools through busing. It has failed miserably. Our schools were never segregated . Racially imbalanced, yes, but never segregated.

Today we have "segregated" integrated schools. Blacks remain with blacks, whites with whites, Puerto Ricans with Puerto Ricans, on the buses, in classes, assembly, and in the cafeteria.

Coercion in any program will lead only to failure. Where we used to have a student union, now we have black, white, and Puerto Rican student unions. Many in Rochester came into existence during violent times.

In my opinion we have three armies in school, white, black, and Puerto Rican. They were formed out of fear. Our youth is frightened. The hatred is kindled by the school's double standard set up by teachers and administrators. Unity, gentlemen, the word unity is dead as long as we are talking color and making laws in color.

As soon as the statement has to be prefaced with a word, white, black, or Puerto Rican, you imply that white, black, or Puerto Rican cannot trust each other and this has happened in our school.

In September the Rochester schools expected 45,000 children but they lacked 1,500. The dropout situation has spiraled, 1,500 in the first 2 months. The Rochester School District has been involved for many years in many federally funded and locally funded experimental programs.

The children in our community have been guinea pigs tested with programs that cannot be evaluated. Quality integrated education is education in which all children of all people go to first-rate schools. This is a quotation from Mr. Herman R. Goldberg, past superintendent of schools, see exhibits 5 and 6.

I do have the crime report. Crime has increased in Rochester schools this year 255 percent and I break it down. The name of the plan is a farce. All schools were integrated. Some schools had the same percentage of ethnic groups as they had before. Busing and voluntary transfers are not the only evils of the reorganization plan.

As I mentioned previously, experimental programs such as a cluster system, nongrading and a school without walls. Schools do not meet building codes and school equipment is davenports and mattresses on the floor. Children come and go as they please. I quote from Rochester History, edited by Blake McKelvey, Rochester city historian, dated April 1969:

> The 1850's were a crucial decade in Rochester's educational history. The board of education recognized the rights of Negro children to equal and unsegregated educational opportunities a full decade before the State granted the right to vote.

I would like to mention that in the last 10 years, Rochester has lost 60 major industries, so unemployment is prevalent. Books in the schools are short. The ratio is three books for five children. The crisis in education today in Rochester is to educate without indulging in social experiments.

The demographic conditions in Rochester preclude any possibility of accomplishing any stable integration. A mere glance at the annual Ethnic Census of 1970–71 put out by the division of planning and research of the Rochester School District, exhibit 7.

In speaking of desegregation and integration, we often lose sight of what these mean within the context of a free, open, pluralistic society. We cannot be free and at the same time be required to fit our lives into prescribed places on a racial grid, whether segregated or integrated and whether by some mathematical formula or assignment.

An open society does not have to be homogeneous or fully integrated. Especially in a Nation like America it is natural and right that we have Italian or Irish or Negro or Norwegian neighborhoods. It is a natural and right thing that members of these communities feel a sense of group identity and group pride.

The right and ability of each person to decide for himself where and how he wants to live, whether as part of the ethnic enclave or as part of a larger society or, as many do, share the life of both.

I have a quote in here by Robert Kennedy or words to that effect, but I would like to say over 150 years ago President Thomas Jefferson said that if our Republic ever falls, it will be the fault of the Federal judiciary.

The time has come for you, the legislature, to realize that now is the time for you to assert yourself and live up to your responsibilities and desires of your constituents, the purpose for which you were elected. Any further usurpation of your prerogatives by the Supreme Court would be complete capitulation on your part. The end result would well be the disruption of our Republic.

An amendment to the Constitution is needed to prevent capricious and arbitrary decisions by appointed state and federal officials from overruling locally elected officials. For example, Mr. Ewald Nyquist and commissioners of schools in New York State.

To prevent capricious and arbitrary decisions made by State and Federal courts from mandating busing situations that are impossible for school districts to implement either logistically or financially.

To put the Supreme Court of the United States out of the legislative structure of our Government and back to the judiciary section where it belongs. To prevent further loss of freedom for our citizens and the quantum steps that have been taken toward a totalitarian state in recent years. To help prevent the insidious Federal bureaucracy such as the Department of Health, Education, and Welfare from becoming more of a government within a government than they already are.

To prevent abortive attempts by the Department of Health, Education, and Welfare to racially balance school children in large cities of the United States, an action which invariably leads to desegregation by whites and the more well-to-do blacks.

Representative Emanuel Celler, you should be most cognizant of the danger of these situations. Even without massive busing programs, the city of New York in the last census period lost 800,000 whites with an educational median of 12.5 years and at the same time gained 750,000 blacks, whose education median was not ascertainable.

The city of Rochester, with a population of less than 300,000, gained over 25,000 blacks, a 114-percent increase in the last 10 years. At the same time, they lost over 50,000 whites. Assign a public school student because of race, color or creed—why? To bus to racially balance—why? To relinquish more of your inalienable rights—God forbid it. To comply with the wishes and beliefs of the overwhelming majority of citizens of this Republic.

If any politician, by this I mean the President or Members of the Congress, does not believe this is a viable statement, let them speak out for busing and against this resolution. And if he or she is up for election, we will send them back to their homes defeated.

I would like to show you what is in the exhibit, but I can now show you in full where on September 24, the Rochester evening paper has the school complaints growing and Senator Javits' article cites our city as a beautiful example of integration and how peaceful it was.

Chairman Celler. I will have to cut you off because, as I said, we have four more witnesses. One has come from Denver, Colo., and others also from distant places, and we cannot keep them over today. I am afraid we will have to cut you off.

I don't do that disrespectfully in any sense. We will put your complete statement and that of Mrs. Urbonas in the record, and all of your exhibits will be retained in our files. All will receive our full consideration. At this time, we thank you very much.

(The statement referred to follows:)

STATEMENT OF MRS. LARNELL A. CLEVELAND, ACCOMPANIED BY MRS. GERALDINE URBONAS

I am Mrs. Larnell A. Cleveland, my companion is Mrs. Geraldine Urbonas and we are both from Rochester, New York.

I live at 566 Hayward Avenue in Rochester, a neighborhood which is thoroughly integrated.

I have 2 daughters and a son all teenagers and attending schools in the Rochester School District. At the present time, I have a daughter in the block schools because in my opinion the school she did attend was unsafe.

My husband and I voluntarily bused our youngest daughter for three years under the open enrollment plan to an integrated school.

We do not belong to any anti-busing organization or school organization, although we sympathize with their cause. I am here on behalf of myself and many, many parents and children of Rochester who are undergoing hardships and anxiety brought on by compulsory busing. This busing program which separates brothers, sisters and friends takes our children long distances from their families and familiar environment.

I am in favor of voluntary busing or voluntary transfer but vehemently oppose compulsory busing to achieve racial balance in our schools.

Compulsory busing has polarized our city—mothers of children in both the white and black communities do not want their children bused, although the ultra liberal faction who have been the strongest proponents of this plan do not have their children in schools which would include them in this program. The ultra liberal or leftist who is sympathetic to the cause of the anarchist and communist, whose goals are to demolish the social structure and undermine our government, appear to be succeeding—by the mere fact that I am here pleading for my constitutional right of freedom of choice guaranteed under our constitution.

Inner city parents are as vociferous as outer city parents against bussing as they see their children short changed in education in order to pay $1.8 million dollars this year alone for bussing. Next year if more zones are implemented the bussing cost will be that much greater, not to mention the cost of monitors who have been hired to keep order on the busses (See Exhibit #1) and help protect the bus drivers and prevent the dismantling of the busses, a true description of the monitor would be "riding shot gun."

The citizenry of Rochester has been in this fight against compulsory bussing since 1967 at which time Supt. Herman Goldberg, introduced his Park Plan and 15 point plan which included compulsory bussing at a School Board Meeting at East High School.

This particular School Board Meeting ran into the wee hours of the morning before all speakers were heard—4:00 a.m. to be exact. The programs proposed by Mr. Goldberg were defeated and it was then that the open enrollment or voluntary transfer program was born and racial problems started in our schools shortly thereafter.

In 1969 after many bitter fights between School Board Commisisoners and constituents, after boycott of schools by both teachers and parents, after picketing of schools and Commissioners' homes, after many violent outbreaks in our schools and after refusing the community of Rochester a referendum on this highly controversial issue, the School Board voted into being the Reorganization Plan which is nothing more than compulsory bussing and involuntary transfer.

In September, 1970, two elementary zones, A and C Zone, consisting of seven (7) schools were implemented under the first phase of this plan. All children involved in these zones were in walking distance—N.Y.S. law designates 1½ miles from home to school as walking distance. Under the reorganization plan elementay schools were broken into two categories K–3 and 4–6 from K–6. In reorganizing in this fashion, it compelled children to walk farther distances and at the same time pass their neighborhood school on their long journey to the reorganized school.

It was explained to the community by Commissioner Thomas Frey that this was an experimental program that had to be evaluated before implementing other zones (Exhibit #2). But in 1971 the School Board Commissioners implemented Zone G, and included the reorganization of both Junior and Senior high schools which threw our community into an "educational crisis," because compulsory bussing was the means to this end.

Rochester consists of 36.44 square miles with a school population of just over 44,000 pupils (Exhibit #3). Due to its peculiar geographical shape, there are bus runs up to 45 min. one way in good weather. So, gentlemen, you can imagine the time involved in rainy or snowy weather. Under poor conditions and good conditions busses run late and children are left standing in rain, snow and zero temperatures. In view of this fact and the fact that often times students miss a bus—truancy has spiralled upward.

Parents and students are undergoing many hardships—with the time involved in bussing, the early hour a child has to rise in the morning along with bus time schedule after school, deprives them of either leisure time or time applicable to academic or cultural studies (homework, music, etc.) and it also deprives them of extra-curricular participation such as sports, student government, yearbook, social committees, which in fact, is infringing on their rights to obtain the opportunities offered to them in many different fields. Many musicians got their start in the high school band and professional athletes took advantage of high school basketball, football and baseball teams.

Parents who have more than one child in school often find that all her children are in different schools. A case in mind is a woman in Rochester that has five children in five different schools. But still gentlemen we hear the cry of the educator "parent involvement" "support PTA." Reorganization makes this almost impossible because the parent either doesn't have the transportation nor the time to run from one end of the city to the other and often time her child is bussed into a neighborhod that she wouldn't be safe to enter.

Bussing is a threat to family life—brothers and sisters are separated and the security that a child has by knowing that either family, friend or neighbor are all together in familiar environment is stripped from them and school becomes a traumatic experience.

Reorganization's prime function was to *integrate* our schools through bussing—it has failed miserably. A point of fact, our schools were never segregated, racially unbalanced, yes, but never segregated. But, today we have "segregated—integrated schools" because blacks remain with blacks, white with white and Puerto Rican with Puerto Rican—on the busses, in classes, in assembly, in cafeteria. Coercion in any program will only lead to failure.

Where a Student Union or Student Council was representative of a student body, we now have Black Student Union, White Student Union and Puerto Rican Student Union. I have no trouble with student unions whatever color—what does cause me consternation is the reason they were born. Many in Rochester came into existence during the violent times in our schools. In my opinion we have 3 armies in a school—white, black and Puerto Rican. They were formed out of fear—Black Student Union, in numbers they could fight the white. White Student Union, in numbers they could fight the black. Puerto Rican Student Union, in numbers they could fight the white and black. Isn't this sad gentlemen—the hatred that is inbred in our youth is frightening. The hatred has been kindled by the schools double standard set up by teachers and administrators. Our children who say "the only good nigger is a dead nigger" and those who say "we'll kill the white mother ———" are really saying "we have to kill the system." The hatred is really for the injustices that have come forth from the double standard set through reorganization.

Unity—gentlemen—the word unity is dead as long as we keep talking in color and making laws in color. As soon as a statement has to be prefaced with the black or white or Puerto Rican, you imply that neither Black or White or Puerto Rican cannot trust each other and this is what happened in our schools. (Exhibit No. 4)

In September the projected number of attendance in Rochester schools was 45,000 pupils but actual enrollment was down 1500 students.

The dropout situation in Rochester is disastrous. In September, 1971, there were 600 children and in October 1971, there were three hundred. These figures added to the 1500 less enrolled adds up to the nice and tidy sum of 2400 decrease in two years. These figures were computed by Mr. Joseph Farbo, present School Commissioner.

Rochester School District has been involved for years in many federally funded or locally funded experimental projects. The children in our community have been guinea pigs—tested with programs that still cannot be evaluated; as per example, "Reorganization". To give proper name, "Grade Reorganization and Desegregation of the Rochester Public Schools."

"Quality Integrated Education is education in which all the children of all people go to first rate schools together free of the fears of men." This is a quotation of Mr. Herman A. Goldberg, past Supt. of Schools in Rochester, and a great proponent of the Reorganization Plan. (Exhibit No. 5 and 6.)

Remembering these words gentlemen from an expert in the field of education, isn't it ironic that in Rochester since 1970, crimes in the schools based on Rochester Police Dept. Report—there has been a 255% rise in school crime.

Since September 1971, 94% of unprovoked types of crimes committed in school or on the school grounds has been blacks attacking whites. 90% of these were committed by students bussed into the school (needless to say schools not reorganized are also feeling a rise in crime due to the young Rev. students of the Third World Movement but not comparable.) 50% of these were black boys attacking white girls. We have had every type of crime imaginable. In 1971 Police Commissioner John A. Mastrella said that the police department last year provided six (6) police officers full time and others part time to the school district. He said it cost his department $100,000 to patrol the schools last year.

Mr. Hubert A. Norton, administrative director, said busses will be lined up each day for a quarter of a mile. "With busses lined up like that, we can't imagine the problems that might occur" he said. More than 5,000 junior and senior high school students will be attending schools *that* they aren't familiar with.

The name of the plan is a "farce." *All* Rochester Schools were integrated prior to the plan. Some schools have the same percentage of ethnic groups as they had before Reorganization. (See Exhibit #8).

Bussing and involuntary transfer are not the only evils of the reorganization plan. As I mentioned previously experimental programs such as the cluster system, non-grading and schools such as the School Without Walls and the Interim School which do not meet building codes where school equipment is davenports and mattresses on the floor, children can come and go as they please and wander the streets individually, go where they like, do what they like and this is what they call education.

The School Without Walls is patterned in the same way as (quoted from Rochester History, Edited by Blake McKelvey, City Historian, dated April 1969.) "The 1850's were a crucial decade in Rochester's educational history. The Board of Education recognized the rights of negro children to equal and unsegregated educational opportunities a full decade before the state granted their fathers the right to vote."

Rochester City School District has right now a deficit of over $2.5 million and will have to go to the City Council to get funds to complete this school year, as they are not fiscally independent.

Financially, Rochester is in dire straits, 60 major industries have left Rochester within the last 10 years. To mention a few nationally known, General Dynamics, employing 15,000 people, Friden Division of Singer—4,000 people, R. T. French, Beechnut Packing Co., Xerox moved headquarters to Connecticut, Eastman Kodak building in Colorado—the reason high taxes. School taxes on a 7 room house in our area—1969–1970—183.52, 1970–1971—203.76—this year a raise of 5.32 per thousand.

For Sale signs abound on houses. People cannot sell houses—yet cannot keep them up.

Rochester schools, at the present time, are among the lowest in the state in reading and math levels due to the non-graded system part of reorganization plan in some schools and standard grading in others. Many children are just being passed whether they should be or not. This is a great injustice to all children. Most children graduating 12th grade have 6th grade reading level. (See Exhibit #9 & 10). Subjects in schools are watered down to the average student and the bright child or the slow learner has little chance of learning the way they should.

Children come home from school complaining about disruptions and fights in classes where some teachers cannot control the children. The ratio of books in many schools is 3 to 5 children per book.

The crisis in education in Rochester today is to *educate* without indulging in social experiments. More money does not mean quality education. We firmly believe if monies appropriated to bussing would be used to bring every public school in Rochester up to a point where there would be no better school then gentlemen equal opportunity would be offered because then all children would be educationally equipped to pick up the challenge of life.

The demographic conditions in Rochester clearly preclude any possibility of accomplishing any true and stable integration. A mere glance at the Annual Ethnic Census of 1970–1971 put out by the division of Planning and Research of the Rochester City School District.

To spend millions of dollars to bus children in an attempt to create a particular racial balance is utterly beyond comprehension when one considers that this situation, in less than three years, will no longer exist. In fact, the racial balance is changing dramatically *every* year.

In President Nixon's Policy Statement of 1970 on desegregation of Schools he stated in parts:

"The goal of this Administration is a free and open society. In saying this, I use the words "free" and "open" quite precisely. Freedom has two essential elements. The right to choose, and the ability to choose.

In speaking of "desegregation" or "integration," we often lose sight of what these mean within the context of a free, open, pluralistic society. *We cannot be free and at the same time be required to fit our lives into prescribed places on a racial grid—whether segregated or integrated, and whether by some mathematical formula or by an automatic assignment.*

"An open society does not have to be homogeneous, or even fully integrated. There is room within it for communities. Especially in a Nation like America, it is natural and right that we have Italian or Irish or Negro or Norwegian neighborhoods, it is natural and right that members of those communities feel a sense of group identity and group pride. The right and ability of each person to decide for himself where and how he wants to live, whether as a part of the ethnic enclave or as part of the larger society—or as many do, share life of both."

The late Senator Robert F. Kennedy said, before the Senate Subcommittee on Housing and Urban Affairs (in 1968) on the Senate Floor:

"To seek a rebuilding of our urban slums is not to turn our backs on integration. It is only to say that open occupancy laws alone with not suffice and that sensitivity must be shown to the asperations of Negroes and other nonwhites who would build their own communities and occupy decent housing in neighborhoods where they now live. And in the long run, this willingness to come to grips with the blight of our center city will lead us toward an open society. For it is the comparability of housing and full employment that are the keys to free movement and to establishment of a society in which each man has a real opportunity to choose whom he will call neighbor."

Gentlemen, face the facts. Over 150 years ago President Thomas Jefferson stated "that if our Republic ever falls, it will be the fault of the Federal Judiciary." The time has come for you in the Legislature to realize this and that now is the time for you to assert your selves and live up to your responsibilities, to the desires of your constituents, the purpose for which you were elected. Any further of your prerogatives as legislators by the Supreme Court would be tantamount to complete capitulation on your part. The end result of which could well be the disolution of our Republic.

An amendment to the Constitution of the United States such as that proposed by the H.J. Res. 620, introduced by Rep. Norman Lent of N.Y. State, 5th District is vitally needed for the following reasons:

1. To prevent capricious and arbitrary decisions by *appointed* State and Federal officials from overruling locally *elected* officials. (Example—Nyquist).
2. To prevent capricious and arbitrary decisions by State and Federal Courts from mandating busing situations that are impossible for school districts to implement either logistically or financially.
3. To put the Supreme Court of the United States out of the Legislative structure of our Government and back to the Judiciary section where it belongs.
4. To prevent the further loss of Freedom for our citizens and the quantum steps that have been taken toward a totalitarian State in recent years.
5. To help prevent the invidious Federal bureaucracy such as the Dept of Health, Education and Welfare, from becoming more of a government within a government than they already are.
6. To prevent abortive attempts by the Dept. of H.E.W. to racially balance school children in the large cities of the U.S. An action that invariably leads to

resegregation by whites and the more well-to-do blacks. Rep. Emanuel Cellar should be most cognizant of the danger in these situations. Even without massive bussing programs; the City of New York in the last Census period 1960–1970 lost 800,000 whites with an educational median of 12.5 years. At the same time, New York City gained 750,000 blacks whose educational median was not ascertainable! The city of Rochester, with a population of less than 300,000 gained over 25,000 blacks (114% increase) and at the same time lost over 50,000 whites. (See Exhibit [1]). As you can see by the exhibit entitled Annual Ethnic Census 1970–71, we have in Rochester a total non-white population of 17.2%. At the same time we have 40% non-white in our school district. The generally accepted prognosis is that we will have by 1975 a non-white population of over 40%, with our school system having 65–75% non-white. In 1980 Rochester will be over 60% non-white with our school district virtually 100% non-white.

Assign a public school student because of race, creed, or color, why?

To bus to racially balance, why?

To relinquish any more of our "inalienable rights," God forbid it.

To comply with the wishes and beliefs of the overwhelming majority of the Citizens of the Republic.—If any politician, by this I mean President and Members of Congress, does not believe this is a viable statement, let him speak out *for* busing and *against* this H.J. Res. 620 Resolution and this November if he or she is up for reelection or election, we will send them back to their homes—defeated.

VOX POPULI

The course of events which have surrounded the School System of the City of Rochester are as complex as they are numerous. They may be simplified to the basic context of freedom. Busing is a means to implement integration and quality education, it has uncovered only the bitterest emotions of this city's people. It has failed in its two prime objectives and has only sown the seeds of hatred and disilusionment. This is only natural when the state of coercion presents itself as a real force. The constituents of Rochester voted in November for a board of five people committed to the rescinding of the reorganization plan. The result of the November election resulted in almost 2 to 1 plurality for the proponents of rescinding this plan. It is very clear that "vox populi" has spoken and has given a clear mandate to its five legally elected school board commissioners. Any impairment on the part of the courts against this plan is a blatant obstruction of American rights.

The Civil Rights Act of 1964 states: "There shall be no involuntary busing for the purpose of achieving racial balance." Rochester, though it may be an exception to the country as a whole, has never perpetrated segregated schools. The charge that this board is trying to perpetrate segregation is ludicrous. The judicial system if it insists that the populus must accept involuntary transfer will in effect be undermining every constitutional right American citizens now possess. Can we justify the abridgement of human rights for any reason? Can the courts, by handing down a decision obviously in discord with the vast majority of people, justify their omnipotent actions? I think not. For a body to decide against the wishes and desires of the people it supposedly represents is a blatant defiance of the liberties we all should cherish. By deciding what needs to be done and when it should be done regardless of the peoples' requests, the courts are in essence expounding the basic tenets of totalitarianism. It is our wish and fervent hope that the courts will recognize our legal rights as free citizens in a democracy and will act accordingly. The majority must be heard or American liberty will be doomed.

GERALDINE URBONAS,
Nazareth College, Rochester, N.Y.

CITY SCHOOL BOARD OKAYS PRIVATE 3-YEAR BUS PACT

(By Kathleen Matichek)

The City Board of Education yesterday, in a 3–2 party line vote, awarded a three-year bus contract to Golden Arrow Line Inc.

The contract, which calls for 168 buses to begin service in September, has been estimated to cost $1.8 million for the 1971–72 school year.

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[1] Additional materials submitted by Mrs. Cleveland are retained in the committee's files.

Board Democrats, who with their vital third vote approved the contract, said that the City School District's own fleet of chartered buses "is the best thing we could do for the people of Rochester."

The board's two Republicans disagreed. Dorothy B. Phillips, board president, blasted the Democrats by saying "you have struck a fierce blow at the standards for which this community has been built by voting to discontinue the service now being provided by the Regional Transit Service." Gordon J. DeHond also dissented.

In September, no city secondary school students will ride RTS buses with the passes for which the school district now pays $104 each.

The board's vice president, David R. Branch, a Democrat, said that the RTS could have bid on the entire contract "but it was their decision not to."

The school district now charters 77 buses. Because of secondary and elementary school reorganization, slated to begin this fall, 91 more buses are needed.

Cost of additional buses for the reorganization plan is about $800,000.

Of the 168 buses, 105 will be used for secondary school students and will have to make two round trips daily. With staggered schedules, there will be 273 routes.

Mrs. Phillips pointed out that staggering schedules "might have some schools start classes at 7:30 a.m. If this is so, these students might be waiting for buses at 6:30 a.m. "What if they miss their bus?"

If school hours were changed from present 8:30 a.m. starting time, the board would have to negotiate new starting times with the Rochester Teachers Association.

Wyoma Best said that past experience with Genesee Bus Service Inc., Golden Arrow's subsidiary, "has demonstrated better service than the RTS provided."

About two months ago, the school district took away 10 routes from RTS and gave them to Genesee because of "very poor service on RTS's part."

John G. Nolan, president of Golden Arrow, said his company could guarantee enough buses by September and that his company would employ 125 more drivers and mechanics.

Mrs. Phillips said it was a careless move to hire a non-union bus company which doesn't pay the prevailing wage rates.

Paul L. Reason, assistant superintendent for business, said that the RTS wouldn't have to lay-off any drivers because of losing the 54 chartered routes it now supplies.

Mrs. Phillips said a three-year contract provides for "built in rigidity."

Thomas R. Frey said such a contract provides for "built in economy" because the contract states that prices can't be raised more than 5 per cent a year.

School Aides Debate Stand on Authority

The city's 10 secondary school principals and the city Board of Education last night said they have begun to decide how to deal with disruptive students.

After a 3½-hour closed meeting, members of the two groups said they will work out a procedure next week and that defines authority of principals.

On Tuesday, the principals told their board they wanted their authority defined by April 19, when classes resume after Easter vacation.

ABC Against Reorganization

The city's anti-poverty agency last night announced its opposition to a city school reorganization plan after overcoming fears of several board members that such a stand would align it with what some called racist groups.

In approving the recommendations of a committee, James McCuller, executive director of Action for a Better Community, said opposition was justified because the reorganization plan contained "no guarantees of educational quality."

Built-in controls that would insure such quality are necessary, he said.

The Rev. Eugene Tennis of the city's Community Relations Department told the board that a negative stance toward the reorganization wouldn't be considered a racist one.

ROCHESTER, N.Y., *March 15, 1971.*

Commissioner THOMAS FREY,
Education Building,
Rochester, N.Y.

DEAR TOM: You may remember that I was present at the stormy No. 8 school Reorganization informational meeting last Spring. This is my "neighborhood" school.

I asked a question of Dr. Rentach and Mr. Siebert. The question stated that I had no doubt that zones A and C would be reorganized but would future implementation rest upon an evaluation of the experiment in zones A and C.

I was assured that it would. When I asked what pre-testing had been done, what was to be done, and if the control group had been identified and measured, the reply was negative. But I was told it was to be done.

At a January RTA House meeting a representative of the Department of Planning and Research spoke to the House about an evaluation instrument that had been designed to evaluate the schools and pupils in zones A and C.

This gentleman indicated that he wished the support of the RTA in the evaluation that was to take place. I know that the evaluation has still not taken place but that other zones have been scheduled for implementation.

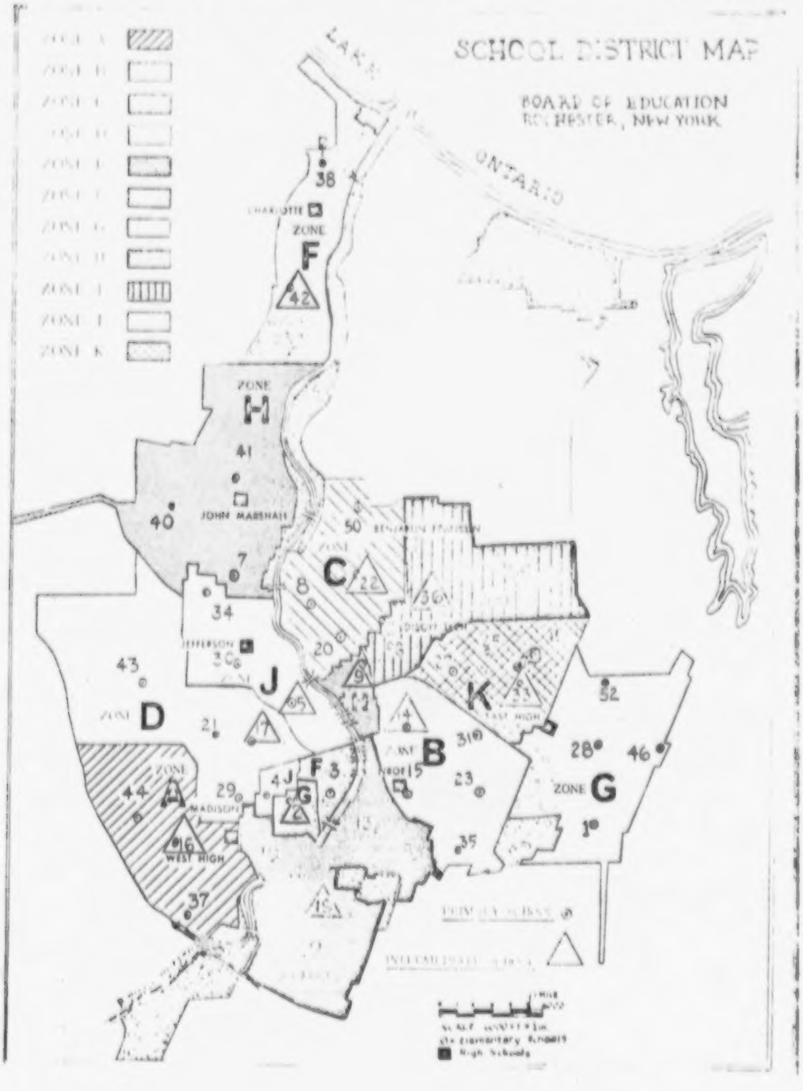
In other words, I don't know if the present reorganization plan is educationally superior or inferior but am asked to support it.

Since you voted for further implementation, what evidence do you have that it is working? I ask this because you nodded acceptance of the answers to my questions at 8 School.

Very truly yours,

ROBERT E. KESEL.

ELEMENTARY SCHOOLS - ENLARGED HOME ZONE PLAN (K-3; 4-6)


SCHOOL DISTRICT MAP
BOARD OF EDUCATION
ROCHESTER, NEW YORK
LAKE
ONTARIO
ZONE A
ZONE B
ZONE C
ZONE D
ZONE E
ZONE F
ZONE G
ZONE H
ZONE I
ZONE J
ZONE K
38
CHARLOTTE
ZONE
F
42
ZONE
H
41
40
JOHN MARSHALL
50
BENJAMIN FRANKLIN
7
ZONE
C
22
8
36
34
20
JEFFERSON
30
43
J
9
ZONE
D
5
21
17
K
52
EAST HIGH
14
ZONE
B
31
28
46
ZONE
A
44
29
MADISON
4
J
F
3
G
15
23
ZONE
G
1
16
WEST HIGH
35
37
19
PRIMARY SCHOOLS
INTERMEDIATE SCHOOLS
SCALE
Elementary Schools
High Schools

Some Schools Missed Racial Balance

(By John **Machacek**)

School reorganization has improved racial balance of city high school enrollments, but desegregation goals of the plan fell far short in three schools.

The annual school ethnic census, released by the City School District, showed Jefferson, Marshall, and Madison senior high schools enrollments considerably off the anticipated racial balance objective of approximately 60 per cent white and 40 per cent non-white.

Other reorganized secondary schools were within 10 per cent of the expected ratio.

Jefferson has a 21 per cent minority enrollment instead of the projected 34 per cent; Marshall, 15 per cent instead of a projected 36 per cent and Madison, 59 per cent instead of a projected 40 per cent.

Before reorganization, Marshall and Jefferson were less than 10 per cent non-white and Madison was 80 per cent non-white.

One reason Madison ended up with more blacks than whites was a decision by Principal Johnny Wilson to enroll black youths who had dropped out of school but wanted to come back for a second chance, said Josh Lofton, administrative director for reorganization.

The two major reasons the projections weren't reached, according to Orrin Bowman, acting director of planning and research, were the options available to students who wanted to transfer to another school for a particular course, and the block schools organized by parents opposed to reorganization.

School officials said 387 students given "out of district permits" to remain in courses not offered at the school they were assigned under the reorganization plan.

Such courses included Russian at East Senior High School; Latin at Franklin Senior High. Music theater at Marshall Senior High and advanced placement courses at Madison Senior High.

Also, nearly six per cent of students assigned to Marshall by reorganization ended up at Franklin when the bi-lingual program was placed there. The transfer of 100 students to the bi-lingual program at Monroe Junior High made that school about 10 per cent more non-white than expected.

Five block schools enrolled 471 students who had been included in projected attendance figures for this year.

There were also a "substantial number" of student transfers due to change of guardianships and address changes.

School Superintendent John M. Franco said the district would not attempt to improve racial balance further this year in order not to disrupt any student's academic program.

School officials believe they may be able to achieve the 60–40 racial balance next year by rearranging feeder patterns and having a more uniform offering of courses.

Enrollments at other reorganized schools turned out just about the way they had been anticipated.

Here's a breakdown of nonwhite percentages: East, 33 per cent; Franklin, 42; Charlotte Junior High, 32; Douglass Junior High, 35; West, 42; Monroe, 52.

Zone G elementary schools: School 1, 30 per cent nonwhite; School 14, 39 per cent; School 28, 50 per cent; School 46, 30 per cent; School 52, 28 per cent.

At Franklin—Whites Form Group

(By Kathy O'Toole)

A group of white students at Benjamin Franklin High School yesterday formed the first white student union in city schools.

Superintendent John M. Franco said such organizations are "not common" in secondary schools, although black and Puerto Rican student unions are prevalent here and in many cities.

Franco said the whites are guaranteed the right to organize their own union under the student bill of rights passed by the City Board of Education last spring. They also have the right to hold a cultural day in the school as blacks and Puerto Ricans frequently have done in the last two years, he said.

"But the ideal," Franco warned, is not three separate organizations for students, but "a complete, integrated student government."

The student bill of rights gave students the right to form "political, social and educational organizations" within the school.

Student unions, which have been formed to increase awareness and to discuss the problems of a particular racial group, are permitted if students have a faculty sponsor approved by the principal and if they admit any student.

"If three different student unions create problems in our schools, I would hope we can get down to discussing how to integrate these student groups into student government this year," Franco said.

Franco said that the blacks in city schools began organizing their own student unions about there years ago "because they were left out of student government . . .

"I don't quite know what the students' purpose is. They are represented on student governments," he said.

One teacher at Franklin said, however, that the students who formed the union yesterday are the whites "who are left out of the white groups which have leaders" in school government.

U.S. Rejects Bid for School Funds

The City School District has been eliminated from a $12 million experimental school program sponsored by the federal government, school officials said yesterday.

Rochester was one of eight school districts chosen to submit proposals for a $3 million program.

None of the eight finalist was recommended by a selection committee, but four districts will be given further consideration. Rochester won't be.

The committee said Rochester's 100-page proposal, concerning elimination of de facto segregation through clustering of schools, "suffered from internal inconsistency and the lack of adequate planning."

The $3 million would have provided a comprehensive kindergarten through twleve grade program including an interim junior high school.

Other funds now will have to be found to pay for leasing two buildings for the junior high.

City Schools Lose Bid for U.S. Funds

City school officials learned yesterday that Rochester will not get any federal experimental schools money for which it had been competing with seven other cities.

The $3.1 million which Rochester sought would have been used to enhance instruction and other programs in some reorganized schools and to provide funds for the interim junior high school, school without walls (a senior high program) and World of Inquiry school.

Acting Supt. John Franco said the failure to get the money would not affect the reorganization of high schools or five elementary schools (Zone G).

Thomas Frey, member of the board's Democratic majority, agreed. "They (proposed uses of experimental money) were pluses," Frey said. "They would have been added things." "We can still do the minimum without the money."

However, other funds now have to be found for leasing and preparing two buildings for the interim junior high schools, Frey said.

The board will use buildings at 31 Prince St. and 421 University Ave., both now occupied by the Singer Corp.

Rental is figured at about $88,000 a year and renovation at $30,000 spread over three years, Frey said.

The City School District has applied for a $140,000 grant under Title 4 of the Civil Rights Act to keep reorganization advisory specialists on the payroll after June 30 and to train teachers in reorganized schools.

Incidents reported to Police Department of Rochester, all of which happened on School Grounds or in School—February 1–29, 1972

Harassments	8
Assaults	24
Loitering	1
Robberies	4
Petty larcenies	27
Grand larceny	0
All sex crimes	2
Burglaries	1
Total	67

Submitted by Mr. Frank Ciaccia, Vice President of Rochester School Board, from Official Rochester Police Reports.

October	Reck. en-danger	Menac-ing	Harass-ment	Assault	Loiter-ing	Robbery	Peti. larceny	Grand larceny	Criminal tres-passing	Criminal misde-meanor	All sex crimes	Disord-erly conduct	Investi-gations	False reports	Bur-glaries	Posses-sion of danger-ous weapon	Other	Total
Ben Franklin			4	1		2	4				1							12
Charlotte			31	20		7	14	4		2	5							83
East		1	4	3		1	7							4			1	21
Edison							1			3								4
Fred. Douglas			3	7						1								11
Jefferson		1	1	10		1						3				1		17
Madison			1			2	1	1	1									6
Marshall			1	6		1	1						1					10
Monroe			2	4		2	2				1			1				12
West		1	1	1		2	4	1	1									11
No. 2							2			2								4
No. 4			1							1					4			6
No. 5							1						1		1			3
No. 6								1										1
No. 8						1												1
No. 9										1								1
Nos. 10 and 11				1										1				2
No. 14							1		1									2
No. 17		1																1
No. 19							1								1			2
No. 22			2	3	1													6
Nos. 23 and 25			1				1											2
No. 29															1			1
No. 30							1						1	1				3
Nos. 37 and 44				1						1								2
Catholic schools			2	1			1								1			5
Other schools			1				2		1									4
Total		4	55	58	1	19	44	7	4	11	7	3	3	7	8	1	1	233

November	Reck endanger	Menacing	Harassment	Assault	Loitering	Robbery	Petit larceny	Grand larceny	Criminal trespassing	Criminal misdemeanor	All sex crimes	Disorderly conduct	Investigations	False reports	Burglaries	Other	Total
Ben Franklin			1	4		1	11			1							18
Charlotte		2	15	20			17			2	1						57
East			2	5			7	1						3			18
Edison							2							1			3
Fred Douglas		1		2						1							4
Jefferson				1			2										3
Madison				4	1		4	1	1								11
Marshall			1	4		1	7			1			1	2			17
Monroe			3	3		3	3				2		1				15
West	1		1	1		2	2							3			10
No. 1										1							1
No. 2			1														1
No. 3													1				1
No. 9				1													1
No. 10				1						1							2
No. 11										1							1
No. 17				1													1
No. 24							1										1
No. 25				1		1	1	1									4
No. 26							1										1
No. 27							1		1								2
No. 29									1								1
No. 30			1														1
No. 33				3			1										4
No. 37															3		3
Nos. 38 and 39			1							1							2
No. 50			1														1
Catholic schools			1			1	2	2									6
Other schools			2				2			2					1		7
Total	1	3	30	51	1	9	64	5	3	11	3		3	9	4		197

December 1971	Reck, endanger	Menacing	Harassment	Assault	Loitering	Robbery	Petit larceny	Grand larceny	Criminal trespassing	Criminal misdemeanor	All sex crimes	Disorderly conduct	Investigations	False reports	Burglaries	Other	Total
Ben Franklin			5	1			10	1						3			20
Charlotte			3	4		1	15		1	1							25
East				1		1	1										3
Edison							5										5
Fred Douglas				3		1											4
Jefferson		1	1	1			3										6
Madison			1	2			2										5
Marshall			1	1			6										8
Monroe		1		1		1	3			1			1	1	1		10
West				1		1	4	1						4			11
No. 1										2							2
No. 2							1										1
No. 3							1										1
No. 4						1											1
No. 7										1							1
No. 9			1	1											1		3
No. 13										3							3
No. 25											1						1
No. 27										1							1
No. 30										1					1		2
No. 31				1													1
No. 34			1							1							2
Catholic schools			2	1		1	1										5
Other schools							1										1
Total		2	15	18		7	53	2	1	11	1		1	8	3		122

Week of Jan. 3, 1972 to Jan. 7, 1972	Reck endanger	Menacing	Harassment	Assault	Loitering	Robbery	Petit larceny	Grand larceny	Criminal trespassing	Criminal misdemeanor	All sex crimes	Disorderly conduct	Investigations	False reports	Burglaries	Other	Total
Ben Franklin							4										4
Charlotte				3			4										7
East				1			2								1		4
Edison							3										3
Jefferson			1	2													3
Marshall			1				1										2
Monroe		1															1
West							1										1
No. 9															1		1
No. 16				1													1
No. 28										1							1
No. 30										1							1
No. 36														1			1
Other schools				1													1
Total		1	2	8			15			2				1	2		31

Week of Jan. 10, 1972 to Jan. 14, 1972	Reck endanger	Menacing	Harassment	Assault	Loitering	Robbery	Petit larceny	Grand larceny	Criminal trespassing	Criminal misdemeanor	All sex crimes	Disorderly conduct	Investigations	False reports	Burglaries	Other	Total
Ben Franklin			1				3										4
Charlotte				2		1	1						1	1			6
Fred Douglas			2	3													5
Madison				1				1						1			3
Marshall			2				2										4
West							1										1
No. 9										1							1
No. 17														1			1
No. 22				1													1
No. 28									1								1
No. 30										1							1
No. 33														1			1
No. 42							1										1
No. 44							1										1
Catholic schools							1										1
Other schools			1												1		2
Total			6	7		1	10	1	1	2			1	4	1		34

Week of Jan. 17, 1972 to Jan. 21, 1972	Reck. endanger	Menacing	Harassment	Assault	Loitering	Robbery	Petit larceny	Grand larceny	Criminal trespassing	Criminal misdemeanor	All sex crime	Disorderly conduct	Investigations	False reports	Burglaries	Possession of dangerous weapon	Other	Total
Ben Franklin			4	11		1	2					1						19
Charlotte				2			7		1	1						1		12
East			1				2											3
Edison				1			1											2
Fred. Douglas			2	1			1											4
Jefferson				1														1
Madison							1											1
Marshall							1											1
Monroe			1															1
West			2			1	1		1									5
No. 3							1											1
No. 9				1														1
No. 13			1															1
No. 26							1											1
No. 40													1					1
No. 46			1															1
Other schools			1				1											2
Catholic schools											1							1
Total			13	17		2	19		2	1	1	1	1			1		58

Week of Jan. 24, 1972 to Jan. 28, 1972	Reck. endanger	Menacing	Harassment	Assault	Loitering	Robbery	Petit larceny	Grand larceny	Criminal trespassing	Criminal misdemeanor	All sex crimes	Disorderly conduct	Investigations	False reports	Burglaries	Other	Total
Ben Franklin			1	4		1	3										9
Charlotte			1	4			2								1		8
East							2										2
Edison							1										1
Fred. Douglas				1			1										2
Jefferson														1			1
Marshall													1				1
Monroe									1	1					1		3
West				1													1
No. 11			1														1
No. 14						1											1
No. 22			1												1		2
No. 29				1													1
No. 30										2							2
No. 38		1															1
Other schools				1		1								1			3
Total		1	4	12		3	9		1	3			1	2	3		3

Source: Detective Capt. James Cavoti, Rochester Police Department.

CITY SCHOOL DISTRICT, ROCHESTER, N.Y.—HIGHLIGHTS OF THE ANNUAL ETHNIC CENSUS, 1970–71

In October 1970, the City School District conducted its tenth Annual Ethnic Census as part of the Basic Educational Data System, a Statewide information collecting service. The minority group designations, as used by the State, distinguish those racial, color, or national origin groups which are numerically the largest in the United States. All persons not classified in one of the specified minority groups, including those considered to be white, are included in the "other" category.

The five year period reported in this study shows a rather consistent 2 percent per annum increase in the pupil population designated as Negro, Spanish surnamed, American Indian and Oriental. When viewed in perspective, these ethnic minority pupils comprise 40.0 percent of the elementary schools' enrollment, 33.4 percent of the secondary level and an overall K–12 percentage of 37.5.

More specific highlights and a summary of this year's census follow.

A. GENERAL

1. The percentage of Negro, Spanish surnamed, American Indian and Oriental pupils in Grades K–12 has increased from 34.8 percent in 1969 to 37.5 percent in 1970, an increase of 2.7 percent. The comparable percentage recorded in 1966 was 28.7 percent.

2. The percentage of ethnic minority pupils is highest at Grade One (44.6%) and declines to a low of 20.4 percent of the students enrolled at Grade Twelve. A year ago these percentages were 40.9 percent at the first grade level and 19.1 percent at the twelfth grade level.

3. In the 1970 listing, white pupils account for 60.0 percent of the elementary population and 66.6 percent of the secondary population, or 62.5 percent of the total school enrollment. The corresponding percentages for 1969 were 61.6, 71.2, and 62.5 respectively.

4. Negro children made up the second largest group of pupils. They constituted 35.2 percent of the elementary population and 29.7 percent of the secondary population, or 33.1 percent of the total school enrollment. Comparable percentages for 1969 were 33.9, 25.8, and 30.1.

5. Pupils with Spanish surnames accounted for 4.0 percent of the 1970 total school enrollment as compared with 3.6 percent for 1969.

B. ELEMENTARY SCHOOLS

1. The percentege of Negro, Spanish surnamed, American Indian and Oriental pupils increased from 38.4 in 1969 to 40.0 in 1970, an increase of 1.6 percent. The increases over the previous 3 years, i.e. 1967, 1968 and 1969, were 1.9 percent, 1.3 percent, and 2.0 percent respectively.

2. The total number of ethnic minority pupils in elementary schools has increased from 9878 in 1966 to 11,402 in 1970, an increase of 15.4 percent. The increase in the percentage of the total elementary population has changed from 33.2 in 1966 to 40.0 in 1970 for an overall percentage gain of 6.8.

3. Ten elementary schools, with white pupils accounting for less than 25 percent of its enrollment in 1970, are the same schools which had a white pupil population of less than 25 per cent of its enrollment in 1969. Five of these ten schools recorded a decrease in the percentage of white pupils ranging from 0.2 to 6.5 since 1969. Four schools recorded an increase in the percentage of white pupils ranging from 0.6 to 7.4 since 1969. One school in this group of ten schools had the same percentage of white pupils in 1970 as in 1969.

4. Seven elementary schools (two more than in 1969) had an enrollment which is made up of over 90.0 percent white pupils.

5. Twelve of the seventeen schools that were within the 65.6 percent to 20.1 percent range of pupils in the minority groups, as shown in Table II, recorded increases in the percentage of Negro, Spanish surnamed, American Indian and Oriental pupils. These increases ranged from 0.2 percent to 12.7 percent above the percentage for 1969.

6. Two elementary schools had a Spanish surnamed population in excess of 25 percent. At Chester Dewey School No. 14, those of Spanish origin made up 26.2 percent of the population and at Henry Lomb School No. 20 they constitute 25.9 percent of the total enrollment.

7. The results of the Board of Education action to implement Zone A and Zone C of the Grade Reorganization and Desegregation Report are shown in the following listing:

PERCENTAGE OF ETHNIC MINORITY GROUPS IN ZONE A AND ZONE C SCHOOLS

Zone	School	Percentage		
		1969	1970	Change
A	[1] 16	34.8	31.6	−3.2
A	37	17.2	26.0	+8.8
A	44	15.6	20.3	+4.7
C	[1] 22	28.8	41.5	+12.7
C	8	23.6	23.8	+.2
C	20	79.7	79.2	−.7
C	50	29.5	29.2	−.3

[1] Intermediate schools.

(a) In 1969 the range in the percentage of ethnic minority pupils between schools in Zone A was 19.4. In 1970 this difference was reduced to 11.3 percent. In Zone C, the 56.3 percent difference between schools in 1969 was reduced to 55.4 percent in 1970.

(b) Schools No. 16 and 20, for the first time in five years, reported a decrease in percentage of ethnic minority pupils.

(c) School No. 22, with an increase of 12.7 percent over 1969, reported an ethnic minority population of 41.5 percent, which is 1.5 percent above the citywide average elementary percentage.

C. SECONDARY SCHOOLS

1. The Negro, Spanish surnamed, American Indian and Oriental population have increased more rapidly in the secondary schools than in the elementary schools over the past five years. The actual number of ethnic minority students increased from 3137 in 1966 to 5683 in 1970, an increase of 81.2 percent. This represents an increase from 20.1 percent of the total secondary population in 1966 to 33.4 percent in 1970, a gain of 13.3 percent.
2. The Madison student population included 80.3 percent from ethnic minority groups, an increase of 6.1 percent over 1969.
3. West High ethnic minority population increased from 54.8 percent in 1969 to 59.7 percent in 1970.
4. Monroe High School recorded the highest increase in percentage of ethnic minority students—21.0 in 1969 to 32.5, a gain of 11.5.
5. At Monroe High School, 8.2 percent of the student body are Spanish surnamed. At Franklin 8.0 percent of the student body are Spanish surnamed.

D. SUMMARY

1. The total enrollment in all schools decreased from 46,618 in 1969 to 45,500 in 1970, a decrease of 2.4 percent. The citywide enrollment in previous years included in this report, have recorded annual increases. The combined population of ethnic minority groups has increased from 16,244 in 1969 to 17,085 in 1970, an increase of 5.1 percent.
2. The increase in percentage of ethnic minority pupils in elementary schools in 1970 is 1.6 as compared with 2.0 in 1969. The increase in percentage of ethnic minority students in secondary schools in 1970 is 4.6 as compared with 2.6 in 1969. On a citywide basis the increase in 1970 is 2.7 percent.
3. For the five-year period 1966–1970 the total number of students from ethnic minority groups has increased from 13,015 to 17,085, an increase of 31.3 percent.
4. In 1966 the students from ethnic minority groups constituted 28.7 percent of the entire enrollment; in 1970, 35.7 percent, an increase of 8.8 percent in the five-year period.

TABLE I.—ETHNIC CENSUS BY GRADE, 1970-71

Grade	Enrollment	Number [1]	Percentage [1]
Elementary:			
Prekindergarten and kindergarten	4, 548	1, 768	38. 9
1	4, 534	2, 021	44. 6
2	4, 140	1, 837	44. 4
3	3, 783	1, 569	41. 5
4	3, 315	1, 191	35. 9
5	3, 295	1, 275	38. 7
6	3, 078	1, 095	35. 6
7	722	164	22. 7
Special education	1, 085	482	44. 4
Total elementary	28, 500	11, 402	40. 0
Combined grade 7 (elementary and secondary)	3, 241	1, 300	40. 1
Secondary:			
7	2, 519	1, 136	45. 1
8	3, 053	1, 118	36. 6
9	3, 182	1, 050	33. 0
10	2, 791	804	28. 8
11	2, 451	633	25. 8
12	2, 161	440	20. 4
Special education	843	502	59. 5
Total secondary	17, 000	5, 683	33. 4
City total	45, 500	17, 085	37. 5

[1] Includes Negro, Spanish surnamed, American Indian, and Oriental.

TABLE II.—MINORITY GROUPS [1] BY SCHOOL, 1966-70

	Number [1]					Percentage [1]				
	1966	1967	1968	1969	1970	1966	1967	1968	1969	1970
Elementary school:										
4	752	725	660	647	660	98. 0	98. 4	98. 4	99. 5	99. 5
6	894	817	759	728	681	96. 9	98. 1	91. 2	96. 1	98. 3
9	824	787	663	671	605	98. 4	97. 9	98. 1	98. 5	97. 9
19	827	787	843	814	880	86. 8	88. 5	93. 5	94. 6	97. 1
14	718	816	711	721	706	90. 4	93. 4	94. 7	96. 4	96. 8
3	690	418	366	350	368	98. 6	99. 5	97. 9	98. 3	96. 1
2	947	811	807	884	955	97. 9	81. 3	80. 8	80. 6	87. 1
27	772	737	712	775	808	76. 6	75. 4	78. 8	83. 0	83. 2
20	638	701	639	659	477	72. 7	76. 9	77. 1	79. 9	79. 2
26			129	193	296			86. 0	86. 5	79. 1
29	375	440	486	547	607	38. 9	46. 6	54. 7	59. 5	65. 6
31	148	168	161	196	208	36. 9	41. 5	43. 9	48. 8	50. 1
5	206	254	275	314	304	29. 9	39. 3	40. 0	47. 4	46. 3
15	124	131	134	138	147	25. 3	27. 5	31. 1	35. 6	43. 1
58			62	84	84			42. 5	43. 1	42. 9
22	88	147	172	243	366	10. 9	17. 5	20. 9	28. 8	41. 5
13	109	129	157	175	206	18. 9	22. 4	27. 8	31. 3	35. 9
36	172	194	226	301	323	19. 5	23. 5	26. 1	32. 4	35. 4
17	188	276	283	254	292	19. 3	26. 9	32. 0	28. 7	32. 9
16	109	155	260	305	213	14. 0	19. 7	30. 4	34. 8	31. 6
50	108	109	92	125	99	28. 2	28. 2	24. 0	29. 5	29. 2
39	169	216	200	208	211	19. 1	25. 4	26. 8	28. 4	26. 8
37	53	88	110	119	185	8. 8	14. 6	16. 6	17. 2	26. 0
8	58	77	111	163	120	9. 1	12. 3	17. 4	23. 6	23. 8
33	108	138	176	191	187	11. 8	14. 6	19. 1	20. 2	20. 5
44	42	78	72	93	124	8. 8	14. 0	12. 4	15. 6	20. 3
25	49	44	62	71	112	8. 6	7. 3	11. 4	12. 9	20. 1
49	46	56	50	87	91	11. 2	13. 6	11. 8	19. 3	19. 5
11	28	59	81	121	144	3. 5	7. 2	10. 3	15. 7	18. 6
1	50	96	88	79	71	11. 1	21. 4	23. 5	21. 3	17. 8
28	75	86	94	92	95	14. 1	15. 3	17. 8	19. 1	16. 7
24	34	38	49	54	66	6. 7	8. 1	10. 1	11. 3	14. 6
21	43	96	69	56	62	8. 9	18. 8	14. 0	10. 8	12. 3
38	49	78	62	87	73	6. 6	10. 5	8. 8	12. 9	11. 9
46	22	35	37	60	45	4. 3	7. 0	7. 9	15. 2	11. 6
23	61	96	99	81	55	13. 2	19. 8	20. 6	16. 4	11. 4
7	24	36	131	96	76	4. 5	6. 5	18. 6	16. 6	11. 2
41	19	83	99	82	77	2. 5	10. 5	12. 2	10. 7	10. 8
42	10	64	87	76	69	1. 2	7. 6	10. 2	9. 0	8. 8
35	76	62	61	75	60	10. 3	8. 1	7. 9	10. 2	8. 4
40	12	16	26	29	50	2. 3	3. 2	4. 7	5. 1	8. 3
30	53	104	91	81	45	7. 7	15. 3	13. 5	12. 0	7. 2

TABLE II.—MINORITY GROUPS [1] BY SCHOOL, 1966-70—Continued

	Number [1]					Percentage [1]				
	1966	1967	1968	1969	1970	1966	1967	1968	1969	1970
52	13	17	40	52	38	2.5	3.0	7.1	9.3	6.6
43	61	89	55	28	27	9.3	12.9	9.5	4.8	5.1
34	34	72	36	49	34	4.6	8.7	4.7	6.3	4.7
Total, elementary	9,878	10,426	10,583	11,260	11,402	33.2	35.1	36.4	38.4	40.0
Secondary school:										
Madison	905	1,065	1,199	1,147	1,377	61.3	64.1	69.8	74.2	80.3
West	458	553	612	737	848	33.8	40.6	44.4	54.8	59.7
OYA					81					53.3
Franklin	813	935	1,135	1,148	1,125	30.9	33.3	39.8	41.6	42.6
Douglass			363	422	425			25.9	30.9	35.0
M[illegible]	304	379	498	450	678	15.3	18.3	21.6	21.0	32.5
E[illegible]	283	286	319	625	644	10.4	10.4	14.0	23.3	25.3
Ed[illegible]	74	81	106	129	120	6.0	6.9	9.3	11.7	11.6
M[illegible]	139	90	117	120	150	7.8	5.6	7.1	7.1	9.6
Jeffers[illegible]	58	95	110	101	118	5.6	8.1	8.9	7.7	9.2
Charlotte	103	56	86	105	117	7.3	4.4	6.3	7.6	8.6
Total, secondary	3,137	3,540	4,545	4,981	5,683	20.1	22.3	26.2	28.8	33.4
City	13,015	13,966	15,128	16,244	17,085	28.7	30.6	32.6	34.8	37.5

[1] Includes Negro, Spanish surnamed, American Indian, and oriental.

TABLE III.—ETHNIC DISTRIBUTION OF SCHOOL ENROLLMENT, 1970-71

	Total enrollment	Negro		American Indian and Oriental		Spanish surnamed		Other	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Elementary school:									
1	398	70	17.6			1	0.2	327	82.2
2	1,096	955	87.1					141	12.9
3	383	358	96.1					15	3.9
4	663	652	98.3			8	1.2	3	.5
5	656	181	27.6	3	0.4	120	18.3	352	53.7
6	693	667	96.3			14	2.0	12	1.7
7	663	74	11.2			2	.3	587	88.5
8	505	61	12.1			59	11.7	385	76.2
9	618	575	93.0			30	4.9	13	2.1
11	772	130	16.8	1	.1	13	1.7	628	81.4
13	574	188	32.8	3	.5	15	2.6	368	64.1
14	729	514	70.5	1	.1	191	26.2	23	3.2
15	341	119	34.9	8	2.3	30	5.9	194	56.9
16	674	202	30.0	5	.7	6	.9	461	68.4
17	886	212	23.9	9	1.0	71	8.0	594	67.1
19	906	875	96.6			5	.5	26	2.9
20	602	319	52.0	2	.3	156	25.9	125	20.8
21	504	54	10.7			8	1.6	442	87.7
22	882	259	29.4			107	12.1	516	58.5
23	484	54	11.2			1	.2	429	88.6
24	453	38	8.4	12	2.6	16	3.6	387	85.4
25	556	82	14.7	1	.2	29	5.2	444	79.9
26	374	263	70.3	4	1.1	29	7.7	78	20.9
27	971	683	70.3			125	12.9	163	16.8
28	569	93	16.3			2	.4	474	83.3
29	926	587	63.4	10	1.1	10	1.1	319	34.4
30	622	45	7.2					577	92.8
31	408	188	46.1	2	.5	18	4.4	200	49.0
33	913	155	17.0	2	.2	30	3.3	726	79.5
34	730	32	4.4			2	.3	696	95.3
35	716	54	7.6	3	.4	3	.4	656	91.6
36	912	224	24.6	6	.6	93	10.2	589	64.6
37	712	172	24.2	10	1.4	3	.4	527	74.0
38	613	73	11.9					540	88.1
39	788	192	24.4	3	.4	16	2.0	577	73.2
40	599	42	7.0	5	.8	3	.5	549	91.7
41	710	73	10.2			4	.6	633	89.2
42	787	69	8.8					718	91.2
43	539	22	4.1	3	.6	2	.4	512	94.0
44	609	116	19.0	1	.2	7	1.1	485	79.7
46	389	45	11.6					344	88.4

TABLE III.—ETHNIC DISTRIBUTION OF SCHOOL ENROLLMENT, 1970-71—Continued

	Total enrollment	Negro		American Indian and Oriental		Spanish surnamed		Other	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
49	466	81	17.4	4	.8	6	1.3	375	80.5
50	339	85	25.1	2	.6	12	3.5	240	70.8
52	574	34	5.9	4	.7			536	93.4
58	196	65	33.2	6	3.1	33	6.6	112	57.1
Total elementary	28,500	10,042	35.2	110	.4	1,250	4.4	17,098	60.0
Secondary schools:									
Charlotte	1,353	116	8.5			1	.1	1,236	91.4
East	2,547	559	21.9	5	.2	80	3.2	1,903	74.7
Franklin	2,642	911	34.5	3	.1	211	8.0	1,517	57.4
Jefferson	1,284	85	6.6	8	.6	25	2.0	1,166	90.8
Madison	1,715	1,372	80.0			5	.3	338	19.7
Marshall	1,561	139	8.9	6	.4	5	.3	1,411	90.4
Monroe	2,080	491	23.6	16	.7	171	8.2	1,402	67.5
West	1,421	834	58.7	3	.2	11	.8	573	40.3
Edison	1,032	81	7.8			39	3.8	912	88.4
Douglass	1,213	383	31.6	2	.1	40	3.3	788	65.0
OYA	152	69	45.4			12	7.9	71	46.7
Total secondary	17,000	5,040	29.7	43	.2	600	3.5	11,317	66.6
City	45,500	15,082	33.1	153	.4	1,850	4.0	28,415	62.5

MATH, READING—CITY KIDS DIP BELOW MARK

(By Charles R. Holcomb)

Scores on state tests given in third and sixth grades show that more and more youngsters in the Rochester public schools have been falling below what the state considers "minimum competence" in reading and mathematics.

An exception—and this is true statewide—is in third-grade math, where scores are improving.

Statewide, sixth-grade math scores are worsening. So, to a lesser degree, are scores in sixth-grade reading, although third-grade reading generally is holding about even.

In Monroe County school districts outside of Rochester, results vary, but in many districts trouble in the sixth-grade math test has showed up.

State officials warn that the tests indicate a school district's "need" more than whether or not it is doing a good job. How many pupils fall below the minimum-competence line hinges not only on the school program but on the capacities and background of the youngsters and the cultural and financial resources of the community.

The minimum-competence line is an arbitrary benchmark established when the tests were launched in 1966, representing what was felt to be the minimum skills need for class work. At that time, 23 per cent of the youngsters statewide had scores in the bottom third, 54 per cent were in the middle third and 23 per cent were in the top third.

So the percentage of youngsters whose scores were in the lower third is considered a yardstick of educational deprivation.

Some 3,140 third graders in the Rochester schools took the reading test in the fall of 1966. Of these, 16 per cent scored in the upper group, 55 per cent in the middle or average group, and 29 per cent in the below-average group.

In 1967 things deteriorated somewhat, with 13 per cent in the top group, 54 per cent in the middle and 34 per cent falling below minimum competence levels.

And by 1970, only 12 per cent scored in the top third, with 46 in the middle third, and 41 in the bottom third.

Third-grade math showed a down-and-up pattern, with 44 per cent falling below the minimum-competence level in 1966, 49 per cent in 1967, but 41 per cent in 1970.

The sixth-grade story was one of steady slippage. Slightly more than half the pupils scored in the middle third in all three years, but fewer ranked in the top group, and more in the bottom group.

In 1966, 27 per cent were below the minimums in reading and 30 per cent in math. In 1966, it was 33 per cent in reading and 35 per cent in math, and, in 1970, it was 39 per cent below competence in reading and 46 per cent in math.

Basically, 1967's third graders were 1970's sixth graders, and there is a fair correlation. Thirteen per cent were in the top third of third-grade readers in 1967, but only 10 per cent were there in the sixth grade in 1970. Meanwhile, the middle group of 64 per cent in 1967 had become 51 percent in 1970, and the lower group went from 34 to 39 per cent.

Among suburban school districts, Brighton shows some contradictory trends. At the third-grade level, both reading and math seems to be getting better. For example, 62 per cent were in the top third in 1970 in reading and math, with only 4 and 2 per cent below competence, respectively, and the rest in the middle. But at the sixth grade level, while reading was about the same (49 per cent in top group in 1970, 53 per cent in 1966, 46 per cent in 1967, with 6, 7 and 8 per cent below competence), math was falling off—from zero per cent below competence in 1966, to 11 per cent in 1967 to 14 per cent in 1970.

Gates-Chili showed remarkable consistency from 1966 to 1970, with its below-competence percentage in third-grade reading going from 20 in 1966 to 17 in 1967 and 19 in 1970. Similarly, in third-grade math, the bottom third figures were 18 in 1966 and 1967 and 21 in 1970, not a statistically important difference.

At the sixth-grade level, trouble showed up in reading, in that the "deprived" group amounted to 14 per cent in 1966, 16 per cent in 1967 and 23 per cent in 1970. But math was slightly more consistent, with the lower group counting 18 per cent in 1966, the same the next year and 21 per cent in 1970.

In the Greece Central Schools, third-grade reading scores declined slightly—10 per cent in the bottom third in 1966, 8 per cent in 1967 and 17 per cent in 1970, but third-grade math held firm—9 per cent, 8 per cent and 10 per cent, respectively.

MORE PUPILS BELOW PAR IN READING, MATH

ALBANY.—More children in New York State schools are failing below minimal standards in reading arithmetic.

The State Education Department today released summary results of its Pupil Evaluation Program (PEP) which showed that nearly one-fourth of the pupils tested fell below desirable standards in reading and mathematics. The study was conducted among pupils in grades three, six and nine.

Based on test given in October, 1970, the results showed that 24.7 per cent of the students were below the desirable level in reading, an increase of 2.4 per cent over the 22.3 per cent who fell below the minimum in 1966, the first year the tests were given.

In mathematics, the department said, 24.9 per cent of all students tested were classified as educationally disadvantaged, an increase of 2.7 per cent above the below-minimum group in 1966.

The department said an analysis of the tests shows that the rate of educational disadvantage continues to be much higher in the public schools than in the non-public schools.

In 1970, 27.6 per cent of all students in public schools were below minimum levels in reading, compared to 11.5 per cent in the private and parochial schools. In 1966, the rate was 25.3 for public school students and 10.2 per cent for non-public pupils.

In mathematics, the average rate in 1970 for public school incempetence was 25.6 per cent, compared to 12.8 per cent. Both were higher than the 24.7 per cent respectively of the 1966 tests.

The rates of below-minimum performance were sharply higher in larger cities, with New York City scoring a 38 per cent below acceptable standards in reading and 40 per cent under achievement in mathematics.

The department noted, however, that the per cent of pupils below minimum standards increased at generally the same rate for each type of community in the five year period from 1966 through 1970.

Victor Taber, director of the department's Division of Education Testing, said "the number of educationally disadvantaged students in a school is not, in itself, an index of the quality of the educational program in the school."

Taber said other factors, including the total environment of the school, teaching and learning setting and pupil potential, also figure into the results.

"Low test results, therefore, do not necessarily indicate poor teaching; but neither can they be casually dismissed as attributable to poor pupil potential," Taber said. "In each particular school situation, constructive action leading to an improved educational achievement will require a realistic look at all the factors influencing pupil achievement."

Standard Test Grades Mixed

Standardized achievement tests, traditionally as much a part of school as fat pencils in first grade, have become a sort of anachronism.

That "standard" reference which compares one child with scores of others, explains an education professor at the State University College at Brockport, just doesn't jibe with the emphasis on individualization in today's classrooms.

"When you're evaluating each individual in terms of his personal growth," says Dr. Donald Nasca, "the norm-referenced test doesn't make much sense."

"I expect it will have to fade out," says Nasca, chairman of the Department of Educational Research at Brockport.

"When you start using any kind of standardized test," says Dr. George J. Rentsch, assistant superintendent in charge of instruction of the Rochester schools," you run into a conflict between what is taught and what is tested."

"For instance, when you non-grade a program and you've got a standard test for third-graders—you have to ask what's a third-grader?"

But the plight of those once-a-year-achievement tests only underscores the fact that the complicated art of testing is because of educational changes.

Individualization is only one.

Another is "humanism"—emphasizing "non-factual" things like attitudes, feelings, creativity, and just plain learning to live with others.

Nobody, educators say, has found a way to evaluate how well teachers are teaching those things, or how well children are learning them.

But they're looking, and that's why testing is in what Nasca calls "a transitional stage."

"Despite the weaknesses that occur in monitoring and testing," says Rentsch, "I wouldn't apt to throw everything out and do nothing."

But meanwhile the Rochester school district, like others, has committees and administrators looking for better ways to evaluate children's progress and their school system's effectiveness.

Helen R. Gerhardt, director of elementary education, explains that one of those committees is working on a method of measuring progress according to the city school's objectives, instead of according to the objectives of a national test.

Another is trying to develop policies to familiarize children with test-taking so that formal testing doesn't scare them into doing poorly.

[From the Rochester Democrat and Chronicle, Apr. 4, 1971]

Nonwhites up 114 Percent Here

The rate of growth of the non-white population of the Rochester metropolitan area from 1960 to 1970 was greater than that in any other metropolitan area in the state, census statistics reveal.

The non-white population in the Rochester metropolitan area—Monroe, Wayne, Livingston and Orleans counties—rose from 29,025 in 1960 to 62,147 in 1970, an increase of 114 per cent.

In the same period Monroe County's non-white population increased from 25,067 to 56,096, a jump of 124 per cent.

Those figures compare with increases of 89 per cent in the Syracuse metropolitan area and 33 per cent in the Buffalo metropolitan area.

The non-white population in New York State rose 61 per cent in the same period.

Non-whites are Negroes, Orientals and American Indians.

About 52,000 of Monroe County's non-whites are concentrated in Rochester, comprising 17.6 per cent of the city's population.

Non-whites make up 12 per cent of Syracuse's population and 21.3 per cent of Buffalo's.

More than 2 million of the state's approximately 2.4 million non-whites live in the New York metropolitan area, and about 1.8 million non-whites live in New York City.

Chairman CELLER. Our next witness is the distinguished New York State commissioner of education, Commissioner Ewald B. Nyquist. He is also president of the University of the State of New York and no stranger to us.

You are a very distinguished public servant and we welcome you, sir.

STATEMENT OF EWALD B. NYQUIST, NEW YORK STATE COMMISSIONER OF EDUCATION

Mr. NYQUIST. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, my name is Ewald B. Nyquist, commissioner of education, State of New York and president of the University of the State of New York.

I filed with you for the record a full statement and I would like to summarize or read parts that won't take more than 5 minutes.

Chairman CELLER. Your statement will be accepted for the record.

(The prepared statement follows:)

STATEMENT OF EWALD B. NYQUIST, PRESIDENT, THE UNIVERSITY OF THE STATE OF NEW YORK AND COMMISSIONER OF EDUCATION

Mr. Chairman and members of the committee, I thank you for the opportunity to address the issue of House Joint Resolution 620. The Resolution proposes an amendment to the Constitution of the United States to insure that:

"No public school student shall because of his race, creed, or color, be assigned to or required to attend a particular school."

A fundamental responsibility of government is to establish and maintain the broad conditions under which the education of free men can be carried from generation to generation. State government has a primary responsibility for education. Policies of the Federal Government, however, can greatly influence the ways in which state governments carry out their responsibilities in education, and therefore, those of us in State educational agencies and State government have a vital concern with legislation such as the Resolution before you.

The State Board of Regents declared in 1960 the conviction that equality of educational opportunity is being denied to large numbers of boys and girls—white as well as black and other minority group children—because of racially segregated schools. Since the adoption of that policy the Board has held steadfastly to the position that segregation in education must be eliminated, and that the educational conditions under which each individual may grow in self-respect, respect for others, and in the attainment of his full potential shall exist everywhere in the State.

The New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education jointly appointed by Governor Rockefeller and the Board of Regents, has recently issued several chapters of its report. Chapter 4 focuses on racial and ethnic integration. After extensive study of education throughout the State of New York this Commission reaches conclusions strongly supportive of the policies of the State Board of Regents. The recommendations of the Commission are consistent with those which I shall outline as necessary to the successful desegregation of the schools.

Current conditions of unrest, frustration and violence show too clearly that the struggle against racial prejudice and injustice is far from over. In fact, there has been a perilous weakening in the foundation of understanding and mutual respect upon which true social justice and human progress can be built.

These conditions point up dramatically the importance of education to our society's cohesiveness. Education must bring children together to grow up in natural, genuine understanding and mutual respect. It must produce responsible citizenship; foster behavior based on moral and spiritual values; prepare for jobs; and instill the confidence for managing one's own life. Education must not mirror society's ills but provide a demonstration of the practicality and workability of the principles of democracy, thus shaping the future for the society.

The stability of our social order depends on the understanding and respect which derive from a common educational experience among diverse racial, social, and economic groups. We must be concerned that all means are employed for different groups to work and learn together in good school buildings, with competent teachers, and the best of materials and equipment combined in the best total educational programs we can create.

The school classroom is a key place where a variety of children find the opportunity to learn to know each other through study and play and to learn that social, economic, religious and national differences are not a valid basis for prejudice. The good educational program—good in humanistic as well as scholastic terms—uses diversity as a source of richness to be enjoyed, not strangeness to be feared. It will promote the mutual understanding and respect essential to the best development of our life together.

The challenge, then, is to take whatever steps are necessary to provide a setting for education which will enhance the opportunities for every child to claim the birthright of his American citizenship and in which no child is handicapped in his education by circumstances of family wealth, the social, religious or national background of his parents, place of residence, or the color of his skin.

For a number of years we in New York and persons in other parts of the nation have been working to attain the goals of integrated education. In many parts of the nation courageous and important steps have been taken to bring about the desegregation and integration of the schools. It is of the highest importance to understand the effects of those changes. Does the integration of white and black children in the school result in the lowering or raising of academic standards? Do white or black children receive as good an education as they did before desegregation? Does integration create hostility within the school or does it create frustration because of the change of competition in the desegregated classroom? Let me comment on results to date.

The New York State Education Department in 1969 initiated a comprehensive review of studies of desegregation and integration in order to test whether the policy we were following in New York State was right and to be assured that we were fulfilling our obligation to provide equality of educational opportunity throughout the State. This review included the results of actions taken by the New York Commissioner of Education and by Boards of Education in New York State, the results of other desegregation efforts throughout the nation and more than 50 local studies bearing on racial integration of the schools and the effects that schools have had in mitigating the consequences of social class and ethnic differences. The principal findings are summarized as follows:

1. The results of current research clearly indicate that schools isolated on the basis of race may be decidedly harmful to the academic achievement of their students. The evidence indicates that the negative effects of segregated schooling are not a result of racial isolation alone but are a consequence of the dominant social and economic environment of the school and classroom. The problem of racial isolation is a part of the broader problem of social class isolation. Negroes and certain other minority group members are proportionately more disadvantaged because of the close correlation between race and economic status and the continuing and exacerbating influence of residential and school segregation. However, any student—whether he be Negro, Puerto Rican, white, or a member of any other identifiable group—is likely to suffer some degree of underachievement as a result of attendance in schools and classrooms with predominantly lower social and economic status children. ("Social and economic status" is hereafter referred to as "status." Lower or upper "status" is measured by relative levels of occupation, income, and education.)

2. The studies of more than 50 school integration programs generally substantiate the positive effects of integration reported in the more representative national or regional studies of the issue. Furthermore, these studies show that a wide variety of integration efforts involving transfer programs within the urban setting or busing from urban to suburban areas generally facilitated the educational development of Negro students while white students continued to make the usual achievement gains. The evidence further indicates that integration is more effective in promoting educational development among Negro students than is compensatory education in segregated school settings.

3. When lower-status students are transferred to schools with predominantly upper-status students, the evidence suggests that continued residence in a lower-status neighborhood will not interfere with the achievement gain that is to

be expected as a result of attendance in the school with predominantly upper-status students.

4. In integrated schools the aspirations and the self-esteem of black students are positively affected.

5. The findings of national local studies generally indicate that the integrated school setting improves interracial understanding among Negro and white students. The development of interracial friendships (made more possible in the integrated school setting) appears to be an important condition in educational and psychological development among disadvantaged minority group students.

6. Transfer of the minority child to schools with predominantly majority children is more likely to help his education if:

(a) transfer occurs continuously beginning in the earliest elementary grades,

(b) the proportion of minority children in the school is below 30%, and

(c) the association of minority and majority children occurs within classrooms as well as in the entire school.

A major concern in the implementation of desegregation is that if the schools are desegregated the majority population will flee the school district. In New York State we made a statistical analysis to test whether or not this is true. We analyzed the school population characteristics in nineteen school districts (A) in which affirmative local action has not been taken to desegregate. These districts enroll about 266,000 pupils. They were compared to school population characteristics in twenty-three school districts, (B) enrolling about 200,000 pupils, which have taken affirmative action to desegregate. During a four year period, from 1966 to 1970, there was a decline in white population in both sets of districts. However, there was no significant difference in the loss of white population in the two sets of districts. The A districts showed a decrease of 5.8% while the B districts had a loss of 4.8%. U.S. Census Data for the same school districts covering the decade from 1960 to 1970 show that both sets of districts had a decline of white population—13.4% for the A districts and 12.8% for the B districts. The evidence indicates that where affirmative action to desegregate has been taken it has not accelerated a decline in white population.

In summary, then, we conclude from the several studies and the population figures, that the overall effects of taking affirmative action to bring about desegregation in the schools are positive. The process of desegregation and the integration of the schools involves a number of elements. We must consider doing much more than mixing children. These elements are essential to successful integration:

1. *Classroom as well as schoolroom integration.*—In an integrated school effort should be made to insure that individual classes reflect the racial composition of the entire grade.

2. *Teacher training.*—We recognize the need for helping teachers and administrators to be accepting and understanding of cultural differences so that these do not become a barrier to communication but a resource for learning. Both preservice and inservice training of educational personnel are necesary.

3. *An integrated curriculum.*—Every child is entitled to have at his disposal the best of equipment and materials of instruction, materials which reflect the participation in and contributions to American life of all minorities. Selection of curricular units and activities that relate to the minority child's cultural background can obviously do much to increase the white child's respect and regard for him as well as to heighten the minority child's self-image.

4. *School facilities.*—School buildings and other physical equipment represent a tremendous capital investment and have a strong long-term impact on the potential for providing integrated education. How they are designed and used and where they are built obviously effects the progress of integration.

5. *Integration specialists.*—Trained and qualified personnel whose responsibilities are solely related to school desegregation and integration should be employed by school districts. These high level administrators should provide leadership in insuring equality of educational opportunity throughout the district.

6. *Participant preparation.*—Prior to desegregation and integration, planning by the direct participants (students, teachers, administrators), and the indirect participants (parents, community leaders, members of community groups) is advisable. Preparation for change including some attention to the emotional processes at work in all participants is needed at its beginning and as desegregation continues.

7. *Assignment of students.*—In order to achieve the objectives of school integration, local and state educational officials have an affirmative responsibility

in the assignment of students which includes consideration of the factor of race. Neither Federal law nor the Federal Constitution should restrict this responsibility.

8. *Transportation.*—In addition to all the elements that have been presented above, it is sometimes necessary to transport students in order to achieve school desegregation. About 40% of all American school children ride buses to the schools to which they are assigned, and nearly 50% of all children in New York State do so. Transportation which will enhance educational opportunity is an accepted practice across this land. The portion of this transportation used to bring about desegregation is very small. Indeed, it is estimated that about 3% of pupils transported ride school buses to achieve desegregation. It should be noted that transportation makes possible better use of existing school facilities and can serve to reduce capital outlays for new facilities. Neither Federal law nor the Federal Constitution should restrict local and state decisions regarding transportation for education.

As Commissioner of Education of the State of New York, my obligation is to give the best thought, planning and leadership to implement educational programs that promise to be an improvement over what has been done in the past. There is no evidence that putting money and man-power into old style programs will do the trick. On the other hand, well planned programs in integrated settings have produced better results for children than were achieved when they were in separate schools. I advocate extending to more and more school districts a style of education that brings a double benefit; improved academic achievement to minority group students without any loss to majority group students; and the opportunity for increased mutual knowledge and understanding of different racial and social groups that is possible in an integrated setting. Let me share with you my own definition of integrated education:

Integrated education is one in which the child learns that he lives in a multi-racial society, in a multi-racial world, a world which is largely non-white, non-democratic, and non-Christian, a world in which no race can choose to live apart. It is one that teaches him to judge individuals for what they are rather than for what group they belong to. From this viewpoint, he learns that differences among people are not as great as similarities, and that difference is a source of richness and value rather than a thing to be feared and denied.

I endorse fully the principle of the Federal Emergency School Assistance Act designed to provide $1.5 billion for the purpose of supporting desegregation and integration. Since the legislation, including proposed Constitutional amendments, affects the total educational effort, and since some transportation may be essential to the success of that total effort, I urge strongly that restrictions not be placed on local school systems which are desegregating or have desegregated their schools either voluntarily or because of a State requirement.

My brief statement has presented (1) our commitment to a policy of educational integration; (2) the evidence of the effects of integration; and (3) the key elements in planning and implementing integration in the future. The task before our nation in realizing racial understanding and in learning to live in a multi-racial and multi-ethnic society and world is immense. The schools have a critical contribution to make toward this objective. In no way should the schools be restricted by Federal action—either by constraints on student assignment or on transportation.

Let the decisions we make at this time reaffirm our faith that the American Creed applies to all American children, without exception. In that faith let us give substance to the things we all hope for for our country and its children.

Mr. NYQUIST. The State Board of Regents, my Board of Governors in the State of New York, declared in 1960 the conviction that equality of educational opportunity is being denied to large numbers of boys and girls—white as well as black and other minority group children—because of racially segregated schools.

Since the adoption of that policy the Board of Regents has held steadfastly to the position that segregation in education must be eliminated, and that the educational conditions under which each individual may grow in self-respect and respect for others, and may attain his full potential, shall exist everywhere in the State.

The New York State commission on the quality, cost, and financing of elementary and secondary education, known as the Fleischman Commission, jointly appointed by Governor Rockefeller and the Board of Regents, reached conclusions strongly supportive of the policy of the State Board of Regents.

In 1969 the New York State Education Department initiated a comprehensive review of studies of desegregation and integration in order to test whether the policy we were following in New York State was sound. We wanted to be assured that we were fulfilling our obligation to provide equality of educational opportunity throughout the State.

This review included the results of actions taken by New York State, the results of other desegregation efforts throughout the Nation, and more than 50 local studies bearing on racial integration of the schools. The studies of more than 50 school integration programs generally substantiate positive effects of integration reported in more representative national or regional studies of the issue.

A major concern in the implementation of desegregation is the question of whether the majority population will flee a school district that is undergoing desegregation procedures. In New York State we made a statistical analysis to test whether or not this is true.

We analyzed the school population characteristics in 19 school districts in which affirmative local action has not been taken to desegregate. These districts enroll about 266,000 students.

They were compared to school population characteristics in 23 school districts enrolling about 200,000 students, which have taken affirmative action to desegregate. During a 4-year period, from 1966 to 1970, there was a decline in white population in both sets of districts.

However, there was no significant difference in the loss of white population in the two sets of districts. The nonsegregated districts show a decrease of 5.8 percent, whereas desegregated districts had a loss of 4.8 percent. U.S. census data for the same school districts covering the decade from 1960 to 1970 show that both sets of districts had a 13.4-percent decline of white population for nonsegregated districts and 12.8 percent for desegregated districts. The evidence indicates that where affirmative action to desegregate has been taken, it has not accelerated a decline in white population.

In summary, then, we conclude from the several studies and the population figures, that the overall effects of taking affirmative action to bring about desegregation in the schools are positive.

The process of desegregation and the integration of the schools involves a number of elements. We must consider doing much more than mixing children. These elements are essential to successful integration.

I won't name all the elements here, but I will dwell on two because they are directly before your committee. The first involves the assignment of students. In order to achieve the objectives of school integration, local and State educational officials have an affirmative responsibility in the assignment of students which includes consideration of the factor of race. Neither Federal law nor the Federal Constitution should restrict this responsibility.

Secondly, on transportation, it is sometimes necessary to bus students in order to achieve school desegregation. About 40 percent of all American school children ride buses to the schools to which they are assigned, and nearly 50 percent of all children in New York State do so.

Transportation which will enhance educational opportunity is an accepted practice across this land. The portion of this transportation used to bring about desegregation is very small. Indeed, it is estimated that about 3 percent of pupils transported ride school buses to achieve desegregation.

Neither Federal law nor the Federal Constitution should restrict local or State decisions regarding transportation for education. Well-planned programs in integrated settings have produced better results for children than were achieved when they were in separate schools.

I advocate extending to more and more school districts a style of education that brings a double benefit: the improved academic achievement of minority group students without any loss to majority group students, and the opportunity for increased mutual knowledge and understanding of different racial and social groups that is possible in an integrated setting.

The proposed constitutional amendment affects total educational effort since some transportation may be essential to the success of the total effort. I urge strongly that restrictions not be placed on local school systems.

Chairman CELLER. The Board of Regents of New York State is opposed to the constitutional amendment, is that correct?

Mr. NYQUIST. I am sure they would be.

Chairman CELLER. What would be the effect in New York State and in the communities which have undertaken voluntary desegregation plans if the amendment became part of the Constitution?

Mr. NYQUIST. I think we would move backwards toward a resegregation.

Chairman CELLER. The bell has rung for a vote.

Mr. NYQUIST. I have finished the summary of my full statement, Mr. Chairman.

Chairman CELLER. I want to thank you very much. We are sorry we have to be so hurried but there is a vote pending on the floor now and the members will have to leave. We will adjourn to meet at half past 1. Would you care to come back, Commissioner, for further interrogation?

Mr. NYQUIST. At your pleasure.

Chairman CELLER. All right. We will adjourn until 1:30.

(Whereupon, at 11:30, the subcommittee recessed, to reconvene for further hearing at 1:30 p.m., the same day.)

AFTERNOON SESSION

(The subcommittee reconvened at 1:30 p.m., Hon. Jack Brooks presiding.)

Mr. BROOKS. The subcommittee will come to order. Commissioner Nyquist, you may resume. Immediately after the conclusion of the questions for Commissioner Nyquist, we will hear Mr. Victor Solomon.

Commissioner, is there any evidence in the State of New York that a neighborhood school system is a superior learning environment as compared with a desegregated or integrated school system?

Mr. NYQUIST. I know of no such evidence or such study.

Mr. BROOKS. What would be the effect in New York State and in the communities which have undertaken voluntary desegregation plans if House Joint Resolution 620 became a part of the Constitution?

Mr. Nyquist. I think we would revert to a segregated situtaion all over the State.

Mr. Zelenko. Mr. Commissioner, what would happen with respect to communities that have adopted desegregation plans, would they be required to reassign students?

Mr. Nyquist. You mean would you undo something in view of the Constitutional prohibition? They have been assigned on a desegregated basis obviously. I am sure the question would come up.

Mr. Zelenko. In other words, you are certain what the impact of the amendment would be in communities that have already undertaken desegregation efforts?

Mr. Nyquist. Would you restate that?

Mr. Brooks. We are asking for your opinion as to what the impact of House Joint Resolution 620 would be if it were a part of the Constitution in those communities which have assigned students to overcome segregated systems and to disperse black students within the schools?

The question is what impact the amendment would have on those efforts in various communities.

Mr. Nyquist. I think in communities that haven't desegregated, it would certainly forestall integration. In those that had desegregated, I am pretty sure that, without being a lawyer, you would tend to undo it.

Mr. McCulloch. I would like to ask this question, Mr. Chairman. I would like to ask the witness if he knows of any tried and proven plan that effectively would bring equality of educational opportunity to school districts that have mixed populations which does not require busing?

Mr. Nyquist. I assume you imply that with no busing you would have excellence prevailing?

Mr. McCulloch. If House Joint Resolution 620 were to become a part of the Constitution, do you believe it would be possible to offer quality education equally to all the students?

Mr. Nyquist. I do not believe it would be possible.

Mr. McCulloch. I thank you sir.

Mr. Polk. Mr. Chairman?

Mr. Brooks. One question first, counsel. Does your office have any information as to the average distance traveled and average time spent by pupils in New York State that are being bussed pursuant to desegregation orders?

Mr. Nyquist. Yes, we do. Let me start off by saying in the State of New York we spent $260 million a year on transportation of students, for all students, for whatever purpose.

Mr. Brooks. Could you give us some details?

Mr. Nyquist. I will give you those statistics. The average distance traveled now is about 7 miles. It takes about 30 to 35 minutes. The average long distance is about 20 miles and it takes about an hour. We also have cases in the State of New York where some handicapped students are transported about 50 or 55 miles, taking an hour or an hour and 45 minutes.

Mr. Zelenko. Excuse me. Are those students being transported pursuant to desegregation plans?

Mr. Nyquist. No, this is the average case of a general busing situation out in rural areas or in the cities.

Mr. Brooks. If you have a breakdown on those, it would be helpful for the committee's consideration.

Mr. Nyquist. On desegregation the average distance is much less than 7 miles. Most of it is under 1 or 2 miles, I would say.

Mr. Brooks. Would you give us both sets of figures so we would know what your average is across the board and what the average is on those that have to do with desegregation plans and orders. The comparison would be obvious.

Mr. Nyquist. The average distance now traveled is about 7 miles one way, not back and forth. It takes about 30 or 35 minutes. The average distance for desegregation purposes for busing is under 2 miles.

Mr. Zelenko. One way?

Mr. Nyquist. One way.

Mr. Zelenko. And it takes how long?

Mr. Nyquist. Well, I don't know. I can estimate that but it is obviously less than 30 to 35 minutes.

Mr. Brooks. Thank you. Counsel?

Mr. Polk. Mr. Nyquist, there has been much discussion in our hearings about equal educational opportunity, and I think the discussion has assumed that the word "education" has a common, agreed-upon definition. However, some of the witnesses seem to imply that education is confined to learning the three R's. I was wondering if you could offer to the committee your definition of education?

Mr. Nyquist. Can I give you two related definitions?

Mr. Polk. Certainly.

Mr. Nyquist. One of them I would like to read in my testimony and it won't take a minute. I think the purposes of education are two. One is obviously career preparation—how to make a living. The second, I would say, is how to live a life. That is to say, a sensitive, creative, and human life. How to make a living and how to live a life if you want to say it in plain words.

Now, I will read my own definition of integrated education: integrated education is one in which a child learns that he lives in a multiracial society, in a multiracial world, a world which is largely nonwhite, nondemocratic and non-Christian, a world in which no race can choose to live apart. It is one that teaches him to judge individuals for what they are rather than for the group they belong to. From this viewpoint he learns that differences among people are not as great as similarities, and that difference is a source of richness and value rather than a thing to be feared and denied.

Mr. Polk. Thank you. I have one other question. In your experience, have you found that a program of compensatory education would be an adequate substitute for desegregation?

Mr. Nyquist. No. In my written testimony that I filed and my summary I did say exactly the opposite; that is to say, that it is not a substitute.

Mr. Polk. Has that been your experience in the State of New York?

Mr. Nyquist. That has been our experience.

Mr. Polk. Are there any reasons that you can give for that conclusion?

Mr. Nyquist. I think compensatory education is a part of a full education but I don't think it can do the job alone.

Mr. Polk. Thank you.

Mr. Brooks. Thank you. Without objection, we will file a copy of a summary of chapter 4 of the report to which you referred, prepared by the New York State Commission on the Quality, Care and Financing of Elementary and Secondary Education.

We thank you for coming and for your testimony and your contribution toward a solution to this problem.

Mr. Nyquist. Thank you.

(The document referred to follows:)

Summary of Chapter 4: Racial and Ethnic Integration

Equal educational opportunity for each child in New York State must become a reality in this decade; the attainment of such opportunity is conditional upon racial and ethnic integration, and such integration will involve the busing of students, the New York State Commission on Quality, Cost and Financing of Elementary and Secondary Education stated today in another chapter of its report to the Governor, Regents and the Legislature.

Citing persistently increasing segregation in New York, the Commission said, "Racial, and in some cases ethnic, isolation as it exists in the public schools of New York State, reflects, in the view of this Commission, a monumental societal failure which must be corrected regardless of its cause." The 18-member group, which has been studying the state's schools for two years, called upon the Legislature to create statutory obligations on the part of school districts to eliminate racial and ethnic imbalance and to take other steps to promote inter-racial and inter-ethnic understanding.

The Commission cited statistics showing that racial imbalance in New York now exceeds that in the eleven Southern states; the trend toward racial imbalance in this state is increasing.

In this connection, the Commission said that "of the state's 3,500,592 public school students, 3,205,900—or 93.3 per cent of the total enrollment—are going to schools in 'racially isolated' or 'segregated' districts; only 234,771, or 6.7 per cent of the total, attend schools in 'desegregated' districts.' (Included in the Commission's definition of "racially isolated" districts are those districts not enrolling enough minority students to be considered racially balanced. "Segregated" districts are those in which the racial enrollment in individual schools varies significantly from the racial enrollment of the entire district.)

Even more alarming, said the Commission, is the number of students in the state attending grossly segregated schools. The percentage of minority students attending public schools in which the enrollment of minority students exceeds 90 per cent has increased from 45.5 per cent in 1968 to 49.2 per cent in 1970. Conversely, during the school year 1970–71, 74.4 per cent of the state's white students attended schools in which the minority population was less than 10 per cent. By contrast, in the 11 Southern states the percentages of whites in schools with a minority population of less than 10 per cent decreased from 70.5 per cent to 46.3 per cent over the same period.

Legal action and executive leadership were said to be the prime factors behind the desegregation of the schools in the South. The Commission also pointed out that Federal court decisions are increasingly being directed toward the elimination of segregation in areas which never had formal dual school systems and that the much-heralded distinction between *de jure* and *de facto* segregation is losing significance under careful judicial scrutiny because almost no public school segregation is wholly adventitious. The Commission asserted that "it would seem much more sound, as a matter of public policy, for those in positions of leadership and authority to bring about desegregation voluntarily" rather than to wait to be required to do so by judicial mandate.

The Commission said that in preparing its recommendations for an intense assault on racial imbalance in New York State schools, (it had) arrived at the following conclusions:

(1) Racial and ethnic segregation are harmful to all children.

(2) In spite of a firm policy promulgated by the Board of Regents and efforts at implementation by the State Education Department, racial and ethnic isolation have increased dramatically in New York State during the last decade.

(3) Elimination of racial and ethnic isolation in the schools cannot be postponed until discrimination and isolation in areas such as housing and employment are eliminated.

(4) It is imperative that desegregation occur at the elementary school level since it is at the earliest ages that the possibilities of overcoming racism and other forms of prejudice are greatest.

(5) In the absence of Federal leadership, the state bears ultimate responsibility for equalizing education opportunities, and it is the obligation of local school authorities to develop and implement plans in harmony with state policy.

(6) School integration is not antithetical to the continued cultural, racial and political efforts and achievements of minority groups; indeed, only through the process of full integration can divisive political viewpoints that are based solely on racial and ethnic distinctions be eliminated.

School integration is a means to create an atmosphere in which our society's remarkable racial and cultural diversity can flourish to the benefit of all.

The Commission called "very regrettable" the Nixon Administration-sponsored amendment to the proposed Emergency School Assistance Act which would expressly prohibit the use of any of the bill's $1.5 billion to defray the cost of any busing other than that required by law.

"This action by the Federal government," said the Commission, "has had the effect of undermining desegregation efforts throughout the country, confusing the American public and eroding the position of those officials who have extended themselves to discharge their legal and moral responsibilities by attempting to implement desegregation."

The Commission added that "the issue of desegregation in general, and busing in particular, threatens to become a partisan political matter in the 1972 Presidential election. This complex and agonizing problem must be dealt with at all levels on a bi-partisan basis if solutions are to be found. The issue is not whether to bus or not; the issue is the quality of education at the end of the bus ride and indeed, in a larger sense, the quality, tenor and tone of life in this country."

In a vigorous defense of busing, the Commission said it "firmly believes that opposition to busing can be overcome when steps are taken to reassure parents of the well-being of their children." "We also believe," said the Commission, "that if in a particular instance community control and integration cannot be reconciled, the latter must prevail."

The Commission said the United States Supreme Court "recognized as recently as April 1971, that student transportation is necessary to accomplish racial and ethnic desegregation. Unfortunately, however, the term 'busing' has been invested with fearful connotations. The fact is," the Commission continued, "that 19.6 million of the nation's public school children—approximately 42 percent of the total—are bused to school every day, in every section of the country. Two million of these children are in New York State alone. In fact, some 58 per cent of the public school children in the state, excluding New York City, are bused to school. The preponderance of this busing is not compelled by court order; in fact, most of it occurs in predominantly white suburban and rural areas where parents pay handsomely, either directly or indirectly, for what they consider the privilege."

"Bus transportation," the Commission continued, "has been an integral part of the public education system for years and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Within tolerable limits, busing neither endangers health or safety nor impinges on the education process."

"However," the panel acknowledged, "the anxiety parents feel at the prospect of sending their young children on buses to schools a distance from their homes is very real, and school administrators must make every effort to show parents their children are safe and cared for. Parents themselves might be recruited to ride the buses as chaperones. Parents from outside the district might also be hired as liaison workers or in some other capacity in the school to minister to the special needs of children who come from other neighborhoods."

The section of the Commission's report released today also contained a detailed analysis of integration efforts in the state's three largest cities—New York, Buffalo and Rochester."

The Commission recommended the following specific action by New York State authorities:

(1) Creation by the Legislature of a statutory obligation on the part of each local school district to develop a plan designed to promote racial and ethnic understanding and positive interracial and inter-ethnic attitudes in the schools within its jurisdiction. Whose applicable, the Commission said, the elements of such a plan should include the elimination of racial and ethnic imbalance within the schools, the hiring of multiracial and multiethnic administrative and teaching staffs, and the use of multi-racial and multi-ethnic curriculam materials. Such a plan, the Commission said, would demonstrate commitment and leadership on the part of the Legislature, which would lead local school authorities toward accomplishment of these goals. Moreover, it would create statutory duties on the part of local school authorities that could be enforced by the State's Supreme Court. The Commission called this "the single most important recommendation" in this area.

(2) Restoration and increased funding of the Racial Imbalance Fund in the Education Department's fiscal 1973 appropriation for such items as pupil transportation and temporary school space and for defraying other costs related to integration efforts.

(3) Expansion of the Division of Intercultural Relations of the State Education Department. The Division should be carefully staffed with representatives of all minority groups and both sexes to assist local boards in preparing, updating and implementing integration plans, the Commission said.

(4) Facilitation of consolidation of school districts to achieve desegregation as well as elimination of statutory obstacles to cross-busing of children across district lines for the same purpose.

(5) Pending such legislative corrections, development of regional solutions where needed, by the State Education Department.

(6) Submission by all school districts to the Intercultural Relations Division of a description of the use and presentation of multi-racial and multi-ethnic materials in their curriculum, to ensure that textbooks are free of historical error and ethnic bias, and that the positive contributions of ethnic groups to American and other societies are stressed. "In short, the curriculum should be integrated even if the student body is not," the Commission noted.

"As for local action," the Commission said, "the goal of integration will only be achieved with the full cooperation and involvement of every school district in New York State. While Federal and state authorities may provide direction and guidance, the real momentum for this effort must come from local districts, each of which should view equality and integration as an essential goal of its educational system."

The Commission then listed four steps which it said should be taken in local districts:

(1) Development of plans for community participation in desegregation in order to ensure that civic leaders, administrators, teachers, parents and students are prepared for full integration to take place.

(2) Even where desegregation has occurred, continued efforts to assure that full integration is accomplished. The Commission said that "conflict should be expected between civic leaders, parents, administrators, teachers and students when desegregation is effected. Conflict is normal and integration has a better chance to succeed if it is exploited as a learning device to produce greater self-awareness and understanding of others. In order to be prepared for such conflict, however, local school authorities must take active steps to educate themselves and the community at large . . . Also, students should be encouraged to explore openly the nature of racism and prejudice, not only in society at large but among themselves."

(3) An annual comprehensive assessment of interracial and interethnic relations to which representatives of each racial and ethnic group would contribute.

(4) Initiatives by each district—white, black and desegregated in seeking ways to improve racial balance throughout its schools, including cooperative arrangements with adjoining school districts and exploration of opportunities for regional consolidation.

The Commission said that its recommendations relating to regional governance are to be set forth in detail in a forthcoming chapter on governance. It is contemplated that many services to facilitate desegregation and integration could be accomplished at the regional level. Region-wide desegregation planning, the Commission said, should occur in order to facilitate interdistrict cooperation generally. Also, school construction should take place with a view toward encouraging integration, and efforts to recruit minority-group teachers should be coordinated regionally.

The Commission also recommended that large regional "exemplary schools" be constructed, with either Federal or state financing, to provide alternative and imaginative approaches to education. Located on the outskirts of cities, these schools would enroll students from many different racial, ethnic and socioeconomic backgrounds.

The Commission said it believes that alternative types of public education should be available to students and parents. It said it wished to encourage individual schools to establish identities and styles of their own and to publicize information relating to their individual characteristics as well as their performance so that families might make a rational choice among several schools. "However," it added, "family choice plans in segregated areas might result in increased segregation; therefore, we insist that safeguards against this eventuality be incorporated into any such plan."

STATEMENT OF VICTOR SOLOMON, ASSOCIATE NATIONAL DIRECTOR, CONGRESS OF RACIAL EQUALITY, ACCOMPANIED BY EDWARD BROWN, POLITICAL DIRECOR, CORE

Mr. Brooks. Mr. Victor Solomon, Associate National Director, Congress of Racial Equality (CORE).

Mr. Solomon. With me is Mr. Edward Brown, Political Director of CORE.

Mr. Brooks. We are delighted to have you here. I understand that you have a lengthy statement which we will accept for the record and that you now are going to proceed to summarize that in your own words. Please proceed.

(The statement referred to follows:)

Statement of Victor Solomon, Associate National Director, Congress of Racial Equality

The Congress of Racial Equality (CORE) is a national organization of Black American Citizens of various backgrounds, professions and occupations, having member chapters throughout the various states. All CORE members are dedicated to the principle of racial parity, religious and political freedom and to the eradication of every obstacle blocking the path to opportunity for Black Americans.

During its early period, CORE's direct action techniques were based on the concept that moral suasion alone could achieve the desired goal of the organization. The sit-in-and-the-picket-line thus became its hallmark, and its members became known for their courage, their tough idealism, and their willingness to undertake any project in the inteerst of justice no matter what the risks to their persons.

The dramatic sit-ins and Freedom Rides organized and conducted by CORE had tangible results in civil rights legislation, in desegregating public facilities, and in opening up jobs in many areas.

CORE has had a long history of involvement in school problems, principally as these affect not only public school pupils but the entire health and welfare of Black communities.

CORE's first hand experience with the totality of problems affecting Black communities had led the organization to focus on education and in particular, on the inequality of educational opportunity accompanying segregation as the host of other problems which plague Blacks in their efforts to progress.

Inspired by the Brown decision, CORE moved into the field with vigor to help hasten the end of segregation, North and South. As the NAACP moved through the courts after 1954, CORE moved in the field with bodies. Both organizations pursuing one sole interpretation of Brown, i.e.—that desegregation meant integration.

In the mid sixties, CORE's field experience began to dictate that integration was not only impractical in many situations—such as Harlem and other urban Black communities; experience showed integration to be in serious conflict with other needs of the Black community—cohesion, opportunity to exert influence, majoritiness, and mental health.

Guided in the field by common sense, a careful study of the entire history of the struggle for equality since the Civil war, and a realistic view of the day to day needs of the Black communities CORE has departed from its earlier course of holding up "integration now" as the highest value. CORE is of the firm belief that desegregation and the road to equality for Blacks in sizeable Black communities lies in the direction of quality local schools with local control.

Whereas, CORE is of the firm belief that "segregation must go!" CORE no less firmly believes that desegregation need not be synonymous with integration.

Segregation when properly defined is a policy of separating pupils racially into a dual pattern within a given legal state school district where there exists one school board with the responsibility for running schools within that district; wherein, one of the two races involved, generally white, controls the board and thus the flow of goods and services.

Viewed in this light, the school district of the city of New York is just as segregated as is that of any large city in the South with a history of De Jure segregation.

CORE maintains that in breaking up segregation, i.e. inequality—that we don't focus anew on stigmatizing Blacks by placing a premium on their dispersal. But rather, that we focus on empowering Blacks in order to bring opportunity for equality within their grasp.

Specifically then, desegregation of most of the cities in the United States with sizeable Black populations would involve the creation within these "inner cities" of state school districts, guaranteeing such districts equitable educational resources.

In the years since 1954 the Blacks throughout the United States have grown through experiences similar to CORE's. The prevailing sentiment among the majority of Blacks is for quality education in the area in which they reside.

The recent referendum in Florida showed a majority of Blacks not supporting bussing, but strongly supporting quality education.

Just as recently, the National Black Convention in Gary, Indiana, overwhelmingly supported CORE's approach to desegregation. (See Florida and South Carolina resolutions.

PROPOSED CONSTITUTIONAL AMENDMENT FOR DISCUSSION

"SECTION 1"

No public school student shall, because of his race, creed, or color, be assigned to, required to attend, or *excluded* from a particular school.

"SECTION 2"

A sizable community of persons, of like educational interest, regardless of race or color, shall have the option of being constituted a state school district. This option shall not be denied because of existing city, county, or other intrastate boundaries.

"SECTION 3"

Within any given State, each public school district shall be entitled to receive an equal share of the sum of all local and state allotments for educational services, pro-rated according to the number of public school students enrolled in the schools in each such district.

"SECTION 4"

"The Congress shall have the power to enforce this article by appropriate legislation".

National Black Convention, Gary, Ind.—March 10–12, 1972

(Subject: *Resolution on bussing and forced integration*)

SOUTH CAROLINA/FLORIDA RESOLUTION

We condemn forced racial integration of schools as a bankrupt, suicidal method of desegregating schools, based on the false notion that Black children are unable to learn unless they are in the same setting with white children. As an alternative to bussing of Black children to achieve racial balance we demand quality education in the Black community through community-controlled state school districts and a guaranteed equal share of all educational money.

Be it resolved that we condemn any anti-bussing amendment that does not include a section allowing for Black community control of schools. The Black Political Convention goes on record in supporting of the C.O.R.E. Unitary School Plan as a legitimate method of desegregating schools and a yiable and desirable Black alternative to racist imposed integrationist tactics to destroy Black schools.

NEW YORK RESOLUTION

We condemn the Nixon Administration as being a racist administration. While we both condemn the same concept (forced bussing to achieve racial balance) it is for different reasons. We demand that the money that would have been used to bus rather be spent in the Black community to guarantee quality education under the control of the Black community. In the face of inferior school facilities in the Black community contrasted by adequate educational facilities in the white community, for Richard Nixon to refuse to give resources and control to the Black communty and yet to deny Black children the right to bus to white neighborhoods demonstrates the highest form of immorality. This is America's current posture.

Mr. Solomon. That is correct, Mr. Chairman. I will try to be as brief as possible in the attempt to summarize. The hope is that we will be able to entertain some questions.

In view of the fact that the material we planned to present is admittedly of a controversial nature, it represents a departure for an organization like ours and to a large extent it represents what to us is very clearly the dominant point of view in the black community.

A word about our organization. The Congress of Racial Equality (CORE) is a national organization of black American citizens of various backgrounds, professions, and occupations, having member chapters through the various States.

All CORE members are dedicated to the principle of racial parity, religious, and political freedom and to the eradication of every obstacle blocking the path to opportunity for Black Americans.

During its early period, CORE's direct action techniques were based on the concept that moral suasion alone could not achieve the desired goal of the organization.

The sit-in and the picket line thus became its hallmark, and its members became known for their courage, their tough idealism, and their willingness to undertake any project in the interest of justice, no matter what the risks to their persons.

The dramatic sit-ins and freedom rides organized and conducted by CORE had tangible results in civil rights legislation, in desegregating public facilities, and in opening up jobs in many areas.

CORE has had a long history of involvement in school problems, principally as these affect not only public school pupils but the entire health and welfare of black communities.

CORE's firsthand experience with the totality of problems affecting black communities has led the organization to focus on education and in particular, in the inequality of educational opportunity accompanying segregation and the host of other problems which plague blacks in their efforts to progress.

Inspired by the *Brown* decision, CORE moved into the field with vigor to help hasten the end of segregation, North and South. As the NAACP moved through the courts after 1954, CORE moved in the field with bodies. Both organizations pursuing one sole interpretation of *Brown*, that is, that desegregation meant integration.

In the mid-sixties, CORE's field experience began to dictate that integration was not only impractical in many situations—such as Harlem and other urban black communities; experience showed integration to be in serious conflict with other needs of the black community—cohesion, opportunity to exert influence, majoritiness, and mental health, and a host of the areas that can be defined as a need for sanity and mental health.

Since the mid-sixties, CORE, guided in the field by common sense, a careful study of the entire history of the struggle for equality since the Civil War, and a realistic view of the day-to-day needs of the black communities CORE has departed from its earlier course of holding up integration now as the highest value.

CORE is of the firm belief that desegregation and the road to equality for blacks in sizable black communities lies in the direction of quality local schools with local control.

Whereas, CORE is of the firm belief that segregation must go. CORE no less firmly believes that desegregation need not be synonymous with integration.

Segregation when properly defined is a policy of separating pupils racially into a dual pattern within a given legal State school district; wherein, one of the two races involved, generally white, controls the board and thus the flow of goods and services.

Viewed in this light, the school district of the city of New York is just as segregated as is that of any large city in the South with a history of *de jure* segregation.

So that the most basic aspect of segregation, which is hardly ever considered, is not just that there are black schools and white schools identifiably so, but who controls both sets of schools. Can it be said that a town which happens to be all black and is a community entity defined by the State law, the Constitution, or what have you, that has a duly elected government, that may have a school board which is a legal school district, can it be said that that school district is ipso facto segregated? To say so and to imply by stating that it is segregated that it is inherently inferior, is to condemn black folks in particular and in general as an inferior people.

That is the dilemma that we have got to deal with. This is the dilemma that this committee has to resolve. Certainly the courts have failed to resolve that dilemma up to this point.

In addressing this committee, we will offer testimony to the effect that it is very possible that the courts need some guidance, that the Constitution needs to be amended for the purpose of clarifying certain basic guidelines, and it is our contention that we have got to talk about an extension in a sense of the 14th amendment and the equal opportunity provisions therein. We will offer some specifications in this regard.

CORE maintains that in breaking up segregation, that is, inequality, that we don't focus anew on stigmatizing blacks by placing a premium on their dispersal, which is what HEW has been about and to an extent what the Justice Department has also been about, the dispersal of black people.

But, rather, that we focus on empowering black in order to bring opportunity for equality within their grasp. Specifically, then, desegration of most of the cities in the United States with sizable black populations would involve the creation within these inner cities of State school districts, guaranteeing such districts equitable educational resources.

We hope that too will be addressed in the proposed constitutional amendment. Basic equality of educational resources to school districts within a State. Suffice it to say that in the years since 1954 the blacks throughout the United States have grown through experiencee similar to CORE's. The prevailing sentiment among the majority of blacks is for quality education in the area in which they reside.

The recent referendum in Florida showed a majority of blacks not supporting busing, but strongly supporting quality education, the other item in the referendum.

Mr. McCulloch. Mr. Chairman, may I ask the witness a question?

Mr. Brooks. Mr. McCulloch.

Mr. McCulloch. How are you going to provide quality education in the hundreds of districts in the United States if you are going to make it unlawful by constitutional amendments to bus students?

Mr. Solomon. Mr. Chairman, wherever there are blacks residing, and all of the statistics show us that increasingly they are in ghettos, so-called ghettos, large communities——

Mr. McCulloch. There are many blacks living in many school districts who are living outside the large urban ghettos.

Mr. Solomon. We would propose something which has been apparently forgotten in the whole discussion of schools and that is commonsense. Kids should go to the schools near where they live. If a neighborhood happens to be salt-and-pepper in terms of black and white, black and white kids walk to their neighborhood school.

Mr. McCulloch. Yes, we have all heard that recited innumerable times. I will repeat the question that I asked. How are you going to bring quality education equally to all students in America? Which is your plan?

Mr. Solomon. I think the basic point we would make on that is possibly to cover the points we make in our proposed amendment. We don't think——

Mr. McCulloch. Might I ask you if your statement supports any one of the constitutional amendments before us or are you proposing a new amendment which is not before us?

Mr. Solomon. We have been in dialog with Congressman Lent and Senator Brock and in our recent discussions we have agreed that the amendments they have submitted are deficient in one very important aspect and I would like to address myself to specifically where they are deficient. We would like to have section 1 of the Brock or Lent amendment read:

> That no public school pupil shall be forced, because of his race, creed or color, to be assigned or required to attend or excluded from a particular school.

Anybody who simply says "that no public school pupil shall, because of his race, creed, or color, be bused," is commiting a basic error in that situation is where folks voluntarily want to bus; they can't do so possibly if somebody challenges it, but the question of being forced is the same old principle which is sound and which the Supreme Court never rejected in itself; freedom of choice.

The Supreme Court rejected freedom of choice as a ruse, as a way of escaping certain affirmative actions that had to be taken. I don't believe anybody should be bused anywhere by force against his will.

Our section 2 is a very important section and this gets to the heart of the matter. There is no black person in his right mind in this country who would not support a constitutional amendment the minute that they found out the contents, who would not support it if it had this section and that is that. Can a black community constitute a school district if they are guaranteed an equitable distribution of moneys?

The courts have been moving in this direction of guaranteeing a State formula in *Cisneros*, more recently in Texas, in New Jersey, and I think it definitely should be a constitutional provision within a State, which is not to say that Mississippi has to provide the same amount of educational dollars as New York, but certainly any school district within the State of New York or any school district within the State of Mississippi should be guaranteed that minimum.

Finally, certainly that Congress shall have the power to enforce the article by appropriate legislation is understood. But such an amendment, our experience has shown, and Florida has shown, Gary has shown, and gentlemen, I have just come from Gary where I did not see the honorable venerable old gentleman who testified this morning. He wasn't there.

There were 10,000 black people there. Old ladies and young folks representing people from every walk of life. They had only one common denominator and that is that they were black. Four thousand of them were delegates and they were as varied and during the peak of attendance, the following resolutions were passed unanimously or by acclaim. South Carolina, Florida, and Maryland submitted the following resolutions:

> We condemn forced racial integration of schools as a bankrupt, suicidal method of desegregationg schools. . . .

Mr. BROOKS. Mr. Solomon, we have a copy of that. It has already been placed in the record. We are not going to have time to ask you but one question and we have two more witnesses.

Mr. SOLOMON. May I make a request?

Mr. BROOKS. Surely.

Mr. SOLOMON. Together we represent, we feel, a majority point of view in the black community. This morning we heard one other point of view which said nothing new and we have sat patiently and listened for over an hour. Now, being more modest, we will settle for half the time.

Mr. BROOKS. You have just about had it.

Mr. SOLOMON. There are two of us.

Mr. BROOKS. The problem, as I tried to explain earlier, is that the House of Representatives is going to have a vote in a few moments. Mr. McCulloch and I will be required to go over there and vote. We will have to adjourn this hearing. It will not reconvene for 3 weeks.

We are trying to hear you and Mrs. Wolf and Mrs. Cristofano. We have accepted your statement. We have listened to you for 20 minutes. I am asking you, as I thought you were about to do, to conclude and not to read something just submitted to us.

If you have any further comments on it, or conclusions, and you want to refer to these resolutions that were adopted by the caucus in Gary——

Mr. Solomon. Suffice it to say in terms of summarizing the resolution, that they endorsed the concept which we are presenting to you now of the idea of State school districts conforming to natural communities of like educational interests which would do more to move toward equality in education and desegregation.

Again, desegregation within the concept of *Brown* by stating that within any school district, whether it be predominantly black or white, any student within that school district would have the right to attend any school. Some of these school districts would be almost all black if they happened to be in Harlem or Roxbury or Watts or Mobile or any city in this country that has a significantly large black community such as Richmond.

What we are talking about, gentlemen, is that we have the need to get away from the bankrupt approaches to desegregation which have been presented to the courts. We will submit one final statement with respect to the need for a constitutional amendment.

It is that we feel that the courts, although they have at times been guilty of activism, are not totally the culprits in the bind they have placed the Nation in. There is no doubt that we are all against the wall. We are on the ropes on this one.

The national resolution against the busing is a testament to that. The polarization between the races is testament to that. The courts are not entirely the culprits. The courts have at times had to rule between two alternatives, that of the old-fashioned segregation and the integration approach which has been presented to them primarily by the one organization let into the court and that is NAACP.

There are other points of view which have not been expressed in the courts. Not until the *Swann* case was there a friend of the court brief even that was presented before the court that offered a position that was different from that of the Solicitor General, the plaintiff or the defendant. That is the position of community control.

Mr. Brooks. That is an excellent dissertation of your position, Mr. Solomon, and it does make a contribution to this hearing. We have a couple of questions I would like to ask you. We accept your statement of course, in full.

Do I understand that you support the constitutional amendment only so long as it requires black community control of community schools?

Mr. Solomon. As it enables that.

Mr. Brooks. And one other question. Do you feel that it is more important to get some immediate legislative action for the guidance of the courts, as you have indicated, as compared with the longer, more rock-strewn road traveled by a constitutional amendment?

Mr. Solomon. I think three actions are needed. I think a constitutional amendment is definitely needed along the lines we have expressed. We feel that legislation is needed immediately and we think that new kinds of arguments are needed before the courts.

Mr. Brooks. That is a good answer.

Gentlemen, any further questions? We want to thank you and your associate very much for appearing. We appreciate your statements and your waiting over to this afternoon to testify.

Our next witness is Mrs. Robert E. Wolf, member, Board of Education of Prince Georges County, Md.

STATEMENT OF MRS. ROBERT E. WOLF, MEMBER, BOARD OF EDUCATION OF PRINCE GEORGES COUNTY, MD.

Mr. Brooks. Mrs. Wolf, we accept your statement for the record and appreciate its submission and ask that you summarize it as much as possible. In view of the fact that you have some very interesting maps over there, would you make available to the committee some smaller copies of those maps?

Mrs. Wolf. I will have that done for you, Mr. Chairman.

Mr. Brooks. If you wish, you may submit that for the record.

(The statement and maps referred to follow:)

Statement of Mrs. Robert E. Wolf, Member, Board of Education of Prince Georges County, Md.

Mr. Chairman and members of the subcommittee: I am Ruth S. Wolf, member of the Board of Education of Prince George's County, Maryland.

I was appointed in 1968 by then Governor Agnew. In the year 1970–71 I was Board President.

Our system has over 162,000 students and more than 230 schools. It is the 10th largest school system in the country.

We are well acquainted with that term called "busing". We transport daily about 47% of our students: 76,139 to 195 schools using over 700 buses, one of the largest school bus fleets in the nation. None of this "busing" is done for racial balance. Until the recent hysteria on the subject I had heard only requests from parents for more buses. This isn't strange since National Safety Council data show busing is the safest way to get children to school.

We do have some paired elementary schools. Our 484 square mile county is urban, suburban, and rural. Our schools overall are 78% White, 2[illegible] Black. In addition, less than 10% of the children attend non-public schools in our County, the District of Columbia and surrounding counties. This percentage has been declining slightly.

My testimony is concerned with how the proposal before you would in my view adversely affect our school system.

The field in which you are asked to legislate has been well plowed and disked this year. However, the seed Congressman Lent and his associates ask you to plant, like all seed, looks innocent. These seed peddlers promise a pretty flower like the poppy. This pretty flower however, will produce a poisonous substance; as destructive to our body politic and social as heroin. I urge that you reject their pretty seed—and the poison it exudes. Let us plant those seeds that make a hardy, strong, united America. Let us not cultivate the flower that poisons our minds, divides our people and destroys our National purpose.

Not one word in the Lent type proposals deal with their real purpose. Congressman Lent says he wants to give us: "relief from these sweeping court-ordered busing edicts". Not one word in his proposal will (1) "return control of education to local school boards", (2) "preserve the neighborhood school system", (3) "eliminate forced busing and the threat of school consolidation to achieve purely arbitrary racial balance".

These proposals will, rather, take away the present authority of each school board to manage its own affairs. They will foster segregated neighborhoods. They will promote arbitrary racial imbalance. They will create a National policy of racially separate schools.

The major bearings in the Administrations' Amicus Curiae brief and their recommendations in *Swann* are enlightening. They urge five alleged alternatives to busing:

(a) Change grade structure so a school has fewer grades thus serves a larger area.

(b) Majority-minority transfers providing transportation.

(c) Close unneeded or substandard schools.

(d) Draw zone lines across rather than encircling racially impacted areas.

(e) Plan new school construction so as to serve students of both races.

Each of these 5 alternative srequires more busing not less. Four of them require student assignment based on race. They thus require, even in the sense the Administration uses the term, "forced busing to achieve racial balance".

The Lent type proposals would take away every desegregation tool—even those the Administration opted for in *Swann*.

School boards can obtain relief from court ordered busing better by meeting their responsibilities. Chief Justice Burger pointed this out in the *Swann* decision. I agree. No one has usurped local school board authority. School boards that have not followed the law have given it away. This is typified by a past President of our Board who said in speaking of school desegregation: "I would rather be told by a Court te do this, than do it myself".

Brown and most of the other landmark school cases come from citizens suits—not from HEW or Federal or State instituted suits.

Only one Justice who signed the *Brown* decision still serves on the Supreme Court. Four of the Justices who unanimously decided *Swann* are Eisenhower or Nixon appointees. Ever since 1954, no matter who appointed them, the Court has decided school case after case with remarkable unanimity and consistency.

Eighteen years after *Brown* there is no excuse for local Boards failing to do what the law and proper policy direct.

What are the specifics in our County? We are under legal attack for doing "too much." The case of *Borders vs Board of Education*, is interesting because its basis is the theme of the Lent proposal. The Maryland Circuit Court has upheld the Boards authority. A key quote in that decision states: "It is apparent that whether segregation results from legal sanctions or from previously drawn attendance zones which have since become 100% black neighborhoods, correction of the condition is within the authority of the Board."

In quick capsule our system was fully de jure in 1954. Through 1964 we were still using Freedom of Choice; no transportation furnished to transferees. Most Blacks were still bused across the county to all Black schools. In 1965, eleven years after *Brown*, we stopped this practice. We placed white students in some previously all black schools, mainly in the rural part of the county. This shortended busing distance for many Blacks and some whites. We did not eliminate the de jure system root and branch. We promised to continue our desegregation efforts. This was an era of National leadership on school desegregation, although there were protests, the changes, which were substantial, were effected smoothly.

In 1968—69 there were continuing discussions between our Board and HEW We again promised to continue our desegregation of staff and facilities and offered as one concrete step the desegregation of two adjacent de jure secondary schools; all Black Fairmont Heights Senior High Schools and Mary M. Bethune Junior High School. In contrast to our 1965 action this step was modest. The climate of National leadership had changed. The President was speaking as though segregation were voluntary while integration were forced; and as though a short bus ride to an integrated school was forced busing while a longer ride to segregated school was voluntary.

The two schools affected were in all Black suburban neighborhoods. Fairmont was ⅓ empty, our only 9–12 grade High School; Bethune was our only Junior High School with a 6th grade.

I want to stress that the device we used was a boundary change not a busride—the white students assigned were already on buses. In addition, the action was timed to coincide with the opening of a nearby new High School which in and of itself required boundary changes for many schools. Also we acted to relieve overcrowding in contiguous schools.

The storm centered in the town where I live and nearby white residential areas. Some people in substantial leadership positions shouted "busing" and "crossbusing"—called the plan "idiotic," and pledged to work to overturn it. They fed the fires of the segregationists.

This map deals with just the Senior High School change. The Junior High School picture is so similar it would be repetitious to explain it. I will not describe all the elements, but highlight those which produced the furore.

First let me touch on the neighborhood school theme. When Bladensburg High School opened in 1951 it served a very large area, over 50 square miles. It served many towns and unincorporated communities. As other High Schools opened Bladensburg's boundaries were reduced. By no stretch of the term are our High Schools neighborhood schools, unless that term has a black-white meaning. In 1969 its attendance zone covered 12 square miles (the green area).

Fairmont Heights also opened in 1949 to serve Black students in one-half the County, over 200 square miles. It was not a neighborhood school. When its boundary was redone in the 1965 action it was reduced to cover an all Black area of only 3 square miles, the smallest in the County.

Here outlined in red is the 1969 Fairmont Heights boundary.

These other dots show adjacent Parkdale, Central and Largo Senior High Schools.

This next overlay shows the pertinent 1970 changes. The green Bladensburg area to the east went to the new Largo High School. Its attendance area extends to the County's east line covering about 40 square miles. (High School attendance areas average 28 square miles in our county.) Bladensburg's attendance area was reduced from 12 to about 6 square miles. It received some of Parkdale's area. Fairmont lost a small portion on the south to Central. Fairmont's attendance area rose to 5½ square miles.

The portion with the red and green check color which was added to Fairmont Heights had mainly white students. Their bus route went to Fairmont Heights rather than Bladensburg. There was no "busing" or "cross busing" as the terms are used, just boundary changes. The racial composition of every surrounding school was affected.

Clearly we had two major purposes.

(1) Overall: To relieve overcapacity and undercapacity situations.

(2) Specifically: To desegregate Fairmont Heights High School.

Any way we approached it, the Largo opening was bound to change racial composition in the other schools—even if we had left Fairmont with its 100% Black three square mile attendance area.

This circle shows a six mile radius on this map. It is obvious we shortened the distance most students travel. If we were required, by the Constitution, to freeze boundaries because racial composition would be disturbed, then whenever a new school opens no adjacent school's racial composition could materially change. The result would be boundaries that look like a more irregular jig saw pattern than our present ones.

The vocal reaction to the desegregation of Fairmont Heights produced solid evidence on the real issue. Some opponents of "busing", who had always previously had their children in public schools, placed their children in non-public schools six miles, ten miles and even farther away.

Now I submit that if the real issue were "busing" these children wouldn't be on a private school bus, or car pool busing them farther away.

The cry also went up "save our neighborhood school". Every child that is assigned to the two elementary schools primarily serving Cheverly was previously in the Bladensburg Junior and Senior High attendance area. Every morning they assembled at the bus stop and rode out of the community to those schools where they joined hundreds of other children getting off other school buses. After spending the day in school together they rode back to their respective communities.

When we changed the boundaries these Cheverly students still went together to the same bus stop. They were all assigned to Bethune and Fairmont. They were all still together—and the school was nearer most of their homes.

The Bethune school assignment was no more traumatic for a Cheverly student entering Junior High School than going to Bladensburg Jr. High. At either school Cheverly pupils were going to meet students from different feeder elementary schools—except at Bethune some would be white and some Black, while at Bladensburg Junior High School 95% of the students would be white.

If I seem skeptical about all this sudden concern for neighghborhood schools and transportation it's because I have seen the sweet smiles and heard the fine phrases, but I've also heard "nigger lover" and worse spit out at me, and my children. I'm skeptical because I've been on the firing line and I know what this battle is all about. It isn't "busing"—It is race.

Against the specifics which grow out of our 1969 action here is our current situation.

We did almost nothing on teacher staffing until 1971 and then only after State and Federal agencies called for action.

We did nothing to further desegregate remaining de jure elementary sheools. We did nothing about resegregation, which may not be required by law, but is nonetheless a significant problem.

HEW reviewed whether the Fairmont and Bethune plan was faithfully carried out, elementary schools; and teacher staffing. After the *Swann* decision HEW asked what action we would take on these problems and when. The majority of our school Board answered in effect "nothing and never." HEW cited us for non-compliance last August. The hearing will be held in April. At this point I want to stress that HEW has not said "bus". They have simply pointed out those situations where they believe de jure vestiges remain, reminded us of our promise to cure them (which dates from 1965—7 years ago) and asked us how and when we would do it.

These maps and exhibits will give you a picture of how the Lent type proposals would set back school integration.

Maryland isn't a large or especially rural state. In some counties Junior-Senior High Schcool attendance areas average over 300 square miles. In Prince George's County elementary areas average three square miles; Junior High Schools 14 square miles; Senior High Schools 28 square miles.

It is pertinent that private schools, in our County traditionally have drawn students from larger attendance areas than comparable level public schools.

This map shows the entire county. At the Senior High School level vocational students attend either Bladensburg or Crossland. The county is divided at Central Avenue into two districts each over 200 square miles.

This overlay shows our 18 Senior High School attendance areas. These vary from six square miles to 125 square miles. When we open the two Senior High Schools now under construction obviously boundaries will be changed.

This next overlay shows our 39 Junior High Schools. Attendance areas vary from less than two square miles to about 120 square miles. You will note the lack of unity between the Senior High School and Junior High School attendance areas. This is significant. We do not maintain school attendance neighborhoods as students move from elementary to Junior High and from Junior High to Senior High.

We will open four Junior High Schools in September. To set these four boundaries will affect boundaries of 19 other Junior High Schools—over half those in the county. No matter how these lines are drawn there will be changes in these schools' racial composition. We may further segregation; we may further integration; but we will change.

Our schools also have a high degree of racial isolation. This is illustrated by these graphs. They represent in total 136 of our schools and 102,183 pupils. A surprisingly large number of pupils are bused to these racially isolated schools.

The upper graph shows 51,806 elementary students in 88 schools averaging 97% white; the lower graph shows 7,508 students in 12 schools averaging 98% Black.

The Junior and Senior High Schools show the same pattern of racial isolation. 22 Junior High Schools housing 21,677 students in schools averaging 95% white; and 3 Junior High Schools with 3,373 students in schools averaging 86% Black.

At the Senior High School level there are 8 schools housing 14,744 students averaging over 95% white and 3 Senior High Schools housing 3,075 students averaging 72% Black.

An excess of 44,000 pupils are "bused" to these racially isolated schools. More students both in number and percent are bused to the predominately white schools.

What, then, is the meaning of this frequently heard term "busing to achieve artificial racial balance"? I submit that in a County only 22% Black, busing over 44,000 students to 136 racially isolated schools is busing to maintain artificial racial balance. The balance has been tipped toward segregation.

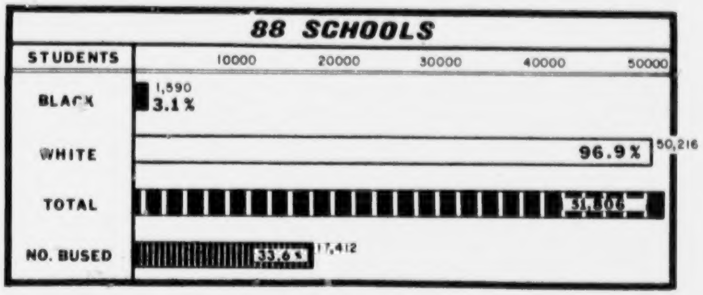
This next overlay shows the 165 elementary school attendance areas in our county.

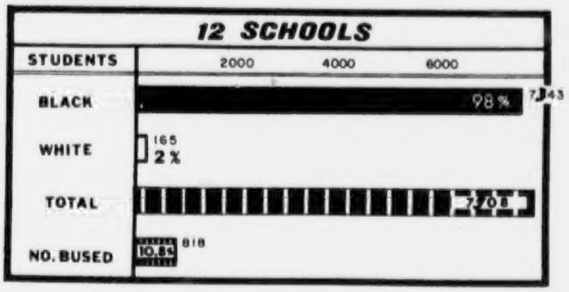
It does not show our eight Special Education centers. We currently bus some of the handicapped children over three hours per day. Under a policy change I recommended, we adopted a two hour limit on their transportation time.

Our regular elementary attendance areas in our county range from one fourth square mile to 40 square miles and from 100% bused to 100% walking. Some towns are served by several elementaries while others serve several communities. We have constructed over 60 new elementaries in the past decade. Boundary changes have been numerous. There will be more changes when we open three new elementaries this September.

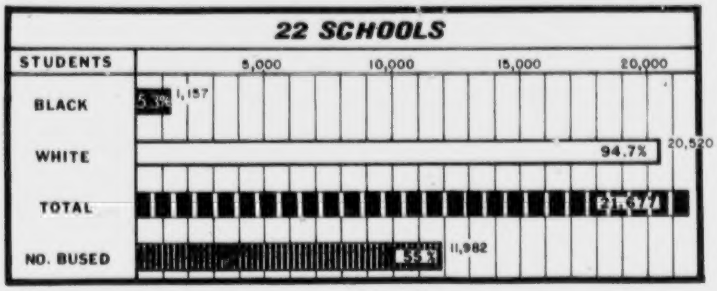
This overlay shows the racial composition of these schools by percentiles. The color chart you have will enable you to see the code. This chart also gives a good picture of the County's racial pattern. Our elementary schools average 76% white—24% Black, but precious few come within 10% of the average—21 to be exact.

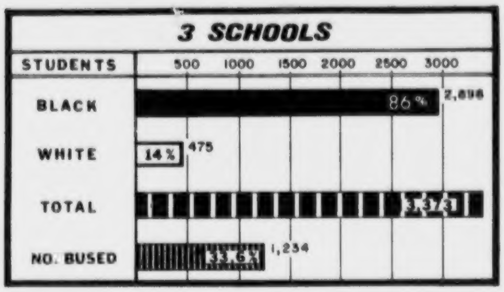
100 Elementary Schools



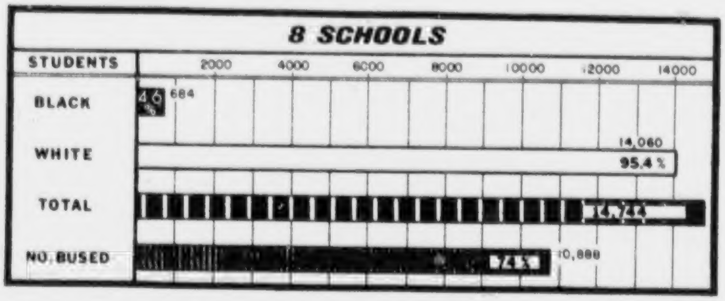


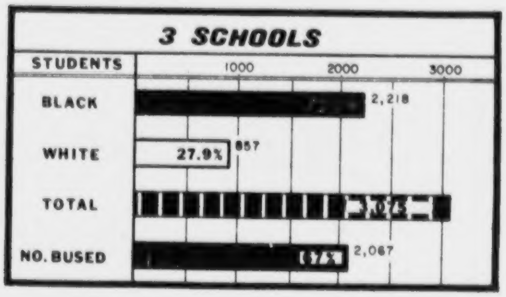
25 Junior High Schools





11 Senior High Schools





Racial Composition and Transportation
Elementary Schools 1971-72

BLACK STUDENT PERCENTILE	COLOR CODE	NUMBER SCHOOLS	NUMBER PUPILS	AVERAGE % BLACK IN PERCENTILE	% BLACK STUDENTS IN PERCENTILE	NUMBER BUSED	% BUSED
0- 9.9%		88	51,806	3.1	7.1	17,412	33.6
10-19.9%	░	23	13,010	14.4	8.3	5,163	39.7
20-29.9%	█	8	4,269	22.5	4.3	1 723	40.4
30-39.9%	▓	3	996	36.2	1.6	480	48.2
40-49.9%	▓	12	6,510	45.1	13.0	3,605	55.4
50-59.9%	▒	6	3,417	55.3	8.4	858	25.1
60-69.9%	░	4	1,876	66.3	5.5	1,240	66.1
70-79.9%	█	2	1,158	70.6	3.6	88	7.6
80-89.9%	█	7	4,133	84.9	15.5	1,518	36.7
90-99.9%	█	11	6,958	97.6	30.3	749	10.8
100%	█	1	550	100.0	2.4	69	5.0
Total		165	94,683	23.7	100	32,905	34.7

You can see these school areas very widely in size and configuration.

Look at Kettering, it has a most peculiar shape. It has 25 Black pupils (4%). Next to it are Randolph Village 83% Black, Ardmore 96% Black and Arrowhead 67% Black to name a few. 61% of the students in these schools are bused now.

Should we decide to change the Kettering attendance boundary due to area growth or new school construction the racial composition of all these schools might change. Could this not be construed, under the language of the various amendments as "assigning students because of race"? I ask you to envisage the amount of litigation every such change could engender—even if the purpose were not to create a specific racial composition.

I request you think of our attendance areas when you consider these amendments and ask yourself whether it would help Prince George's County make future boundary changes.

These facts and maps also help penetrate the myth of the so called "neighborhood school". Which of these schools serves a neighborhood? Kettering? Orme in which students ride over seven miles to school? Or Randolph Villiage 87% Black right next to Ritchie 17% Black—with every student bused to both schools?

What is a neighborhood? Franklin Roosevelt included all the Americas in his "good neighbor" policy.

But the definition of neighbor more meaningful in this dialogue comes from words of Jesus of Nazareth. When asked "who is my neighbor" He told the parable of the Good Samaritan.

In this Nation we are all neighbors in this larger sense. Any action which seeks to divide us and to separate us, corrupts our National moral resolve. We are asked to support a concept that would bankrupt us as a force for world leadership. We are asked to divide ourselves North, South, East and West—by race.

If you support local school board antonomy then you must reject these proposed amendments. Instead you must add your voice to that of Chief Justice Burger by pointing out that the courts are only called in "because of the school boards' failure to fulfill their constitutional obligations".

The Prince George's system has still a long way to go to be integrated. Numbers are not as important as spirit and intent.

As a school board member my interest in education is broad. The issue of integration has this Nation divided. The need to integrate our schools cannot be avoided. Separatism is no solution. With two-thirds of the school children in this Nation being bused daily to get an education, busing is ratified and supported.

The phrase "unnecessary busing for the sole purpose of achieving an arbitrary racial balance" (emphasis supplied) is a negative and misleading statement.

Governmental acts that are arbitrary and unnecessary have been struck down by Court after Court wherever this mistake has been made. Whenever, wherever and however committed such acts are bad public policy.

My philosophy is this. The public schools of the United States are the training ground for future citizens in a Nation which seeks to promote peace—good will in the world. School boards should use all tools available applying criteria of necessity, reasonableness and flexibility to assign pupils to public schools and to instruct them. Assignment and instruction must be designed to guide each student to be a productive member of society. The bed rock goal of public education is to promote a United States of one people—indivisible.

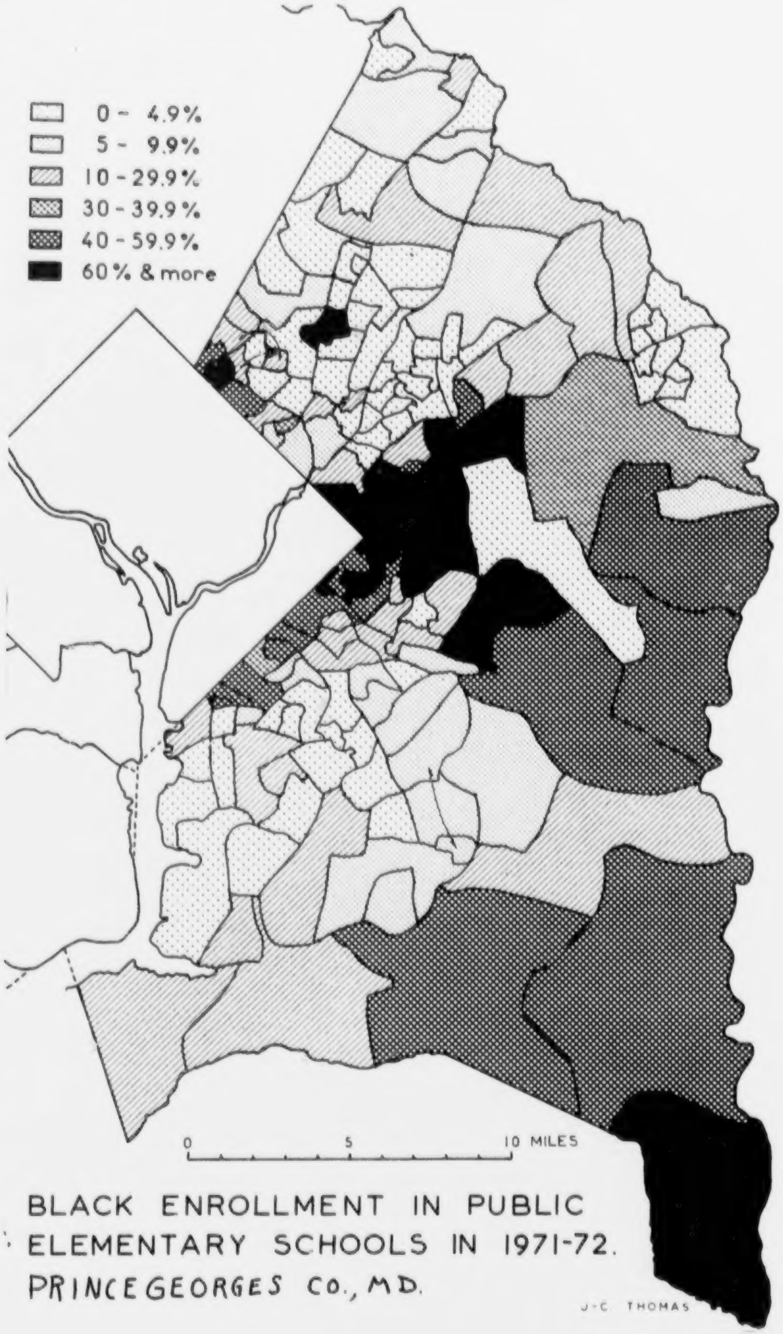
The legislation before you is bad because it doesn't say what it really means, or mean what it really says.

Its intent is pernicious and malign. I urge you to reject it.

(The following data have been reassembled to conform to the coding on the attached maps by Dr. J. C. Thomas, Catholic University. His maps are the same as used by Mrs. Wolf in her testimony except that they are in black and white whereas Mrs. Wolf's were in color and not reproducible.)

PRINCE GEORGES COUNTY PUBLIC SCHOOLS RACIAL AND TRANSPORTATION DATA

Percent black students	Number schools	Number pupils	Percent average black	Number transported	Percent transported
Elementary:					
0 to 4.9	63	37,164	1.5	9,969	26.8
5 to 9.9	25	14,624	7.0	7,443	51.8
10 to 29.9	31	17,279	16.4	6,886	39.7
30 to 39.9	3	996	36.2	480	48.2
40 to 59.9	18	9,927	48.5	4,463	45.0
60 to 100	25	14,675	87.8	3,664	25.0
Junior high schools:					
0 to 4.9	14	14,184	3.2	7,341	51.8
5 to 9.9	6	5,727	7.4	4,210	73.5
10 to 29.9	9	8,214	18.9	4,993	60.7
30 to 39.9	3	2,632	35.3	1,127	42.8
40 to 59.9	2	2,030	52.5	1,660	81.5
60 to 100	5	4,946	80.7	2,031	41.0
Senior high schools:					
0 to 4.9	4	8,438	2.8	6,318	75.7
5 to 9.9	4	6,293	7.0	4,630	73.6
10 to 29.9	6	11,201	18.6	7,666	68.5
30 to 39.9	0				
40 to 59.9	1	420	52.1	368	88.0
60 to 100	3	3,075	72.1	2,067	67.5


0 - 4.9%
5 - 9.9%
10 - 29.9%
30 - 39.9%
40 - 59.9%
60% & more
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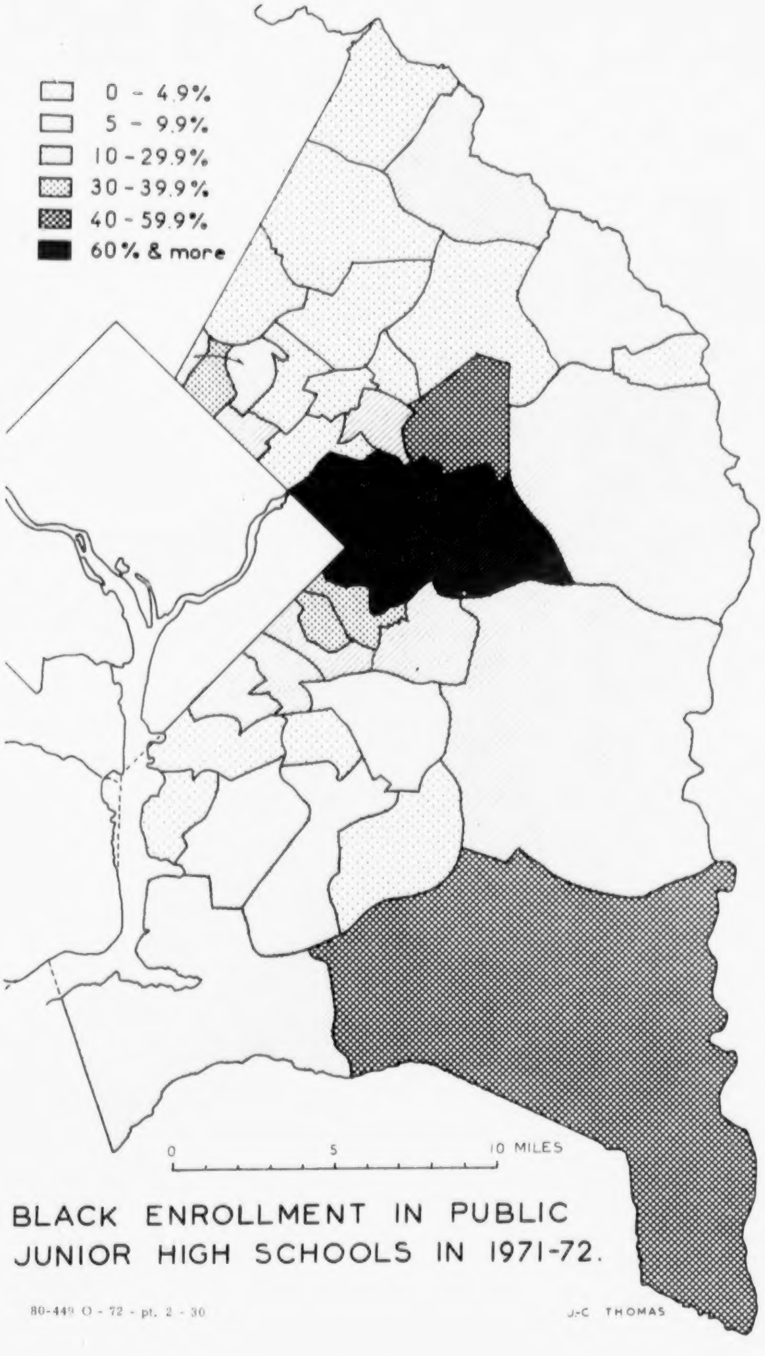
10 MILES

BLACK ENROLLMENT IN PUBLIC
ELEMENTARY SCHOOLS IN 1971-72.
PRINCEGEORGES CO., MD.

J-C THOMAS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BLACK ENROLLMENT IN PUBLIC
JUNIOR HIGH SCHOOLS IN 1971-72.

J-C THOMAS

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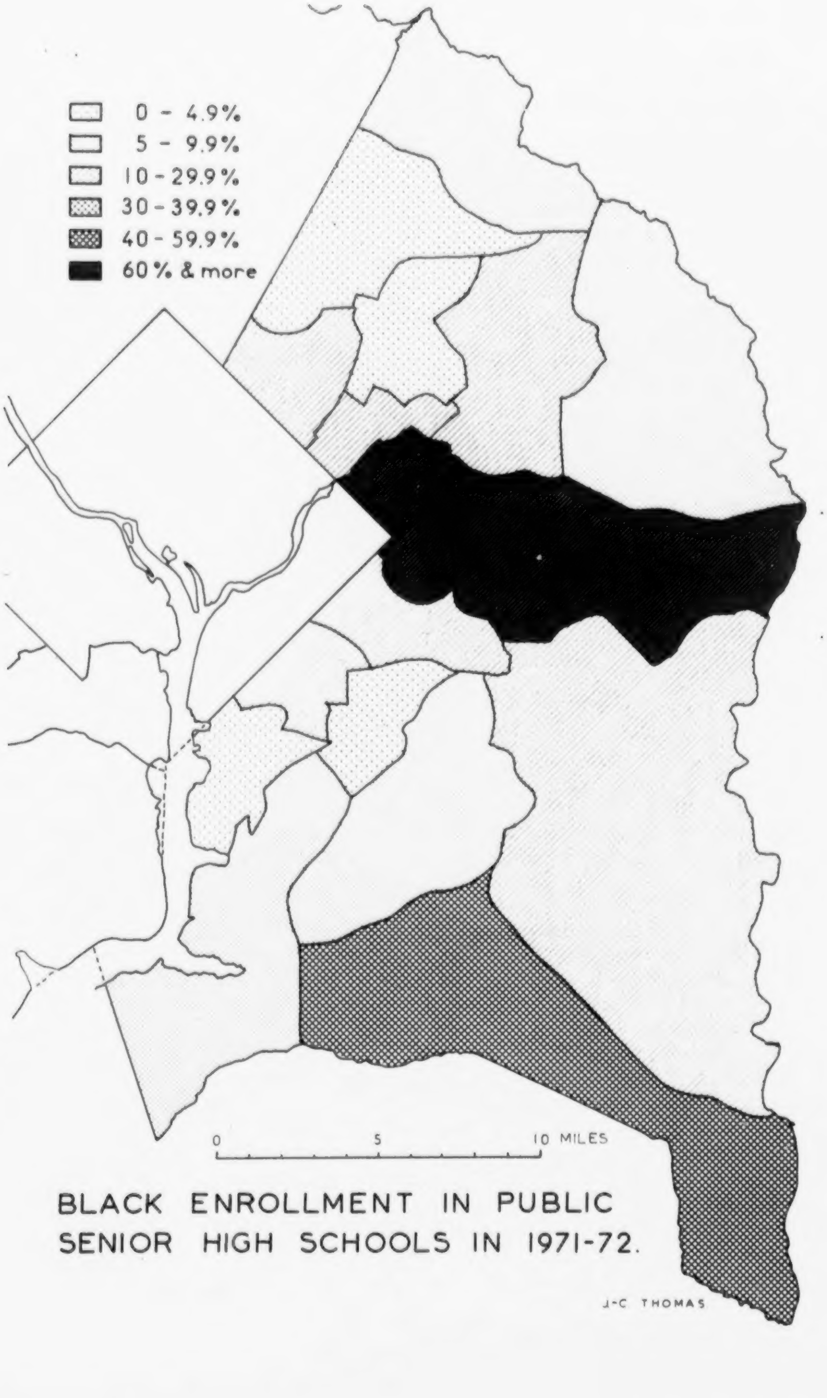
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30 - 39.9%
40 - 59.9%
60% & more
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10 MILES
J-C THOMAS

BLACK ENROLLMENT IN PUBLIC SENIOR HIGH SCHOOLS IN 1971-72.

Mrs. **Wolf.** I appreciate this opportunity to appear before you and will summarize my remarks. I have a group of outstanding students from Fairmont Heights Senior High. Four of them will help me with the presentation of the map. I am a member of the board of educations of Prince Georges County appointed in 1968 by then Governor Agnew.

Our school system has 162,000 students, more than 230 schools, and is the 10th largest school system in the country.

We are very well acquainted with a term called "busing." We transport daily 47 percent of our students, over 76,000 to 195 schools using over 700 buses, one of the largest school bus fleets in the Nation. None of this busing is for racial balance.

Until the recent hysteria on the subject, I had heard only requests from parents for more transportation, which means more buses. Our schools are overall 78 percent white and 22 percent black. My testimony is concerned with how the proposal before you would in my view adversely affect a specific school district.

The field in which you are asked to legislate has been well plowed and disked. However, the seed Congressman Lent and his associates asked you to plant, like all seed, looks, innocent. The seed peddlers promise a pretty flower like the poppy. This pretty flower, however, will produce a poisonous substance as destructive to our body politic and social as heroin.

I urge you to reject their pretty seed and the poison it exudes. Let us plant those seeds that make us united America. There is not one word in the Lent-type proposals that deals with the real purpose. Congressman Lent says that he wants to give us relief from those sweeping court ordered busing edicts. Not one word in his proposal would: (1) return control of education to local schools; (2) preserve neighborhood school system; (3) eliminate forced busing, or (4) the threat of school consolidation to achieve purely arbitrary racial balance.

I ask you to look at one action our school board took in 1969-70 to eliminate two adjacent de jure secondary schools. On the map you will see an area outlined in red that was all black, Fairmont Heights Senior High School. It was our smallest senior high school in attendance area, it had 3 square miles, even though it had grades 9 through 12.

Adjacent to it outlined in green was Bladensburg Senior High School—12 square miles. When we were opening new schools, we proceeded to try to desegregate these schools. You can see that in no way were these neighborhood schools. No Prince Georges County high school is a neighborhood school.

In September 1970, we desegregated these schools. On the overlay the students have put up, the green area to the east went to a newly opened Largo Senior High School. This school's attendance area covers 40 square miles. It goes out to the eastern county line.

Fairmont Heights lost a small portion to the south to Central High School. The red-green checked portion that was added to Fairmont Heights had mainly white students who previously attended Bladensburg Senior High. Their bus route was changed to Fairmont Heights rather than Bladensburg. There was no busing or cross-busing as the terms are used, just a boundary change.

The racial composition of every surrounding school as affected. Clearly we had two purposes: (1) to relieve the overall, over capacity and under capacity situation. Fairmont Heights before the change was one-third empty; (2) specifically to desegregate Fairmont High School.

Under constitutional amendments of this type I seriously doubt that this type of change would be legal. I would like to stress that this change as you can see was not a bus ride. All of the students were already on buses. The bus ended up going in a different direction.

Of special note is the fact that most of the white students ended up going to a school closer to their home than they had before.

The vocal reaction to the desegregation of Fairmont Heights produced solid evidence on the real issue of some of the opponents of busing. Many of the opponents of busing who had always had their students previously in public schools placed their children in nonpublic schools 6 miles, 10 miles, and even farther away. I know these people personally and I can submit the facts if you need them.

I submit that if the real issue were busing, these children would not be on a private school bus or in carpools going three or four times as far away as they would to a public segregation school.

If I seem skeptical about all of the sudden concern for neighborhood schools and transportation, it is because I have seen the sweet smiles and heard the fine phrases but I have also heard "nigger lover" and worse, people spit at me and my children.

I have been on the firing line and know what this battle is all about. It is not about busing. It is about race.

We did nothing to further desegregation of remaining de jure schools. We did nothing about resegregation which may not be required by law but is nonetheless a significant problem in our county.

You have copies of the charts dealing with the exhibits. Due to the time limit, I will not go into great detail. I will show you the high degree of racial isolation we still have within the schools in our district. You will note that 100 of our 165 elementary schools are racially isolated. Eight-eight average 97 percent white. Twelve average 98 percent black. And over 33 percent of the students are bused to these racially isolated "white" schools, not busing for integration but, I submit, busing to maintain a segregated pattern. Only 10 percent are bused to the 98 percent "black" schools.

At the junior high level, the situation is much the same. We have 22 schools averaging 95 percent white. Then at the other end we have three schools averaging 86 percent black. And in this case, 55 percent of the students are bused to these racially isolated "white" schools, while only 33 percent are bused to three "black" schools.

At the senior high level, the busing jumps to 74 percent of the students bused to the eight high schools which average 95 percent white.

We have three high schools which average 72 percent black. We bus 67 percent of the students to these racially isolated "black" schools.

I submit in a county like ours that is 22 percent black when we bus over 44,000 students to racially isolated schools we are busing to achieve artificial racial balance but the balance is tipped toward segregation.

The students will now put up a map of our elementary attendance areas in our county. I omit the junior and senior high overlays. They show the same pattern. The elementary one is more revealing. They average in size from ¼ of a square mile to 40 square miles, from 100 percent bused to 100 percent walking.

Mr. Zelenko. Did you say 40 miles?

Mrs. Wolf. Yes; we have elementary school districts such as Baden that are 40 miles in area. As you can see, our schools serve several small and separate communities. In larger communities we may have several schools. The next overlay will show you the racial composition of each of these elementary school districts by percentile of black students. I will not read the statistics for each percentile. You will see a very interesting pattern as you will look at the chart.

You can see with the color pattern overlay that these school districts vary widely not only in size but also in configuration. The clear areas are the 88 schools that average 3.1 percent black. The brown and black areas are the schools which average 98 percent black.

I would ask you to look at Kettering, a particular elementary school. It has a most peculiar shape and is 10 miles long. It has 25 black students, 4 percent. Next to it are Randolph Village, which is 83 percent black; Ardmore, which is 96 percent black, and Arrowhead, 67 percent black to name a few.

Sixty-one percent of the students are now bused to this group of schools. Should we decide to change the boundary for Kettering, through growth and new school construction, the racial composition of all of these schools might change. Could this not be construed under the language of the various amendments as assigning students because of race?

I ask you to envisage the amount of litigation every such change could bring to our school district even if our purpose were not to create a specific racial balance. I request that you think of our attendance areas when you consider the amendments and ask yourself whether they would help us make further changes and we will have to make further changes.

We have built 60 elementary schools alone in the last 10 years. The facts on this map also help penetrate the myth of the so-called "neighborhood school." Which of these schools is a neighborhood school? Kettering? Orme, which you can see in the Southeast to which students ride 7 miles on a bus? Baden, where they ride 13 miles and 35 minutes on a bus? Or Randolph Village which is 87 percent black right next to Ritchie, which is 17 percent black and every student is now bused to both of those schools.

In summary: In this Nation we are all neighbors in a large sense and the neighborhood school concepts should take this into consideration. Any action that seeks to divide us, corrupts our national moral resolve. We are asked to support a concept that would bankrupt us as a force for world leadership.

My philosophy is this: The public schools of the United States are training grounds for future citizens in a nation which seeks to promote peace and goodwill in the world.

School boards should use all tools available applying criteria of necessity, reasonableness and flexibility to assign pupils to public schools and to instruct them. Assignment and instruction must be designed to guide each student to be a productive member of society.

The bedrock goal of public education is to promote a United States of one people, indivisible.

The legislation before you is bad because it does not say what it really means or mean what it really says.

Its intent is pernicious and malign and I urge you to reject it.

Mr. Brooks. We would appreciate the audience refraining from comment, pro or con. We want to thank you, Mrs. Wolf, for a very well thought-out statement which indicates you are pretty familiar with the facts in your area. You have presented your views concisely and more effectively than if you had taken an hour to do it.

I wonder if you would outline for the record the 10 longest buslines and 10 shortest buslines serving elementary and high school?

Mrs. Wolf. I would have to supply the detail on that for the record. I can give you some examples. We have vocational students who ride an hour and 35 minutes to high school. We only have two vocational high schools.

We have rides as short as two blocks because of highways. The thing that bothers me the most is we have handicapped children who ride an hour and a half each way to school because the facilities for handicapped children are not as many as for regular students.

I submit, when I hear parents of healthy high school students telling me they can't ride on a bus when I know we have 6-year-old handicapped children riding an hour and a half, I think there is something wrong with the concept.

I think if any relief is needed, it is on behalf of the handicapped children.

(The information to be supplied follows:)

PRINCE GEORGES COUNTY PUBLIC SCHOOLS, UPPER MARLBORO, MD.

10 LONGEST SPECIAL EDUCATION BUS RUNS

Bus No.	School	Length of trip—1 way (minutes)
1426	Capitol Heights Center and Hillcrest Heights Center	[1] 150
1424	do	[1] 145
1317	Apple Grove Elementary and Rosecroft Park Elementary	[1] 125
1332	Nicholas Orem Junior High	125
1373	Bowie Special Center	125
1406	Capitol Heights Center and Hillcrest Heights Center	[1] 120
1314	Holly Park Orthopedic Center	120
1372	Lincoln Special Center	109
1308	Apple Grove Elementary and Rosecroft Park Elementary	[1] 105
1365	Bowie Special Center	102

10 LONGEST ELEMENTARY BUS TRIPS

62	Baden Elementary	40
13	Tall Oaks Elementary	39
82	Pointer Ridge Elementary	35
87	Tall Oaks Elementary	35
190	Woodmore Elementary	35
519	Baden Elementary	35
520	Orme Elementary	35
34C	Brandywine Elementary	30
43	do	30
81	Kettering Elementary	30
182	Baden Elementary	30

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[1] These bus trips include shuttle service between the 2 centers. The 4 schools serve the southern half of Prince Georges County.

10 LONGEST BUS RUNS FOR JUNIOR AND SENIOR HIGH SCHOOLS

326	Crossland Senior High School (vocational students only)	90
182	Gwyn Park Senior High	80
376	Gwyn Park Junior High	65
241	Bladensburg Senior High (vocational students only)	60
272	Crossland Senior High (vocational students only)	60
324	do	58
183	Gwyn Park Senior High	55
375	Gwyn Park Junior High	53
62	do	50
185	do	50
104	Bladensburg Senior High (vocational students only)	50
253	Frederick Douglass Senior High	50
372	Bladensburg Senior High (vocational students only)	50

10 SHORTEST SPECIAL EDUCATION BUS RUNS

1344	Samuel Ogle Junior High	8
1318	Overlook Elementary	10
1408	Gallatin Street Center	10
1419	Highland Park Elementary	10
1453	Woodley Knoll Elementary	10
1363	Accokeek Elementary	11
1379	Northwestern Senior High	15
1404	Benjamin Tasker Junior High	18
1404	Mullikin Special Center	20
1453	Lyndon Hill Elementary	20

10 SHORTEST ELEMENTARY BUS TRIPS [2]

331	Tayac Elementary	2
224	Waldon Woods Elementary	3
211	Francis T. Evans Elementary	3
130	Tanglewood Elementary	3
75	Powder Mill Elementary	4
120	Fort Washington Forest Elementary	4
456	O. W. Phair Elementary	4
232	Powder Mill Elementary	5
76	Oaklands Elementary	5
41	Avalon Elementary	5

10 SHORTEST JUNIOR HIGH BUS RUNS

64	John Hansen Junior High	[3] 5
26	Lord Baltimore Junior High	5
71	do	5
72	do	5
214	Nicholas Orem Junior High	5
244	Walker Mill Junior High	5
270	Suitland Junior High	5
307	D. B. Eisenhower Junior High	5
325	Francis Scott Key Junior High	5
328	Roger B. Taney Junior High	5

10 SHORTEST SENIOR HIGH BUS RUNS

192	Duval Senior High	5
123	Friendly Senior High	5
639	High Point Senior High	6
633	Crossland Senior High	6
166	Surrattsville Senior High	6
171	Crossland Senior High	7
282	High Point Senior High	7
337	do	7
3	Central Senior High	7
24	Potomac Senior High	8

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[2] There are an additional 38 buses, each having 5-minute runs.
[3] 6 additional buses have 5-minute runs.

Mr. BROOKS. Counsel?

Mr. ZELENKO. Mrs. Wolf, do your children attend school in Prince George's County?

Mrs. WOLF. I have two who graduated from our schools. I have one in elementary school and my 15-year-old daughter is in one of our three senior high schools, which are over 50-percent black because I live in that school's attendance area and it is the school nearest my residence.

Mr. BROOKS. We want to thank you very much for your testimony and your students for their assistance. We are glad you could all be here. Thank you very much.

(Subsequently Mrs. Wolf submitted the following statement on the proposed busing moratorium legislation:)

STATEMENT OF RUTH S. WOLF, MEMBER, BOARD OF EDUCATION OF PRINCE GEORGES COUNTY, MD., ON H.R. 13916

This sets forth my views on why this proposed legislation is a bad policy. I will leave to others the legal analysis; a policy can be Constitutional and yet be bad.

One element ought to be made perfectly clear at the outset. This legislation directly favors only a few school boards which, after due process, with full and adequate protection of their judicial rights, have been found to be violating the Constitutional rights of their students and thus the Constitution itself. The legislation proposes to strip the Courts of their duty to secure effective compliance with the Constitution using school integration plans that promise to work realistically and work now.

Those schools districts which require even a little bit more transportation along with those which may require much more to integrate their schools are to be so favored. Districts that can integrate schools by various means without more transportation, however, must desegregate. Clearly the remedies are to be unequal for the same violation of the same Constitution.

Even more insidious is that the legislation, if enacted, will erode local initiative to do what is right and just. It encourages every school district that thinks it might benefit to get taken to court—not to get a legal issue adjudicated but to minimize the effectiveness of the cure.

When those who rob banks are brought to Court and found guilty the penalties are prescribed. When a school board robs children of their Constitutional rights, however, the continuation of the crime is going to be sanctioned by law.

All of the seven findings in the bill are a combination of unproven supposition, flights into fancy, speculation and pure sophistry. No bill of particulars has been supplied by the administration to support one of the allegation labelled as Findings.

The legislation is a direct assault on the integrity of the Supreme Court despite the fact that since 1954 its Chief Justices were and are now bona fide Republicans.

The legislation warps the unanimous findings in Charlotte-Mecklenburg and Mobile. Prior to that decision, large numbers of students were bused in these school systems without regard to desegregation plans; more elementary students were bused, than secondary students. The plan the Supreme Court affirmed was the one the local District Judge had accepted. It provided shorter trips for the integrated system to replace the longer trips existent in the segregated system.

The President's proposal is fatally flawed because its logic is upside down. It attacks one of the means of integrating schools in a system where Constitutional rights have been violated.

On March 29, President Nixon described the need for Executive Reorganization. He touted that proposal because:

Its method is to organize around the ends which public policy seeks, rather than (as too often in the past) around the means employed in seeking them."

On school integration the President ignores his own prescription for effecting a sound policy.

If the President opposes school integration let him come out flatly and say why. The net effect of this legislation would be to stifle all local initiative while crippling the ability of the Court to provide redress.

The President states he is opposed to the evil disease of segregation, but has told those trying to cure it that they may not use one of the most effective "medicines."

He has proposed setting National "busing" standards, while extolling "local control." Even in the state of Maryland, with only 24 school districts—any "standard" which would apply to, for example, Garrett County (one Black pupil in its entire district) would be more than broad enough, in terms of time and miles, to effectively desegregate every school in our county. Garrett County buses 92% of its students, buses students to every school and buses students longer distances than does Prince George's County. We bus 47% of our students and have some all walking schools. All the facts suggest that 80% white Prince George's County could thoroughly and effectively desegregate all its schools by busing a far lower percentage of its students less distance than is now practiced in 100% white Garrett County. It should be obvious, no fair, rational, practical national standard can be set for busing.

Should the Congress be persuaded to enact this legislation it ought to be candid and retitle the bill. Its title ought to be, "a Bill to reward violators of the Constitution of the United States of America, to reduce the Constitutional rights of school children, and convert public schools into segregated institutions."

Unless the Congress is prepared to do this it ought to return the bill to the President, reciting his failure to set forth any factual basis for its enactment.

PRINCE GEORGES COUNTY PUBLIC SCHOOLS,
Upper Marlboro, Md., May 11, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: With further reference to President Nixon's Student Transportation Moratorium Act, HR13916 and S3388 data now available indicates how it would absolutely prohibit even minimal integration in a manner designated to reduce overall busing. Under contract HEW–OS–71–185, the Lambda Corporation conducted a prototype study in Prince Georges County, Maryland, dated April 28, 1972. Tables III, IV and V cite desegregation alternatives. From my earlier testimony, you have data on numbers of students bused. My staff now advises actual average bus trip time one way for Prince George's students is:

	Minutes
Elementary, K–6	11.0
Junior High, 7–9	14.6
Senior High, 10–12	17.3

Lambda computations show actual degree of desegregation (based on index they developed), and percent transported:

	Actual desegregation percent	Actual transported percent
Elementary	48	35
Junior high	61	56
Senior high	70	78

They developed 5 prototype plans at elementary levels. Each reduced percent of students bused to 25.9% to 34.7% range. Each raised percent of students desegregated to 58% to 96% range. One plan reduced average travel time per student to 9 minutes; other 4 ranged from 11.3 to 14.0 minutes.

At Junior and Senior High levels, 3 alternative shown.

Junior High options reduced percent of students bused to 38% to 43% range. Each raised percent of students desegregated 71% to 98%. Each reduced travel time to 8.1 to 11.3 minutes. Senior High plans reduced percentage of students bused to 64% to 68% range. Desegregation rose to 78% up to 99% level. Travel time reduced to 10.4 to 11.3 minutes.

Section 3 (1) and (2) restrictions would render impossible actual overall savings in total number of students transported and overall reduced travel time.

The Lambda study showed present pattern of segregation was abetted by our busing practices. However, to achieve savings and integrate, some students now walking must ride and some students must be assigned to different schools.

Lambda data suggests Nixon's plan will be counter productive. It will force school boards with unconstitutional segregation maintained by excessive busing to continue not only to violate the Constitution, but also to waste tax dollars to to so. It currently costs us about $55 per student per year for busing.

If any "moratorium" bill is to be enacted, a section ought to be included which makes Section 3 (1) and (2) totally inapplicable to any school district where facts show students are bused to force segregation.

Sincerely yours,

RUTH S. WOLF, *Member*.

Mr. BROOKS. The next witness is Mrs. Mary Ann Cristofano, president, United Schools Against Forced Busing, from Denver, Colo. Mrs. Cristofano, you understand our problem. I saw you in my office. We are glad you are here today to hear you and we look forward to your statement.

STATEMENT OF MARY ANN CRISTOFANO, PRESIDENT, UNITED SCHOOLS AGAINST FORCED BUSING, DENVER, COLO.

Mrs. CRISTOFANO. Thank you, Mr. Brooks.

Mr. McCULLOCH. Could I ask one question. Could you tell me when USAFB was organized and how many members you have and whether they are paying members?

Mrs. CRISTOFANO. We were organized May 23 last. We have over 500 members, and there are no dues involved.

Mr. Chairman and members of the committee, I am Mary Ann Cristofano, president of United Schools Against Forced Busing in Denver, Colo., an organization opposed to compulsory busing of children out of their neighborhood schools.

Each affected area believes that it is the only one suffering or that it is the most important part of the whole problem. We in Denver share that view, but we find some impartial support from Joseph Alsop, whose Washington Post article of March 13 indicates the importance of the Denver case.

Needless to say, we support the Lent bill—House Joint Resolution 620—and urge this committee to report out that specific bill so that debate and vote can take place.

At the outset, let me make it very clear that our group does not oppose integration. Denver has one of the oldest open housing laws in the country. All of my children attend integrated schools. The constant attempt by demagogues to equate opposition to compulsory busing with opposition to integration is not only false but in some cases maliciously misleading.

If the Florida primary settled anything, it did lay to rest that canard. According to figures obtained yesterday, 74 percent of the voters in Florida oppose busing and 76 percent are for quality education. Votes on these two Florida propositions are wholly consistent with our philosophy that we can oppose destruction of the neighborhood school without opposing integration. Governor Askew should be complimented for insisting that the second proposition be added to the ballot.

Let me interject that the Florida primary results proved in another manner that the problem of compulsory busing is not an integration versus segregation issue. Three candidates in that primary supported a constitutional amendment—Wallace, Jackson, and Ashbrook.

According to the Washington Post this morning, the three candidates received the following votes: 515,916; 167,667; 35,983; for a total of 719,566. The Post also spells out that 1,111,366 voters support the constitutional amendment. Thus nearly 400,000 people have demonstrated that they are for the constitutional amendment, and yet they voted for candidates who either had not declared themselves on the subject or actually opposed the amendment. If that doesn't eliminate segregation from the issue, then people who are doing it are doing it for propaganda purposes.

Further elaboration, if such is needed—Mr. Brooks, I came 2,000 miles. Could you give me 10 minutes, please, a courteous 10 minutes of attention?

Mr. Brooks. If you are concerned about counsel's question, there is a case we want to discuss with you that we are trying to look up. We are indeed honored that you came these 2,000 miles. I came back 1,500 miles so I could be here to hear you.

Mrs. Cristofano. Mr. Brooks, you could afford to pay your own way. I had to go out and raise my money. Further elaboration, if such is needed, lies in the fact that most groups opposed to busing include members of all races, creeds, and colors.

You have already heard testimony from Clay Smothers, the black man from Texas, who told you not to bus his children out of the neighborhood schools. Another witness before this committee was the former Cuban who is president of a school board in Michigan and who opposes busing. It has been brought to your attention by Mr. Lent, sponsor of House Joint Resolution 620, that CORE is opposed to busing. Only this week newspapers carried the report of the opposition to busing by the National Black Political Convention in Gary, Ind. And Mr. Solomon was there and said no one was in the hall. It has also been brought to your attention in testimony that black columnist, William Raspberry, has said: "But to send black children chasing to hell and gone behind white children is also wrong and psychologically destructive."

In summary, then, I appear today on the sole ground of USAFB's opposition to compulsory busing.

To justify this mass idiocy known as compulsory busing, one report is repeatedly referred to for documentation to support the lunacy of our courts. Judge William E. Doyle in the U.S. district court in Denver utilized this report, too. It is the very questionable Coleman report, and, for this committee's edification and information, I would like to give you gentlemen a little background on this document.

Before we can talk about the Coleman report, we have to go further back to the Moynihan report. President Johnson commissioned the Moynihan report following the Watts riot. The purpose of this report was to find whether there were any tangible reasons for that tragedy. Three conclusions were reached:

(1) The black man's vicious cycle of frustration with his lot in life.

(2) Distintegration of the black family as a unit.

(3) Promises made by politicians which they cannot keep.

President Johnson hailed this report as a breakthrough in racial understanding. Now Americans could see "officially" that the problems within the ghetto could not be tied to an indictment of the white community and its educational system.

The immediate reaction of the Civil Rights Commission was to throw out the whole thing and label it as white racism. Gentlemen, whatever happened to the Moynihan report so highly thought of by the Johnson administration?

Because the Moynihan study reported conclusion contrary to some of their pet theories, the Civil Rights Commission ordered its own study—the Coleman report. One must question the objectiveness under which this study was commissioned.

Mr. ZELENKO. Excuse me, Mrs. Cristofano, I think you will find that the Coleman report was prepared pursuant to a direction of the Congress, namely section 402 of the Civil Rights Act of 1964, and at the direction of the Commissioner of Education.

Mrs. CRISTOFANO. If that is so, I stand corrected. I thought it had come from the Civil Rights Commission. My information is incorrect.

The Coleman report covered 4,000 schools. They seemed to be searching for an indictment of the white educational system but were unsuccessful in their attempt. They had set up their hypothesis but were unable to prove it in any acceptable fashion.

Yet judges all across this country hold up the Coleman report as sacred, while they ignore completely the Moynihan study. In Denver, Judge Doyle, who has no children of his own, did likewise. While there was much evidence even then that the Coleman studies were inconclusive and in view of the fact that Denver school officials had their own studies conducted, Judge Doyle still presented his omniscient decision to use our children as pawns in his silly chess game.

Dr. James Coleman, author of the Coleman report, in sworn testimony in Denver, says himself, that his studies are inconclusive. A statement from the Center for the Study of Education, a nonprofit Colorado corporation dedicated to the promotion of educational philosophy as the basic tool for creating new and sound educational programs, says:

> Two major research studies have been conducted in Denver regarding the effects of integration. The conclusions reached conflict very basically with the findings of the Coleman studies (the primary basis for Judge Doyle's rulings). Although the Denver school officials have spent hundreds of man-hours to demonstrate the weakneses of labeling a cause-and-effect relationship between racial isolation and low achievement, Judge Doyle *dismissed their arguments in one short paragraph in his first ruling.* (Emphasis added.) Not only are there many reasons for low achievement in low economic areas but also there are very good reasons to doubt the validity and intellectual honesty of the reports on which Judge Doyle based his findings.

With all this, Judge Doyle referred to Dr. Coleman and his report repeatedly in his decision and based his rulings on this study. Significantly, the Coleman report is no longer available. Our school board attorneys in Denver have been told that it is "out of print" whatever that means, so they have had it on order for a very long time.

If any of you gentlemen can provide me with a copy of this document, I will bring it back to our attorneys in Denver. All references to the Coleman report hereafter are derived from the Atlantic Monthly article of September 1971 by Richard Herrnstein.

One of the key statements which Dr. Coleman makes is that black children lag behind white children in scholastic achievement from grades 1 through 12 and the difference increases with age. The logical assumption at this point would seem to be the inherent inferiority of black schools in our white system. Yet the Coleman study could not come up with any clear-cut, conclusive proof that school quality had any effect on scholastic achievement for white children.

If school quality is to blame for the poor performance of black children, why aren't some white children similarly affected? The reason is that there are many more determining factors than the inequality of the educational system. Even the plaintiffs in Denver's case have to agree reluctantly with that statement:

"The defendants do not acknowledge that segregated schools per se produce lower achievement and an inferior educational opportunity. They point to other factors, such as home and community environment, socioeconomic status of the family, and the educational background of the parents as the major causes of inferior achievement. We do not disagree that these factors are relevant * * *." Quoted from trial papers supplied by school board attorney.

At the time the Coleman report came out, Commissioner Howe and the then Secretary of Health, Education, and Welfare, John Gardner, came to the tentative, guarded conclusion that the difference in black and white scholastic achievement resulted from the cultural surroundings at home.

> Both the Moynihan and Coleman reports grappled with the idea that something within the black community itself was holding back its economic and educatitonal advance. Neither report denied the clear evidence that racist customs and even laws were in large part responsible for the lag. But both reports noted that, for reasons not wholly understood, the removal of external barriers such as racist customs and laws did not always bring the promised improvement in economic and educational condition, presumably because of internal barriers—for example, family structure or cultural ambience. Such a presumption made both reports intensely unwelcome to civil rights interests * * *.—From preface by the editors to "I.Q.," by Richard Herrnstein, Atlantic Monthly, September 1971.

Now, to compensate for the alleged inequality, the Coleman study recommended massive federally funded compensatory educational programs across the United States. These recommendations were implemented by the Federal Government.

This brings us to our next study, the Jensen report. Prof. Arthur R. Jensen, of the University of California at Berkeley, does a thorough study of compensatory educational programs and has this to say about them:

> Compensatory education has been tried and it apparently has failed.
>
> Compensatory education has been practiced on a massive scale for several years in many cities across the Nation. It began with auspicious enthusiasm and high hopes of educators. It had unprecedented support from Federal funds. It had theoretical sanction from social scientists espousing the major underpinning of its rationale: the 'deprivation hypothesis,' according to which academic lag is mainly the result of social, economic, and educational deprivation and discrimination—an hypothesis that has met with wide, uncritical acceptance in the atmosphere of society's growing concern about the plight of minority groups and the economically disadvantaged.
>
> The chief goal of compensatory education—to remedy the educational lag of disadvantaged children and thereby narrow the achievement gap between 'minority' and 'majority' pupils—has been utterly unrealized in any of the large compensatory education programs that have been evaluated so far.—"I.Q.," op. cit.

The purpose of the Jensen article was to study those compensatory programs set up at the recommendation of the Coleman report and, as

I have already quoted from Professor Jensen, the programs have failed. Arthur Jensen's findings were so highly controversial that they were immediately subjected to some unreasoning comment.

Still our courts dare to use our children experimentally as a means to achieve the end already assumed by the sociologists. In other words, the social tinkerers drew up an hypothesis, which was then accepted by our judges, and then they set about to find facts which would substantiate the assumed hypothesis. To put it even more simply, the runs in the ball game were tallied before all the innings were played.

Have any of you gentlemen on the committee seen the Jensen article? I will bet that it is as unavailable as the Moynihan and Coleman studies are.

Compensatory education was designed to raise the IQ level, but the glaring fact is that it has been unable to do it.

Professor Herrnstein's article referred to above discusses all three reports—Moynihan, Coleman, and Jensen. He comes to some disturbing and controversial conclusions. His most controversial statement—an opinion shared by other experts in the field—is that intelligence is 80 percent nature and 20 percent nurture. If that is true, we are spending a tremendous number of dollars with little hope of much return.

In commenting on his subject, Mr. Herrnstein makes this statement: "It is whether inquiry shall (again) be shut off because someone thinks society is best left in ignorance."

We believe that the same statement is applicable to the philosophical basis espoused to support compulsory busing. Why haven't the Moynihan, Coleman, and Jensen articles, along with Herrnstein's comments, been made a part of the judicial record in these court cases involving compulsory busing?

Conclusions of these men are not isolated. In the Washington Post of March 12 appeared a review of a new book-length analysis of the data accumulated by Coleman. As Lawrence Feinberg, the Post columnist, said:

> A major new analysis of the Coleman report on race and education reaffirms its central findings that academic achievement depends far more on family background than on what happens in the classrooms.

The new study suggests that the best way to deal with the educational problems of poor children—black and white, may thus be to improve the jobs and incomes of their families.

Neither racial integration nor increased spending on schools has much effect, the report concludes, on the educational performance of lower-class children or on that of any others.

These conclusions are contained in a book-length analysis by a group of researchers at Harvard University, headed by Frederick Mosteller, a mathamatical statistician, and Daniel P. Moynihan, a social scientist and former aide to President Nixon.

Their study is a reassessment of data on about 570,000 students in 4,000 schools. Collected by the U.S. Office of Education for a 1966 report on educational equality, those data comprise the most extensive survey of the subject ever conducted.

The 1966 study, known as the Coleman report, was directed by James S. Coleman, a sociologist at Johns Hopkins University.

Using somewhat different statistical methods from Pettigrew, David J. Armor, another sociologist, estimated that the Coleman data show that integration reduces the achievement gap between black and white students by just slightly more than 10 percent.

He said in an interview that more recent, though less comprehensive research, makes him skeptical that there is even that much of a gain.

In the report, Armor writes:

> The policy implication here is that programs which stress financial aid to disadvantaged black families may be just as important, if not more so, than programs aimed at integrating blacks into white neighborhoods and schools.

Armor is an associate professor at Harvard and has also served as a consultant to the Civil Rights Commission.

Here it would appear that the Coleman reports refute Professor Jensen's disturbing findings. Even the special report of the National Committee for Furtherance of Jewish Education, which was inserted in the Congressional Record on February 23, 1972, says:

> It is thought that the Negro children in the original studies improved educationally because of other factors, and not the busing. We are beginning to realize that these Negro children were not representative of all Negro children, but were from middle-class Negro families who were aggressively trying to upgrade their status. Thus, the group surveyed was atypical, and the results obtained with them do not apply to the majority of Negro youth, millions of whom are not middle-class.

If, indeed, it is the desire of this committee to study thoroughly the inequities in our educational system, then I say you cannot do that until you have conscientiously and with a fine tooth comb assessed the reports I have brought before you. If quality education is the goal, then let's stop busing.

Our group, USAFB, conducted a research project on all the schools of Denver. A copy of that is with me today and I offer it to the committee for its further use. The important part to be derived from the data presented is what the variable factors we can find in Denver which affect achievement are the mobility of families—the more mobile or transient, the less achievement—and the absenteeism of pupils—the more absence, the less achievement. This tends to support the findings of the learned men discussed above.

But no matter what kind of facts America offers to prove the fallacy of busing to achieve anything, the courts ignore this evidence and continue to bus the innocent of our society all over this country. To achieve his ends in Denver, Judge Doyle states in his ruling:

> Desegregation in and of itself cannot achieve the objective of improving the quality of the education in schools. It must be carried out in an atmosphere of comprehensive education and preparation of teachers, pupils, parents, and the community. It also must be coupled with an intense and massive compensatory education program for the students if it is to be successful.

Obviously Judge Doyle never read any of the three reports discussed earlier, except, perhaps, a few lines of the coleman report. Judge Doyle, and you gentlemen as well, should consult with Professor Herrnstein of Harvard, author of the Atlantic Monthly article referred to.

The good Judge Doyle also chose to ignore the testimony of the then Superintendent of Denver Public Schools, Dr. Robert Gilberts, who stated that "low achievement among children in the court-designated schools was the result of a number of factors, including home situation, lack of discipline, absence of stimulation by parents, and verbal deficiencies resulting from the families' limited vocabulary."

He also maintained that "there is no affirmative evidence that desegregation would aid in providing an equal educational opportunity for minority children." Furthermore, Dr. Gilberts expressed doubt that desegregation could be successful without broad community support.

The U.S. Constitution set down the rules for this land of freedom and choice. A document called the Bill of Rights guarantees among our freedoms the right to "life, liberty, and the pursuit of happiness." But some judge—and thereafter many judges—misinterpreted "pursuit" to mean "chase after" and "happiness" to mean "Anglo schools."

To implement this feather-brained interpretation, the Office of Health, Education, and Welfare is going to provide the money to buy the yellow buses to help the dark-skinned children get to the side of the light-skinned children, after which something dramatic is supposed to happen by way of osmosis.

And who is to pay for all this nonsense? Why, you and I gentlemen, the always faithful taxpayer. Isn't that interesting? Mr. and Mrs. America are forced to pay for this blight on our sanity which we never wanted in the first place.

In Denver, Judge Doyle ruled to bus our children all over the city for his social experimentation because of the third count of the plaintiff's second claim for relief which "urges us to adopt a rule of law that a neighborhood school policy may in and of itself create and/or maintain unconstitutional segregation, even if the adoption of such a policy is motivated by legitimate factors."

Yet, in a few lines down in my copy of the court case, we read: "However, the law in our circuit, as enunciated in *Downs* and *Dowell*, supra, is that a neighborhood school policy, even if it produces concentration, is not per se unlawful if: it is carried out in good faith and is not used as a mask to further and perpetuate racial discrimination, *Board of Education*, etc. v. *Dowell*, 375 F. 2d 158, 166 (10th Cir. 1967). The United States Supreme Court has not yet ruled on this question, and we are here subject to the strong pronouncements of our circuit court.

It will not be long now before the Supreme Court rules on this question since Denver now waits to be heard sometime this spring. That oligarchy of nine men will decree that this generation must be equal in mediocrity of achievement, must experience only sameness, must be equal in the way that cabbages are equal.

Of course, the tool being utilized to achieve this incredible end is forced busing. Even the plaintiffs in the case in Denver say, "The evidence in this case shows that neither the plaintiffs nor the defendants nor other interested parties are in favor of busing as such * * * Setting up an artificial and extensive system of busing which compels cross-movement and which is not supported by either side has some tendency to *undermine the program from the start*." [Emphasis added.]

That is amazing. They know it cannot work, but they are going to force the busing on us anyway—all in the name of the 14th amendment, which says that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

Apparently the courts do not consider those of us opposed to compulsory busing as "persons." We are merely cattle who should be thankful for any tidbit tossed our way, as exemplified in the stupid

Mansfield-Scott amendment to the gigantic $24 billion education bill.

The only amendment with any teeth in it, Senator Griffin's, was voted down by those pillars of democracy, Humphrey, Muskie, and McGovern—the great white fathers in Washington who think it is so moral to bus our children all over this country while they either have no children who can be affected or who safely tuck them away in private schools.

These are the kinds of men who are determining the fate of Mr. and Mrs. America and their children and I say it is time they were replaced. Will the real American leaders in our country please stand up? The way you can stand up for us is by reporting out House Joint Resolution 620, Congressman Lent's constitutional amendment, to the floor of the House for debate and a vote.

It is because of this ugly manipulation of our children that thinking Americans are demanding a constitutional amendment. Indeed, it is the only way left to us to bring an end to this madness of busing.

We have gone through all the channels of the establishment—appeals to school boards; letters and telegrams to the White House; appeals to our Congressmen; the expensive and wasteful road through the courts. We have been left with only one other alternative—a constitutional amendment, the only thing no judge has ruled to be unconstitutional—at least not yet.

People are not running away to avoid integration, but to fly from the governmental bureaucracy which has become so stifling that it strives to control even a man's will. The bureaucracy is so all-encompassing now that it rules de facto segregation, the kind brought about by housing patterns, is in truth, de jure—as a result of school board decisions in choosing sites and building schools.

So the citizen who saw the mighty claw of the courts hovering over his head ran in the hope that he could avoid its grasp. But alas, he could not because the courts saw him run and now the courts will strike down all school district boundaries and merge all these little suburbs into incredibly massive cities and we, the citizens, have nothing to say about it.

The bureaucratic courts in Richmond, Va., so decided, and I say they will rule exactly the same way in the Denver case. The courts must decide this way to show the country that all these judicial decisions are fair and equal—if they destroy the freedoms and rights to choose of our Southern neighbors, so must they strike down the same freedoms in the North. It would not be democratic otherwise.

The issue, therefore, is no longer de jure or de facto segregation but the contrived and well-planned step by step destruction of every freedom we and our Constitution hold dear.

What better excuse is there for the Federal Government to step in and take over the education of our youngsters and therefore their attitudes and value systems than school districts which are bankrupt? The best way for a school district to go bankrupt, of course, is to have the taxpayers run to the suburbs to avoid the manhandling by the courts.

You and I know which way the courts will continue to rule. Denver's case is next, so you stall until such time as that decision will come down, in the hopes that you can take up most of this short session in rhetoric and get through the November elections without any positive action in the busing furor.

But while you are stalling, we are fighting for a constitutional amendment and we will win or the men here in Washington will be applying for jobs as bus drivers next November.

There appears to be no other solution to this problem except a constitutional amendment. I charge you to stop this stalling and get to the business of bringing H.J. Res. 620 to the floor for debate.

Thank you for the opportunity to appear today and present our views.

Mr. **Brooks**. Any questions?

Mr. **McCulloch**. I have no questions.

Mr. **Polk**. I would like to read from the report of the Commission on Civil Disorders, of which Mr. McCulloch was a member, and I think it has something to say with regard to the discussion we have had today.

> We have cited the extent of racial isolation in our urban schools. It is great and it is growing. It will not easily be overcome. Nonetheless, we believe school integration to be vital to the well-being of this country.
>
> We base this conclusion not on the effect of racial and economic segregation on achievement of Negro students, although there is some evidence of such relationship; nor on effect of racial isolation on the even more segregated white students although lack of opportunity to associate with persons of different ethnic and socio-economic backgrounds surely limits their learning experience.
>
> "We support integration as the priority education strategy because it is essential to the future of American society. We have seen in this last summer's disorders the consequences of racial isolation, at all levels, and of attitudes toward race, on both sides, produced by three centuries of myth, ignorance and bias. It is indispensable that opportunities for interaction between the races be expanded. The problems this society has will not be solved unless and until our children are brought into a common encounter and encouraged to forge a new and more viable design of life.

Mrs. **Cristofano**. Mr. Counsel, I submit that you didn't listen.

Mr. **Brooks**. Mrs. Cristofano, did you have a comment?

Mrs. **Cristofano**. Yes; Mr. Counsel, I submit you didn't listen. One of the first lines was that I did not oppose integration and that my children were in perfectly racially balanced schools in Denver. You don't listen.

Mr. **Polk**. I am sorry if you were offended. However, to endorse an end but oppose the means is, to me, another way of opposing the end.

Mr. **Brooks**. Any questions?

We are pleased to have you here and glad we could be here to hear your testimony. We thank you very much.

We will include in the record the following letters and statements:

A letter to Chairman Celler from Hon. Olin E. Teague, a U.S. Representative in Congress from the State of Texas, March 13, 1972, enclosing letter from Texas State Representative Jack Blanton, March 7, 1972.

A statement of Hon. Sam Gibbons, a U.S. Representative in Congress from the State of Florida.

A statement of Hon. Jack Edwards, a U.S. Representative from the State of Alabama.

A fact sheet on busing and desegregated schools in Pontiac, Mich., submitted by Dixie McCleary, Pontiac, Mich.

A statement of Hon. G. V. Montgomery, a U.S. Representative in Congress from the State of Mississippi.

A statement of the Southern States Industrial Council, Nashville, Tenn.

A statement of the League of Women Voters of Jefferson, Parish, Metaire, La.

A statement of the League of Women Voters of Michigan, Detroit, Mich.

A statement of the League of Women Voters of New Castle, Pa.

(The statements referred to follow:)

HOUSE OF REPRESENTATIVES,
Washington, D.C., March 13, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Would you be kind enough to place the enclosed letter from Jack Blanton, House of Representatives, Carrollton, Texas, in the record of the Hearings on Busing.

Thanking you, I am
Sincerely yours,

OLIN E. TEAGUE,
Member of Congress.

STATE OF TEXAS,
HOUSE OF REPRESENTATIVES,
Austin, March 7, 1972.

Hon. OLIN TEAGUE,
Congress of the United States,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN TEAGUE: With reference to your letter of February 18, I am pleased to submit my views of the subject of forced bussing of school children for the purpose of achieving racial balance.

It is my opinion that a student is not apt to learn anything while on a school bus that will be of benefit to him. I therefore, am opposed to the use of busses beyond getting a child from his home to the nearest neighborhood school. I would much prefer that all of the money and effort being spent on bussing be used for the purposes of enlightening the minds of the children attending such schools and thereby accomplishing the real purpose of education.

Yours truly,

JACK BLANTON.

STATEMENT OF HON. SAM GIBBONS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman and distinguished members of the Judiciary Committee, I greatly appreciate the opportunity to offer my support of H.J. Res. 620 which calls for the prohibition of forced busing for the purpose of achieving racial balance in our public schools. I have introduced a similar proposal (H.J. Res. 747) to amend the Constitution to guarantee students the right to attend schools nearest their place of residency regardless of race, color, national origin, religion, or sex.

Mr. Chairman, the concept of the neighborhood school is part of the American public school tradition. It reflects the important need of the child for a sense of security and well-being which can best be fulfilled by being a member of a community. Neighborhood schools allow parents to participate and take a greater personal interest in the child's day-to-day activities through ready accessibility for meetings with the school board, parents, teachers, and children. The child himself is able to participate in after-school activities and thus develop a greater rapport with his peers, as well as developing friendships at home which are carried over into the classroom. The neighborhood school often becomes a center for cultural education. The Chinese Americans in San Francisco use their neighborhood schools to teach Chinese language and culture classes after hours, and schools in predominantly black communities can focus on black culture and respond to the special needs of the black child in society.

Busing, on the other hand, can deter the development of this much-needed sense of security. Children are sent to strange neighborhoods where only the school itself becomes familiar as they are bused back to their own communities at the close of the school day. Thus there is little opportunity for extra-curricular activities or continuing friendships outside the classroom. Parents also have less opportunity to become involved in a school which may be on the other side of town, and consequently they may not encourage their children's success as much as at the neighborhood school.

Mr. Chairman, we must look at the history of the court decisions to see that forced busing is a gross exaggeration of what was meant to be. The 1954 Brown v. Board of Education condemned state laws compelling separate schools based on race, calling for the elimination of dual school systems and the establishment of single desegregated systems. In effect, race was to be eliminated as a factor for distinctive treatment in determining the composition of a school system; schools were to be "color-blind". Quality of education was the motivating factor in the decision; dual school systems were in fact unequal. The Swann decision in 1971 declared that in order to determine whether a school system was desegregated the concept of racial balance involving a specific ratio of black/white might be useful as a starting point. One method of achieving such a racial balance was busing school children. Somehow in the intervening months since that decision, quality of education, the motivating factor in the Brown decision, has been subordinated to the idea of racial balance, and we now find ourselves in this intolerable situation where thousands of school children, black and white, are being forcibly bused miles from their homes to schools in strange neighborhoods in order to achieve a numerical ratio of blacks to whites.

Mr. Chairman, we cannot lose sight of the primary goal of offering equal opportunity of education to each and every child. It is pointless to send children to a poorer school in a strange neighborhood when the sense of security they need and a good school are available within walking distance of home. Busing is meant to be a tool to achieve a good education, not an end in itself.

We cannot, on the other hand, ignore the fact that for those children who are victims of poverty, the sense of security developed by living in a community with a happy home situation is lacking. For them school becomes especially important as their only chance to gain an awareness of their problems and to develop the skills to enable them to better themselves. Busing for these children can lead to a traumatized life as they are singled out as "different" or inferior compared to their white counterparts.

For these disadvantaged children, money must be allocated to their schools to provide an equal educational opportunity for all. Massive busing costs thousands of dollars to taxpayers and hours of time to schoolchildren. The money could be put to better use by providing additonal teachers and more school equipment. Especially important is the need for professionals and paraprofessionals to offer guidance to disadvantaged children in the form of practical instruction of how to survive in today's mass industrial society. With a better educational background and a knowledge of how to get along as a member of a minority group in society, blacks can achieve a higher standard of living and integrate predominantly white communities as participating residents, not as poor children bused in and out for eight hours of a school day.

Mr. Chairman, as members of Congress representing the people of this nation, we have to consider what the public wants, and the public does not want busing. According to the latest Gallup Poll, three out of four people in all areas of the United States were opposed to busing; that is, 76% of the American public oppose busing, and 47% of those people are black. We cannot say, therefore, that forced busing is opposed only by whites who want to prevent their children from attending frequently poorer black schools. Some people advocate busing as a means to achieving better race relations in the United States. Mr. Chairman, I ask you to look at the state of the nation on this issue; it has caused much bitterness and strife among both the black and white population. We cannot forget the actual physical conflicts that have occurred in such places as Pontiac, Michigan and Lamar, S.C. where actual busing has started.

Mr. Chairman, we must put an immediate end to this intolerable situation which is destroying the American public schools. The best way is through Constitutional amendment which will once and for all guarantee our school children the right to attend the school nearest their place of residency regardless of race, color, national origin, religion, or sex.

Fact Sheet on Busing and Segregated Schools in Pontiac, Mich., Submitted by Dixie A. McCleary

EQUALITY

On the opening day of school, September, 1971, Pontiac parents could no longer complain that their children were being discriminated against. Discriminatory "track" systems may have developed in some schools since then, but the system will never become as hopelessly unjust as before desegregation.

COST

The cost of busing to achieve desegregation is minimal . . . about 1.6% of the school budget, or $16.55 per child.

The following figures are from the Board of Education, February, 1972:

Children enrolled in Pontiac Schools, 1971–72: 21,343

Pontiac Education Budget, 1971–72: $21,642,894.00

(Per child average, using above figures: $1,014.00)

Children bused to school in Pontiac, 1970–71: 3,775

(There was no general protest that it is "unsafe" to bus retarded, handicapped, or small children out of their neighborhoods)

Total number of children bused in Pontiac, 1971–72: 9,500

NUMBER OF CHILDREN BUSED TO SEGREGATE PONTIAC SCHOOLS: 5,725 (9,500 minus 3,775)

Amount spent for busing, 1970–71: $328,499.79

Total amount budgeted for busing, 1971–72: $681,581.00

COST OF BUSING TO ACHIEVE DESEGREGATION IN PONTIAC: $353,081.21

(This is about 1.6% of the total school budget, or $16.55 of the $1,014.05 per child, being spent in the Pontiac School District this year)

DISTANCE

The median or average distance that a Pontiac child is bused is 2½ miles and takes about 15 minutes. (This is a considerably shorter distance than the 50 miles to Montgomery which Black children in Selma, Alabama were bused, for the purpose of maintaining segregation, during the administration of George Wallace).

The longest distance that Pontiac children travel is 5¾ miles. These same children were bused the same distance last year (and all the years before that) because their parents choose to live on the fringes of the school district.

VIOLENCE

In Pontiac, the School Board did not keep records on incidents of violence for 1970–71 and no statistical comparison is possible. However, the Superintendent of Pontiac Schools believes that, "There was considerably more violence in the 2 Senior high schools and in the 2 Ninth grade schools during the first 6 weeks of the 1971–72 term. After that, all schools returned to normal." Let's examine that supposition. Disruption at the Senior-high level (grades 10, 11, 12) cannot be directly attributed to the desegregation policy of 1971–72 because school boundaries for these schools were changed in the Summer of 1970. There were no school attendance changes for these schools in 1971–72! That leaves 2 Ninth grade schools which were disrupted for a period of 6 weeks. (A part of the unhappiness of these students can be attributed to the fact that for 2 years they were underdogs in a junior-high system which included 7th, 8th, & 9th grades, but in September, 1971, they were placed in separate schools and denied the prestige and privileges of upper-classmen.

To date, busing injuries have been minor and negligible.

No white child has been injured, molested, or mistreated by people in or about the schools in Black areas.

STRANGE SURROUNDINGS

White children are going to schools in which they are a ⅔ majority. About ⅓ of the children in every class-room are former classmates. Teachers move with the children. Many were surprised to find some of their favorite teachers in their new schools.

Where necessary, unsafe conditions and delapidated slum schools were rehabilitated before white children were bused to them.

The children are bused directly to school and do not roam strange neighborhoods. When on the buses, to and from school, children are with their own peer group, i.e., children from the same neighborhood and of the same age.

STATEMENT OF HON. JACK EDWARDS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman: I am concerned that the policy of unnecessary busing of children in order to reach a racial balance in our schools is paving the way for a collapse of quality education in this nation.

Last year, when the Supreme Court decreed that busing could be used to accomplish a balanced integration of our nation's schools, there were those among us who acknowledged that forced busing would be a rude awakening to many Americans; that the decisions which were giving us so much trouble in the South would one day be applied in other parts of the country; and that when that day came Congress would take a closer look at the problem. This has all come to pass now and thanks to the help we are now getting from some of our Northern colleagues, we are finally getting a hearing.

Mr. Chairman, busing young people to the nearest school serves a purpose, in fact the only purpose of the nation's schools—to educate. Busing for any other purpose cannot ordinarily be justified and in fact is a complete failure insofar as advancing the cause of education is concerned. With all the misery and frustration busing has created, the Federal Government and, in particular, the Federal Judiciary, has remained adamant in refusing to even compromise the issue.

In the past, objections to hauling children nine, ten or even 20 miles from their homes to school to obtain a racial balance were supposed to be nothing more than the rantings of bigoted, Southern racists. Any other objections, whether on educational grounds, the disruption of neighborhood cohesion, inconvenience to the children or their parents, the great expense involved, or perhaps the most important of all, the destruction of human relationships and the diminution of racial tolerance, were all dismissed as excuses of segregationists. Even blacks who exhibited disfavor over having to bus their children were tagged "Uncle Toms."

Well, the shoe is on the other foot now. Communities in the North, the East, and the West have begun to vehemently protest busing as it has been applied in their areas. In short, busing is now a national issue.

It is ironic and unfortunate that the tragedy of forced busing should become an issue at a time when a majority of the people of the nation (The Wall Street Journal reports at last 80 percent) today accept integration in schools and other aspects of public life. If the public accepts integration, and it has progressed further than at any previous time in the nation's history, then why muddy the waters with a thing as unpopular and unsuccessful as forced busing? The logic escapes me. James Kilpatrick has noted that we are substituting dishonest integration for honest desegregation, and I agree.

Sociologically, forced busing has been a nightmare for children throughout the land. It is taking small children, black as well as white, and making them consume a seven or eight hour day for only six or seven hours of schooling and putting them in a position where school friends are not neighborhood friends or vice-versa.

I challenge anyone here concerned with providing the best education possible for our children to stand up and advise this Committee what tangible value can be gained from busing a child, who lives within walking distance of an elementary school, an extra hour across the city to another school.

Mr. Chairman, I believe we have reached the point of no return. We must resolve the issue of forced busing once and for all.

In 1964, Congress passed very specific legislation prohibiting pupil assignment and forced busing to overcome racial imbalance in the nation's schools. No one, especially the Federal Judiciary, paid any heed. We have passed the so-called

Whitten amendments and other similar amendments all to no avail. The courts continue to ignore the expressed intention of Congress. Apparently additional legislation is not the answer.

I am not one of those who believes in numerous amendments to the Constitution. I believe that great document should not be tampered with any more than absolutely necessary. But, Mr. Chairman, we have tried just about every avenue without success.

The Supreme Court has ruled that busing is an available tool, *not* that it is an absolute must. But the Circuit Courts of Appeals and many District Courts have insisted that there must be busing, past schools, across cities and counties and now even between counties. Legislation has not been able to stem the tide.

And so I have reluctantly come to the conclusion that the Constitutional Amendment is the only answer.

As I see it, there are two basic conflicts that divide us on this issue. But first let me digress and say that I am painfully aware of the fact that we in the South have "cried wolf" too often over the years. When the ultimate "wolf" started coming around in busing clothing, we once again cried out in alarm, but no one could listen to us.

And so we come to the first conflict, namely that those who oppose busing are automatically racists, segregationists, against civil rights, and all the other things you have heard. By the same token those who are for integration, for civil rights somehow feel that they must automatically be for busing. That is until they get hit between the eyes with the problem.

The second conflict arises with those who find reason to oppose mass busing. The basic controversy here is how to fight it. Legislation? In the Courts? Or a Constitutional Amendment? In this group are those who want to be on record but don't really want to get too involved . . . those who still have faith that legislation will be sufficient . . . those who think there is some hope that the Courts will clarify this issue. And those who have seen everything else fail and who turn to the Constitution as a last resort. I fall in the latter group.

Mr. Chairman, "anti-busing" is not synonymous with "racism" or "segregation." And it naturally follows that a "civil rights advocate" or an "integrationist" if you will, is not any less an advocate because he is opposed to busing.

There was even a time not too long ago that a reference to "quality education" was considered a code word for segregation. Now everyone is speaking out for quality education. So in the realm of civil rights it is hard to keep up with the language.

My point is that regardless of what particular connotation someone cares to attach to particular phrases, our principal concern should be quality education for all our children. If busing a child to the nearest available school is required for reasons of distance, health or safety then I'm for that kind of busing. This serves an educational purpose and is therefore desirable. Busing for reasons other than this cannot possibly serve any educational purpose. And, after all, the sole purpose of schools should be to educate and anything that impedes the execution of that purpose should be discontinued.

In conclusion, I urge the Committee to report favorably the Lent Constitutional Amendment proposal, H.J. Res. 620, or my own proposal, H.J. Res. 564, both of which call for a Constitutional Amendment to prohibit forced assignment to schools because of race, creed or color.

The need for quality education in all schools is apparent. Education is not enhanced by massive busing purely for purposes of racial balance. Let's put a stop to the excessive busing now beofre we destroy the very educational opportunity which we so desire for all children.

Mr. Chairman, I thank you for the opportunity to appear before you and your Committee today.

STATEMENT OF HON. G. V. MONTGOMERY, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Thank you for allowing me to express my support for a Constitutional Amendment, such as proposed by H.J. Res. 620, which would protect the concept of neighborhood schools and establish, for all time, a uniform national policy on school desegregation.

Since the federal courts have seen fit to disregard the express legislative prohibitions contained in the Civil Rights Act of 1964, which unequivocally prohibit "any official or any court of the United States from requiring the transportation of pupils from one school to another in order to achieve a racial balance", it now becomes incumbent upon the legislative branch of the government to protect the people of this Nation from these arbitrary decisions.

The people of this Nation, who are overwhelmingly opposed to forced busing to achieve a racial balance, are rightfully entitled to equal protection under the laws. Furthermore, when the courts of this Nation disregard express, unequivocal provisions of law to justify their own personal philosophical ends and usurp the authority of the legislative branch of government, it is appropriate and timely that affirmative action be taken by the legislative branch of government to correct this intolerable situation by passage of a Constitutional Amendment.

For too long this Nation has endured the double standard sanctioned by the Supreme Court of *de facto* and *de jure* segregation. As the situation exists, *de jure* segregation is absolutely forbidden and *de facto* segregation is accepted as a fact of everyday life. Notwithstanding some of the arguments that the Southern *de jure*-Northern *de facto* distinction has been rendered void by the courts finding *de jure* segregation in some Northern and Western cities, I can count those cases on one hand. There remain those hundreds of cities in the North and West with their predominantly black areas and white suburbs which have the Court's tacit blessing of *de facto* segregation—something the Supreme Court refuses to touch. In fact, the Court said in *Swann* v. *Charlotte-Mecklenberg Board of Education*, "it might well be desirable to assign pupils to schools nearest their homes." Thus, the Court has sanctioned a standard in the North that it has forbidden in the South. This hypocritical approach is compounded in light of recent surveys that show significant integration in the South and continuing re-segregation in the North. But the Court forgets that the rationale of the *Brown* v. *Board of Education* decision is also applicable to *de facto* segregation and renders the distinction between *de facto* and *de jure* segregation illusory. The Court said in *Brown* that "segregation of white and colored children in public schools has a detrimental effect upon the colored children." While the Court pointed out that the impact is greater when it has the sanction of law, the *Brown* decision nevertheless turned on the sociological effects of segregation. This was the basis of the decision because the history of the "equal protection" clause was inconclusive and the Court "looked instead to the effect of segregation itself on public education."

Mr. Chairman, I know of no sociologists who say the adverse effects of segregation are limited to *de jure* segregation. Instead, I think the effects are identical in all parts of America. But the Court's analysis is that, residential segregation in the North was accidental or *de facto*, and that, somehow, made it better than the legally supported *de jure* segregation of the South. It is a hard distinction for black children in totally segregated schools in the North to understand. Can anyone explain it?

Northerners have, for years, been doing a great deal of pious moralizing about segregated schools in the South, while passing off their segregated schools as being a result of residential segregation, and thus *de facto*. It is indeed amusing to hear the excuses as to why Northern white children shouldn't be bused out of their neighborhoods. When Southerners made these same arguments, it was denounced as a subterfuge and smokescreen for segregation; yet these very arguments have suddenly obtained a great deal of merit and validity.

Let me predict that, should the Court make the *Swann* ruling applicable to the entire Nation as well as the South, H.J. Res. 620 would pass the Congress in a matter of hours.

The children of America are not pawns of the State. The parents and taxpayers of this Nation send their children to school to be educated. They do not send their children to school to be used in social experimentation.

STATEMENT OF THE SOUTHERN STATES INDUSTRIAL COUNCIL

Chairman Celler and members of House Judiciary Subcommittee No. 5: The Southern States Industrial Council, a business organization representing approximately 3,000 member companies nationwide, is pleased to have an opportunity to submit a statement urging approval of a Constitutional amendment prohibiting forced busing of school children to achieve racial balance.

SSIC member companies employ more than 3,000,000 people. We believe the Council's views on the issue before this Subcommittee reflect not only those of the executives of these companies, but also of the majority of the employees, with whom they are in continual communication. Furthermore, most of the business leaders associated with the Council are community leaders in close touch with the sentiments of residents of their home communities.

In the judgment of the SSIC, a Constitutional amendment is needed to stabilize the public school situation in the country and to prevent deterioration of community relations and community values. Both the courts and federal agencies have required busing in order to achieve racial balance in the school, thereby causing nationwide distress among parents of both races.

It is the position of the SSIC that the function of public schools is to impart academic instruction and to prepare young people for a productive life. Unfortunately, the courts and the Department of Health, Education and Welfare have, on many occasions, sought to use the schools for purposes of social transformation. This is not a proper use of educational institutions and is not approved by the people or warranted under the Constitution of the United States and the constitutions of the fifty states. Schools are not properly utilized as social laboratories, and when they are so used, the result is strife, bitterness, and erosion of the quality of education.

Nothing would be more effective in giving Ameircan school children a quality education than approval of a Constitutional amendment forbidding forced busing, which is inimical to a good school situation.

The threat of forced busing has caused acute distress among the American people. Parents, understandably, are bitterly opposed to the transportation of their children over long distances during rush hours, simply to create a melting pot effect in the classroom. Not only is the safety of children jeopardized by extended busing, but the time involved makes necessary the elimination of programs and extracurricular activities important to the educational process.

Constant juggling of school districts, merging of schools and districts, and revamping of bus routes and schedules in order to achieve an arbitrary mix in the classroom result in an increase of tensions in schools and entire communities. Parents, disturbed by the busing situation, are inclined to shift their residence to communities or areas where busing is not required. Thus, busing is *the* major factor in the destabilization and unsettling of neighborhoods and towns and cities.

Indeed, it is clear that the entire suburban world in the United States—the areas that provide important tax revenues and community leadership—is threatened by the federal government's obsession with forced busing. Parents, taxpayers, and other citizens have a right to sensible public school policies that promote harmony and sound education. The pursuit of suburbanites, through the medium of forced busing, is destructive of harmony and ruinous to the developments of minds and skills. Moreover, forced busing is another example of the profoundly hurtful interference of federal authorities in the local school situation. Busing is a virtual guarantee that the neighborhood school, part of the bedrock of American education in the past, will be completely eliminated.

The anti-busing amendment, therefore, should be seen by Congress and the people as part of a common sense movement to return pubile schools to their true educational mission, emphasizing use of the classroom for learning, instead of compulsory association and sociological reconstruction.

The Southern States Industrial Council urges that this Subcommittee and the full Judiciary Committee report out, with recommendation for passage, H.J. Res. 620 by Representative Norman F. Lent, providing for a Constitutional amendment whose effect will be to prohibit forced busing of school children to achieve racial balance.

Statement of the League of Women Voters of Jefferson Parish, Metairie, La.

ANTI-BUSING STATEMENT

Jefferson Parish, acting under court order, initiated a plan of busing students for racial balance in September, 1971. Jefferson has for the most part bused its students to school but individual district lines were surreptiously drawn to have the smallest possible amount of integration in the elementary and middle schools. (High schools are consolidated on each bank of Jefferson and are further segregated by sex.) Another factor leading to small amounts of integration is the fairly easy manner in which white students were allowed to transfer from predominately black schools. With these points in mind, a suit was filed based on the *Swann* decision.

The school board has fought this decision but reluctantly implemented the plan. There was opposition by a group of Metairie residents who formed an organization called "Operation Bus Stop". It was the expressed desire of this group to stop the orderly process of the opening of school and defy the court-ordered busing.

School opened on schedule. There was no violence as had been predicted. There was no wholesale dropping out of students and/or transfer of students to private or parochial schools. There was, however, a decline in student enrollment but this has been explained by normal attrition and a declining birthrate.

In the six months since school has begun, there has been no trouble which can be directly related to busing. We have contacted a principal of a formerly predominately black elementary school and he has borne out the fact that there have been no problems. An assistant principal at another formely predominately black middle school has said that there have been no problems. It may be noted that this middle school was one of the focal points of "Operation Bus Stop". Parents of students now attending this school have expressed satisfaction and are giving support to the school by participating in PTA and school-related activities.

We, in Jefferson are, showing that busing can work and is working. While you may find support for an anti-busing amendment in Jefferson, we must ask what is the alternative? We cannot accept a return to a dual system of education. There is no truth to the idea of "separate but equal". For the time being, there really is not an alternative to busing.

There is another significant reason for opposition to the anti-busing amendment. The Constitution of the United States is not a document which should be tampered with for purely emotional reasons. Our constitution was amended only one time to solve a purely social problem. The only result was chaos and the eventual passing of another amendment to revoke the original amendment. This, of course, was prohibition.

We cannot be so naive to believe that the passing of an anti-busing amendment will be the panacea that the public desires. The passing of this amendment will only create more problems. We cannot let emotions be the guide. Reason must triumph.

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF MICHIGAN—DETROIT, MICH.

The many attempts to amend the U.S. constitution to forbid school busing to desegregate have given an air of respectability to those in Michigan who wish to perpetuate a segregated society.

Our state legislature has felt itself pressured by political winds to the extent that 75 of our 110 representatives recently co-sponsored a joint resolution to amend the Michigan constitution to forbid assignment as well as transportation of school children to desegregate schools.

The national legislative furor concerning school busing has polarized community opinion in this state. Attempts to reform the financing of education in Michigan, a truly crucial subject here, have taken a very decided back seat in the whole hysterical atmosphere of busing, or else have become linked in people's minds with attempts to desegregate schools. Chances of making substantial reforms in our system of financing schools, a subject that is vital to every citizen in our state, are growing slim because of misunderstandings about the whole general subject of school busing.

Pontiac and Kalamazoo are two school systems operating under court ordered busing to desegregate. Both are making satisfactory progress and community acceptance is growing daily.

The Lansing, Jackson, and Saginaw public schools are presently each attempting to draw up school attendance plans that further desegregate their schools. None of the systems is under any court direction to do so. These communities are finding it difficult to even talk about their plans because possibilities of constitutional amendments are acting as a divisive force in the community. Obviously these attempts are counter-productive to such communities who are positively trying to move.

If busing as a total of desegregation is prohibited or made almost impossible to use, many, many school districts will be deprived of the means to begin integration plans.

We cannot believe that the citizens of this country are willing to turn away from the progress that has been made since the painful early days following the Brown court decision and sentence us once more to the spector of two separate societies in this country. Indeed we can not help but feel that if positive leadership is not forthcoming from the national level on this issue of desegregation, we stand in danger of fulfilling the prophecies of the Kerner Report.

Members of the League of Women Voters of Michigan urge each and every member of Congress to do all in their power to see that integration in our schools continues to move forward.

Statement of the League of Women Voters of New Castle, Pa.

Anti-busing amendments endorse arbitrary prohibitions which are designed to inhibit the orderly progress of legally and voluntarily integrating our nation's schools.

Anti-busing amendments place the burden of desegregation on blacks, and such amendments avoid the hard fact that busing is the only way to desegregate large-city systems.

Here in New Castle, Pennsylvania, talk of "quality education" as a substitute for desegregation does not ring true, for the one elementary school which has a non-white enrollment above the percentage mandated by the state Human Relations Commission has had an on-going program for many years for "quality education". This includes a plant equal to or better than the other predominantly white schools in the city, qualified teachers, innovative programs, and a qualified, respected black principal. The children nonetheless enter integrated junior high schools considerably behind their white peers.

Even those black parents in New Castle who are not receptive to large-scale busing react to anti-busing amendments for what they are—racist.

Here in New Castle as elsewhere in the country there is an inescapable tie between housing patterns and the racial make-up of schools. Solutions require more than local initiative: strong federal and state leadership is vital. The panic of the anti-busing amendments is the antithesis of creative leadership.

Tampering with the Constitution or with hard-won gains in integration of schools in order to stop busing would prove most destructive in white-minority group relations. After all, it is well known what previous uses of busing have been—to get rural children to more efficient consolidated schools, to transport suburban children to their excellent schools, to provide city children a safer method of getting to school. No one would argue that busing such children is unworthy of the cost involved. Neither do people argue against distance if the school is efficient or excellent.

As busing has been an essential first step in reaching quality education for numerous rural and suburban children, so is busing an essential first step in reaching quality education for the urban poor.

Mr. Brooks. The committee stands adjourned, to reconvene at the call of the Chair.

(Whereupon, at 2:50 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.)

SCHOOL BUSING

WEDNESDAY, APRIL 12, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the subcommittee), presiding.

Present: Representatives Celler, Brooks, Hungate, Mikva, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman Celler. The meeting will come to order.

Today Subcommittee No. 5 resumes its hearings on the problems of school desegregation and pupil transportation as a means of implementing such desegregation.

Since our last meeting on March 16, President Nixon spoke on national television and recommended two legislative measures to the Congress. One of these, the so-called Student Transportation Moratorium Act of 1972 (H.R. 13916), has been referred to this committee and will be considered along with other legislation and proposed amendments to the Constitution on the subject. The second proposal, the so-called Equal Educational Opportunities Act (H.R. 13915), has been referred to the Committee on Education and Labor.

The moratorium bill is reminiscent, I must confess, of an earlier proposal which I opposed at the time, to enlarge the size of the Supreme Court. That proposal was made when certain decisions of the High Court were widely criticized during the administration of Franklin Delano Roosevelt.

It seemed to me that the court-packing plan was an unwarranted attack on the integrity of the Federal courts and I must say the President never forgave me for that view. The busing moratorium bill which is now before this committee appears to reflect similar lack of confidence in the capacity of the Federal judiciary properly to implement constitutional protections.

It has been charged by some that the Federal courts have disregarded explicit provisions of the Civil Rights Act of 1964 when they ordered school districts to dismantle their dual school systems.

It has been charged that the Federal courts have ordered busing of school pupils to achieve racial balance. I shall ask the Acting Attorney General whether he shares these views, and if he does, to furnish illustrative court decisions to the subcommittee.

The Chair has written to a number of nationally recognized authorities on constitutional law, requesting their views and comments on the President's busing moratorium proposal. Replies have been received from Prof. Alexander Bickel of Yale Law School; Profs. Harold Horowitz and Kenneth Karst of UCLA Law School; and Prof. Milton Katz of Harvard Law School. Each of these comments expresses objections to the busing moratorium bill on constitutional grounds.

Copies of these letters together with copies of H.R. 13916 and H.R. 13915 and the President's message to Congress on busing will be placed in the record at this point.

(The documents referred to follow:)

UNIVERSITY OF CALIFORNIA, LOS ANGELES,
SCHOOL OF LAW,
Los Angeles, Calif., March 30, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

MY DEAR MR. CELLER: This is in response to your letter asking for my comments on H.R. 13916, the "Student Transportation Moratorium Act of 1972." I have asked my colleague, Kenneth Karst, to join me in responding.

It would not be wise, we believe, to enact this legislation. We base this conclusion on a weighing of the potential benefit and harm which would result from adoption of the moratorium.

This bill would stay the implementation of the transportation aspects of any order of a federal court entered after enactment of H.R. 13916 until July 1, 1973, or the enactment of legislation such as H.R. 13915. The stay is said, in Sec. 2(a)(5), to be needed because there is a substantial likelihood that pending consideration by the Congress of H.R. 13915 many local educational agencies will be required to implement desegregation plans "that impose a greater obligation than required by the fourteenth amendment and permitted by" H.R. 13915. Consideration of the moratorium proposal requires, therefore, an understanding of the provisions of H.R. 13915.

H.R. 13915 declares that only dual school systems (deliberate segregation) and the "vestiges" of dual systems are violations of the equal protection clause. Failure to attain racial balance, and the assignment of students to the schools nearest their places of residence are said, in sections 202 and 203, not to be denials of equal educational opportunity. The use of transportation of students as a remedy for denial of equal educational opportunity is narrowly restricted by sections 402 and 403. H.R. 13915 thus states congressional interpretations of the equal protection clause of the fourteenth amendment, with declarations that only some types of racial separation in the public schools are in violation of the amendment, and that some types of remedies for unconstitutional state action shall not be given effect. On the first of these questions the Congress would be declaring an interpretation of the Constitution on an issue on which the United States Supreme Court has not yet ruled. On the second of the questions the Congress would be declaring that the Court's interpretation of the equal protection clause in the *Swann* case should no longer be given effect. There are, of course, substantial questions whether this legislation would be constitutional, in light of the much-discussed statements in the opinions in *Katzenbach* v. *Morgan* and *Shapiro* v. *Thompson.*

What the proposed moratorium would accomplish would be effective temporary enactment of the very substantive provisions of H.R. 13915 whose constitutionality is dubious. The Congress would be declaring that, pending its own deliberation of these serious constitutional issues, the constitutional rights of school children are to be deferred. But in the case of a school child, whose education goes on from year to year until graduation, to "defer" a right means the denial of the right. During the congressional deliberations on H.R. 13915, we believe that Congress should leave the *Swann* decision undisturbed. For the same reasons, Congress should not, as an "interim" measure, prevent federal courts from using the remedy of transportation in cases in which those courts find constitutional violations with respect to "de facto" school segregation.

The issues before your Committee with respect to the proposed moratorium, in other words, are not separable from the issues concerning H.R. 13915 itself. The denial of constitutional rights should not casually be enacted. There is great potential harm, real and symbolic, in telling black children, North and South, that the Congress is deliberating on whether it should deny them a desegregation remedy, that if Congress does deny that remedy there is a considerable likelihood the denial of the remedy will be held to be unconstitutional, and that in the meanwhile the Congress is going to deny them that remedy. This harm, we believe, plainly outweighs any benefit (benefit to whom?) to be gained from a moratorium.

Sincerely,

HAROLD W. HOROWITZ,
Professor of Law.
KENNETH L. KARST,
Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., April 5, 1972.

Hon. EMANUEL CELLER,
Chairman, Judiciary Committee, U.S. House of Representatives, Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: I am writing to recommend that you use your office and influence to oppose President Nixon's recently introduced bills, the "Student Transportation Moratorium Bill" and the bill "To Further the Achievement of Equal Educational Opportunity". I have read and analyzed both bills with care.

The President's proposed measures do not seek to have Congress regulate alleged excesses in the mandatory reassignment of pupils and in busing in a selective and sensible way. On the contrary, they seek to place far-reaching, rigid, and mechanical limitations on the exercise of judgment by courts, government departments and administrative agencies alike. In effect, the President's bills would seek to counter alleged excesses in a good direction by replacing them with clear excesses in a bad direction.

I recognize that serious questions about various aspects of busing have been raised by conscientious citizens, both black and white. In the administration of any policy, however wise and important, it is possible for administrators—or courts—at times to take steps that are unnecessary and misdirected. In such cases, the appropriate remedy would be to insist on good sense and good judgment, not to throw out the baby with the bath.

The situation calls for moderation, careful judgment, and a painstaking selection of appropriate targets. The President proposes to bring up two blunderbusses to fire in all directions.

Sincerely yours,

MILTON KATZ,
Henry L. Stimson, Professor of Law,
Director, International Legal Studies.

YALE LAW SCHOOL,
New Haven, Conn., April 7, 1972.

Hon. EMANUEL CELLER,
U.S. House of Representatives,
Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: I have been away, and so have been unable to make an earlier answer to your letter of March 21 concerning H.R. 13916, the President's moratorium bill.

In my judgment, the constitutional validity of the moratorium depends in the first instance on the constitutionality of the mandatory provisions of the President's second bill, H.R. 13915. Legislative moratoriums, forgiving repayments of debts or of interest on debts for the time being, have been upheld in the past, when they have been, on the ground that legislatures have power to regulate the property interests of creditors; not—short of the martial law situation—on any general ground that the legislature may temporarily stop a court from doing something that the legislature has no power to prevent permanently. Of course, if Congress can permanently forbid busing below the sixth grade or across district lines, it may forbid it temporarily. But if not, the question has to be whether Congress is credibly in train of doing something else, which is within its constitutional power, and which exigently requires the courts to stay their hands temporarily in order to enable Congress to achieve its end. (The declarative, admonitory and financial provisions of H.R. 13915 can scarcely be deemed exigently to require a moratorium.) Unless the question is put this way, rather closely and with built-in qualifications, the argument in behalf of the moratorium, whatever its trappings, necessarily boils down to the claim that Congress always has plenary power to suspend enforcement of Constitutional rights. But the "judicial power of the United States" is vested by Article III of the Constitution in the courts, not in Congress, and ever since John Marshall's decision in *Marbury* v. *Madison*, the judicial power has been held to be supreme over the legislative, so far as the application and enforcement of the Constitution is concerned. Since the Court cannot be asked to guess what Congress might have a mind to do, or to deliver an advance, abstract judgment on the constitutionality of hypothetical future laws, I would think, moreover, that no plausible claim for the validity of a moratorium can be made unless the moratorium is attached to the very legislation which, in the view of Congress, renders it exigent.

Everything hangs, therefore, on the validity of the mandatory provisions of the second bill. The strongest proposition supporting the constitutionality of these provisions is that even where individual constitutional rights are in question, Congress, though it cannot overrule the judicial definition of the substance of those rights, has power to prescribe appropriate remedies for effectuating them, and to forbid the courts to employ other remedies. But the line between substance and remedy is not so clear as this proposition would have it. As the late Professor Henry M. Hart Jr. pointed out, "the denial of one remedy while another is left open, or the substitution of one [remedy] for another is very different" from the "denial of *any* remedy." Hart and Wechsler, *The Federal Courts and the Federal System* 312, 313 (1953).

In a companion case to the *Swann* case of last spring (*North Carolina State Board of Education v. Swann*), the Supreme Court had before it North Carolina statute that provided as follows:

"No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion, or national origins. Involuntary busing of students in contravention of this article is prohibited, and public funds shall not be used for any such busing."

The Court declared the statute unconstitutional because it operated "to hinder vindication of federal Constitutional guarantees." Not only the prohibition of assignments of students on account of race, but even the prohibition against assignments for the purpose of creating racial balance, said the Court, "must inevitably conflict with the duty of school authorities to disestablish dual school systems." For even though racial balance was not mandated by the Constitution, some ratios were likely in many cases to be useful starting points in the shaping of a remedy. An absolute prohibition of ratios, even as a starting point, interfered unconstitutionally with the shaping of appropriate remedies. The same was true of the prohibition against busing. Bus transportation, said the Court, as it had noted in its main opinion in the *Swann* case, "has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it."

Is there reason to think that Congress has any more power than the states to deprive the federal courts of a means that the Supreme Court has said may be essential for giving effect to the Constitutional rights declared in *Brown v. Board of Education?* To be sure, Congress has power, which the states lack, to regulate the jurisdiction of federal courts, and to govern their procedure and their choice of remedies. So it did in the Norris-LaGuardia Anti-Labor Injunction Act of 1932, for example. But there it deprived courts of the power to grant a remedy historically viewed as extraordinary. The remedy ordinarily available was not affected. And in the vast number of its applications, the Norris-LaGuardia Act was not concerned with remedies for the denial of constitutional rights.

The short of it, it seems to me, is this. The Supreme Court has held that there are cases in which the only effective remedy for school segregation is to order more extensive busing of children below the sixth grade than has been used before, and may hold that busing across district lines is essential. If in such a case, having determined that but for the more extensive busing or the crossing of district lines the segregation of schools would go unremedied, the Court should accept the command of Congress that it may not administer what it regards as the essential remedy, the Court will have accepted a more far-reaching limitation on judicial power, a greater qualification of the power of judicial review established by *Marbury v. Madison* than ever before in its history, greater than in the Reconstruction case of *Ex parte McCardle*, which is itself aberrational, and which in common with the late Professor Hart I read as a fairly narrow holding. Theoretically, to be sure, state courts retain power to order busing of any sort below the sixth grade. But exercise of the appellate jurisdiction of the Supreme Court is restricted in this regard, in this specific regard only, and with specific substantive consequences. And the general jurisdiction of lower federal courts, otherwise also unaltered, is also restricted in this specific regard. The power of Congress to regulate judicial jurisdiction has never been held to enable Congress to change specific substantive results. It should not be, and cannot be—not consistently with *Marbury v. Madison*.

Faithfully yours,

ALEXANDER M. BICKEL.

92D CONGRESS
2D SESSION

H. R. 13915

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1972

Mr. MCCULLOCH (for himself, Mr. QUIE, and Mr. GERALD R. FORD) introduced the following bill; which was referred to the Committee on Education and Labor

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A BILL

To further the achievement of equal educational opportunities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Equal Educational Opportunities Act of 1972".

POLICY AND PURPOSE

SEC. 2. (a) The Congress declares it to be the policy of the United States that—

(1) all children enrolled in public schools are entitled to equal educational opportunity without regard to race, color, or national origin; and

(2) the neighborhood is an appropriate basis for determining public school assignments.

(b) In order to carry out this policy, it is the purpose of this Act to provide Federal financial assistance for educationally deprived students and to specify appropriate remedies for the orderly removal of the vestiges of the dual school system.

FINDINGS

SEC. 3. (a) The Congress finds that—

(1) the maintenance of dual school systems in which students are assigned to schools solely on the basis of race, color, or national origin denies to those students the equal protection of the laws guaranteed by the fourteenth amendment;

(2) the abolition of dual school systems has been virtually completed and great progress has been made and is being made toward the elimination of the vestiges of those systems;

(3) for the purpose of abolishing dual school systems and eliminating the vestiges thereof, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students;

(4) the implementation of desegregation plans that require extensive student transportation has, in

many cases, required local educational agencies to expend large amounts of funds, thereby depleting their financial resources available for the maintenance or improvement of the quality of educational facilities and instruction provided;

(5) excessive transportation of students creates serious risks to their health and safety, disrupts the educational process carried out with respect to such students, and impinges significantly on their educational opportunity;

(6) the risks and harms created by excessive transportation are particularly great for children enrolled in the first six grades; and

(7) the guidelines provided by the courts for fashioning remedies to dismantle dual school systems have been, as the Supreme Court of the United States has said, "incomplete and imperfect," and have failed to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in order to eliminate the vestiges of a dual school system.

(b) For the foregoing reasons, it is necessary and proper that the Congress, pursuant to the powers granted to it by the Constitution of the United States, specify appropriate remedies for the elimination of the vestiges of dual school systems.

DECLARATION

SEC. 4. The Congress declares that this Act is the legislation contemplated by section 2 (a) (4) of the "Student Transportation Moratorium Act of 1972."

TITLE I—ASSISTANCE

CONCENTRATION OF RESOURCES FOR COMPENSATORY EDUCATION

SEC. 101. (a) The Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary") and the Commissioner of Education shall—

(1) in the administration, consistent with the provisions thereof, of the program established by title I of the Elementary and Secondary Education Act of 1965; and

(2) in the administration of any program designed to assist local educational agencies in achieving desegregation or preventing, reducing, or eliminating isolation based on race, color, or national origin in the public schools;

take such action consistent with the provisions of this title, as the Secretary deems necessary to provide assistance under such programs (notwithstanding any provision of law which establishes a program described by clause (2) of this subsection) in such a manner as to concentrate, consistent with such criteria as the Secretary may prescribe by regulation, the funds available for carrying out such programs for the provision of basic instructional services and basic supportive services for educationally deprived students.

(b) A local educational agency shall be eligible for assistance during a fiscal year under any program described by clause (2) of subsection (a) of this section (notwithstanding any provision of law which establishes such program) if it—

(1) is eligible for a basic grant for such fiscal year under title I of the Elementary and Secondary Education Act of 1965;

(2) operates a school during such fiscal year in which a substantial proportion of the students enrolled are from low-income families; and

(3) provides assurances satisfactory to the Secretary that services provided during such fiscal year from State and local funds with respect to each of the schools described in clause (2) of this subsection of such agency will be at least comparable to the services provided from such funds with respect to the other schools of such agency.

(c) In carrying out this section, the Secretary and the

Commissioner of Education shall seek to provide assistance in such a manner that—

(1) the amount of funds available for the provision of basic instructional services and basic supportive services for educationally deprived students in the school districts of local educational agencies which receive assistance under any program described in clause (1) or (2) of subsection (a) of this section is adequate to meet the needs of such students for such services; and

(2) there will be adequate provision for meeting the needs for such services of students in such school districts who transfer from schools in which a higher proportion of the number of students enrolled are from low-income families to schools in which a lower proportion of the number of students enrolled are from such families;

except that nothing in this title shall authorize the provision of assistance in such a manner as to encourage or reward the transfer of a student from a school in which students of his race are in the minority to a school in which students of his race are in the majority or the transfer of a student which would increase the degree of racial impaction in the schools of any local education agency.

(d) The Secretary shall prescribe by regulation the proportions of students from low-income families to be used in the program established by this title and may prescribe a range of family incomes, taking into account family size, for the purpose of determining whether a family is a low-income family.

EFFECT ON ENTITLEMENTS AND ALLOTMENT FORMULAS

SEC. 102. Nothing in this title shall be construed to authorize the Secretary or the Commissioner of Education to—

(1) alter the amount of a grant which any local educational agency is eligible to receive for a fiscal year under title I of the Elementary and Secondary Education Act of 1965; or

(2) alter the basis on which funds appropriated for carrying out a program described by section 101 (a) (2) of this title would otherwise be allotted or apportioned among the States.

SEC. 103. Upon approval of a grant to a local educational agency to carry out the provisions of this title, the assurances required by the Secretary or the Commissioner of Education pursuant thereto shall constitute the terms of a contract between the United States and the local educational agency, which shall be specifically enforceable in action brought by the United States.

TITLE II—UNLAWFUL PRACTICES

DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY PROHIBITED

SEC. 201. No State shall deny equal educational opportunity to an individual on account of his race, color, or national origin, by—

(a) the deliberate segregation by an educational agency of students on the basis of race, color, or national origin among or within schools;

(b) the failure of an educational agency which has formerly practiced such deliberate segregation to take affirmative steps, consistent with title IV of this Act, to remove the vestiges of a dual school system;

(c) the assignment by an educational agency of a student to a school, other than the one closest to his place of residence within the school district in which he resides, if the assignment results in a greater degree of segregation of students on the basis of race, color, or national origin among the schools of such agency than would result if such student were assigned to the school closest to his place of residence within the school district of such agency providing the appropriate grade level and type of education for such student;

(d) discrimination by an educational agency on the basis of race, color, or national origin in the employment, employment conditions, or assignment to schools of its faculty or staff;

(e) the transfer by an educational agency, whether voluntary or otherwise, of a student from one school to another if the purpose and effect of such transfer is to increase segregation of students on the basis of race, color, or national origin among the schools of such agency; or

(f) the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.

RACIAL BALANCE NOT REQUIRED

SEC. 202. The failure of an educational agency to attain a balance, on the basis of race, color, or national origin, of students among its schools shall not constitute a denial of equal educational opportunity, or equal protection of the laws.

ASSIGNMENT ON NEIGHBORHOOD BASIS NOT A DENIAL OF EQUAL EDUCATIONAL OPPORTUNITY

SEC. 203. Subject to the other provisions of this title, the assignment by an educational agency of a student to the school nearest his place of residence which provides the appropriate grade level and type of education for such student is not a denial of equal educational opportunity unless such assignment is for the purpose of segregating students on the basis of race, color, or national origin, or the school to which such student is assigned was located on its site for the purpose of segregating students on such basis.

TITLE III—ENFORCEMENT

CIVIL ACTIONS

SEC. 301. An individual denied an equal educational opportunity, as defined by this Act, may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate. The Attorney General of the United States (hereinafter in this Act referred to as the "Attorney General"), for or in the name of the United States, may also institute such a civil action on behalf of such an individual.

JURISDICTION OF DISTRICT COURTS

SEC. 302. The appropriate district court of the United States shall have and exercise jurisdiction of proceedings instituted under section 301.

INTERVENTION BY ATTORNEY GENERAL

SEC. 303. Whenever a civil action is instituted under section 301 by an individual, the Attorney General may intervene in such action upon timely application.

SUITS BY THE ATTORNEY GENERAL

SEC. 304. The Attorney General shall not institute a civil action under section 301 before he—

(a) gives to the appropriate educational agency notice of the condition or conditions which, in his judgment, constitute a violation of title II of this Act; and

(b) certifies to the appropriate district court of the United States that he is satisfied that such educational agency has not, within a reasonable time after such notice, undertaken appropriate remedial action.

ATTORNEYS' FEES

SEC. 305. In any civil action instituted under this Act, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorneys' fee as part of the costs, and the United States shall be liable for costs to the same extent as a private person.

TITLE IV—REMEDIES

FORMULATING REMEDIES; APPLICABILITY

SEC. 401. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, a court, department, or agency of the United States shall seek or impose only such remedies as are essential to correct particular denials of equal educational opportunity or equal protection of the laws.

SEC. 402. In formulating a remedy for a denial of equal educational opportunity or a denial of the equal protection of the laws, which may involve directly or indirectly the transportation of students, a court, department, or agency of the United States shall consider and make specific findings on the efficacy in correcting such denial of the following remedies and shall require implementation of the first of the remedies set out below, or on the first combination thereof, which would remedy such denial:

(a) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account school capacities and natural physical barriers;

(b) assigning students to the schools closest to their places of residence which provide the appropriate grade level and type of education for such students, taking into account only school capacities;

(c) permitting students to transfer from a school in which a majority of the students are of their race, color, or national origin to a school in which a minority of the students are of their race, color, or national origin;

(d) the creation or revision of attendance zones or grade structures without exceeding the transportation limits set forth in section 403;

(e) the construction of new schools or the closing of inferior schools;

(f) the construction or establishment of magnet schools or educational parks; or

(g) the development and implementation of any other plan which is educationally sound and administratively feasible, subject to the provisions of sections 403 and 404 of this Act.

TRANSPORTATION OF STUDENTS

SEC. 403. (a) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan that would require an increase for any school year in—

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the sixth grade or below transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the sixth grade or below transported by an educational agency over the comparable average for the preceding school year, disregarding the transportation of any student which results from a change in such student's residence, his advancement to a higher level of education,

or his attendance at a school operated by an educational agency for the first time.

(b) No court, department, or agency of the United States shall, pursuant to section 402, order the implementation of a plan which would require an increase for any school year in—

(1) either the average daily distance to be traveled by, or the average daily time of travel for, all students in the seventh grade or above transported by an educational agency over the comparable averages for the preceding school year; or

(2) the average daily number of students in the seventh grade or above transported by an educational agency over the comparable average for the preceding school year, disregarding the transportation of any student which results from a change in such student's residence, his advancement to a higher level of education, or his attendance at a school operated by an educational agency for the first time,

unless it is demonstrated by clear and convincing evidence that no other method set out in section 402 will provide an adequate remedy for the denial of equal educational opportunity or equal protection of the laws that has been found by such court, department, or agency. The implementation of a plan calling for increased transportation, as described in clause (1) or (2) of this subsection, shall be deemed a temporary measure. In any event such plan shall be subject to the limitation of section 407 of this Act and shall only be ordered in conjunction with the development of a long term plan involving one or more of the remedies set out in clauses (a) through (g) of section 402. If a United States district court orders implementation of a plan requiring an increase in transportation, as described in clause (1) or (2) of this subsection, the appropriate court of appeals shall, upon timely application by a defendant educational agency, grant a stay of such order until it has reviewed such order.

(c) No court, department, or agency of the United States shall require directly or indirectly the transportation of any student if such transportation poses a risk to the health of such student or constitutes a significant impingement on the educational process with respect to such student.

DISTRICT LINES

SEC. 404. In the formulation of remedies under section 401 or 402 of this Act, the lines drawn by a State, subdividing its territory into separate school districts, shall not be ignored or altered except where it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, or national origin.

VOLUNTARY ADOPTION OF REMEDIES

SEC. 405. Nothing in this Act prohibits an educational agency from proposing, adopting, requiring, or implementing any plan of desegregation, otherwise lawful, that is at variance with the standards set out in this title, nor shall any court, department, or agency of the United States be prohibited from approving implementation of a plan which goes beyond what can be required under this title, if such plan is voluntarily proposed by the appropriate educational agency.

REOPENING PROCEEDINGS

SEC. 406. On the application of an educational agency, court orders or desegregation plans under title VI of the Civil Rights Act of 1964 in effect on the date of enactment of this Act and intended to end segregation of students on the basis of race, color, or national origin shall be reopened and modified to comply with the provisions of this Act.

TIME LIMITATION ON ORDERS

SEC. 407. Any court order requiring, directly or indirectly, the transportation of students for the purpose of remedying a denial of the equal protection of the laws shall, to the extent of such transportation, terminate after it has been in effect for five years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order requiring such educational agency to transport students for such purpose shall be entered unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than five years.

SEC. 408. Any court order requiring the desegregation of a school system shall terminate after it has been in effect for ten years if the defendant educational agency is found to have been in good faith compliance with such order for such period. No additional order shall be entered against such agency for such purpose unless such agency is found to have denied equal educational opportunity or the equal protection of the laws subsequent to such order, nor remain in effect for more than ten years.

SEC. 409. For the purposes of sections 407 and 408 of this Act, no period of time prior to the effective date of this Act, shall be included in determining the termination date of an order.

TITLE V—DEFINITIONS

SEC. 501. For the purposes of this Act—

(a) The term "educational agency" means a local educational agency or a "State educational agency" as defined by section 801 (k) of the Elementary and Secondary Education Act of 1965.

(b) The term "local educational agency" means a local educational agency as defined by section 801 (f) of the Elementary and Secondary Education Act of 1965.

(c) The term "segregation" means the operation of a school system in which students are wholly or substantially separated among the schools of an educational agency or within a school on the basis of race, color, or national origin.

(d) The term "desegregation" means "desegregation" as defined by section 401 (b) of the Civil Rights Act of 1964.

(e) An educational agency shall be deemed to transport a student if any part of the cost of such student's transportation is paid by such agency.

(f) The term "basic instructional services" means instructional services in the field of mathematics or language skills which meet such standards as the Secretary may prescribe.

(g) The term "basic supportive services" means noninstructional services, including health or nutritional services, as prescribed by the Secretary.

(h) Expenditures for basic instructional services or basic supportive services do not include expenditures for administration, operation and maintenance of plant, or for capital outlay, or such other expenditures as the Secretary may prescribe.

92d CONGRESS
2d Session

H. R. 13916

IN THE HOUSE OF REPRESENTATIVES

March 20, 1972

Mr. McCulloch (for himself, and Mr. Gerald R. Ford) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To impose a moratorium on new and additional student transportation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Student Transportation Moratorium Act of 1972."

FINDINGS AND PURPOSE

Sec. 2. (a) The Congress finds that:

(1) For the purpose of desegregation, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students.

(2) In many cases these reorganizations, with attendant increases in student transportation, have caused substantial hardship to the children thereby affected, have impinged on the educational process in which they are involved, and have required increases in student transportation often in excess of that necessary to accomplish desegregation.

(3) There is a need to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in discharging its obligation under the fourteenth amendment to the United States Constitution to desegregate its schools.

(4) The Congress is presently considering legislation to establish such a standard and define that obligation.

(5) There is a substantial likelihood that, pending enactment of such legislation, many local educational agencies will be required to implement desegregation plans that impose a greater obligation than required by the fourteenth amendment and permitted by such pending legislation and that these plans will require modification in light of the legislation's requirements.

(6) Implementation of desegregation plans will in many cases require local educational agencies to expend large amounts of funds for transportation equipment, which may be utilized only temporarily, and for its operation, thus di-

verting those funds from improvements in educational facilities and instruction which otherwise would be provided.

(7) The modification of school schedules and student assignments resulting from implementation of desegregation plans and any subsequent modification in light of the legislation's requirements would place substantial unnecessary administrative burdens on local educational agencies and unduly disrupt the educational process.

(b) It is, therefore, the purpose of this Act to impose a moratorium on the implementation of Federal court orders that require local educational agencies to transport students and on the implementation of certain desegregation plans under title VI of the Civil Rights Act of 1964, in order to provide Congress time to fashion such a standard, and to define such an obligation.

MORATORIUM ON ORDERS AND PLANS

SEC. 3. (a) During the period beginning with the day after the date of enactment of this Act and ending with July 1, 1973, or the date of enactment of legislation which the Congress declares to be that contemplated by section 2 (a) (4), whichever is earlier, the implementation of any order of a court of the United States entered during such period shall be stayed to the extent it requires, directly or indirectly, a local educational agency—

(1) to transport a student who was not being trans-

ported by such local educational agency immediately prior to the entry of such order; or

(2) to transport a student to or from a school to which or from which such student was not being transported by such local educational agency immediately prior to the entry of such order.

(b) During the period described in subsection (a) of this section, a local educational agency shall not be required to implement a desegregation plan submitted to a department or agency of the United States during such period pursuant to title VI of the Civil Rights Act of 1964 to the extent that such plan provides for such local educational agency to carry out any action described in clauses (1) or (2) of subsection (a) of this section.

(c) Nothing in this Act shall prohibit an educational agency from proposing, adopting, requiring, or implementing any desegregation plan, otherwise lawful, that exceeds the limitations specified in subsection (a) of this section, nor shall any court of the United States or department or agency of the Federal Government be prohibited from approving implementation of a plan that exceeds the limitations specified in subsection (a) of this section if the plan is voluntarily proposed by the appropriate educational agency.

SEC. 4. For purposes of this Act—

(a) The term "desegregation" means desegregation as defined by section 401 (b) of the Civil Rights Act of 1964.

(b) The term "local educational agency" means a local educational agency as defined by section 801 (f) of the Elementary and Secondary Education Act of 1965.

(c) A local educational agency shall be deemed to transport a student if it pays any part of the cost of such student's transportation, or otherwise provides such transportation.

92d CONGRESS
2d Session

H. R. 13936

IN THE HOUSE OF REPRESENTATIVES

March 20, 1972

Mr. Teague of Texas introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To impose a moratorium on new and additional student transportation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Student Transportation Moratorium Act of 1972."

FINDINGS AND PURPOSE

Sec. 2. (a) The Congress finds that:

(1) For the purpose of desegregation, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students.

(2) In many cases these reorganizations, with attendant increases in student transportation, have caused substantial hardship to the children thereby affected, have impinged on the educational process in which they are involved, and have required increases in student transportation often in excess of that necessary to accomplish desegregation.

(3) There is a need to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in discharging its obligation under the Fourteenth Amendment to the United States Constitution to desegregate its schools.

(4) The Congress is presently considering legislation to establish such a standard and define that obligation.

(5) There is a substantial likelihood that, pending enactment of such legislation, many local educational agencies will be required to implement desegregation plans that impose a greater obligation than required by the Fourteenth Amendment and permitted by such pending legislation and that these plans will require modification in light of the legislation's requirements.

(6) Implementation of desegregation plans will in many cases require local educational agencies to expend large amounts of funds for transportation equipment, which may be utilized only temporarily, and for its operation, thus

diverting those funds from improvements in educational facilities and instruction which otherwise would be provided.

(7) The modification of school schedules and student assignments resulting from implementation of desegregation plans and any subsequent modification in light of the legislation's requirements would place substantial unnecessary administrative burdens on local educational agencies and unduly disrupt the educational process.

(b) It is, therefore, the purpose of this Act to impose a moratorium on the implementation of Federal court orders that require local educational agencies to transport students and on the implementation of certain desegregation plans under title VI of the Civil Rights Act of 1964, in order to provide Congress time to fashion such a standard, and to define such an obligation.

MORATORIUM ON ORDERS AND PLANS

SEC. 3. (a) During the period beginning with the day after the date of enactment of this Act and ending with July 1, 1973, or the date of enactment of legislation which the Congress declares to be that contemplated by section 2(a)(4), whichever is earlier, the implementation of any order of a court of the United States entered during such period shall be stayed to the extent it requires, directly or indirectly, a local educational agency—

(1) to transport a student who was not being trans-

ported by such local educational agency immediately prior to the entry of such order; or

(2) to transport a student to or from a school to which or from which such student was not being transported by such local educational agency immediately prior to the entry of such order.

(b) During the period described in subsection (a) of this section, a local educational agency shall not be required to implement a desegregation plan submitted to a department or agency of the United States during such period pursuant to title VI of the Civil Rights Act of 1964 to the extent that such plan provides for such local educational agency to carry out any action described in clauses (1) or (2) of subsection (a) of this section.

(c) Nothing in this Act shall prohibit an educational agency from proposing, adopting, requiring, or implementing any desegregation plan, otherwise lawful, that exceeds the limitations specified in subsection (a) of this section, nor shall any court of the United States or department or agency of the Federal Government be prohibited from approving implementation of a plan that exceeds the limitations specified in subsection (a) of this section if the plan is voluntarily proposed by the appropriate educational agency.

SEC. 4. For purposes of this Act—

(a) The term "desegregation" means desegregation as defined by section 401 (b) of the Civil Rights Act of 1964.

(b) The term "local educational agency" means a local educational agency as defined by section 801 (f) of the Elementary and Secondary Education Act of 1965.

(c) A local educational agency shall be deemed to transport a student if it pays any part of the cost of such student's transportation, or otherwise provides such transportation.

92d Congress, 2d Session } HOUSE OF REPRESENTATIVES { Document No. 92–195

BUSING AND EQUALITY OF EDUCATIONAL OPPORTUNITY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

RELATIVE TO BUSING AND EQUALITY OF EDUCATIONAL OPPORTUNITY, AND TRANSMITTING A DRAFT OF PROPOSED LEGISLATION TO IMPOSE A MORATORIUM ON NEW AND ADDITIONAL STUDENT TRANSPORTATION

March 20, 1972.—Message and accompanying papers referred to the Committee of the Whole House on the State of the Union and ordered to be printed

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To the Congress of the United States:

In this message, I wish to discuss a question which divides many Americans. That is the question of busing.

I want to do so in a way that will enable us to focus our attention on a question which unites all Americans. That is the question of how to ensure a better education for all of our children.

In the furor over busing, it has become all too easy to forget what busing is supposed to be designed to achieve: equality of educational opportunity for all Americans.

Conscience and the Constitution both require that no child should be denied equal educational opportunity. That Constitutional mandate was laid down by the Supreme Court in *Brown* v. *Board of Education* in 1954. The years since have been ones of dismantling the old dual school system in those areas where it existed—a process that has now been substantially completed.

As we look to the future, it is clear that the efforts to provide equal educational opportunity must now focus much more specifically on education: on assuring that the opportunity is not only equal, but adequate, and that in those remaining cases in which desegregation has not yet been completed it be achieved with a greater sensitivity to educational needs.

Acting within the present framework of Constitutional and case law, the lower Federal courts have ordered a wide variety of remedies

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for the equal protection violations they have found. These remedies have included such plans as redrawing attendance zones, pairing, clustering and consolidation of school districts. Some of these plans have not required extensive additional transportation of pupils. But some have required that pupils be bused long distances, at great inconvenience. In some cases plans have required that children be bused away from their neighborhoods to schools that are inferior or even unsafe.

The maze of differing and sometimes inconsistent orders by the various lower courts has led to contradiction and uncertainty, and often to vastly unequal treatment among regions, States and local school districts. In the absence of statutory guidelines, many lower court decisions have gone far beyond what most people would consider reasonable, and beyond what the Supreme Court has said is necessary, in the requirements they have imposed for the reorganization of school districts and the transportation of school pupils.

All too often, the result has been a classic case of the remedy for one evil creating another evil. In this case, a remedy for the historic evil of racial discrimination has often created a new evil of disrupting communities and imposing hardship on children—both black and white—who are themselves wholly innocent of the wrongs that the plan seeks to set right.

The 14th Amendment to the Constitution—under which the school desegregation cases have arisen—provides that "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

Until now, enforcement has been left largely to the courts—which have operated within a limited range of available remedies, and in the limited context of case law rather than of statutory law. I propose that the Congress now accept the responsibility and use the authority given to it under the 14th Amendment to clear up the confusion which contradictory court orders have created, and to establish reasonable national standards.

The legislation I propose today would accomplish this.

It would put an immediate stop to further new busing orders by the Federal courts.

It would enlist the wisdom, the resources and the experience of the Congress in the solution of the vexing problems involved in fashioning school desegregation policies that are true to the Constitutional requirements and fair to the people and communities concerned.

It would establish uniform national criteria, to ensure that the Federal courts in all sections and all States would have a common set of standards to guide them.

These measures would protect the right of a community to maintain neighborhood schools—while also establishing a shared local and Federal responsibility to raise the level of education in the neediest neighborhoods, with special programs for those disadvantaged children who need special attention.

At the same time, these measures would not roll back the Constitution, or undo the great advances that have been made in ending school segregation, or undermine the continuing drive for equal rights.

Specifically, I propose that the Congress enact two measures which together would shift the focus from more transportation to better education, and would curb busing while expanding educational opportunity. They are:

1. *The Equal Educational Opportunities Act of 1972.*

This would:

—Require that no State or locality could deny equal educational opportunity to any person on account of race, color or national origin.

—Establish criteria for determining what constitutes a denial of equal opportunity.

—Establish priorities of remedies for schools that are required to desegregate, with busing to be required only as a last resort, and then only under strict limitations.

—Provide for the concentration of Federal school-aid funds specifically on the areas of greatest educational need, in a way and in sufficient quantities so they can have a real and substantial impact in terms of improving the education of children from poor families.

2. *The Student Transportation Moratorium Act of 1972.*

—This would provide a period of time during which any future, new busing orders by the courts would not go into effect, while the Congress considered legislative approaches—such as the Equal Educational Opportunities Act—to the questions raised by school desegregation cases. This moratorium on new busing would be effective until July 1, 1973, or until the Congress passed the appropriate legislation, whichever was sooner. Its purpose would not be to contravene rights under the 14th Amendment, but simply to hold in abeyance further busing orders while the Congress investigated and considered alternative methods of securing those rights—methods that could establish a new and broader context in which the courts could decide desegregation cases, and that could render busing orders unnecessary.

Together, these two measures would provide an immediate stop to new busing in the short run, and constructive alternatives to busing in the long run—and they would give the Congress the time it needs to consider fully and fairly one of the most complex and difficult issues to confront the Nation in modern times.

Busing: The Fears and Concerns

Before discussing the specifics of these proposals, let me deal candidly with the controversy surrounding busing itself.

There are some people who fear any curbs on busing because they fear that it would break the momentum of the drive for equal rights for blacks and other minorities. Some fear it would go further, and that it would set in motion a chain of reversals that would undo all the advances so painfully achieved in the past generation.

It is essential that whatever we do to curb busing be done in a way that plainly will not have these other consequences. It is vitally important that the Nation's continued commitment to equal rights and equal opportunities be clear and concrete.

On the other hand, it is equally important that we not allow emotionalism to crowd out reason, or get so lost in symbols that words lose their meaning.

One emotional undercurrent that has done much to make this so difficult an issue is the feeling some people have that to oppose busing is to be anti-black. This is closely related to the arguments often put forward that resistance to any move, no matter what, that may be advanced in the name of desegregation is "racist." This is dangerous nonsense.

There is no escaping the fact that some people oppose busing because of racial prejudice. But to go on from this to conclude that "anti-busing" is simply a code word for prejudice is an exercise in arrant unreason. There are right reasons for opposing busing, and there are wrong reasons—and most people, including large and increasing numbers of blacks and other minorities, oppose it for reasons that have little or nothing to do with race. It would compound an injustice to persist in massive busing simply because some people oppose it for the wrong reasons.

For most Americans, the school bus used to be a symbol of hope—or better education. In too many communities today, it has become a symbol of helplessness, frustration and outrage—of a wrenching of children away from their families, and from the schools their families may have moved to be near, and sending them arbitrarily to others far distant.

It has become a symbol of social engineering on the basis of abstractions, with too little regard for the desires and the feelings of those most directly concerned: the children, and their families.

Schools exist to serve the children, not to bear the burden of social change. As I put it in my policy statement on school desegregation 2 years ago (on March 24, 1970):

> One of the mistakes of past policy has been to demand too much of our schools: They have been expected not only to educate, but also to accomplish a social transformation. Children in many instances have not been served, but used—in what all too often has proved a tragically futile effort to achieve in the schools the kind of multiracial society which the adult community has failed to achieve for itself.
>
> If we are to be realists, we must recognize that in a free society there are limits to the amount of Government coercion that can reasonably be used; that in achieving desegregation we must proceed with the least possible disruption of the education of the Nation's children; and that our children are highly sensitive to conflict, and highly vulnerable to lasting psychic injury.
>
> Failing to recognize these factors, past policies have placed on the schools and the children too great a share of the burden of eliminating racial disparities throughout our society. A major part of this task falls to the schools. But they cannot do it all or even most of it by themselves. Other institutions can share the burden of breaking down racial barriers, but only the schools can perform the task of education itself. If our schools fail to educate, then whatever they may achieve in integrating the races will turn out to be only a Pyrrhic victory.

The Supreme Court has also recognized this problem. Writing for a unanimous Court in the *Swann* case last April, Chief Justice Burger said:

> The constant theme and thrust of every holding from *Brown I* to date is that State-enforced separation of races in public schools is discrimination that violates the Equal Protection Clause. The remedy commanded was to dismantle dual school systems.
>
> We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious, or ethnic grounds. The target of the cases from *Brown I* to the present was the dual school system. The elimination of racial discrimination in public schools is a large task and one that should not be retarded by efforts to achieve broader purposes lying beyond the jurisdiction of school authorities. One vehicle can carry only a limited amount of baggage. . . .
>
> Our objective in dealing with the issues presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools.

In addressing the busing question, it is important that we do so in historical perspective.

Busing for the purpose of desegregation was begun—mostly on a modest scale—as one of a mix of remedies to meet the requirements laid down by various lower Federal courts for achieving the difficult transition from the old dual school system to a new, unitary system.

At the time, the problems of transition that loomed ahead were massive, the old habits deeply entrenched, community resistance often extremely strong. As the years wore on, the courts grew increasingly impatient with what they sometimes saw as delay or evasion, and increasingly insistent that, as the Supreme Court put it in the *Green* decision in 1968, desegregation plans must promise "realistically to work, and . . . to work *now*."

But in the past 3 years, progress toward eliminating the vestiges of the dual system has been phenomenal—and so too has been the shift in public attitudes in those areas where dual systems were formerly operated. In State after State and community after community, local civic, business and educational leaders of all races have come forward to help make the transition peacefully and successfully. Few voices are now raised urging a return to the old patterns of enforced segregation.

This new climate of acceptance of the basic Constitutional doctrine is a new element of great importance: for the greater the elements of basic good faith, of desire to make the system work, the less need or justification there is for extreme remedies rooted in coercion.

At the same time, there has been a marked shift in the focus of concerns by blacks and members of other minorities. Minority parents have long had a deep and special concern with improving the quality of their children's education. For a number of years, the principal emphasis of this concern—and of the Nation's attention—was on desegregating the schools. Now that the dismantling of the old dual system has been substantially completed there is once again a far greater balance of emphasis on improving schools, on convenience, on the chance for parental involvement—in short, on the same concerns that motivate white parents—and, in many communities, on securing a greater measure of control over schools that serve primarily minority-group communities. Moving forward on desegregation is still important—but the principal concern is with preserving the principle, and with ensuring that the great gains made since *Brown*, and particularly in recent years, are not rolled back in a reaction against excessive busing. Many black leaders now express private concern, moreover, that a reckless extension of busing requirements could bring about precisely the results they fear most: a reaction that would undo those gains, and that would begin the unraveling of advances in other areas that also are based on newly expanded interpretations of basic Constitutional rights.

Also, it has not escaped their notice that those who insist on systemwide racial balance insist on a condition in which, in most communities, every school would be run by whites and dominated by whites, with blacks in a permanent minority—and without escape from that minority status. The result would be to deny blacks the right to have schools in which they are the majority.

In short, this is not the simple black-white issue that some simplistically present it as being. There are deep divisions of opinion among people of all races—with recent surveys showing strong opposition to busing among black parents as well as among white parents—not because they are against desegregation but because they are for better education.

In the process of school desegregation, we all have been learning; perceptions have been changing. Those who once said "no" to racial integration have accepted the concept, and believe in equality before the law. Those who once thought massive busing was the answer have also been changing their minds in the light of experience.

As we cut through the clouds of emotionalism that surround the busing question, we can begin to identify the legitimate issues.

Concern for the quality of education a child gets is legitimate.

Concern that there be no retreat from the principle of ending racial discrimination is legitimate.

Concern for the distance a child has to travel to get to school is legitimate.

Concern over requiring that a child attend a more distant school when one is available near his home is legitimate.

Concern for the obligation of government to assure, as nearly as possible, that all the children of a given district have equal educational opportunity is legitimate.

Concern for the way educational resources are allocated among the schools of a district is legitimate.

Concern for the degree of control parents and local school boards should have over their schools is legitimate.

In the long, difficult effort to give life to what is in the law, to desegregate the Nation's schools and enforce the principle of equal opportunity, many experiments have been tried. Some have worked, and some have not. We now have the benefit of a fuller fund of experience than we had 18 years ago, or even 2 years ago. It has also become apparent that community resistance—black as well as white—to plans that massively disrupt education and separate parents from their children's schools, makes those plans unacceptable to communities on which they are imposed.

Against this background, the objectives of the reforms I propose are:

—To give practical meaning to the concept of equal educational opportunity.

—To apply the experience gained in the process of desegregation, and also in efforts to give special help to the educationally disadvantaged.

—To ensure the continuing vitality of the principles laid down in *Brown* v. *Board of Education.*

—To downgrade busing as a tool for achieving equal educational opportunity.

—To sustain the rights and responsibilities vested by the States in local school boards.

THE EQUAL EDUCATIONAL OPPORTUNITIES ACT

In the historic effort since 1954 to end the system of State-enforced segregation in the public schools, all three branches of Government have had important functions and responsibilities. Their roles, however, have been unequal.

If some of the Federal courts have lately tended toward extreme remedies in school desegregation cases—and some have—this has been in considerable part because the work has largely gone forward in the courts, case-by-case, and because the courts have carried a heavy share of the burden while having to operate within a limited framework of reference and remedies. The efforts have therefore frequently been disconnected, and the result has been not only great progress but also the creation of problems severe enough to threaten the immense achievement of these 18 difficult years.

If we are to consolidate our gains and move ahead on our problems—both the old and the new—we must undertake now to bring the leaven of experience to the logic of the law.

Drawing on the lessons of experience, we must provide the courts with a new framework of reference and remedies.

The angry debate over busing has at one and the same time both illuminated and obscured a number of broad areas in which realism and shared concern in fact unite most American parents, whatever their race. Knowledge of such shared concerns is the most precious product of experience; it also is the soundest foundation of law. The time is at hand for the legislative, executive and judicial branches of Government to act on this knowledge, and by so doing to lift the sense of crisis that threatens the education of our children and the peace of our people.

The Equal Educational Opportunities Act that I propose today draws on that experience, and is designed to give the courts a new and broader base on which to decide future cases, and to place the emphasis where it belongs: on better education for all of our children.

Equal Opportunity: The Criteria

The act I propose undertakes, in the light of experience, both to prohibit and to define the denial of equal educational opportunity. In essence, it provides that:

—No State shall deny equal educational opportunity to any person on account of race, color or national origin.

—Students shall not be deliberately segregated either among or within the public schools.

—Where deliberate segregation was formerly practiced, educational agencies have an affirmative duty to remove the vestiges of the dual system.

—A student may not be assigned to a school other than the one nearest his home, if doing so would result in a greater degree of racial segregation.

—Subject to the other provisions of the act, the assignment of students to their neighborhood schools would not be considered a denial of equal educational opportunity unless the schools were located or the assignment made for the purpose of racial segregation.

—Racial balance is not required.

—There can be no discrimination in the employment and assignment of faculty and staff.

—School authorities may not authorize student transfers that would have the effect of increasing segregation.

—School authorities must take appropriate action to overcome whatever language barriers might exist, in order to enable all students to participate equally in educational programs. This would establish, in effect, an educational bill of rights for Mexican-Americans, Puerto Ricans, Indians and others who start under language handicaps, and ensure at last that they too would have equal opportunity.

—Through Federal financial assistance and incentives, school districts would be strongly encouraged not only to avoid shortchanging the schools that serve their neediest children, but beyond this to establish and maintain special learning programs in those schools that would help children who were behind to catch up. These incentives would also encourage school authorities to provide for voluntary transfers of students that would reduce racial concentrations.

Thus, the act would set standards for all school districts throughout the Nation, as the basic requirements for carrying out, in the field of public education, the Constitutional guarantee that each person shall have equal protection of the laws. It would establish broad-based and specific criteria to ensure against racial discrimination in school assignments, to establish the equal educational rights of Mexican-Americans, Puerto Ricans and others starting with language handicaps, to protect the principle of the neighborhood school. It would also provide money and incentives to help ensure for schools in poor neighborhoods the fair treatment they have too often been denied in the past, and to provide the special learning and extra attention that children in those neighborhoods so often need.

Denial of Equal Opportunity: The Remedies

In the past, the courts have largely been left to their own devices in determining appropriate remedies in school desegregation cases. The results have been sometimes sound, sometimes bizarre—but certainly uneven. The time has come for the Congress, on the basis of experience, to provide guidance. Where a violation exists, the act I propose would provide that:

—The remedies imposed must be limited to those needed to correct the particular violations that have been found.

—School district lines must not be ignored or altered unless they are clearly shown to have been drawn for purposes of segregation.

—Additional busing must not be required unless no other remedy can be found to correct the particular violation that exists.

—A priority of remedies would be established, with the court required to use the first remedy on the list, or the first combination of remedies, that would correct the unlawful condition. The list of authorized remedies—in order—is:

(1) Assigning students to the schools closest to their homes that provide the appropriate level and type of education, taking into account school capacities and natural physical barriers;

(2) Assigning students to the schools closest to their homes that provide the appropriate level and type of education, considering only school capacities;

(3) Permitting students to transfer from a school in which their race is a majority to one in which it is a minority;

(4) Creation or revision of attendance zones or grade structures without necessitating increased student transportation;

(5) Construction of new schools or the closing of inferior schools;

(6) The use of magnet schools or educational parks to promote integration;

(7) Any other plan is educationally sound and administratively feasible. However, such a plan could not require increased busing of students in the sixth grade or below. If a plan involved additional busing of older children, then: (a) It could not be ordered unless there was clear and convincing evidence that no other method would work; (b) in no case could it be ordered on other than a temporary basis; (c) it could not pose a risk to health, or significantly impinge on the educational process; (d) the school district could be granted a stay until the order had been passed on by the court of appeals.

—Beginning with the effective date of the act, time limits would be placed on desegregation orders. They would be limited to 10 years' duration—or 5 years if they called for student transportation—provided that during that period the school authorities had been in good-faith compliance. New orders could then be entered only if there had been new violations.

These rules would thus clearly define what the Federal courts could and could not require; however, the States and localities would remain free to carry out voluntary school integration plans that might go substantially beyond the Federal requirements.

This is an important distinction. Where busing would provide educational advantages for the community's children, and where the community wants to undertake it, the community should—and will—have that choice. What is objectionable is an arbitrary Federal requirement—whether administrative or judicial—that the community must undertake massive additional busing as a matter of Federal law. The essence of a free society is to restrict the range of what must be done, and broaden the range of what may be done.

Equal Opportunity: Broadening the Scope

If we were simply to place curbs on busing and do nothing more, then we would not have kept faith with the hopes, the needs—or the rights—of the neediest of our children.

Even adding the many protections built into the rights and remedies sections of the Equal Educational Opportunities Act, we would not by this alone provide what their special needs require.

Busing helps some poor children; it poses a hardship for others; but there are many more, and in many areas the great majority—in the heart of New York, and in South Chicago, for example—whom it could never reach.

If we were to treat busing as some sort of magic panacea, and to concentrate our efforts and resources on that as the principal means of achieving quality education for blacks and other minorities, then in these areas of dense minority concentration a whole generation could be lost.

If we hold massive busing to be, in any event, an unacceptable remedy for the inequalities of educational opportunity that exist, then we must do more to improve the schools where poor families live.

Rather than require the spending of scarce resources on ever-longer bus rides for those who happen to live where busing is possible, we should encourage the putting of those resources directly into education—serving all the disadvantaged children, not merely those on the bus routes.

In order to reach the great majority of the children who most need extra help, I propose a new approach to financing the extra efforts required: one that puts the money where the needs are, drawing on the funds I have requested for this and the next fiscal year under Title I of the Elementary and Secondary Education Act of 1965 and under the Emergency School Aid Act now pending before the Congress.

As part of the Equal Education Opportunities Act, I propose to broaden the uses of the funds under the Emergency School Aid Act, and to provide the Secretary of Health, Education, and Welfare with additional authority to encourage effective special learning programs in those schools where the needs are greatest.

Detailed program criteria would be spelled out in administrative guidelines—but the intent of this program is to use a major portion of the $1.5 billion Emergency School Aid money as, in effect, incentive grants to encourage eligible districts to design educational programs that would do three things:

—Assure (as a condition of getting the grant) that the district's expenditures on its poorest schools were at least comparable to those on its other schools.

—Provide, above this, a compensatory education grant of approximately $300 per low-income pupil for schools in which substantial numbers of the students are from poor families, if the concentration of poor students exceeds specified limits.

—Require that this compensatory grant be spent entirely on basic instructional programs for language skills and mathematics, and on basic supportive services such as health and nutrition.

—Provide a "bonus" to the receiving school for each pupil transferring from a poor school to a non-poor school where his race is in the minority, without reducing the grant to the transferring school.

Priority would be given to those districts that are desegregating either voluntarily or under court order, and to those that are addressing problems of both racial and economic impaction.

Under this plan, the remaining portion of the $1.5 billion available under the Emergency School Aid Act for this and the next fiscal year would go toward the other kinds of aid originally envisaged under it.

This partial shift of funds is now possible for two reasons: First, in the nearly 2 years since I first proposed the Emergency School Aid Act, much of what it was designed to help with has already been done. Second, to the extent that the standards set forth in the Equal Educational Opportunities Act would relieve desegregating districts of some of the more expensive requirements that might otherwise be laid upon them, a part of the money originally intended to help meet those expenses can logically be diverted to these other, closely related needs. I would stress once again, in this connection, the importance I attach to final passage of the Emergency School Aid Act: those districts that are now desegregating still need its help, and the funds to be made available for these new purposes are an essential element of a balanced equal opportunity package.

I also propose that instead of being terminated at the end of fiscal 1973, as presently scheduled, the Emergency School Aid Act continue to be authorized at a $1 billion annual level—of which I would expect the greatest part to be used for the purposes I have outlined here. At the current level of funding of Title I of the Elementary and Secondary Education Act of 1965, this would provide a total approaching $2.5 billion annually for compensatory education purposes.

For some years now, there has been a running debate about the effectiveness of added spending for programs of compensatory or remedial education. Some have maintained there is virtually no correlation between dollar input and learning output; others have maintained there is a direct correlation; experience has been mixed.

What does now seem clear is that while many Title I experiments have failed, many others have succeeded substantially and even dramatically; and what also is clear is that without the extra efforts such extra funding would make possible, there is little chance of breaking the cycle of deprivation.

A case can be made that Title I has fallen short of expectations, and that in some respects it has failed. In many cases, pupils in the programs funded by it have shown no improvement whatever, and funds have frequently been misused or squandered foolishly. Federal audits of State Title I efforts have found instances where naivete, inexperience, confusion, despair, and even clear violations of the law have thwarted the act's effectiveness. In some instances, Title I funds have been illegally spent on unauthorized materials and facilities, or used to fund local services other than those intended by the act, such as paying salaries not directly related to the act's purposes.

The most prevalent failing has been the spending of Title I funds as general revenue. Out of 40 States audited between 1966 and 1970, 14 were found to have spent Title I funds as general revenue.

Too often, one result has been that instead of actually being concentrated in the areas of critical need, Title I moneys have been diffused throughout the system; and they have not reached the targeted schools—and targeted children—in sufficient amounts to have a real impact.

On the positive side, Title I has effected some important changes of benefit to disadvantaged children.

First, Title I has encouraged some States to expand considerably the contributions from State and local funds for compensatory education. In the 1965–66 school year, the States spent only $2.7 million of their own revenues, but by the 1968–69 school year—largely due to major efforts by California and New York—they were contributing $198 million.

Second, Title I has better focused attention on pupils who previously were too often ignored. About 8 million children are in schools receiving some compensatory funds. In 46 States programs have been established to aid almost a quarter of a million children of migratory workers. As an added dividend, many States have begun to focus educational attention on the early childhood years which are so important to the learning process.

Finally, local schools have been encouraged by Title I to experiment and innovate. Given our highly decentralized national educational system and the relatively minor role one Federal program usually plays, there have been encouraging examples of programs fostered by Title I which have worked.

In designing compensatory programs, it is difficult to know exactly what will work. The circumstances of one locality may differ dramatically from those of other localities. What helps one group of children may not be of particular benefit to others. In these experimental years, local educational agencies and the schools have had to start from scratch, and to learn for themselves how to educate those who in the past had too often simply been left to fall further behind.

In the process, some schools did well and others did not. Some districts benefited by active leadership and community involvement, while others were slow to innovate and to break new ground.

While there is a great deal yet to be learned about the design of successful compensatory programs, the experience so far does point in one crucial direction: to the importance of providing sufficiently concentrated funding to establish the educational equivalent of a "critical mass," or threshold level. Where funds have been spread too thinly, they have been wasted or dissipated with little to show for their expenditure. Where they have been concentrated, the results have been frequently encouraging and sometimes dramatic.

In a sample of some 10,000 disadvantaged pupils in California, 82 percent of those in projects spending less than $150 extra per pupil showed little or no achievement gain. Of those students in projects spending over $250 extra per pupil, 94 percent gained more than one year per year of exposure; 58 percent gained between 1.4 and 1.9 years per year of exposure. Throughout the country States as widely separated as Connecticut and Florida have recognized a correlation between a "critical mass" expenditure and marked effectiveness.

Of late, several important studies have supported the idea of a "critical mass" compensatory expenditure to afford disadvantaged pupils equal educational opportunity. The New York State Commission on the Quality, Cost, and Financing of Elementary and Secondary Education, the National Educational Finance Project, and the President's Commission on School Finance have all cited the importance of such a substantial additional per pupil expenditure for disadvantaged pupils.

The program which I propose aims to assure schools with substantial concentrations of poor children of receiving an average $300 compensatory education grant for each child.

In order to encourage voluntary transfers, under circumstances where they would reduce both racial isolation and low-income concentration, any school accepting such transfers would receive the extra $300 allotted for the transferring student plus a bonus payment depending on the proportion of poor children in that school.

One key to the success of this new approach would be the "critical mass" achieved by both increasing and concentrating the funds made available; another would be vigorous administrative follow-through to ensure that the funds are used in the intended schools and for the intended purposes.

THE STUDENT TRANSPORTATION MORATORIUM ACT

In times of rapid and even headlong change, there occasionally is an urgent need for reflection and reassessment. This is especially true when powerful, historic forces are moving the Nation toward a conflict of fundamental principles—a conflict that can be avoided if each of us does his share, and if all branches of Government will join in helping to redefine the questions before us.

Like any comprehensive legislative recommendation, the Equal Educational Opportunities Act that I have proposed today is offered as a framework for Congressional debate and action.

The Congress has both the Constitutional authority and a special capability to debate and define new methods for implementing Constitutional principles. And the educational, financial and social complexities of this issue are not, and are not properly, susceptible of solution by individual courts alone or even by the Supreme Court alone.

This is a moment of considerable conflict and uncertainty; but it is also a moment of great opportunity.

This is not a time for the courts to plunge ahead at full speed.

If we are to set a course that enables us to act together, and not simply to do more but to do better, then we must do all in our power to create an atmosphere that permits a calm and thoughtful assessment of the issues, choices and consequences.

I propose, therefore, that the Congress act to impose a temporary freeze on new busing orders by the Federal courts—to establish a waiting period while the Congress considers alternative means of enforcing 14th Amendment rights. I propose that this freeze be effective immediately on enactment, and that it remain in effect until July 1, 1973, or until passage of the appropriate legislation, whichever is sooner.

This freeze would not put a stop to desegregation cases; it would only bar new orders during its effective period, to the extent that they ordered new busing.

This, I recognize, is an unusual procedure. But I am persuaded that the Congress has the Constitutional power to enact such a stay, and I believe the unusual nature of the conflicts and pressures that confront both the courts and the country at this particular time requires it.

It has become abundantly clear, from the debates in the Congress and from the upwelling of sentiment throughout the country, that some action will be taken to limit the scope of busing orders. It is in the interest of everyone—black and white, children and parents, school administrators and local officials, the courts, the Congress and the executive branch, and not least in the interest of consistency in Federal policy, that while this matter is being considered by the Congress we not speed further along a course that is likely to be changed.

The legislation I have proposed would provide the courts with a new set of standards and criteria that would enable them to enforce the basic Constitutional guarantees in different ways.

A stay would relieve the pressure on the Congress to act on the long-range legislation without full and adequate consideration. By providing immediate relief from a course that increasing millions of Americans are finding intolerable, it would allow the debate on permanent solutions to proceed with less emotion and more reason.

For these reasons—and also for the sake of the additional children faced with busing now—I urge that the Congress quickly give its approval to the Student Transportation Moratorium Act.

No message to the Congress on school desegregation would be complete unless it addressed the question of a Constitutional amendment.

There are now a number of proposals before the Congress, with strong support, to amend the Constitution in ways designed to abolish busing or to bar the courts from ordering it.

These proposals should continue to receive the particularly thoughtful and careful consideration by the Congress that any proposal to amend the Constitution merits.

It is important to recognize, however, that a Constitutional amendment—even if it could secure the necessary two-thirds support in both Houses of the Congress—has a serious flaw: it would have no impact this year; it would not come into effect until after the long process of ratification by three-fourths of the State legislatures. What is needed is action now; a Constitutional amendment fails to meet this immediate need.

Legislation meets the problem now. Therefore, I recommend that as its first priority the Congress go forward immediately on the legislative route. Legislation can also treat the question with far greater precision and detail than could the necessarily generalized language of a Constitutional amendment, while making possible a balanced, comprehensive approach to equal educational opportunity.

CONCLUSION

These measures I have proposed would place firm and effective curbs on busing—and they would do so in a Constitutional way, aiding rather than challenging the courts, respecting the mandate of the 14th Amendment, and exercising the responsibility of the Congress to enforce that Amendment.

Beyond making these proposals, I am directing the Executive departments to follow policies consistent with the principles on which they are based—which will include intervention by the Justice Department in selected cases before the courts, both to implement the stay and to resolve some of those questions on which the lower courts have gone beyond the Supreme Court.

The Equal Educational Opportunities Act I have proposed reflects a serious and wide-ranging process of consultation—drawing upon the knowledge and experience of legislators, Constitutional scholars, educators and government administrators, and of men and women from all races and regions of the country who shared with us the views and feelings of their communities.

Its design is in large measure the product of that collaboration. When enacted it would, for the first time, furnish a framework for collaborative action by the various branches of Federal and local government, enabling courts and communities to shape effective educational solutions which are responsive not only to Constitutional standards but also to the physical and human reality of diverse educational situations.

It will create more local choice and more options to choose from; and it will marshal and target Federal resources more effectively in support of each particular community's effort.

Most importantly, however, these proposals undertake to address the problem that really lies at the heart of the issue at this time: the inherent inability of the courts, acting alone, to deal effectively and acceptably with the new magnitude of educational and social problems generated by the desegregation process.

If these proposals are adopted, those few who want an arbitrary racial balance to be imposed on the schools by Federal fiat will not get their way.

Those few who want a return to segregated schools will not get their way.

Those few who want a rollingback of the basic protections black and other minority Americans have won in recent years will not get their way.

This Administration means what it says about dismantling racial barriers, about opening up jobs and housing and schools and opportunity to all Americans.

It is not merely rhetoric, but our record, that demonstrates our determination.

We have achieved more school desegregation in the last 3 years than was achieved in the previous 15.

We have taken the lead in opening up high-paying jobs to minority workers.

We have taken unprecedented measures to spur business ownership by members of minorities.

We have brought more members of minorities into the middle and upper levels of the Federal service than ever before.

We have provided more support to black colleges than ever before.

We have put more money and muscle into enforcement of the equal opportunity laws than ever before.

These efforts will all go forward—with vigor and with conviction. Making up for the years of past discrimination is not simply something that white Americans owe to black Americans—it is somewhat the entire Nation owes to itself.

I submit these proposals to the Congress mindful of the profound importance and special complexity of the issues they address. It is in that spirit that I have undertaken to weigh and respect the conflicting interests; to strike a balance which is thoughtful and just; and to search for answers that will best serve all of the Nation's children. I urge the Congress to consider them in the same spirit.

The great majority of Americans, of all races, want their Government—the Congress, the Judiciary and the Executive—to follow the course of deliberation, not confrontation. To do this we must act calmly and creatively, and we must act together.

The great majority of Americans, of all races, want schools that educate and rules that are fair. That is what these proposals attempt to provide.

RICHARD NIXON.

THE WHITE HOUSE, *March 17, 1972.*

Chairman Celler. I also place in the record a statement issued March 29, 1972, by the Commission on Civil Rights, commenting on the President's legislation proposals.

Statement of the U.S. Commission on Civil Rights Concerning the President's Message to Congress and Proposed Legislation on Busing and Equal Educational Opportunities

On March 17, 1972, the President sent to Congress a message and proposed legislation dealing with the most deeply felt and most divisive domestic issue troubling the American people today. The issue is commonly characterized as "busing" but it involves far more fundamental questions. It involves questions concerning the kind of education we want our children to have, the firmness of our resolve to redeem the Nation's pledge of equal rights for all, and, in the final analysis, the kind of society we want our children to inherit.

The Commission has serious disagreement with the proposed legislation. We believe that it can have no other effect than to roll back the desegregation advances made so slowly and so painfully over the 18 years since the Supreme Court of the United States declared that "separate educational facilities are inherently unequal." This proposed leigslation is retrogressive on several counts:

> It seeks to alter the substantive standards by which the illegality of school segregation could or should be judged and found wanting.
>
> It seeks to hinder the capacity of the courts to provide relief to those whose constitutional right to a desegregated education has been violated.
>
> It seeks to curb the Executive Branch as an active participant in the effort to desegrate the schools.
>
> It seeks to enshrine the neighborhood school as a fundamental cornerstone of educational policy when, in light of pervasive patterns of neighborhood segregation, this can only have the effect of perpetuating segregated schools.
>
> It would accept the inevitability of the continuation of school segregation and seek to create equal educational opportunity by equalizing racially separate schools, in other words, a reversion to the doctrine and practice of "separate but equal."

These and other provisions in the legislation would render lifeless many of the legal principles established in the Supreme Court's classic *Brown* decision.

Although the Commission has serious disagreement with the President's premises and recommendations for legislation, we believe that it is not only right and proper, but essential, for the President to address this issue. The Commission is mandated by law to advise both the President and the Congress on these matters, and we speak out with the hope that we may contribute to constructive debate and to successful resolution of the difficult problems involved.

What has divided the Nation on school busing is not so much sharp disagreement on the merits, but confusion as to what the issues really are. Public discussion has not served to illuminate these issues. The complex matter of overcoming in a few years the inequities of the long past through the medium of desegregated schools has been reduced to the question of whether one is for or against busing.

In his message, the President has recognized the need to address these important issues rationally and analytically. In addition, the President has sought to quiet the fear that his legislation placing curbs on busing will mark an end to the effort to achieve equal rights and even undo the advances made in the 18 years since the Supreme Court of the United States declared that "separate educational facilities are inherently unequal."

Despite the President's assurances, we fear that this legislation will nonetheless have that result. It focuses on the wrong issue—busing—and in so doing will make rational debate over the true issues of school desegregation and quality education much more difficult. Further, if enacted, it would mark a major governmental retreat in the area that has been at the heart of the struggle for equal rights. Retreats in other areas might well follow.

In its fifteen-year history, the Commission has been continuously studying the problems of achieving quality, desegregated education. We have issued numerous reports dealing with various aspects of the problem North and South, and exploring ways in which it can be successfully resolved. We issue this statement out of our present concern that progress in school desegregation not be halted and not be diluted.

LEGAL BACKGROUND

In 1954, the Supreme Court in *Brown* v. *Board of Education of Topeka* established that officially sanctioned segregation in public schools violates the 14th Amendment. Most clearly this holding applied to those States in which segregation was expressly required or authorized by law. In recent years, this principle of law has been applied as well to Northern school districts where the courts have concluded that official policies and actions have just as effectively resulted in racial isolation in the schools.

In the 18 years since *Brown*, not only have the courts continued to interpret what constitutes illegal segregation, but the courts and other agencies of government have been seeking to devise effective remedies for achieving full school integration.

Throughout the late 1950's and 1960's, many school districts adopted a variety of plans which produced little integration—in fact, less than 3 percent in 10 years. In 1968, the Supreme Court made clear that *Brown* requires the actual abolition of dual school systems—so that there no longer are "white schools" or "black schools," but simply schools.

The loss of time, the loss of opportunity for a generation of our children has been discouraging. But remedies have been developed. A variety of techniques for achieving desegregation have been applied successfully, including the use of attendance zones, pairing of schools, construction of new facilities, such as education parks, and, as a last resort, busing.

The appropriateness of these remedies was fully dealt with last April by the Supreme Court in *Swann* v. *Charlotte-Mecklenburg*. In that case, the Court recognized the validity and necessity of each of these remedies—including busing—which courts, with the guidance of Federal, State and local officials, had concluded were the proper means for achieving desegregation and fulfilling the promise of the *Brown* decision.

It is against the background of this history that the legislation proposed by the President must be viewed.

CURB ON THE COURTS

As the President points out, all three branches of the Federal Government have participated in the effort to end the system of State-imposed segregation in the public schools. As he also points out, however, they have been unequal partners. The courts have carried the heaviest share of the burden. During the ten years following the 1954 *Brown* decision, the courts labored virtually alone with little if any backing from the executive and legislative branches. The pace of desegregation was painfully slow, in contrast to the court's injunction of "all deliberate speed."

It was not until a decade later that Congress, through enactment of the Civil Rights Act of 1964, and the Executive Branch, through enforcement of Title VI of that law, joined the battle. In recent years the courts again have had to carry the main burden, but the dramatic increase in the pace of desegregation since 1964 demonstrates the impact that all three branches, working together, can have.

The disproportionate burden placed upon the courts has been unfair. Further, the case-by-case approach, which is inherent in the judicial process, is not the most effective way to deal with a problem of national scope and concern. The limited range of remedies available to courts further limits their capacity to meet the problem. Congress, with its power to enact new programs and to appropriate funds, and the Executive Branch, with its power of flexible administration, are necessary partners. Thus we agree with the President when he urges that Congress accept additional responsibility and use its authority under the 14th Amendment for purposes of joining the effort to desegregate the schools.

The courts need support and assistance. However, the legislation proposed by the President would curb, not help, them. It would seek to limit the remedies available to the courts by restricting and, in some cases, removing, their power to order transportation of students. It would also blunt the force of the Executive Branch through similar restrictions. The proposed "Student Transportation Moratorium Act of 1972" would bar, until July 1, 1973 or until appropriate legislation is enacted by Congress, all new busing orders, despite the unmistakably clear and strong mandate of the Supreme Court that further delay in carrying out the requirements of *Brown* is not acceptable. As the Court has said: "The burden on a school board today is to come forth with a plan that promises realistically to work, and promises realistically to work now."

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The proposed "Equal Educational Opportunities Act of 1972" also would place severe curbs on the power of the courts and the Executive Branch to remedy constitutional violations. It would generally prohibit the ordering of desegregation plans that involve an increase in the amount of transportation. For elementary school students, this prohibition would be absolute. It should be stressed that this anti-busing proposal, unlike the one in the "Moratorium" bill, would be permanent. Thus the power of Federal Courts to provide relief to those whose constitutional rights have been violated would be impaired—indefinitely. Further, existing court orders or desegregation plans under Title VI of the Civil Rights Act of 1964 could be reopened and changed.

The legislation also would seek to alter the standard by which courts judge constitutional rights and remedies. Provisions of the bill, such as those emphasizing the appropriateness of neighborhood school assignment and the inviolability of school district lines, would not only impair the courts' power to provide remedies, but also, by seeking to lower the standard of constitutionality, would intrude on the traditional prerogative of the courts. Thus this proposed legislation raises serious constitutional questions concerning separation of powers.

The Commission urges that Congress fully examine these questions, especially those concerning constitutionality, before acting. The courts are the final judges on issues of constitutionality, but Congress has its own heavy responsibility to assure that legislation it enacts is authorized under the Constitution. The Commission believes that the anti-busing provision in this legislation not only would impede desegregation efforts, but would also undermine the integrity of our Federal judiciary.

Ours is the longest enduring Constitution in the world today precisely because the founding fathers wisely balanced the powers to preserve constitutional and equal rights for all citizens. To tamper with this balance is a threat to the Nation and its future life and health which far transcends the issue of busing.

BUSING AND NEIGHBORHOOD SCHOOLS

What Americans must keep in mind, in the furor over the busing debate, is that to restrict busing in most communities is simply to restrict desegregation. This is so because of the segregated neighborhoods that exist from coast to coast, North and South. It is so because even with a concerted effort to eliminate well-entrenced patterns of housing segregation, it would take generations to undo or even significantly alter them and thus to alter the educational opportunity of the children who live in segregated neighborhoods near inferior, segregated neighborhood schools. What you really say to these children when you say "no busing" is "stay in your place and attend your inferior schools." This will, in reality, cost us another whole generation of badly educated minority children, denied their constitutional rights to equal educational opportunity. No amount of talk about new expenditures to create what, in fact, is a revision to the unconstitutional and bankrupt policy of "separate but equal" will long delude minority parents or even minority students.

This is not to say, however, that busing is the only means of achieving desegregation. In many towns and cities, busing is not necessary and desegregation can be achieved within the confines of neighborhood school attendance. Great progress can be made through the use of such techniques as redrawing school attendance lines, pairing schools, and creating central schools.

But in many cases these techniques, no matter how skillfully and conscientiously applied, cannot bring about desegregation without busing. That is because very often school attendance areas must be enlarged in order to accomplish desegregation, and some pupils would be too far away from school to walk. In these instances, some pupils have to be transported to school. Sincere and dedicated school officials, school boards and courts across the Nation have sought ways to desegregate schools in a number of cities without busing and have had to conclude, finally, that in some casese there is no other way.

To be sure, busing for desegregation purposes can be inconvenient—but no more so than busing for a number of other educational purposes. The key question is the value we place—for the sake of our children and our society—upon having quality, integrated education. The Commission is convinced that the relatively small amount of busing that is conducted for desegregation purposes is not only justified, but is necessary. The Supreme Court recognized this fact in tha *Swann* case.

The Supreme court, in *Swann*, did not ignore the worires of parents about "excessive" busing. The Court said that children should not be bused if the time or distance would endanger either the child's health or education, and that seems a reasonable standard to this Commission. No one is endorsing the busing of any child to an inferior school, although just this happened to many past generations of minority children. The fears and concerns about busing, and the extent and inconvenience of it, have been greatly overstated in the course of the debate now sweeping the Nation. 'Regretfully, too many leaders have been speaking to the base prejudices of the American people rather than to their inherent sense of justice and idealism.

What are the plain facts about busing? Every day nearly 20 million school children go to and from school by bus and their parents seldom complain about inconvenience. Some parents prefer to have their children go to school by bus rather than brave dangerous traffic on foot. Some school boards provide buses for handicapped and gifted children, so that they can attend special schools away from their neighborhoods. Rural areas have virtually abandoned the once-familiar one-room school in favor of modern consolidated schools reached by bus. School districts often take pride in providing transportation for these purposes, sometimes at great cost, knowing that the improved education that awaits the children at the end of the bus ride is what really matters and this is well worth the inconvenience. Only when busing occurs for the purpose of desegregation are objections raised. Some would have us believe that for this purpose, busing is not an inconvenience, but an absolute evil.

The neighborhood school represents, in a sense, the opposite side of the coin of busing. That is, just as the fifty-year old practice of busing represents an inconvenience, not an absolute evil, neighborhood schools represent a convenience, not an absolute good.

As noted, neighborhood schools have been abandoned by the thousands in rural areas in favor of larger consolidated schools commonly reached by bus. The trend of modern educational thought generally is away from the neighborhood school and toward the larger central units that can provide facilities, teachers, services and curriculum not financially feasible in smaller neighborhood schools.

Neighborhood schools realistically should be viewed as only one of several forms of school units, and not as the foundation upon which our entire system of public education should rest. In plain fact, it does not. Therefore it would be a serious mistake for the proposed "Equal Education Opportunities Act" to elevate the neighborhood school concept to the position of a new national policy and purpose. To do so would not only undermine desegregation; it would discourage the efforts of educators seeking to improve the organization of their school system toward providing quality education for every pupil.

INTEGRATION AND EQUAL EDUCATIONAL OPPORTUNITY

The cornerstone of the proposed "Equal Educational Opportunities Act" is the declaration of national policy that: all children enrolled in public schools are entitled to equal education opportunity, without regard to race, color, and national origin.

The substantive provisions of the bill, however, seek to carry out this policy while at the same time curtailing efforts to desegregate the schools. Indeed the President's message, as well as the legislation, accept the inevitability of continued school segregation and seek other means—the channelling of money into ghetto schools—to achieve equality of educational opportunity.

The essence of the President's proposal is that infusion of money can make racially isolated schools equal and he would allocate up to $2.5 billion in previously requested funds to this purpose. The Commission doubts the value of this approach. In fact, it has not worked even with a larger per student allotment in the schools of Washington, D.C.

In seeking to achieve equal educational opportunity by equalizing segregated facilities, the legislation returns to the tradition of the discarded "separate but equal" rule of *Plessy* v. *Ferguson*, which the *Brown* decision expressly overturned as unconstitutional.

But even if true equality could be achieved under segregated conditions, there is little reason to believe that the expenditures contemplated would accomplish this result. A recent report prepared by Mosteller and Moynihan of Harvard University has reaffirmed that the least promising way to improve education in ghetto schools is through the expenditure of additional funds. Many studies, including the Commission's own, have concluded that amounts far in excess of those presently contemplated would be necessary before compensatory programs in ghetto schools would in fact "compensate" in any significant degree.

Is pupil integration any more likely than increased expenditures to achieve our goals? A basic finding of the 1966 Office of Education study, "Equality of Educational Opportunity," (the Coleman Report) was that a child's own family background was by far the most important influence on his school achievement and later life experience. Some have concluded from this finding that the schools are virtually powerless as a positive influence on our children, and that the effort, instead, must be in the area of jobs and income.

We believe there are severe fallacies in this reasoning. First, the reasoning assumes incorrectly that there is only one road to the achievement of equality for minorities. In fact, efforts must be made across the board—in jobs, in housing, and in education—if that goal is to be realized. Experience has taught us that none can be ignored, that there is no quick or simple cure to the social and economic injustices which have been allowed to grow and fester for decades.

Second, this reasoning would lead us to write off at least one more generation of children, knowingly abandoning efforts to help them develop into productive participants in American society and condemning them to lives of inequality.

Third, the conclusion that the schools are powerless to increase and improve their impact on the young is wrong. As the Office of Education study found, as the Commission on Civil Rights' own study, "Racial Isolation in the Public Schools," later confirmed, and as the Harvard University report recently has reaffirmed, the social and economic backgrounds of a child's classmates bear very significantly on his or her achievement in school. It therefore does matter greatly that disadvantaged children not be educated in isolation.

But schools play a much more important function than merely providing children with the technical tools necessary to perform well on achievement tests. It is a function which one commentator has described as "to prepare people not just to earn a living but also to live a life—a creative, humane, and sensitive life." In short, the true measure of how well schools are performing cannot be gained solely by reference to test results. Two years ago, the President underscored the uniqueness of the school as an institution of society:

> It is a place not only of learning but also of living—where a child's friendships center, where he learns to measure himself against others, to share, to complete, to cooperate . . . .

It should also be a place where a child is not isolated in inferior surroundings as part of an unwanted class or race and thus told from the beginning of the process that he is inferior.

The school is the most important public institution bearing on a child's development as an informed, educated person and as a human being with hope for the future. It represents the single most important opportunity afforded to society to interrupt the endless cycle of poverty and, above all, to heal the great social divisions that trouble the Nation. For children of white, affluent society, as well as for minorities, integrated education is essential if they are to thrive in the multi-racial world they will enter and help redeem America's promise, which school children each day are asked to recite and believe in—"One Nation, under God, indivisible, with liberty and justice for all." The Commission believes it would be a serious mistake for Congress to enact legislation—especially legislation entitled "Equal Educational Opportunities Act"—that accepts the inevitability of school segregation, with its demonstrated denial of equal educational opportunity.

Two years ago, the President emphasized the close tie between quality education and desegregation: "Quality is what education is all about; desegregation is vital to that quality."

In that statement the President took a position with which we concurred then and concur now. It is a stand that is just as correct and essential today as it was two years ago. It is a stand from which the President, Congress, American education and the Nation should not retreat.

CONCLUSION

The Commission has discussed its reservations about the proposed legislation mainly in terms of its effect in slowing down progress in school desegregation. Our concerns, however, are much deeper.

Since the Supreme Court decision in the *Gaines* case in 1937, requiring the admission of a black man to the law school of the University of Missouri, there has been a slow but steady and progressive attack on segregation and discrimination in this Nation. Executive Orders of Presidents beginning in 1941, acts of Congress beginning in 1957, along with other decisions of the courts, have all been directed toward the creation of legally supported standards of behavior that would lead the Nation toward human cohesiveness and racial equality.

Now for the first time in 35 years we are faced with a series of legislative proposals including an amendment to the Constitution that lead us back along a road that this Nation should never see again. These proposals require the Nation to turn its face away from finding solutions to the difficult task of seeking effective ways of implementing the decisions of the courts and the civil rights laws enacted by the Congress. We must now defend the results of 30 years of effort that we thought were fast becoming an accepted part of American manners and morals.

Our fear is that what appears to be an assault on school desegregation, will in fact have the effect of providing solace, comfort, and support to those who opposed all civil rights advances in the past and who may now attempt to roll back the progress made in other areas.

We are also greatly troubled that millions of American citizens of minority group background may well conclude that the laws and court decisions that had begun to generate hope and faith in America's commitment to a desegregated society, with equality and justice for all, was never a true commitment, but only a device designed to muffle the voices of discontent and frustration.

Any legislation that deprives or makes more difficult the process by which American children of all races learn to understand each other—through the kind of creative contacts that can take place in the schools of the Nation—is, in our view, antithetical to the creation of a society with the capacity to provide equal justice to all, and lessens the hope, not only for American education but for American children and our Nation.

Members of the Commission:

Rev. THEODORE M. HESBURGH, C.S.C.,
Chairman.
STEPHEN HORN,
Vice Chairman.
FRANKIE M. FREEMAN,
MAURICE B. MITCHELL,
ROBERT S. RANKIN,
MANUEL RUIZ,
JOHN A. BUGGS,
Staff Director-Designate.

March 29, 1972.

Chairman CELLER. Mr. McCulloch.

Mr. MCCULLOCH. Mr. Chairman, on March 20, 1972, I introduced H.R. 13916 at the request of the administration. That bill, if enacted, would prospectively limit, for a time, the power of the Federal courts to desegregate public schools where desegregation would require new or additional busing of schoolchildren.

Certainly, Congress has in the past enacted legislation limiting the remedies that the Federal courts might give in particular cases. But never quite like this. In all prior instances of limiting legislation, Congress has either made certain that other effective remedies were available, such as in *Carey* vs. *Curtis* and *Ex Parte McCardle*, or had eliminated a remedy, where it had already constitutionally eliminated the right, as with the antiinjunction provision of the Norris-LaGuardia Act.

But Congress does not have the power to eliminate constitutional rights, and it is not uncommon that the only effective remedy for the unconstitutional wrong of school segregation involves the busing of schoolchildren. Could it be that although Congress does not have the power to eliminate constitutional rights, it can abridge them indirectly by denying the only effective remedy for their violation. If so, I submit that our written charter, our living Constitution, breathes no more.

Make no mistake about my question. I do not deny the Congress the power to regulate the jurisdictional growth of the Federal courts. Rather, I suggest that Congress cannot use the courts to accomplish unconstittuional ends. That is the history of *Marbury* v. *Madison* and *United States* v. *Klein*. Once the Federal courts are granted jurisdiction over the subject matter, the courts decide the cases according to the law of the land, and congressionally enacted limitations on the power of the courts to reach the result required by the law of the land are null and void. Congress need not use the Federal courts, but if it decides to do so, it cannot prostitute the courts for an unconstitutional end.

Indeed, the end is unconstitutional. In *Green* and in *Alexander*, the Supreme Court held that the Constitution required school desegregation and "at once." Now then, can Congress defer the right to desegregated schooling until July 1, 1973? And if it could, how could it justify the delay? As providing time to seek answers to questions which have already been answered by the Supreme Court? As providing time to adopt a bill that would prohibit busing younger students even short distances to remedy constitutional violations?

It is with the deepest regret that I sit here today to listen to a spokesman for the administration asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause for a time so that Congress may debate the merits of further slowing down and perhaps even rolling back desegregation in public schools.

I fear that long after I have ceased to represent the Fourth Congressional District of Ohio, the Nation will be paying the price for the politics of 1972 as we have long paid the price for the politics of 1876.

Wasn't it only yesterday that we in Congress told our deprived citizens to press their claims not in the streets but in the courts? Now, when some of them have taken their case to the court and under the law of the land have won victories, it is suggested that it is time to change the rules.

What message are we sending to our black people?

Is this any way to govern a country?

Is this any way to bring peace to a troubled land?

Chairman CELLER. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, may I make a brief statement?

Chairman CELLER. Yes.

Mr. MCCLORY. Thank you, Mr. Chairman.

I wish to extend a warm welcome to the Acting Attorney General this morning. He has problems enough without my adding to them here today. But I do want to say that I think that we have a very serious and very sensitive and very widespread problem to deal with. I want to commend the administration for endeavoring to help resolve this problem which does affect every section of this country.

I certainly do not want to sit here and prejudge the statement of the Acting Attorney General or even the program that the administration is advancing. I want to listen attentively to determine whether or not there is a constitutional means by which we can help resolve this very difficult problem.

I am happy that the Attorney General is not here this morning in support of a constitutional amendment, a subject that has until now been the focal point of these hearings. I cannot help but feel that it has been the meddlesome activities of some district courts in overriding duly elected school boards that has exacerbated this problem and has made it extremely difficult to solve. I do not know what the outcome is going to be but I cannot help but feel that trying to provide some national remedy and some general answer might tend to cool a situation that has certainly grown way out of proportion.

I welcome the testimony which the Attorney General is presenting here this morning. Thank you.

Chairman CELLER. Mr. Kleindienst, you may proceed.

STATEMENT OF HON. RICHARD G. KLEINDIENST, ACTING ATTORNEY GENERAL OF THE UNITED STATES, ACCOMPANIED BY RALPH E. ERICKSON, ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, AND DANIEL J. McAULIFFE, DEPUTY ASSISTANT ATTORNEY GENERAL

Mr. KLEINDIENST. Thank you, Mr. Chairman and members of the committee.

I am pleased to have this opportunity to appear before this subcommittee this morning.

At the outset I would like to introduce to the chairman and members of the committee two gentlemen who are here with me. To my left and to your right is Mr. Ralph E. Erickson, Assistant Attorney General, Office of Legal Counsel in the Department of Justice. To my right and to your left is Mr. Dan McAuliffe, Deputy Assistant Attorney General of the Department of Justice.

Chairman CELLER. We welcome them both.

Mr. KLEINDIENST. I am glad to be here concerning legal aspects of the President's proposals to limit new or additional transportation of schoolchildren in desegregation cases.

The President's program envisions an early adoption of the Student Transportation Moratorium Act. This act provides, in pertinent part, that for the period beginning with the date of its enactment until July 1, 1973, or until the enactment of the accompanying substantive legislation, or its equivalent—whichever is the earlier—"the implementation of any order of a court of the United States entered during such period shall be stayed to the extent it requires" any of the defined increases in student transportation. This provision, together with those sections of the President's proposed Equal Educational Opportunities Act dealing with remedies available to the Federal courts have been criticized as posing substantial constitutional questions relating to the separation of powers. It is further contended that in limiting available equitable remedies, Congress would violate the constitutional rights of black school children.

With respect to establishing appropriate equitable remedies and otherwise asserting its constitutional power over the federal courts Congress has ample authority. The constitutional underpinnings for this power rest on both section 5 of the 14th amendment and those sections of articles I and III of the Constitution granting Congress certain powers over the Federal courts.

Congress has a significant role to play in the development and protection of personal rights and liberties just as it has a role in the areas of property rights and economic regulation. In the latter areas the Congress' role has been predominant since the late 1930's. With respect to personal rights, Congress' role has heretofore been minimal, but that it can be enlarged within existing Supreme Court cases is illustrated by the cases decided under the enforcement clauses of the 14th and 15th amendments. For example, with respect to voting rights, the Supreme Court in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), held that Congress could prohibit certain State literacy requirements even through the Court itself in an earlier case had held that literacy tests per se were not invalid exercises of State power. Likewise, with respect to dealing with equitable remedies appropriate for use by the Federal courts, the role of Congress has been minimal, but here, too, the decided cases clearly indicate that its role can be larger.

Before elaborating on this role, it is instructive to review what the courts have and have not decided since *Brown I* declared the rights to education in a desegregated school system. The most important factor in this development is that to date the courts have been required to fashion remedies to implement that right because Congress has not used its power to provide legislative guidance.

Another significant factor is that the Supreme Court has consistently separated the finding of a substantive constitutional right from the remedies chosen to implement the right. The right is clearly based in the Constitution, while the remedy is based in the courts' equitable powers. This separate treatment began with the first *Brown* decision—*Brown* v. *Board of Education*, 347 U.S. 483 (1954), which determined only that a right to a desegregated education was constitutionally required.

One year later the court took up the problem of remedies separately, deciding that "in fashioning and effectuating the decrees the (lower Federal) courts will be guided by equitable principles."

This same separation of right and remedy is apparent in subsequent desegregation cases. Thus, in its most recent case, *Swann* v. *Board of Education*, 402 U.S. 1 (1971), the Supreme Court ruled that busing was a permissible remedy falling within the broad equitable powers of a Federal court. The court has not held that any particular remedy, including busing, is constitutionally required.

Another decision handed down on the same day as *Swann* makes clear that the States cannot enact laws eliminating remedies if they affect constitutional rights. There the court declared unconstitutional a North Carolina State law which flatly prohibited all busing. (*North Carolina State Board of Education* v. *Swann*, 402 43 (1971).)

In our opinion this decision does not conflict with the adoption by Congress of alternative desegregation remedies. The 14th amendment is specifically designed to prohibit State action whereas Congress has specific constitutional grants of legislative authority over Federal courts. This is not to say that Congress is not subject to the prohibitions of the 14th amendment (*Bolling* v. *Sharpe*, 347 U.S. 492 (1954)), but merely to emphasize that Congress has express constitutional authority with respect to dealing with the jurisdiction and remedies of Federal courts whereas the States do not.

In *Swann* the Chief Justice's opinion suggests the court would welcome assistance from the Congress in dealing with desegregation cases. He noted that the lower court there acted in the absence of legislative guidance and was required to fashion a remedy of its own. After examining the provisions of the Civil Rights Act of 1964 he concluded: "In short, there is nothing in the act that provides us material assistance in answering the question of remedy for State-imposed segregation in violation of *Brown I*" 402 U.S. at 18. The purpose of the President's substantive legislation, of course, is to provide that material assistance to the courts.

There are a number of constitutional provisions that deal with Congress power to legislate with respect to Federal courts. Article I gives Congress the express power "To constitute tribunals inferior to the Supreme Court." This same power in slightly different language, also derives from article III. (U.S. Const., art. I, sec. 8, Cl. 9; U.S. Constitution art. 111, sec. 1.)

Although the Supreme Court is created by the constitutional document itself rather than by Congress, its appellate jurisdiction is subject to "such exceptions, and under such regulations as the Congress shall make." (U.S. Const., Art III. sec. 2, Cl. 2.)

This is the thrust of *Ex parte McCardle*, 74 U.S. (4 Wall) 506 (1868).

From these express provisions flow a number of implied powers of Congress over the Federal judiciary. Thus, the power to establish the lower Federal courts includes the power to abolish those courts as, for example, Congress did with the Commerce Court in 1913. More significant is Congress' power to grant and to withdraw the jurisdiction of all Federal courts, other than the original jurisdiction of the Supreme Court.

The power of Congress to control the jurisdiction of the lower Federal courts is similar to its power with respect to the Supreme Court. *Glidden* v. *Zdanok*, 370 U.S. 530, 567 (1962).

In this regard it is significant to note that until 1875 the lower Federal courts were not granted, and hence did not possess, general jurisdiction to decide controversies in cases resting upon Federal statutes, treaties or the U.S. Constitution. Only State courts could rule on these questions. As recently as 1962, the Court observed:

> The great constitutional compromise that resulted in agreement upon Art. III, Section 1, authorized but did not obligate Congress to create inferior courts . . . Once created, they passed almost a century without exercising any very significant jurisdiction . . . Throughout this period and beyond it up to today, they remained constantly subject to jurisdictional curtailment (*Glidden* v. *Zdanok*, 370 U.S. 530, 551 (1962)).

It seems clear that, if Congress has the power to create or abolish courts and to grant, withhold or revoke jurisdiction, it has the lesser power to grant or deny remedies to the Federal courts or, as outlined in the President's proposals, to minimally alter some of their equitable remedies.

It appears that Congress first defined the equitable jurisdiction of the Federal courts in the Judiciary Act of 1789. Section 16 of that act prohibited the granting of any equitable relief where there is an adequate remedy at law. More significantly, a statute that has been on the books since 1793 prohibits the Federal courts from issuing injunctions against State court proceedings.

The Norris-La Guardia Act provides that "no court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute."

These provisions have scarcely been questioned on constitutional grounds. In one case upholding the Norris-La Guardia Act, the Court said merely that—

> There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States.

The Emergency Price Control Act of 1942 vested the Emergency Court of Appeals with exclusive equity jurisdiction to determine the validity of the price regulations issued by the Office of Price Administration. All other courts, State and Federal, were divested of this jurisdiction. The act, in addition, denied to the Emergency Court the equitable remedies of the temporary restraining order and the interlocutory injunction. Further, in the event a permanent injunction was issued by the Emergency Court, the decree could not be effective until the Supreme Court denied certiorari or until after a hearing on the merits in that Court.

The Supreme Court unanimously held that Congress could vest jurisdiction over the matter in any court that it chose and simultaneously divest the other courts of this jurisdiction. Chief Justice Stone stated that—

> The congressional power to ordain and establish inferior courts includes the power of "investing them with jurisdiction either limited, concurrent, or exclusive and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good."

The provision of the act restricting the issuance of temporary injunctions and delaying the effective date of any permanent injunction was upheld by the Court in the *Yakus* case. There the Chief Justice stated that—

> The legislative formulation of what would otherwise be a rule of judicial discretion is not a denial of due process or a usurpation of judicial functions.

It should be noted that the 1942 act's provision affecting equitable remedies is very similar to the President's Moratorium Act. In each instance Congress is exercising its power over the courts to define the appropriateness of ordering equitable remedies that in the absence of legislative guidance could issue as a matter of judicial discretion.

In a later case, the Court again approved the power of Congress to limit the equitable remedies of Federal courts. In *Glidden* it approved Congress refusal to give the Court of Claims the power to grant equitable relief, stating "no question can be raised of Congress' freedom, consistently with article III, to impose such a limitation upon the remedial powers of a Federal court." *Glidden* v. *Zdanok*, 370 U.S. 530, 557 (1962).

A frequent argument voiced against the President's proposals is that although they are nominally directed only against judicial remedies, they so restrict those remedies as to deny or substantially abrogate constitutional rights. The constitutional source of the right in this instance, of course, is the first *Brown* decision in which the Court held that the equal protection clause prohibits officially sanctioned segregation in the public schools. The proposed legislation fully recognizes this decision. Indeed, the Equal Educational Opportunities Act expressly reaffirms the *Brown I* right.

We also recognize that "Congress may not by fiat overturn the constitutional decisions of the Court." *Glidden* v. *Zdanok*, 370 U.S. 530, 541 (1962). Neither of the proposals submitted by the President has as either a purpose or an effect the overturning of constitutional decisions.

The Congress has a proper constitutional role to play in the definition of constitutional rights and in the remedies appropriate for implementing them. Here this role derives from section 5 of the 14th amendment which provides that "the Congress shall have the power to enforce, by appropriate legislation, the provisions of this article," including, of course, the equal protection and due process clauses.

With the exception of the Civil Rights Act of 1964, congressional participation in the enforcement of school desegregation has been minimal. While those provisions of articles I and III discussed earlier permit congressional action solely with respect to remedies, section 5 authorizes Congress to legislate as to matters dealing with constitutional rights as well.

The general issue of congressional power pursuant to this section has been before the Court recently on three occasions—*South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966); *Oregon* v. *Mitchell*, 400 U.S. 112 (1970)—involving the Voting Rights Act of 1965 and the 1970 amendments to that act in which Congress dealt with the qualifications of persons to vote, an area of power traditionally reserved to the States.

The most significant of these cases is *Katzenbach* v. *Morgan* which upheld section 4(e) of the 1965 act prohibiting the States from enforcing literacy requirements for voting against "persons educated in American-flag schools in which the predominant classroom language was other than English."

Although the Supreme Court had itself held in a previous case—*Lassiter* v. *Northampton Election Board*, 360 U.S. 45 (1959)—that literacy tests were not per se invalid, in all circumstances, it upheld the legislation in question on the basis of Congress' power under section 5 of the 14th amendment. The test adopted by the Court for judging the constitutionality of congressional enactments under the enforcement clause is:

> Whether the Act may be regarded as an enactment to enforce the equal protection clause, whether it is "plainly adapted to that end" and whether it is not prohibited by but is consistent with "the letter and spirit of the Constitution." 384 U.S. at 651.

The *Morgan* case thus establishes that Congress can legislate concerning rights already said to exist within equal protection clause guarantees and to enlarge those guarantees upon a proper factual showing. The only question raised by *Morgan*, with respect to the Moratorium Act, is whether the proposal fits within the warning issued by Justice Brennan in a footnote that Congress has "no power to restrict, abrogate, or dilute" the 14th amendment guarantees, 384 U.S. at 651–52 note 10. See also Justice Black's opinion in *Oregon* v. *Mitchell*, 400 U.S. 112, 128 (1970), to the same effect.

We do not believe that this footnote is sufficient authority to place in doubt the President's proposal to place a moratorium on the implementation of new busing orders. In the first place, the footnote refers only to powers contained in section 5, but does not discuss other constitutional clauses bearing on the moratorium proposal, namely, the constitutional powers of Congress over the Federal judiciary.

In addition, in examining this issue, one must consider the total legislative proposal submitted. Some of the provisions, such as the moratorium, may temporarily limit some of the Courts' previous powers, but others, notably the provisions in the Equal Educational Opportunities Act dealing with language barriers, increase the scope of judicial actions, and the rights of individuals. When the proposal as a whole is examined in the light, its overall thrust is to enlarge upon and enforce the individual rights embraced by the equal protection clause.

Moreover, we believe that the *Morgan* footnote overstates the case against Congress' power to deal with constitutional rights. In a scholarly article, former Solicitor General Cox has suggested that there may indeed be areas where it is appropriate for Congress, with its superior fact-finding abilities, to substitute its judgment of the proper implementation of constitutional rights for that of the courts. [Cox, "The Role of Congress in Constitutional Determinations," 40 U. Cinn. L. Rev. 199, 247–61 (1971).]

Indeed, in some respects the *Morgan* footnote appears to contradict the text of the opinion itself, which recognizes that instead of constitutional rights being immediately clear from the face of the Constitution, the existence of some rights depends upon a showing of particular facts. The opinion recognizes the superior factfinding abilities of Congress to gather and to weigh the various considerations and to use its discretion in reaching a judgment about constitutional rights. Thus, at one point the Court held that:

> It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations. . . . It is not for us to review the Congressional resolution of these factors. It is enough that we be able to perceive a basis upon which the Congress might resolve the conflict as it did (384 U.S. at 653).

Later in the opinion, the Court explained that it deferred to "a specially-informed legislative competence" because "it was Congress' prerogative to weigh these competing considerations." 384 U.S. at 656.

This deference to Congressional judgment is not an uncommon theme of Supreme Court opinions. In 1962 the Supreme Court was faced with a declaration by Congress that the Court of Claims and the Court of Customs and Patent Appeals were constitutional courts established under article III of the Constitution. The Court had previously held as a matter of constitutional law that those courts were legislative courts established under article I.

In its later decision, however, the Court deferred to Congress. It held that although the Court is the ultimate expositor of the Constitution, its responsibility in this regard is not compromised if it gives "due weight" to congressional declarations. *Glidden* v. *Zdanok*, 370 U.S. 530, 542 (1962).

The lesson of these cases is that there is an area in which reasonable men may differ over the proper course to take in implementing constitutional guarantees. In this area the Court will defer to the superior ability of Congress to weigh all the factors needed to reach a conclusion as to the proper course to take.

The question here is the appropriate remedy for implementation of the right to a desegregated education, an area in which Congress' special factfinding expertise should be utilized. Legitimate questions that might be raised in this area are, for example: How much busing will harm the health of a child? How much may impair the educational process? How great are the benefits to children in receiving a desegregated education compared to the detriments of busing? These are essentially legislative—not judicial—questions.

The concept of a moratorium on governmental action has previously been upheld by the Supreme Court. This was the case with Minnesota's 2-year moratorium on mortgage foreclosures during the depression. *Home Building & Loan Association* v. *Blaisdell*, 290 U.S. 398 (1934).

The Supreme Court rejected the contention that this statute violated the constitutional guarantee prohibiting the impairment of obligations. Thus, the State legislature effectively, and within the constitutional ambit, modified the remedies available in cases involving Federal constitutional rights.

The Voting Rights Act of 1965 contains a moratorium prohibiting the States from implementing new voter regulations, either by statute or constitutional amendment, until they can be examined by Federal authorities. South Carolina's claim that this was not appropriate legislation within the meaning of the enforcement clause of the 15th amendment was rejected by the Court:

> This may have been an uncommon exercise of Congressional power, as South Carolina contends, but the Court has recognized that exceptional conditions can justify legislative measures not otherwise appropriate (*South Carolina* v. *Katzenbach*, 383 U.S. 301, 334 (1966)).

The situation presented by the Moratorium Act is analogous. Since Congress is presently considering a permanent solution to the busing problem, one that permits reopening of existing busing orders, it may well deem it appropriate to withhold the effective date of new busing orders that may exceed the requirements of the permanent bill. Otherwise, elaborate busing plans could be imposed by the Federal courts only to be subject to a reopening after the permanent legislation is adopted.

The Moratorium Act is intended merely as a first step in dealing with the immediate problem of busing. It is predicated upon congressional enactment of a subsequent, comprehensive scheme to deal with equal educational opportunity. We believe that the proposed Equal Educational Opportunities Act fulfills that need and will satisfactorily establish a unifom, national standard for school desegregation based on present constitutional standards. While Secretary Richardson will speak to that part of the proposal intended to concentrate resources for compensatory education, I wish to comment briefly on the provisions dealing with the right to an equal educational opportunity and the remedies provided for achieving that right.

The act prohibits any State from denying, by taking any one of six prohibited actions, any individual an equal educational opportunity on account of his race, color, or national origin. These prohibitions include deliberate segregation of students by race and similar actions already prohibited by the Supreme Court as denying equal protection. In some instances, notably the failure by an educational agency to take appropriate action to overcome language barriers, the act goes beyond what is now required by the 14th amendment.

To implement the right to an equal educational opportunity, every court, agency, or department of the United States must adhere to the priority list of remedies as specified in the act. These remedies are subject to certain transportation limits. For students in grades six and lower, no remedy can be imposed that results in an increase in transportation. For students in grades seven and higher no increased busing can be ordered unless it is demonstrated by clear and convincing evidence that no other remedy set forth in the act will be adequate.

As drafted, these provisions fall within the current constitutional guidelines set forth by the Supreme Court. Since the act embraces the substantive rights flowing from the guarantee of equal protection and provides the remedies appropriate for enforcing these rights, the constitutional underpinnings for this proposal, as in the case of the Moratorium Act, rests on both section 5 of the 14th amendment and Congress' powers under articles I and III to deal with the jurisdiction and remedies of Federal courts.

Since I have already discussed in some detail the scope of congressional power arising under these constitutional provisions, I need add only a few observations with respect to this particular act. To the extent the act enlarges on rights flowing from equal protection, it relies on the Supreme Court's opinion in *Katzenbach* v. *Morgan* endorsing an expansive role of Congress under section 5.

The busing limitations are predicated not only on Congress' express constitutional powers with respect to Federal courts, but are also tailored to meet the criteria outlined by the Chief Justice in the *Swann* case. There the appropriateness of busing as a remedy is tied to such factors as the age of the students, and the possible impairment of health and the educational process due to long-distance busing. The determination by Congress of these factors will be given due weight by the courts in line with previous decisions acknowledging the superior factfinding abilities of Congress.

Finally, I wish to emphasize that one of the most significant features of the President's program is that, although Congress has the power to limit the jurisdiction of State courts as to Federal questions—*Bowles* v. *Willingham*, 321 U.S. 503, 511–12 (1944)—neither of the bills attempts to do so. Both acts apply only to courts, departments, or agencies of the United States, thus leaving the State courts and State agencies completely free to deal with any violations of the right to education in a desegregated school system.

This aspect of the President's program meets conclusively an oft-heard objection that by limiting some of the Federal courts' equitable remedies, including busing, the bills may improperly dilute or deny the constitutional right to education in a desegregated school system. Even if one were to concede for the sake of argument that the bills would deny the Federal courts the power to deal effectively with a desegregation suit—a position hardly consistent with the terms of the proposals—the acts remain valid by virtue of the broad constitutional authority vested in Congress to allocate the Nation's judicial business among the courts.

There is ample support for the proposition that the Constitution does not require that any particular tribunal hear Federal question cases. As noted earlier, until 1875 State courts were the general repositories of such jurisdiction. Also in *Yakus*, where jurisdiction over certain cases had been removed from all State and Federal courts except the Emergency Court of Appeals, the Supreme Court held that—

> . . . there is no constitutional requirement that . . . (testing the constitutional validity of a regulation) be made in one tribunal rather than another, so long as there is an opportunity to be heard and for judicial review which satisfies the demands of due process (*Yakus* v. *U.S.* 321 U.S. 414, 444 (1944) See also *Lockerty* v. *Phillips*, 319 U.S. 182, 188 (1943)).

And just this past term Justice Douglas stated for the Court:

> Congress could, of course, have routed all Federal constitutional questions through the state court systems, saving to this Court the final say when it came to review of the State court judgments (*Wisconsin* v. *Constantineau*, 400 U.S. 433, 437 (1971)).

Of course, neither the Moratorium Act nor the substantive legislation goes this far. They retain the jurisdiction of the Federal courts to determine both the existence of any violation of the right to a desegregated education and to afford remedies appropriate to rectify the violation. The bills do affect the priority of remedies, but if any aggrieved party feels that he cannot get satisfactory relief in the Federal courts, he can pursue the matter in the State courts. The availability of these forums clearly precludes any argument that Congress has recognized the right but cut off the remedy.

I might add a few words about the various constitutional amendments that have been proposed on school busing. We are not supporting, at this time, any of these proposals. Primarily, this is true because we believe that the President's proposals offer an adequate, speedy, and constitutional solution of the busing dilemma. If these premises turn out not to be true, we are free to reconsider the matter but in the meantime we urge that Congress' consideration of the amendment approach should not serve to delay action on the President's proposals.

In conclusion, it is our view that Congress has an important role to play in meeting the challenge of providing a better education for the schoolchildren of America. This education must be provided in a desegregated school system setting and yet avoid the disruptive and harmful effects of excessive busing. Congress can fulfill its role in this important effort by enacting the two proposals submitted by the President, The Student Transportation Moratorium Act of 1972, and the Equal Educational Opportunities Act of 1972. These proposals fit well within the scope of the power of Congress, as defined by the courts, to define constitutional rights and to establish appropriate remedies to effectuate these rights. We are satisfied that, if such legislation is enacted, it will be upheld against constitutional attacks. As Oliver Wendell Holmes once observed:

> Great constitutional provisions must be administered with caution. Some play must be allowed for the joints of the machine, and it must be remembered that legislature are ultimate guaradians of the liberties and welfare of the people in quite as great a degree as the courts.

Thank you, Mr. Chairman.

Chairman CELLER. I want to commend you, Mr. Kleindienst, on a very fine statement. Of course, that does not mean that I, personally, agree with you but it was very well put together.

The *Brown* decision outlawed segregation by race in the public schools under the 14th amendment. Your statement says that you and the administration agree with the *Brown* decision.

That decision meant the granting of constitutional right not to be compelled to attend a segregated school. Since that time the Supreme Court has held that the States must take positive steps to desegregate now without further delay.

I ask this question: Can Congress, by statute, now delay the enjoyment of these constitutional rights? Justice delayed, is justice denied.

Mr. KLEINDIENST. Mr. Chairman, I believe, with respect to the limited application of the Student Transportation Moratorium Act, it can, because this Moratorium Act does not ask the Congress to stop the whole process of desegregation in schools that the States did segregate by operation of law. All it does is say that from the date of the enactment of this act until July 1, 1973, or the adoption of legislation, whichever is sooner, there shall be no additional court orders with respect to one particular remedy in the whole problem of desegregation, and that is the remedy of busing. There shall be no increased busing. That does not prevent courts from entering appropriate orders, seeking as they have done since *Brown I*, to continue the process of desegregation in our schools.

I think that there has been great confusion, Mr. Chairman, because the Moratorium Act has been characterized by some as meaning that we are stopping the whole process of desegregation in our schools. It does not mean that. It merely means that until July 1, 1973, one particular remedy, and that is the remedy of transportation, shall not be used or be increased by an order of a Federal court until the Congress deals with this problem.

Chairman CELLER. That is what I am trying to say, that the busing was used to desegregate or to integrate, and that under the *Brown* decision such assignments were to implement constitutional rights.

Now, how can Congress exercise power over the courts to delay or postpone enjoyment of a constitutional right?

Mr. KLEINDIENST. There is no effort here to deny the constitutional right that was given in *Brown I* and the subsequent cases. Indeed, the Supreme Court addressed itself to the question of busing in the *Swann* case. It said, I believe, that there is no absolute right to busing but that busing may be one of the tools, one of the remedies, one of the techniques, one of the arrows in your quiver that you can put to your bow as a means by which to desegregate our schools.

I believe that just as a court can issue a temporary restraining order to give it the time to determine the outcome of a case, so the Congress can pass a law and say, with respect to this one particular aspect of the matter, we are going to just call a halt in order to give us time to exercise our expertise and our wisdom to conduct committee hearings and, based on the evidence that would be adduced, to come up with a national formula, a national standard, a course of action similar, let us say, to what occurred in the adoption of the National Labor Relations Acts in 1935 and 1936, that laid to rest the chaos that existed with respect to the rights of working people to engage in concerted activities and collective bargaining and strikes.

Here you are saying, we are going to give ourselves a year in order to come up with a national standard that would apply in Alabama, Massachusetts, California and Illinois and, according to the proposal of the President of the United States, a solution that contemplates the use of busing. The substantive legislation of the President of the United States, among other things, contemplates, as a remedy, the use of busing.

Chairman CELLER. Now, as to busing, let us see what the Supreme Court said in that regard and you make much of this. I am reading from the *Board of Education* v. *Swann.*

> Bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it. *Board of Education v. Swann.*

What is your comment on that?

Mr. KLEINDIENST. My comment is this, Mr. Chairman: I think, as my principal remarks illustrate, busing is an equitable remedy of the Federal courts, the lower courts. I think you would agree with me that the Congress could pass a law in which it could abolish all Federal courts except the Supreme Court. If you did that, then you would have no forum in the Federal judiciary. You would have to go to the Supreme Court in the first instance.

The Congress has this right, and the Supreme Court, by Chief Justice Burger, significantly said this as part of his opinion in the *Swann* case:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process. District courts must weigh the soundness of any transportation in light of what is said in subdivisions (1), (2), and (3) above. It hardly needs stating that the limits on time of travel will vary with many factors but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed.

What the Chief Justice of the United States is really saying is that the Congress of the United States ought to address itself to the admittedly troublesome problem of the limits, if any, that should be imposed upon this remedy of busing. They should examine into whether excessive, complete, unabrogated busing does have an impact on a child 6 or 7 years of age. Can excessive busing under some circumstances impair the health of a child?

And that is all the President of the United States is asking the Congress to do; that is, to lay down a guideline that would be binding upon the 400 Federal district judges in this sensitive area.

Chairman CELLER. I am happy that you embrace the words of Chief Justice Burger. In that connection, let me call your attention to the following: This administration has tried to delay desegregation before. This is not the first time. Three years ago in 1969, the Government sought to delay the implementation of desegregation in Mississippi schools so that so-called, new indepth studies could be made. In 1969 efforts of HEW to postpone or delay desegregation was denied and brought forth from the Supreme Court these words:

> The question presented is one of paramount importance, involving as it does denial of fundamental rights of many thousands of school children who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate

speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools (*Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 1283 (1969).)

Mr. KLEINDIENST. I fully endorse and adopt that statement and accept it as the law of the United States and nothing contained therein, I respectfully submit, Mr. Chairman, is inconsistent with the proposals made by the President of the United States. He does not propose either in his substantive legislation or in the Student Transportation Moratorium Act to stop the courts, the Federal courts of the United States, from dealing with the problem of segregation in our schools. All he is saying is that with respect to one remedy that is available to the courts, the remedy of busing, there will be no new busing orders for a year until the Congress of the United States deals with this sensitive problem.

Chairman CELLER. What remedies would be available other than busing—what remedies would be available to desegregate?

Mr. KLEINDIENST. Mr. Chairman, there are all kinds of remedies that are available.

Chairman CELLER. For example?

Mr. KLEINDIENST. The construction of new schools, the allocation of students within a school district where no additional busing is required, the reassignment of students in *de jure* school situations. Indeed in many situations you would have less busing than you would now pursuant to a formal order of the court. The *Swann* case really was the first case that began to deal with this whole problem of busing and the reason why it came up, and I believe the reason why it is the troublesome issue that it is in the United States is that in interpreting the thrust of the *Swann* case, various Federal district judges have given it different interpretations. One judge would say that *Swann* means that we are going to have excessive busing to bring about a racial balance. Another judge said we are not going to have racial balance but we have to, if necessary, have extensive busing.

Another judge said no busing is necessary or required, that you can do it another way. Other judges have said that, in order to implement and effectuate *Swann*, we are going to cut across traditional school lines, county lines, and political subdivision lines.

When you are a citizen of one State and you are subject to one order and you hear that a judge does something else in another case with respect to this matter, I think you have a right to ask questions whether or not it is time for the Congress——

Chairman CELLER. Isn't that the situation in all types of litigation? In antitrust cases you may have differing decisions in different sections of the county. That is our judicial system. The Supreme Court makes the final decision.

Mr. KLEINDIENST. I think what is happening here, as a result of the fact that the Congress has avoided this problem, is that some 400 Federal district judges are doing the legislating and that was not contemplated by our Constitution. The courts are there to enforce and effectuate the laws of the Congress and ultimately to determine whether those laws are constitutional. I do not think it was contemplated to have 400 legislators appointed by the Presidents of the United States with the advice of the Senate who call themselves Federal judges. That is the reason why the National Labor Relations Act had a great impact on the solution to a very serious social problem in the United States. It created a standard.

Chairman **Celler**. You don't give an answer to the question as to whether or not you agree or do not agree with the pending resolution, House Joint Resolution 620, providing for a constitutional amendment for which there is a discharge petition on the Speaker's desk. Do you still insist on refusing to give your opinion on that?

Mr. **Kleindienst**. Yes, sir; I do.

Chairman **Celler**. Why do you do that? Suppose that discharge petition obtains the requisite number of signatures? We have no such luxury in delaying a decision on that. The Members of the House are confronted with a very serious situation here and we are asking for the advice of the administration. Why shouldn't we get that advice as to whether the administration approves or disapproves the proposed constitutional amendment?

Mr. **Kleindienst**. I think in my remarks this morning, Mr. Chairman, I have indicated that the preferable approach to the solution of this problem from the standpoint of the executive branch is something short of a constitutional amendment and that is the enactment, by the Congress of the United States, of substantive legislation that will give a national standard for providing a solution to this problem all over the United States.

Chairman **Celler**. I understand what you are saying but I again repeat, we have not the luxury of delay here. We are confronted with a discharge petition now with over 150 signatures and we would like to get an option from the administration on that proposed amendment.

Mr. **Kleindienst**. We have given it, Mr. Chairman. We do think you have the luxury of delay for a reasonable period of time to address yourselves to legislation. The moratorium proposal is a proper function of the Congress of the United States to provide the time needed for thoughtful consideration of a national standard with respect to education.

Chairman **Celler**. Do I understand by inference that one can say that the President approves the constitutional amendment but, because of the length of time it would take for ratification, that he does not wish to have it processed now?

Mr. **Kleindienst**. Well, I think he feels, as I interpret his statements and the message that he sent to the Congress on March 17, this conviction: Something less than a constitutional amendment can be the solution to this problem, that is to say, the act of the Congress of the United States and that is something that you can do now. A constitutional amendment is something that realistically could not be brought to bear on this problem for several years, until the legislators of the requisite number of States adopted it. I think that, Mr. Chairman, the Congress can indulge itself in the luxury of time here if it would address itself to this problem and come up with a legislative solution that would guarantee, No. 1, that you would never again have a dual school system by operation of law; No. 2, that you would not have students assigned to schools based upon race, color, or creed, and, No. 3, that remedies would be provided by the Congress that would have a uniform application throughout this Nation so that we can get on with the business of providing equal educational opportunities to our children and eliminate the scourge of racism and racial segregation. This is a great challenge to the Congress to deal with this problem.

Chairman CELLER. By the way, when I referred to the constitutional amendment I was referring to House Joint Resolution 620. You stated, I believe, that both administration proposals applied only to courts, departments, or agencies of the United States, thus leaving the State courts and State agencies completely free to deal with any violations of the right to education in a desegregated school system. But could not a case instituted in a State court be removed to a Federal court by the defendant school board?

Mr. KLEINDIENST. Mr. Chairman, I will have to beg your indulgence. You made a statement with respect to House Joint Resolution 620 and I did not get the import of your last remark and I apologize.

Chairman CELLER. My last statement was with reference to your statement: "Both acts apply to courts, departments, and agencies of the United States, thus leaving the State courts and State agencies completely free to deal with any violations of the rights to education in a desegregated school system."

Now, a case brought in a State court can be removed to the Federal court inasmuch as deprivation of civil rights is involved.

Mr. KLEINDIENST. It may but what I was intending to point out there, Mr. Chairman——

Chairman CELLER. If that be the case, what remedy would in fact be available?

Mr. KLEINDIENST. What I was trying to point out is that in the event the moratorium bill was passed, during its effective period, a person would still have available to him a State court to assert any Federal right in this area. If you are talking about the removal statute, I do not know if it has been touched upon by this legislation. I am consulting with my colleagues, Mr. Chairman. Just one minute, please.

We have a doubt in our minds with respect to the answer to that question, Mr. Chairman, and therefore I would like to submit an additional statement on it. We are uncertain.

Chairman CELLER. Before you do, let counsel read from one Federal removal statute; it might help you.

Mr. ZELENKO. For example, section 1443 reads:

> Any of the following civil actions or criminal prosecutions commenced in state court may be removed by the defendant to District Court of the United States for the district and diversion embracing the place wherein it is pending
>
> * * * * * * *
>
> (2) For any act under color of authority derived from any law providing equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

Mr. KLEINDIENST. I think, Mr. Zelenko, you probably have touched an aspect of this thing that we had not considered and that is that a defendant, a school board, could remove it to Federal court and then if the moratorium was in effect, he would not be able; no—I have to be careful about that—he could not get an additional busing remedy during the existence of the moratorium.

Chairman CELLER. That is a very serious situation and I would like you to give us the answer on it.

Mr. KLEINDIENST. I think we should, Mr. Chairman, and I think Mr. Zelenko has aided us in pointing that out.

Chairman CELLER. Mr. Hungate.

Mr. HUNGATE. Thank you, Mr. Chairman.

We are glad to have you here, Mr. Kleindienst. I wonder if you could tell us some of the recognized constitutional authorities around the country who support the President's proposals, suggesting they are constitutional. Would it be possible to submit the names of authorities with such a view to aid the committee in weighing this matter?

Mr. KLEINDIENST. We are here submitting authorities to substantiate the view of the executive department. We are advocates for a cause. As lawyers we sincerely believe that the constitutional power exists and I do not know, Mr. Hungate, if I would want to go out and seek arguments from other experts who oppose our point of view.

Mr. HUNGATE. No, I did not mean those opposing it. I meant if there were other recognized scholars who concurred in your view, it might be helpful.

Mr. KLEINDIENST. We consulted many, Mr. Hungate, and as a result of our consultation with many constitutional experts in and out of the Government, we have distilled it down to the presentation that I made for you today, so that I can just say to you that is not just the thinking of the Department of Justice and lawyers in it. This has been participated in by lawyers throughout the Government and also very distinguished constitutional lawyers outside of the Government.

Mr. HUNGATE. All I am suggesting is that it might strengthen the case perhaps if we had the names of three or four of these constitutional authorities—if they would submit letters to weigh in the balance of opinions of the scholars that keep rolling in here.

Mr. KLEINDIENST. We would endeavor to do that. I cannot guarantee that they would be willing to do that publicly but we will endeavor to do that.

Mr. HUNGATE. I understand that. I would say not all of the committee, perhaps, regard court packing as a great mistake. The analogy with President Roosevelt's attempt to increase the size of the Court reveals that it is not necessarily a liberal or conservative attitude. He was recognized as liberal and tried to increase the court. There are those who feel if nine Supreme Court Justices are good, perhaps 15 could be better.

Mr. Attorney General, are there not lawsuits now pending brought by the Justice Department that, if successful, would result in consolidation of school districts and increased busing?

Mr. KLEINDIENST. There are no suits brought by the Department of Justice that would look to consolidation of school districts. There are suits before Federal district judges which have been brought by private parties.

Let us take the *Richmond* case. We were not a party in the *Richmond* case.

Mr. HUNGATE. Perhaps I misunderstand the case but there is a case in Missouri involving Berkeley, Kinloch, and Ferguson Counties that I had understood was brought by the Justice Department to combine three basically white communities with a basically black community and accomplish more integration. It would seem to me busing would necessarily be increased in that case.

Mr. KLEINDIENST. I do not know if we are a party or not, Mr. Hungate.

Mr. HUNGATE. Could that be checked and would you please advise the committee?

Mr. KLEINDIENST. What was the name of the case?

Mr. HUNGATE. The case is in the Eastern District of Missouri, St. Louis Federal Court and it involves the communities of Kinloch, which is basically a black community, and Florissant, Ferguson, and Berkeley.

Mr. KLEINDIENST. If we are there, we would ask the Court to await congressional action on the Moratorium Act and further, upon the passage of that, we would ask the Court to await the action of the Congress with respect to the adoption of a national standard.

Mr. HUNGATE. If such consolidation would result in increased busing and if there is no desire to increase busing, would it not be within the discretion of the department to dismiss the suit if they brought it?

Mr. KLEINDIENST. I do not think we would do that.

Mr. HUNGATE. You do not think you would dismiss it?

Mr. KLEINDIENST. The question is not whether you increase or decrease busing in every case. The question is one of a priority for the use of remedies.

Mr. HUNGATE. Pardon me. You are not necessarily opposed to increased busing in every case?

Mr. KLEINDIENST. No, all we want to do is to have every Federal district judge apply a list of remedies on a priority basis in order to achieve two things: First, quality education and, second, the elimination of segregation in our schools. The last remedy is busing. If you cannot accomplish those objectives without busing, then you use it. I can see hypothetically in some cases you might have more busing and you might have less. The significant thing is that with respect to the use of busing, it would be pursuant to a standard that would apply equally all over the United States.

Mr. HUNGATE. I think in some part of your statement we were talking about children in the sixth grade and below, where no increased busing would be permitted.

Now, in some cases would it not be possible in unforeseen circumstances, perhaps unrelated to race or quality of education, that would require some increase in busing? For example, a 10-percent increase might be desirable?

Mr. KLEINDIENST. Under this bill it would prohibit such increased busing and it seems to me that is an aspect of this proposed legislation that the Congress would have to address its attention to, but the way it is now written, it would prohibit, after the substantive legislation was passed, increased busing of those who are in the sixth grade or below.

Mr. HUNGATE. If I understood you previously, the busing is but one tool for the improvement of quality education.

Mr. KLEINDIENST. Yes, sir.

Mr. HUNGATE. In some circumstances it might be that increased busing would be the tool you would need to use to increase quality of education.

Mr. KLEINDIENST. I would like to add one footnote. The substantive legislation provides that a State, let's say the State of Missouri, could pass legislation with respect to, let us say, students in the first six grades. They would have increased busing. So it does not prohibit any increased busing. All it says is that a Federal district judge shall not in his order increase busing over that which existed for those who are in the first six grades.

Mr. Hungate. A Federal judge would not be permitted to do that, is that right?

Mr. Kleindienst. The way this bill is written; yes, sir.

Mr. Hungate. Let me ask, Mr. Attorney General, would you think there is a distinction between *Brown I* and *Brown II*, as they are referred to, in courts applying rules to effect desegregation as opposed to rules and orders to effect integration?

Mr. Kleindienst. Your fundamental law was announced in *Brown I* and in every case that has been decided since *Brown I* the Supreme Court has either further interpreted *Brown* or laid down requirements and mandates by which the States are compelled to get on with the business of desegregating schools, so there is no basic conflict between the two.

The fundamental proposition is stated in *Brown I*.

Mr. Hungate. Don't you believe that it is possible for courts to issue orders to accomplish desegregation without issuing orders to accomplish integration?

Mr. Kleindienst. That is true.

Mr. Hungate. Do you find the distinction in the opinions between *de facto* and *de jure* segregation? In some cases schools have complied with elimination of *de jure* segregation whereas they have not gone so far as to eliminate *de facto* segregation.

Mr. Kleindienst. I think that the principle is pretty much stated by the Supreme Court in the *Swann* case that racial balance is not required by the Constitution. There is no percentage factor required. You don't have to have a 50–50 or 60–40 or 45–35 allocation.

I think some Federal district judges have misinterpreted *Swann* and seem to be looking for results that do come up with a mathematical formula and the Supreme Court has said that is not required.

Mr. Hungate. As I understand it, your suggestion is that the Congress has power under article I or article III to withdraw part of the jurisdiction previously extended to the Federal courts.

Mr. Kleindienst. They have. If they have the power to abolish inferior Federal courts, then it seems to me they have the power to determine the remedies that the courts can apply. Indeed, the Congress in the past has enacted legislation, such as the Norris-LaGuardia Act, which said that a Federal district court shall not issue a restraining order in labor disputes.

Mr. Hungate. How would you deal with the analogy that although a State may in some cases decline to issue a corporate charter it may not impose unconstituional conditions in granting the charter?

Mr. Kleindienst. I am not sure of the analogy.

Mr. Hungate. The analogy is that, while you may abolish a court, does that necessarily mean you can create a court and strip it of powers to remedy a constitutional deprivation?

Mr. Kleindienst. No; I do not think you can create a court nor can Congress pass a law and give an unconstitutional jurisdiction to a court. That would violate the Constitution.

Mr. Hungate. Would it be unconstitutional to take away the courts' jurisdiction as to public school cases?

Mr. Kleindienst. I do not think it would.

I do not think that would ever happen but I do not think it would be unconstitutional. I think the Congress has the power to carve out anything it wishes with regard to the jurisdiction of the inferior courts. But it cannot tell an inferior court what it must decide by a congressional enactment which is contrary to the Constitution.

Mr. Hungate. Perhaps this analogy is not apt, either, but I am thinking of the *Dartmouth College* case which, of course, dealt with the contract clause. It was held that once a contract was granted, the Supreme Court likened the charters of private corporations to contracts. State legislatures could not constitutionally impair its provisions.

Mr. Kleindienst. Only the Supreme Court can determine the constitutionality of an act. The Supreme Court long ago held that the Congress cannot determine an act unconstitutional. Your final arbiter, of course, is the Supreme Court of the United States.

Mr. Hungate. Thank you.

Chairman Celler. Mr. Mikva.

Mr. Hungate. I am sorry. I have a citation on the Missouri case to which I referred, *United States* v. *State of Missouri*, et al., Civil Action No. 716555-C, September 3, 1971. I would appreciate it if you would check that.

Mr. Mikva. Mr. Attorney General. I did not share the experience that you and Mr. Hungate had of going to the same law school so you will have to back up a little bit with me.

You based a lot of your statements on the capacity of Congress to either strip down or strip out the inferior Federal courts and on that there has been no argument.

We skipped through that but I am afraid that presents more confusion than help in terms of this dispute and I have seen several proposals wandering around the legislative chamber which seem to revolve on the supposition that Congress has the power to take away the capacity of the judicial branch to fashion a remedy for a violation of a constitutional right. That is not your position, is it?

Mr. Kleindienst. Well, it is not our position that the Federal judiciary as it is now constituted does not have the power to implement a remedy. It does have that power right now.

Mr. Mikva. Let me ask my question and maybe you can answer it. Is there anything in this proposal, H.R. 13916, which would deny the U.S. Supreme Court—or which seeks to deny the U.S. Supreme Court—the power to impose an order requiring busing?

Mr. Kleindienst. No; in our opinion there is nothing in H.R. 13916 that contravenes *Swann* and the cases that preceded it.

Mr. Mikva. I will get to that in a moment and I am not trying to spar. I am trying to get an answer.

If we were to pass H.R. 13916 and the U.S. Supreme Court were to get a case—whether through the Federal courts or through the State court system—in which it decided that the only way that the Federal constitutional right could be implemented was through busing, is there anything in H.R. 13916 which would restrict the power of the U.S. Supreme Court to order such busing immediately?

Mr. Kleindienst. The only restriction, Mr. Mikva, would be that the Court would have to satisfy itself that the busing order that was issued by the Federal district court was pursuant to the terms and conditions of this legislation.

Mr. Mikva. You missed my point.

H.R. 13916 is the Moratorium Act.

Mr. Kleindienst. I am sorry.

Mr. Mikva. I did not mean to confuse you.

It says that "During the period beginning with the day after the date of enactment of this Act and ending with July 1, 1973 . . . the implementation of any order of a court of the United States entered during such period shall be stayed . . ."

Mr. Kleindienst. In my opinion this would prevent the Supreme Court from issuing a new busing order until July 1, 1973, if this bill were passed today.

Mr. Mikva. That has nothing to do with the congressional power to destroy courts, right?

Mr. Kleindienst. I agree.

Mr. Mikva. What is that authority based on?

Mr. Kleindienst. In our opinion, that is based upon the power of the Congress of the United States to declare that we are going to have a moratorium on this question until we have had a chance to look at it and to legislate about it, and, in our opinion, the Supreme Court would say that, since the moratorium has been passed, we are not going to enter such an order until July 1, 1973.

Mr. Mikva. At least we are now getting down to cases.

Mr. Kleindienst. I misunderstood what you were talking about there, Mr. Mikva.

It was my fault.

Mr. Mikva. On what is that power based?

Mr. Kleindienst. That power is based on the power of the Congress with respect to the jurisdiction of the Federal courts.

Mr. Mikva. Do we have any power to restrict the jurisdiction of the U.S. Supreme Court?

Where is that power?

Mr. Kleindienst. The appellate jurisdiction. If we deprived the Federal district courts and courts of appeal of jurisdiction in a matter like this, I do not know how the issue would come up like this.

Mr. Mikva. Bring it up in the State court and there is nothing we can do to take away the Supreme Court appellate power in question involving the Constitution arising from cases in the State courts.

Mr. Kleindienst. I think that is a good point and that is one aspect of the matter we had not considered on that basis.

Mr. Mikva. It is the root of the problem because, basically, what you are telling us and the President is telling us is that we think some of the lower-court decisions are wrong.

Mr. Kleindienst. I do not like to use the word "wrong."

Mr. Mikva. Well, inappropriate, insufficient, unwise, any adjective you want but some of the lower-court decisions are not in the best interest of the objective we all agree on. Well, the way that is normally handled is by the highest court in the land correcting its inferior courts. I do not understand what we are doing here that is going to change the price of bananas, if you will pardon my using the vernacular. Let us take the *Richmond* case; if the *Richmond* case order is right and the Supreme Court of the United States affirms that order, is there anything in H.R. 13916 which would change that?

Mr. **Kleindienst.** I do not believe that the Moratorium Act would apply to the *Richmond* case.

Mr. **Mikva.** Or a new *Richmond* case.

Mr. **Kleindienst.** I am not going to make a comment here as to this, whether something is right or wrong.

Mr. **Mikva.** Those are bad words.

Mr. **Kleindienst.** When any Federal district judge issues an order that meets the requirements of the Supreme Court and Constitution, it is right. What we are dealing with here is an attempt to have the Congress come up with a formula that is going to have national uniformity. It is no more right or wrong than a particular Federal district judge constitutionally speaking. All it is is the legislative function of providing a uniform national standard for application.

Mr. **Mikva.** Here is where my different law school education creates a problem for me. I refer to page 3, of H.R. 13916, section 3(a) "during the period," and that is commencing with the day of enactment of this act "implementation of any order of a court of the United States entered during such period shall be stayed."

When I read "of a court of the United States," the Supreme Court is a court of the United States and it seems to me that we are telling the Supreme Court of the United States, notwithstanding the powers you thought you were given under article III, you are not to exercise those powers in a constitutional case. Where am I misreading that language?

Mr. **Kleindienst.** We have two comments to make with respect to that.

First of all, section 3(a) of the moratorium bill merely is a requirement by this Congress that there be a stay, not that you do not do it, but that you stay doing it until July 1, 1973.

And then our basic authority is article III of the Constitution which says, "In all the other Cases before-mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions and under such Regulations as the Congress shall make."

So both the wording of the moratorium act, which is merely a stay and does not deprive it of a power on the one hand, and then also Congress saying to inferior courts and appellate courts, that you are not going to do this.

Mr. **Mikva.** You have lost me again, Mr. Attorney General, and I am sure you did not mean to.

Let us get back to the basic premise I was trying to establish. You are not suggesting that we, in any way, have the right to tell the Supreme Court of the United States not to implement a constitutional right or to uphold it?

Mr. **Kleindienst.** We are saying that the Congress has the right to require that the Supreme Court stay for a reasonable period of time an order with respect to an area in which the Congress is legislating.

Mr. **Mikva.** Can you give me one case to support that?

Mr. **Kleindienst.** We are talking about an equitable remedy here.

Mr. **Mikva.** We are talking about the Supreme Court of the United States, not any inferior court.

Mr. **Kleindienst.** We are talking about a fundamental constitutional right; I would say you are right. If you are talking about whether the Congress has the power to ask the Supreme Court to stay the use of a remedy as compared to a right, and that is the equitable remedy of busing, I would say it does.

Chairman CELLER. What is the basis of that statement, Mr. Kleindienst?

Mr. KLEINDIENST. The basis of that would be article III of the Constitution and section 5.

Chairman CELLER. Read article III.

Mr. KLEINDIENST. "In all other cases before mentioned"——

Chairman CELLER. Read Section 1, "The judicial power of the United States, shall be vested in one Supreme Court . . ."

Mr. KLEINDIENST. And inferior courts and also section 5 of the 14th amendment where the rights conferred in the 14th amendment "shall be those as prescribed by the Congress." Fundamental constitutional rights. I believe you are right.

Mr. MIKVA. The question is, does *Brown* deal with constitutional rights?

Mr. KLEINDIENST. Yes.

Mr. MIKVA. You are saying that it does not.

Mr. KLEINDIENST. It does.

Mr. MIKVA. Can you cite me one case—again I am not intending to chide or debate—is there any case which suggests that the Congress of the United States has the capacity to interfere with the Supreme Court's power to effectuate any right under the Constitution of the United States?

Mr. KLEINDIENST. With respect to a particular remedy, I believe it does.

Mr. MIKVA. What case?

Mr. KLEINDIENST. Well, it is the conclusions drawn from the cases I have cited here today.

Mr. MIKVA. I went through *Glidden*, and, of course, that dealt with the capacity of an inferior court. All of the other cases you cite—there is no argument about that—deal with congressional power to abolish all of the Federal courts save one. I might even concede to you that we might restrict the jurisdiction of all of the Federal courts, save one, and we might impose on them a nonarbitrary jurisdictional limitation. But I know of no case and no provision of the Constitution that empowers the Congress to alter or diminish the power of the Supreme Court of the United States to exercise jurisdiction over matters affecting the Constitution of the United States.

Mr. POFF. Mr. Chairman, would my distinguished colleague yield?

Mr. MIKVA. I will be glad to yield.

Mr. POFF. I asked you to yield simply to put a question. I confess I do not know the answer to the question or even the precise relevancy of it.

But, do you interpret the *McCardle* case as being a case in point negativing the implication in the question you just put? As I recall, that case went to the Supreme Court and the Supreme Court found that Congress indeed had the power.

Mr. MIKVA. I do not think so. I think all that case dealt with again was the question of our capacity to affect the High Court's appellate jurisdiction, not its power to implement a constitutional right. If we strip all of the points away, that decision only restricted *one* method of obtaining Supreme Court review, other avenues were still open.

Mr. Poff. I will agree with the gentleman that one cannot deny that Congress does not have the power to abridge constitutional rights. We are, however, now talking about remedies for violations of those rights.

Mr. Mikva. I do not think we could conclude that on the basis of the *McCardle* case—that is really what I think this entire argument is about.

Mr. Kleindienst. I think the best illustration I could give would be the passage by Congress of the Norris-LaGuardia Act, with the requirement that no Federal court "shall issue a restraining order in a labor dispute." Prior to that time I guess, under the due process clause, the court would have had a right to issue a restraining order. But Congress said no, this is a remedy, it is not going to be available to you, and the Supreme Court upheld the constitutionality of this.

Mr. Mikva. That was going to be my next question.

Before we pass any constitutional amendments such as the one that is being considered by this committee and by the Congress as a whole, what is the constitutional right that is in conflict with the rights set forth in *Brown* v. *Board of Education?* In other words, is there a right—a constitutional right—not to take a bus?

Mr. Kleindienst. I do not think in the remedial sense that is a constitutional right.

Mr. Mikva. The reason I think the Norris-LaGuardia Act is not a good analogy is that there the Congress found there was a constitutional right being jeopardized by Federal court action, that is, the right to speech, the first amendment.

Chairman Celler. The Norris-LaGuardia Act sought to redress the constitutional right. Antistrike injunctions had endangered labor's right, and Norris-LaGuardia sought to protect that right.

Mr. Polk. Mr. Chairman, if I may interrupt, I would like to read from this committee's report on the Norris-LaGuardia Act. The report said:

> The purpose of the bill is to protect the rights of labor in the same manner Congress intended when it enacted the Clayton Act, October 15, 1914, which act, by reason of its construction and application by Federal courts, is ineffectual to accomplish the congressional intent.

What the report is saying is that in 1914 Congress thought that it had taken away the statutory rights involved but the courts had not interpreted the legislation that way. Thus, to make doubly clear that Congress has limited the statutory right, Congress was acting again to limit the remedy.

Mr. Mikva. That is why, with all due deference, I think the Norris-La Guardia Act rested on a different set of facts than this moratorium bill.

I have one last question. Putting aside all of the constitutional problems which is like putting aside the world, but assuming somehow we can reconcile our differences on all of those and I, frankly, do not see how we could pass such a statute, but suppose we were all persuaded that this was constitutional.

Now, let us talk about the wisdom of the moratorium. Do you agree that the necessity for H.R. 13916 is bottomed on finding H.R. 13915, that is, the substantive amendment, to be sufficient?

Mr. Kleindienst. Or something substantially like H.R. 13915.

Mr. MIKVA. So that those of us who think H.R. 13915 is an attempt to statutorily repeal some of the wisdom of *Brown* v. *Board of Education*, must resist the moratorium bill?

Mr. KLEINDIENST. I do not agree.

Mr. MIKVA. But, those of us who disagree with the administration bill, I appreciate that you would not—would not—find H.R. 13916 wise. In other words, H.R. 13915 has to offer as good a set of remedies in effectuating the purposes of *Brown* v. *Board of Education* in order for us to say the moratorium makes sense. Would you agree?

Mr. KLEINDIENST. In part, but if you read H.R. 13915, in section 201, it specifically declares its prohibition which affirms *Brown* and subsequent decisions.

Section 401 and subsequent sections affirm *Swann*. So I think that the wisdom of the substantive legislation—and you will note that the two are tied together—one refers to the other.

Mr. MIKVA. That is what I was saying.

Mr. KLEINDIENST. We are not talking in a vacuum here. We are talking about two things together.

This is a recommendation to the Congress of the United States by the President, that the approach taken in the substantial legislation is an adequate, reseasonable, viable solution to a very critical problem in the United States.

Mr. MIKVA. Thank you very much.

Mr. HUNGATE. Mr. Chairman, if I may follow that up with one question.

Mr. Attorney General, in response to Mr. Mikva's question regarding power of Congress temporarily to suspend a remedy, why would not your statement on the top of page 17, referring to the *Blaisdell* case, be an answer to that?

Mr. KLEINDIENST. It would be in part, yes sir.

Chairman CELLER. Mr. McCulloch.

Mr. MCCULLOCH. No questions.

Chairman CELLER. Mr. Poff.

Mr. POFF. Thank you, Mr. Chairman.

The chairman feels that the legislation is unconstitutional. The Department of Justice feels that the legislation is constitutional. I am about to ask a question which the witness may choose not to answer until he has had an opportunity to reflect.

In the Voting Rights Act Amendments of 1970 which contains a statute reducing the voting age to 18, there was incorporated what can be termed a "quick court test." How would the Justice Department feel about adding a similar mechanism to the moratorium bill?

Mr. KLEINDIENST. We would have no objection to any means by which the constitutionality of any proposal of the Department of Justice could be resolved by the Supreme Court.

Mr. POFF. That mechanism as I recall——

Mr. KLEINDIENST. I do not have to reflect on that. We have absolutely no objection to any quick test of the constitutionality of any proposal that we make.

Chairman CELLER. Would the gentleman yield?

Mr. POFF. Not at this point, Mr. Chairman. In a moment, however, I will be prepared to yield. As I recall, that mechanism instructed the Attorney General to bring a lawsuit to enforce the statute, and the

Attorney General in fact brought such a suit against Arizona and Idaho and invoked the original jurisdiction of the Supreme Court, and at the same time Oregon and Texas brought a lawsuit against the Attorney General invoking again the original jurisdiction of the Supreme Court.

The mechanism also provided that the question could be tested before a three-judge district court in accordance with title 28, section 2284. That section authorizes a direct appeal from the decision of the three-judge court to the Supreme Court.

Now, one thing that occurs to me in fashioning this remedy is the difficulty of adapting the concept of a quick court test to the particular provisions and context of the moratorium bill. But if it is possible to do so, it would certainly put to rest promptly the dispute about the constitutionality of the moratorium bill and would thereby enable the Congress to act more expeditiously.

I would be glad to have any suggestion that you would like to make along that line.

Mr. KLEINDIENST. We have no objection to any such procedure, Congressman Poff.

Mr. POFF. I will yield to the Chairman.

Chairman CELLER. It is my understanding that both of these bills would be presented to the committee so we could consider them in committee. Why it took the course of one bill going to the other committee is something I cannot understand.

Mr. POFF. I am afraid I cannot help the chairman.

Chairman CELLER. We should have had both bills so we could intelligently act on them.

Mr. POFF. I yield to Mr. Mikva.

Mr. MIKVA. I take it you are referring to the test of the constitutionality of this bill.

Mr. POFF. And this bill only at this point.

Mr. MIKVA. I am still troubled. Are you assuming that it would be a bill which would apply to all courts or just to those inferior courts?

Mr. POFF. I am assuming it would be a bill that this committee would report.

Mr. MIKVA. Let me ask it specifically. Are you suggesting it could be a bill which would seek to limit the power of the U.S. Supreme Court to fashion a remedy?

Mr. POFF. I am not making that suggestion, and that suggestion is not relevant to the suggestion that I am making. The suggestion I am making is that whatever doubts there may be about constitutionality can be and ought to be resolved expeditiously.

Chairman CELLER. How can that be—would you repeat it again?

Mr. POFF. I have tried to illustrate that by reference to the device used in the Voting Rights Act Amendments of 1970—more to describe what our purpose should be rather than what procedure we should adopt, for there may be some objections to that procedure, but there probably are acceptable alternatives, which is something I think we might fruitfully explore.

Mr. ZELENKO. Mr. Chairman.

Mr. POFF. I am glad to yield to counsel.

Mr. ZELENKO. In order to effectuate what Congressman Poff proposes, why isn't the moratorium proposal attached to the substantive bill? The result would be a moratorium on additional busing until and unless the standards themselves were upheld as valid? Why does the administration send the Congress two bills?

Mr. **Kleindienst.** I think, if I might venture an opinion on that, Mr. Zelenko, it was in recognition of the fact of life that a bill this complicated and with its national import, is one that requires some time. I am talking about the substantive bill. The purpose of the moratorium bill is to say that, while the Congress is engaged in that process, there will be no new busing orders. To put it as a rider or as a section of the substantive legislation would permit the continuation of what the President of the United States would like to avoid and that is, some Federal district judges issuing excessive busing orders which, in the opinion of many, go 'way beyond the requirements of *Brown I* and *II*, *Alexander*, *Green* and *Swann*. Then after you have passed your substantive legislation, you could likewise put in it a requirement for an expeditious, immediate determination as to its constitutionality, but the President has asked the Congress to declare a moratorium with respect to the use of a remedy, and only the remedy of additional busing orders, until the Congress can address itself to this problem.

Mr. **Zelenko.** We do not need a moratorium after you pass the substantive legislation.

Now, Mr. Poff has raised a question a draftsman would have to answer furnishing a procedure for testing the moratorium, because it is unclear who the government would sue to test it. However, it is clear who the government would sue to test the standards of the substantive bills.

Mr. **Kleindienst.** I think Congress can figure out a way by which we can get a Supreme Court test and we would be happy to assist the Congress in arriving at such a formula.

Chairman **Celler.** Where would we be if, for example, the other committee rejects the substantive bill and we are standing alone with this moratorium?

What would happen then?

Mr. **Kleindienst.** The moratorium would be in effect until July 1 or until something was passed or until the Supreme Court said it was unconstitutional.

Chairman **Celler.** What would it cover?

How effective would it be?

Mr. **Kleindienst.** I do not know quite how to answer that. It is my belief that, if the moratorium is passed, because of the nature of this problem, Congress will do something about it between now and July 1, 1973 and will find the means by which it could do it.

Chairman **Celler.** I am sorry, Mr. Poff.

Mr. **Poff.** That is all right, Mr. Chairman.

I have other questions, but I find the hour is almost up. I will defer to my colleagues.

Chairman **Celler.** Mr. Hutchinson?

Mr. **Hutchinson.** Mr. Chairman, I want to state on the record that I deeply appreciate the excellence of the statement made by the Acting Attorney General. I generally agree with the thrust of it.

I was particularly interested in the way that the Attorney General handled footnote 10 of *Katzenbach* v. *Morgan* which suggests that

Congress could enlarge upon some constitutional rights provided in the Fourteenth Amendment but could not limit them. It seems to me that if Congress can expand some rights, it can certainly contract those rights—at least insofar as they were expanded. Would you agree with the proposition, put in those terms, if the legislature can expand a right, it can contract it at least back to the point where it started?

Mr. KLEINDIENST. Yes, I think, again if you are talking about remedies, Mr. Hutchinson, it can. I do not believe—and I think my dialogue with Mr. Mikva illustrates that—that the Congress could pass a law that would deprive an individual in this country of a basic constitutional right. We are not talking about that. I believe it can restrict remedies that have been used with respect to the enforcement of a right.

Mr. HUTCHINSON. Then you would not go as far as I would go and say that under the fifth section of the 14th amendment, which gives Congress power to enforce the provisions of the amendment. Congress has the power to define the provisions of the amendment with greater precision so that it might be more effectively enforced and that the original drafters of the 14th amendment contemplated that Congress would define what was equal protection of the laws and due process of law and so on and that the Court would retain its traditional position of interpreting the laws that Congress passed embodying the more precise and clear national standard?

Mr. KLEINDIENST. Well, you interpret the laws Congress passes subject always to a test of their constitutionality.

Mr. HUTCHINSON. Yes; but the key phrase of the 14th amendment is so broad, it is hard to say there is any definition at all. Certainly, it was not the intent—I hope it was not the intent of the writers of the 14th amendment—to grant the courts as broad a legislative power as they have exercised. It seems to me that the only way to correct this practice of judicial legislation is for Congress to assert its power to define the 14th amendment. I am willing to accept your argument concerning remedies. But I think I would go even further.

Chairman CELLER. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman.

I am very impressed by the scholarly and enlightening statement that you have presented here today. I am concerned about the practical aspects of the problem that is confronting us.

You noted that there are limits on busing outlined in the *Swann* case. I endorse those limits. It was my hope that the administration would recommend some legislation which would, in my opinion, be more in line with what the Court was implicitly telling the Congress in that part of the opinion outlining the limitations on busing.

I anticipate that unless we do resolve this problem now it will continue. It will not abate. People are moving farther and farther from the city. Thus, in order to accomplish desegregation, we experience the demand to bus farther and farther. And so the question of the health of the children, the distance involved, the time consumed, and other aspects come into play as very legitimate questions, questions that I believe we might answer with legislation.

I do not think that the moratorium bill is going to accomplish that.

Mr. KLEINDIENST. I agree with you, except for the fact that the substantive legislation, which is a companion piece to this, does deal with those problems raised by the *Swann* case. Section 403 (a) and (b) specifically deal with it as do the remedies set forth in section 402 and that is why the two came together. One is a moratorium on additional busing until Congress has an opportunity to enact something like H.R. 13915 which is the substantive legislation which deals with the very problems raised by the *Swann* case.

Mr. McClory. In reviewing H.R. 13915 in your statement, you mention that the Congress is considering a permanent solution to the busing problem—"one that permits reopening of existing busing orders."

Mr. Kleindienst. Right. Section 406 of the substantive legislation says that upon the application of any school agency, every desegregation order that exists in this country may be reopened to see to it that it meets the standards set forth in this legislation. And that, it seems to me, is the great remedying feature of this legislation. I do not think that there is anybody in this country that can speak with more convincing clarity and persuasion than the Congress of the United States, as it has done so many times in the past, and say that we have a national problem here, that there is a national standard that is going to be met by everyone. If you are going to say that, then it seems to me that you have got to permit the reopening of cases to come within that standard. Some will require more and some will require less busing.

Mr. McClory. Is it your opinion that the enactment of H.R. 13915 would provide a right then to reopen all of the desegregation cases that have already been litigated, even those that have been decided by the Supreme Court?

Mr. Kleindienst. And if reopened, with respect to many where there is no busing, under this law there could be some busing.

Chairman Celler. Will the gentleman yield?

Mr. McClory. Would the right to reopen apply only to cases which involve busing?

Mr. Kleindienst. No, sir.

Mr. McClory. Are we talking about only busing cases or all desegregation cases?

Mr. Kleindienst. All desegregation cases, even where busing might not even be an issue involved in it. You are going to have an opportunity for a school agency to come into a Federal district judge and say, this order was entered into 12 years ago, Congress has laid down a national standard and we want to reexamine this and apply the remedies and priorities set forth in the national standards, and obtain a new order in this particular case.

Mr. McClory. So all desegregation cases that have been litigated and in which there have been final decisions can be reopened?

Mr. Kleindienst. Yes, sir; and if they reopen them, the Court could order, as a remedy, busing, where they had none before.

Mr. McClory. There is only one other point that I want to clarify and that is this: While the moratorium bill that you are recommending would stay the hand of the Federal courts in busing cases, it would not do so in State court cases which, if a constitutional question were involved, could be appealed from the highest court of the State to the Supreme Court; is that correct?

Mr. Kleindienst. Yes, sir.

Mr. McClory. That is all I have. Thank you very much.

Chairman **Celler**. Let us assume that this substantive bill before the other committee does not pass, the moratorium would only refer to the future, not to the past, so that it could not apply to schoolchildren who have already been bused.

Mr. **Kleindienst**. No, sir.

Chairman **Celler**. It would only apply to future opportunities to bus that might arise?

Mr. **Kleindienst**. Correct.

Chairman **Celler**. Would it be possible therefore, that the 14th amendment would apply in one case and not in another—could we thus split the 14th amendment—make it inapplicable to future cases and applicable only to past cases?

Mr. **Kleindienst**. You would split a fundamental constitutional right. You would, until July 1, 1973, under your hypothetical case, Mr. Chairman, say that a remedy could continue to be used in one case but it would not be available in another.

Chairman **Celler**. In other words, you could split the 14th amendment as to remedies.

Mr. **Kleindienst**. As to remedies, yes, sir. In our opinion we say that we can.

Chairman **Celler**. May I ask you this question? What is the purpose of the finding set forth on pages 1, 2, and 3 of H.R. 13916?

Mr. **Kleindienst**. I believe there is a rational purpose for those three sections and that is to provide for the Supreme Court, by congressional finding, additional bases for the argument in favor of the constitutionality of H.R. 13916. I am personally of the opinion that the Congress would not have to make those findings to sustain the constitutionality of the moratorium, but by making those findings, I think it makes the argument all the more persuasive.

Chairman **Celler**. Would you say if we passed the moratorium, those findings would have the force and effect of law?

Mr. **Kleindienst**. No, I would not; no, sir.

Chairman **Celler**. Finding No. 1 on page 1, line 7, refers to "Extensive transportation." Can the Department of Justice furnish specific information to document finding No. 1?

I supplement that by the following observation: Secretary Richardson made the following statement on March 27 to the House Committee on Education and Labor: "We do not have clear data indicative of the precise increase in the quantity of busing which has been brought about by desegregation orders . . ."

The Civil Rights Commission in testimony of April 11 states that the increase in busing attributable to desegregation is less than 1 percent nationally.

You might submit these answers later if you wish. I also refer to finding No. 2 on page 2, lines 1 through 6, which claims that busing has caused substantial hardships and has impinged upon the educational process. Can you furnish the committee with specific information to document that finding? In this connection I have a letter from HEW addressed to myself as chairman, dated March 7, 1972, which reads in part as follows:

> We do not maintain information which would indicate the average time spent in transit and average distance traveled by public school students transported either on a district-by-district basis or on a statewide basis.

In addition HEW indicates that it does not have transportation data on a district-by-district basis prior to 1970–71 school year.

Finding No. 2 also declares that desegregation has required transportation in excess of that required to desegregate. What examples can the Department of Justice furnish to substantiate this finding? Apparently the moratorium bill is predicated on the finding of potential harm to children caused by busing? See finding No. 2. Does the bill only prevent new busing if it is shown to be injurious or cause a hardship? Or, does it in fact, apply whether or not busing promises a hardship?

I would appreciate if you could respond subsequently to those questions and give us the data if you have it. I do not know whether you have it, but we would like to get that information so we can intelligently pass upon these findings.

Another ground for the busing freeze is that school districts may be required to expend large amounts of funds for transportation equipment.

Does the proposed "freeze" only apply where additional financial investments would be required? Or, does it apply whether or not greater financial resources must be used?

We would appreciate it if you could subsequently give us that information.

One or two more questions and I am finished.

It has been charged that the Federal courts have ordered busing of school pupils to achieve racial balance. Do you believe that the Federal courts have so acted?

Mr. KLEINDIENST. I do not like to use the comprehensive term "the Federal courts." I believe some Federal judges have issued orders, either the purpose or effect of which was to achieve a racial balance.

Chairman CELLER. Can you give us and supply the cases where that is so?

Mr. KLEINDIENST. Yes, sir.

Chairman CELLER. It has been charged that the Federal courts have disregarded provisions of the Civil Rights Act of 1964 in ordering certain school districts to dismantle their dual school system. Do you agree with that charge?

Mr. KLEINDIENST. I am not sure I understand the question.

Chairman CELLER. Will you give some thought to that and let us have the information on that subsequently?

Mr. KLEINDIENST. Yes, sir.

Chairman CELLER. Any other questions?

Mr. HUNGATE. Yes, Mr. Chairman.

Chairman CELLER. Mr. Hungate.

Mr. HUNGATE. I am not sure I understood the answer to a previous question. Certainly as the Nation's highest legal office in capacity as Attorney General, I assume you would insist on the right and discretion of your office to nolle prosse or dismiss any suit that has been brought by your department?

Mr. KLEINDIENST. Well, if we are the litigant, the sole litigant.

Mr. HUNGATE. Let us say you are the plaintiff in an action and you have brought an action, would you not insist as an inherent and ancient right of the prosecution to dismiss that action when deemed appropriate?

Mr. Kleindienst. If the circumstances warranted, sure.

Mr. Hungate. Then I suppose my question relates to those cases which have been brought to consolidate school districts or to seek other orders which would, in effect, result in more busing. If it is the administration policy not to require more busing, would it not be within the power of the Attorney General's office to go into court to urge dismissal in all such cases?

Mr. Kleindienst. If we were sole litigants and we felt that was the effect of it, we could do that.

Mr. Hungate. If you were the plaintiff or one of the plaintiffs, would you not have a right to nolle prosse insofar as your own prosecution of the case was concerned? Would you not insist that you had such a right?

Mr. Kleindienst. In the abstract, that might be a right, Mr. Hungate.

Mr. Zelenko. If the gentleman would yield, I believe the prosecution has gone to jail on assertion of that right when courts ordered them not to and they have insisted they would.

Mr. Kleindienst. I do not want to go to jail.

Mr. Hungate. But you would insist—would you not, on the rights of the Attorney General's office to dismiss prosecution it brought when it saw fit?

Mr. Kleindienst. In the context of our dialog here today, however, we are not trying to dismiss cases that deal with the problem of desegregation of our schools. What we are asking is that the Federal judges hold the phone a minute so we can come back and get along with the business of quality education and desegregation.

Whether or not it would be appropriate in a particular case to, let us say, ask that the case be dismissed, we would have to determine that after we looked at it. I doubt if we would want to do that.

Mr. Hungate. Let us assume there is a prayer seeking additional busing to accomplish integration of schools. Would you not agree if it was Department policy to contact new or additional busing that—you could ask leave of the court to amend the prayer for relief?

Mr. Kleindienst. We could and we could also ask the judge to wait and see what happens with the U.S. Congress.

Mr. Zelenko. Would you furnish the committee with a list of cases now pending in the Federal courts which the Department feels will be affected by this moratorium bill? Can you also tell the committee today whether cases such as those now pending in Augusta, Ga., and Chattanooga, Tenn., where the Federal courts have ordered school desegregation and pupil busing in stages—whether the subsequent orders in those continuing cases would be affected by the moratorium?

Mr. Kleindienst. In my opinion any order that is in effect as of right now would not be covered by the moratorium bill. If, however, a Federal district judge would call the parties back and hear additional evidence and then come up with an additional busing order during this period of time, it would be prohibited by the moratorium bill.

Mr. Zelenko. The moratorium I gather would freeze all busing whether or not that busing exceeds or is less than that allowed under the substantive bill the administration has proposed.

Mr. Kleindienst. All additional busing.

Mr. Zelenko. Why should the busing freeze be more extensive, be broader than the amount of busing the administration proposes to allow under the substantive bill?

Mr. Kleindienst. There is a nice answer to that, Mr. Zelenko. The administration is not the Congress of the United States. The coverage of the moratorium is the responsibility of the Congress and we are just saying, wait now with respect to busing orders until the Congress, in its wisdom, can come up with a national policy. When it does, we will be right back before you and say, Judge, enter an order including busing if you will, under the law, that is consistent with the national policy. It would be presumptuous of the executive branch of the Government to presume what the Congress of the United States is going to do.

Mr. Zelenko. In other words, the busing moratorium does not depend on whether additional busing is longer or shorter in distance or in time.

Mr. Kleindienst. Right.

Mr. Zelenko. It does not depend upon whether the busing in fact is injurious or not injurious?

Mr. Kleindienst. Correct.

Mr. Zelenko. It does not depend on whether it is more expensive or less expensive?

Mr. Kleindienst. Correct. With respect to additional busing, that is correct.

Mr. Mikva. Would counsel yield?

Mr. Zelenko. Yes, sir.

Mr. Mikva. Is the busing policy that has been exercised by the Department of Justice thus far founded solely on a statutory basis?

Mr. Kleindienst. No. The busing orders of the various Federal courts——

Mr. Mikva. No. The policy that the Department of Justice is executing on behalf of the Administration, when you are filing these suits, the Department of Justice has been a plaintiff or an intervenor.

Mr. Kleindienst. But not in all.

Mr. Mikva. But what policy are you executing at that point?

Mr. Kleindienst. It depends on the circumstances, Mr. Mikva. If we are not a party, which we were not in the Richmond case, in some instances in order to eliminate the remaining vestiges of the dual school system, we file a lawsuit, or HEW is before the Court with a plan and we are there as the attorney for HEW advocating the plan. There is no statutory scheme in this thing and that is one of the problems the Congress has not dealt with.

We are and have been, up to now, urging on the courts remedies that effectuate the Constitution of the United States.

Mr. Mikva. That is what I was getting at. It has been effectuation of a constitutional——

Mr. Kleindienst. Constitutional right as enunciated first in the *Brown* case.

Mr. Zelenko. Since March 16, 1972, the date of the announced administration policy in what cases has the Department of Justice moved to defer remedies in school desegregation suits?

Mr. Kleindienst. We have, I think, intervened in one way or another in three cases: Richmond, Nashville, and Detroit.

Mr. **Zelenko**. I gather the Court has not yet ruled in the Detroit case on whether the motion of the Government to defer remedies will be allowed.

Mr. **Kleindienst**. I do not believe it has.

Mr. **Zelenko**. In the Nashville case which is the most recent motion the Government has made, hasn't the Government asked to defer the remedy embodied in the HEW plan that the lower court adopted?

Mr. **Kleindienst**. Right. What we did, we filed a motion Monday in Nashville for leave to file a brief *amicus curiae* in which, in effect, we asked the Sixth Circuit to send this case back to the district judge. We stated that the plan that that judge promulgated was an original HEW-U.S. Government plan, that in its implementation, it has brought about severe hardship and requested that the District Judge be directed to re-examine it in light of the hardships that have come about, namely, the effects upon young children of the distance traveled. We indicated that, if the court wants, we would be available to provide technical assistance in the fashioning of a new plan. We would like to also urge the Court to come up with a plan, another plan by September 1. In the event the moratorium bill is passed, and in the event the Sixth Circuit remands the case, we would also request that no additional busing come about in the Nashville case pursuant to the standards we have been talking about here.

I think the Nashville case is a good example of what has happened in the country, where the original plan contemplated for getting rid of the dual school systems in that area has, in the course of its implementation, imposed severe hardships upon small black and white children.

Mr. **Zelenko**. The Nashville desegregation suit started in 1955, I believe?

Mr. **Kleindienst**. That is right.

Mr. **Zelenko**. If the Government is successful in the circuit court in asking for remand of the Nashville case, would the circuit court remand order in the terms of the bill "indirectly require new transportation" and therefore be barred by the moratorium?

Mr. **Kleindienst**. We would have to see what the order is first.

Mr. **Zelenko**. Would any modification of a busing order by any order of court of appeals remanding a case to reexamine a prior desegregation plan, involving modifications which might lead to different busing, would that order be covered by the moratorium bill?

Mr. **Kleindienst**. I believe it would if it required additional busing.

Mr. **Zelenko**. Then how can the Government succeed in pressing its own petition if the moratorium bill is passed?

Mr. **Kleindienst**. We are going to urge the Court to enter an order to eliminate some of the hardships, to decrease busing.

Mr. **Zelenko**. But the moratorium bill does not only say "increase" in busing, the moratorium bill says "different busing." If it were different busing and students were to be ordered to different schools, would the Court be in a position to do that between now and July 1, 1973?

Mr. **Kleindienst**. I do not think they would.

Mr. **Brooks**. Mr. Chairman.

Chairman **Celler**. Mr. Brooks.

Mr. **Brooks**. Mr. Kleindienst, not on this subject, but on an irrelevant matter to this committee, I am interested in the Government Operations Committee on Government Architects. You have sent me a long letter on architects and engineers and we had been hopeful we could get in touch with you and we have written to you and have not been able to get a direct commitment from you and the Antitrust staff to come before the subcommittee.

Mr. **Kleindienst.** I am sorry about that, Mr. Brooks. I am not consciously aware of that problem.

Mr. **Brooks.** I can believe that.

Mr. **Kleindienst.** I will address myself to it when I get back to the office.

Mr. **Brooks.** Would you do that. I realize you may not be able to appear but it might be that you could send someone from Antitrust Division who is cognizant of this problem.

Mr. **Kleindienst.** What is the problem?

Mr. **Brooks.** The Government Activities Subcommittee of Government Operations is considering architect-engineering legislation about which you have prepared a three and a half page letter generally in opposition.

Mr. **Kleindienst.** You want someone from the Department of Justice?

Mr. **Brooks.** To come down and discuss it. We want to visit with them in the hearing. It will not be near as bad as some of the others.

Mr. **Kleindienst.** I will have Mr. Comegys of the Antitrust Division contact you immediately for the purpose of arranging an appearance.

Mr. **Brooks.** That would be very helpful. Thank you, sir.

Mr. **Polk.** Mr. Kleindienst, does Congress have the power to take away all desegregation remedies in the Federal courts?

Mr. **Kleindienst.** I think, if you start doing that, then you quit talking about remedies and you find yourself in the substantive law. My answer, I think, would be no, it does not have that power because, as the Court has held many times, sometimes how you treat a remedy affects the right involved.

Mr. **Polk.** Then what about the particular case where in fact there is only one effective remedy for the violation of the Equal Protection Clause and that involves additional busing?

Mr. **Kleindienst.** That is a busing order. I believe your question is that if busing is the only thing that would perfect or preserve the right and you are then going to say to a court, you cannot use the only thing available until July 1, 1973, would that have a bearing on the constitutionality of moratorium legislation? It raises a good question. I cannot believe or imagine a fact situation in which that would arise but it does raise a question. I am not prepared to answer it categorically one way or another.

Mr. **Polk.** Is it true that the moratorium bill would prevent a court from ordering a school district to bus students of parents who voluntarily request majority-to-minority transfers?

Mr. **Kleindienst.** No. This is an order of the court. If the school boards and parents and everybody in the community want to buy themselves 1,000 buses and run all over the country, they can have a good time. There is no prohibition.

Mr. **Polk.** But there have been court orders to that effect, and they would require additional busing.

Mr. Kleindienst. If parents want to bus children and want to buy buses, they can do so.

Mr. Polk. If this——

Mr. Kleindienst. If it is a Federal court order, or are you saying that all of the parties come in and stipulate, we want to do this, and now we want to issue an order?

Mr. Polk. No, not all parties. The plaintiff in the lawsuit requests the Federal court to order the school district to allow a majority-to-minority transfer.

Mr. Kleindienst. They can do it without an order. They do not need an order.

Mr. Polk. If the school board objects——

Mr. Kleindienst. Then you have a litigated case, where then you are asking the court to order something, and the moratorium would say, "Don't do it until the Congress tells us what the national standard would be."

Mr. Polk. Thank you. Now I do not know if I understood correctly, but I think earlier you said that the moratorium bill would not apply to the Judge Merhige order in Richmond, is that correct?

Mr. Kleindienst. I do not believe it would. That order was entered. And it is on appeal. It would not.

Mr. Mikva. Would counsel yield at that point?

Mr. Polk. Yes.

Mr. Mikva. Would it not also prevent the court of appeals from modifying Judge Merhige's order?

Mr. Kleindienst. If the court of appeals entered an order, itself, that altered the busing in the Richmond case, I believe it would be barred by the moratorium bill. If it sent it back and said, reconsider this whole thing, and then the Richmond court wanted to alter the busing, I believe the moratorium bill would prevent that, too.

Mr. Mikva. In other words, it would freeze the Richmond decision for a year and 3 months.

Mr. Kleindienst. Yes.

Mr. Mikva. Will you take responsibility for explaining that to the Richmond parents?

Mr. Polk. Would the freeze continue even after the Supreme Court heard the Richmond case and affirmed?

Mr. Mikva. If you are asking me, I do not think we can do anything to change the Supreme Court power.

Mr. Kleindienst. The Supreme Court can say to the Richmond court, your order is invalid, then the Federal court would have to start over again.

I think the court of appeals would have that power. They would reverse Judge Merhige in the Federal district court and then they would start over again.

Mr. Zelenko. What would be the law in Richmond meanwhile?

Mr. Kleindienst. May I beg your indulgence? My associates want a caucus which apparently means I have said something they want to disagree with.

Mr. Mikva. I would like to amend my statement. The judge in the Richmond case has entered an order. However, should the Fourth Circuit reverse on some ground that would require a new plan, then that would be subject to the moratorium.

Mr. **Polk.** Mr. Kleindienst, then does not the order entered "indirectly" require additional busing?

Mr. **Kleindienst.** Now, I do not know.

Mr. **Polk.** That is the language in the bill.

Mr. **Kleindienst.** You asked me a question and I said I did not know. I will try to find out.

Mr. **Zelenko.** Similarly, could you tell the committee whether the cases in Indianapolis, Detroit and San Francisco——

Mr. **Kleindienst.** There is no busing order in Grand Rapids, Detroit, Indianapolis and, I believe, in San Francisco.

Mr. **Zelenko.** In Detroit there is an order of a court finding deliberate segregation and that order may or may not come within the language of the bill—an order "indirectly requiring transportation." We would like to know whether those orders are or are not covered under this bill.

Mr. **Kleindienst.** I would have to see the orders. We are speculating as to what the court might do.

Mr. **Mikva.** If counsel will yield, I think the concern Mr. Polk and Mr. Zelenko and I have been emphasizing is that the language of the bill, not of any court order, is very broad in this respect because it says "directly or indirectly." So, therefore, I think the intention of counsel and I think I would agree, would be that anything which would, in any way, affect an existing district court order would come under this bill.

Mr. **Kleindienst.** I appreciate that and I think I should have the benefit of the particular court order and look at it in light of the language of the bill so I could give a reliable opinion.

Chairman **Celler.** We would like to have your views on that. Could you give us your views as to that now or subsequently?

Mr. **Kleindienst.** To the extent that there is a sufficient order of a court that would permit us to do so, Mr. Chairman.

Mr. **Polk.** I have been troubled by the aspect of the moratorium bill which is broader than the change that would be effectuated by the substantive legislation.

I am wondering what justification there is for imposing a moratorium with respect to those in the seventh through the 12th grades when the substantive legislation itself would, where necessary, allow busing of those children.

Mr. **Kleindienst.** I think it is the answer I gave to Mr. Zelenko. The executive branch is not presuming what the Congress is going to do. It has a recommendation to Congress and it has been my experience that the Congress does not always pass a bill in the precise language recommended by the President of the United States. There have been a few variations in the past.

Mr. **Polk.** Are you suggesting that both bills be rewritten so they would correlate with one another?

Mr. **Kleindienst.** If you pass the moratorium bill today and substantive legislation tomorrow, which I wish you would do, then the moratorium bill does not apply any more. It has had 1 day of application or, if you pass another substantive bill tomorrow, then the moratorium bill would cease to exist by its own terms.

Chairman **Celler.** Mr. Kleindienst, we are grateful to you and your colleagues. You have been very patient and helpful. You have been a very ardent advocate of the administration's position with which some of us do not agree, naturally.

That will terminate your testimony here today.

Mr. KLEINDIENST. May I express my appreciation for the courtesy of the chairman and every member of this subcommittee this morning, Mr. Chairman. It was a pleasure to be here.

Chairman CELLER. Thank you.

(Subsequently Acting Attorney General Kleindienst submitted the following additional information:)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., May 15, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During my appearance to testify on H.R. 13916, the Student Transportation Moratorium Act of 1972, before Subcommittee No. 5 of your Committee, the members of the Subcommittee requested several items of information which I agreed to provide at a later time. This letter is in response to those requests.

The Subcommittee requested information as to those districts where recent Federal court decisions in desegregation cases have resulted in substantial increases in the numbers of students transported. Enclosed herewith is a list of school districts which incurred substantial increases, either in the number or in the percentage of students transported, in implementing desegregation plans in the 1971–72 school year. The factual data provided is derived from information submitted by local school districts in response to the annual Elementary and Secondary School Survey conducted by the Office for Civil Rights of the Department of Health, Education, and Welfare. It is my understanding that Secretary Richardson has furnished the Subcommittee with the results of that survey.

Since that survey was conducted, Federal court orders requiring extensive additional student transportation have been issued in several cases, such as those involving Oklahoma City and Richmond, Virginia. In its decision involving Augusta, Georgia public schools, the District Court indicated that its order would require the transportation of 5,681 additional elementary school students. *Acree v. County Board of Education of Richmond County, Ga.*, 336 F. Supp. 1275, 1280 (S.D. Ga., 1972). In Norfolk, Virginia, the Fourth Circuit Court of Appeals recently ruled that the school board was required to provide transportation for students as part of a desegregation plan which the District Court had indicated would "require that many thousands of students will be involved in mass busing." Similarly, in Corpus Christi, Texas, the District Court indicated that under the plan ordered "15,000 is a good estimate of the maximum number of students who might need or qualify for transportation." *Cisneros* v. *Corpus Christi Independent School District*, 330 F. Supp. 1377, 1395 (S.D. Tex., 1971). Implementation of this plan was stayed pending appeal by Mr. Justice Black. Cf. 404 U.S. 1211 (1971).

This information should be considered representative, rather than exhaustive, as the sources of the Department's information are generally limited to those cases in which we are involved. Our information on litigation instituted and conducted by private parties is typically limited to that provided by the opinions of the courts. One such private suit recently resulted in the implementation of a plan expressly designed to create a racial balance in the Winston-Salem, North Carolina public schools. See *Winston-Salem/Forsyth County Board of Education* v. *Scott*, 404 U.S. 1221, 1225 (1971), where the Chief Justice denied an application for a stay in that case.

The Subcommittee also requested any information which evidenced the hardships to students, the impingement on the educational process, or the extensive costs to school districts resulting from compliance with desegregation decrees. Again, the access of the Department to such information is somewhat limited. However, the Senate Select Committee on Equal Educational Opportunity recently studied this very subject, and the Subcommittee may wish to refer to its report. ***Hearings Before the Select Committee on Equal Educational Opportunity of the United States Senate:***

Part 18—Pupil Transportation Costs, 92nd Cong., 1st Sess. (1971). Other examples of this type of information are provided below:

Duval County (*Jacksonville*), *Fla.*—In its opinion, the District Court indicated that: "It will require 250 additional buses to transport the students under the desegregation plan." *Mims* v. *Duval County School Board*, 329 F. Supp. 123, 136 (M.D. Fla., 1971). Part of the plan had to be stayed last fall due to the lack of availability of 150 buses.

Hillsborough County (*Tampa*), *Fla.*—While the District Court did not comment on hardship or cost, Dr. Shelton, the Superintendent, testified, at pp. 9025–9026 of the Senate Select Committee Hearings referred to above, that under this year's plan 25,000 additional students are being bused and 125 additional buses are being used, at an additional operating cost of $850,000. The district has had to stagger the opening hours of schools between 7:00 and 9:30 a.m. in order to comply.

Richmond County (*Augusta*), *Georgia.*—In its opinion in this case, the District Court stated, at 336 F. Supp. 1280: "It was estimated that under the proposed [subsequently ordered] plan 27 new buses would be required at a cost of $12,400 each with an annual operational cost of $5,000 per bus."

Chatham County (*Savannah*), *Georgia.*—The District Court issued two orders in this case in the Summer of 1971. In its June 30 order, the Court indicated that under the plan for the secondary schools, 3,098 additional students would be bused, the longest ride would be 30–40 minutes, and the added cost would be $47,320 per annum. The August 31 order required the busing of an additional 4,390 elementary students at an additional cost of $19,070.

In his appearance before the Senate Select Committee, Dr. Marshall, Superintendent of Schools, testified, at p. 9008, that under this plan "it is necessary to bus some students as far as 42 miles per round trip per day"; and at p. 9009, that "[t]he additional load on our transportation represents a need for 61 additional buses at a cost of $549,000. The school system does not have the funds necessary to purchase these buses." The plan was implemented by staggering the opening hours of schools, but at p. 9010, Dr. Marshall indicated that many students were unable to participate in extra-curricular activities.

Nashville, Tennessee—In this case, the District Court indicated that the plan it approved for implementation last fall would entail the transportation of 10,500 more elementary students and 2,838 more secondary students than were previously transported. At p. 9018 of the Senate Select Committee Hearings, Dr. Brooks, Director of the metropolitan school system, testified that the school district had to stagger opening hours between 7:00 and 10:00 a.m. and, as a result, some students have to leave home before light and others do not return home before dark. Due to lack of buses there is no transportation for field trips and special fine arts performances. At p. 9023, he stated that the cost of equipment, operation, and development of maintenance facilities for an adequate transportation system would be $3,700,000.

Corpus Christi, Texas—As noted earlier, this plan has been stayed pending appeal. In its decision, the District Court estimated that the plan approved would entail the transportation of an additional 15,000 students and would require the acquisition of 96 new buses. During the trial, "the school board calculated the cost of acquisition and use of 96 buses as $1,718,756". 330 F. Supp. at 1395.

Norfolk, Virginia—The Norfolk school system did not provide free public transportation for its students. In approving a desegregation plan last fall which, in its own words, called for the transportation of "many thousands of students", the District Court declined to order the school board to provide such transportation, noting that ". . . the credible evidence places the initial cost at more than $3,600,000". The Fourth Circuit reversed, holding that the school board should have been required to provide free transportation.

Congressman Hungate inquired as to the potential effect that passage of either H.R. 13916, or its companion legislation, H.R. 13915, the Equal Educational Opportunities Act of 1972, would have on the Department's position in *United States* v. *State of Missouri*, et al., Civ. Action No. 71 C 555(1), presently pending in the United States District Court for the Eastern District of Missouri, which concerns the Kinloch, Berkeley, and Ferguson School Districts in St. Louis County.

Section 404 of H.R. 13915 provides that State-established school district boundaries are to be respected unless "it is established that the lines were drawn for the purpose, and had the effect, of segregating children among public schools on the basis of race, color, or national origin." At this stage, it appears that this section is consistent with the theory of the complaint, which alleges, in paragraph 18, that the Kinloch School District was created in 1938 "as a school district designed to be attended exclusively by black students." However, as this case is still in the pretrial discovery stage, it is impossible to predict, with any degree of accuracy, the precise effect that Section 404 would have. If H.R. 13915 is enacted prior to the trial of this case, the District Judge will have to evaluate the evidence presented in light of the standard set forth in Section 404.

Moreover, given the present status of this litigaton, no desegregation plan has been developed, and it is impossible to predict the precise effect that passage of H.R. 13915 would have. If a violation is found, and a desegregation plan ordered which entails new or different busing, H.R. 13915 would stay implementation of the transportation.

The Subcommittee also inquired as to whether desegregation cases brought in State courts, which are not subject to the provisions of either H.R. 13915 or 13916, could be removed to Federal courts, at the behest of defendant school boards, pursuant to the provisions of Title 28, United States Code, Section 1443.

28 U.S.C. §1443 provides:

"Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and divisions embracing the place wherein it is pending:

> "(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> "(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

While the precise question raised has never been resolved by the courts, it is difficult to envision a situation in which this statute would permit removal of a school desegregation suit at the behest of a school board. In order to qualify for removal, the school board would have to demonstrate either (1) that it was denied or could not enforce, in the State proceeding, a right derived from any law providing for equal civil rights, or (2) that its actions stemmed from any law providing for equal civil rights. In other words, the defendant school district would have to demonstrate that the alleged segregation of students in its public schools was based on a law providing for equal civil rights.

Section 1443 was originally part of the Civil Rights Act of 1866 and it was designed to cover entirely different types of cases. Subsection 1 would generally apply in cases where an individual defendant alleges a denial of a Constitutional or Federal statutory right, but is unable to assert the right in State courts. See, e.g. *Strauder* v. *West Virginia*, 100 U.S. 303 (1880), where the defendant sought removal because a State law prohibited blacks from serving as jurors. Subsection 2 typically covers situations where federal officials attempting to enforce federal civil rights become subjected to, for example, civil or criminal suits for trespass. This subsection permits them to have such suits heard in federal courts. Cf. *Greenwood* v. *Peacock*, 384 U.S. 808 (1966).

This removal statute is designed to protect defendants who are denied equal civil rights in State court proceedings or whose efforts to enforce equal rights laws are hampered or frustrated by litigation in State courts. It is difficult to imagine how it would be applicable to a school desegregation suit where the defendant school board is alleged to be denying the equal civil rights of its students.

Finally, the Subcommittee requested information as to those cases presently pending in the Federal courts which would be affected by passage of H.R. 13916. There is enclosed herewith a list of those pending cases, of which the Department is presently aware, where there is a possibility that the proposed moratorium will apply. Whether a particular case will be affected, and the precise effect the moratorium will have, depends upon when the case is decided and whether a plan involving new or different transportation is ordered. Thus, the enclosed list represents those cases which have a present potential of being affected, and is divided into four distinct categories.

Category I includes those districts which are already operating under court orders but where the plaintiffs are seeking further, more comprehensive relief. If the plaintiffs should prevail during the period of the moratorium, and if new or different student transportation is required, such plans would be stayed.

Category II encompasses those school systems where no desegregation order has as yet been entered. If the court orders desegregation during the period of the moratorium, and new or different transportation is required, such plans would be stayed. Category III includes those school systems where comprehensive plans have been ordered, but have been appealed by the defendants. If these orders are reversed, and, upon remand, a different desegregation plan is ordered which requires new or different transportation, this new plan would be stayed. Category IV includes those school districts where desegregation plans have been ordered, but further proceedings are pending in the District Court which may result in a new desegregation plan. If such a new plan entails new or different transportation, it would be stayed.

I trust that the foregoing is responsive to the Subcommittee's needs.

Sincerely,

RICHARD G. KLEINDIENST,
Acting Attorney General.

SCHOOL DISTRICTS WHERE SIGNIFICANT INCREASES IN STUDENT TRANSPORTATION HAVE RESULTED FROM DESEGREGATION DECREES

District	Increase in number transported	Increase in percent transported
Mobile, Ala	8,138	3.5
Little Rock, Ark	6,378	27.3
San Francisco, Calif.[1]	14,774	19.7
Broward County, Fla.[1]	12,500	9.2
Duval County, Jacksonville, Fla	6,688	6.8
Hillsborough County, Tampa, Fla.[1]	19,271	19.2
Orange County, Fla.[1]	5,860	7.9
Palm Beach County, Fla.[1]	6,599	10.6
Chatham County, Savannah, Ga.[1]	5,629	17.2
Jackson, Miss	5,729	19.6
McComb, Miss	903	27.0
Greensboro, N.C	6,249	23.4
New Hanover County, N.C	4,385	22.9
Raleigh, N.C	8,801	40.2
Orangeburg County No. 5, S.C	2,094	33.0
Nashville, Tenn	10,558	14.7
Dallas, Tex	7,073	4.5
Henderson, Tex	953	25.4
Houston, Tex	6,040	2.5

[1] Indicates that not all schools within the district responded to the survey.

SCHOOL DESEGREGATION CASES WHICH COULD POTENTIALLY BE AFFECTED BY PASSAGE OF H.R. 13916

I. SCHOOL DISTRICTS PRESENTLY OPERATING UNDER COURT ORDER, BUT PLAINTIFFS ARE SEEKING FURTHER, MORE COMPREHENSIVE RELIEF

A. Pending before Supreme Court

Denver, Colorado (in part).

B. Pending in Courts of Appeals

Jefferson County, Alabama.
Marengo County, Alabama.
Troy City, Alabama.
Wilcox County, Alabama.
Decatur City, Georgia.
Elbert County, Georgia.
Newton County, Georgia.
Taylor County, Georgia.
Pointe Coupee, Louisiana.
Benton Harbor, Michigan.
Tulsa, Oklahoma.
Shelby County, Tennessee.
Austin, Texas.
Dallas, Texas.
Fort Worth, Texas.
Midland, Texas.
Newport News, Virginia.

C. Pending in District Courts

- Anniston, Alabama.
- Conecuh County, Alabama.
- Fairfield, Alabama.
- Gadsden, Alabama.
- Little Rock, Arkansas.
- Wilmington, Delaware.
- Atlanta, Georgia.
- Indianapolis, Indiana.
- Shreveport, Louisiana.
- South Pike, Mississippi.
- Darlington County, South Carolina.
- Memphis, Tennessee.

II. SCHOOL SYSTEMS WHERE NO COURT ORDER REQUIRING DESEGREGATION HAS YET BEEN ENTERED

- Sequoia Union High School District, California.
- Hartford, Connecticut.
- Waterbury, Connecticut.
- Boston, Massachusetts.
- Detroit, Michigan.
- Grand Rapids, Michigan.
- Minneapolis, Minnesota.
- Kinloch, Missouri.
- St. Louis, Missouri.
- Rochester, New York.
- Edgecombe County, North Carolina.
- Robeson County, North Carolina.
- El Paso, Texas.
- New Braunfels, Texas.
- Milwaukee, Wisconsin.

III. SCHOOL DISTRICTS WHERE ORDERED DESEGREGATION PLANS ARE ON APPEAL BY DEFENDANTS

- Oxford, California.
- San Francisco, California.
- Denver, Colorado.
- Winston-Salem, North Carolina.
- Oklahoma City, Oklahoma.
- Chattanooga, Tennessee.
- Nashville, Tennessee.
- Corpus Christi, Texas.
- Portsmouth, Virginia.
- Richmond, Virginia.

IV. SCHOOL SYSTEMS UNDER COURT ORDER, BUT WHERE FURTHER PROCEEDINGS ARE PENDING IN DISTRICT COURT

- Kalamazoo, Michigan.
- Raleigh, North Carolina.

Chairman CELLER. The next witnesses are Mr. Lloyd Cutler and Mr. John Doar.

STATEMENT OF LLOYD N. CUTLER, ESQ., AND JOHN DOAR, ESQ., COCHAIRMEN, LAWYERS COMMITTEE FOR CIVIL RIGHTS UNDER LAW, ACCOMPANIED BY DAVID TATEL, DIRECTOR, AND RONALD ROTUNDA

Mr. CUTLER. Mr. Chairman and members of the committee, we are here today at the committee's invitation to testify concerning House Joint Resolution 620 and H.R. 13916.

Mr. Doar, sitting at my left, and I are presently cochairmen of the Lawyers Committee for Civil Rights Under Law. We are accompanied by Mr. David Tatel, the director of the committee, and Mr. Ronald Rotunda.

The committee was formed in 1963 at the request of President Kennedy and it has continued its activity at the request of each succeeding President.

We have worked cooperatively with the Acting Attorney General and all of his predecessors and the Department of Justice and we regret the need to disagree most respectfully with him on this occasion.

I will, in view of the lateness of the hour, not read through this entire statement which you have before you but I will try to summarize the points that meet the arguments made by the Acting Attorney General and then Mr. Doar will add a few personal remarks of his own.

The committee's purpose is to mobilize the legal resources and the moral force of the Nation's lawyers to defend and uphold the civil and constitutional rights of the Nation's racial minorities and other disadvantaged citizens. Our board of trustees consist primarily of leading lawyers throughout the country who, in today's vernacular, would be regarded as part of the legal establishment.

Our principal activity is to take part in the trial and appeal of cases that raise significant issues relating to the rights of minority and other disadvantaged groups. We function as lawyers, not as a political or pressure group. And as a matter of policy, Mr. Chairman, our committee as such does not advocate the passage or defeat of any legislation. But in response to your invitation, we are submitting our opinion, as lawyers with some qualification in this field, as to the constitutionality of the moratorium bill and as to the constitutional implications of the proposed constitutional amendment.

We should also note that the views that we are expressing were unanimously approved after appropriate notice by a quorum present at a regular meeting of the executive committee of our board of trustees in Washington, D.C., on April 3, 1972.

Nevertheless, since we are presenting a professional legal opinion, we want to make clear that we are presenting it only as the opinion of the executive committee members whose names are attached to this statement and who either attended the meeting or subsequently notified us of their concurrence. And if you will look at the attachment at the end of our statement, you will see the names of the lawyers and I believe it is fair to say a number of them are very eminent lawyers and constitutional scholars who have joined in this opinion.

For your information, our executive committee consists of 50 members and 44 of them have joined in this opinion. None have dissented and the other six either could not be reached or were not prepared to take a position.

We believe that the Moratorium bill is unconstitutional for the reasons we will set forth in a moment.

This bill whether taken on its own terms or in conjunction with the companion Equal Educational Opportunities bill, H.R. 13915, in our view has not been shown to be necessary for or likely to result in the enactment of standardized and equally effective remedies for adjudicated impairments of constitutional rights. To the contrary, accepting its own stated intentions, it appears on its face to enact a congressional limitation on judicial remedies for previously adjudicated constitutional rights while Congress considers another measure that would impose still further limitations on these rights and remedies.

Two main arguments have been advanced to you to justify the congressional power to take these steps. One relates to the congressional authority over the jurisdiction of the Federal courts and the other to the congressional powers to enact enforcing legislation under section 5 of the 14th amendment.

And we will take up those in turn. Of course, Congress does have the constitutional power to create lower Federal courts and to define their jurisdiction as well as power to make exceptions to the appellate jurisdiction of the Supreme Court. But like any other constitutional power, this power is not an absolute one.

It has to be exercised consistent with other grants of power and other declarations of constitutional rights. For example, no one would suggest, we assume, that Congress could enact a statute denying either original or appellate access to any Federal court for all claimed violations of first amendment rights.

The judicial power granted under article III extends to "all cases in law and equity arising under this Constitution," and Congress cannot constitutionally bar all Federal courts, including the Supreme Court, from exercising this power. That, Mr. Chairman and members of the committee, is precisely what both the Moratorium bill and the subsequent definitive bill would do.

I will not get into the subject of whether Congress, having created the lower Federal courts, could abolish them and Mr. Justice Story thought it could not and later Supreme Court dicta have suggested perhaps it can, but having created these lower Federal courts and conferred on them jurisdiction in cases arising under the constitution, Congress cannot limit this jurisdiction in ways that violate other provisions of the constitution or prevent courts from granting effective relief.

Both *Norris-LaGuardia* and *Ex parte McCardle* have been cited to you as authority to the contrary. But the curtailment imposed by *Norris-LaGuardia* on the right to an injunction in a labor dispute and incidentally it did not forbid injunctions, it set forth certain rules that a court would have to follow before granting an injunction—had the effect, as members of the committee already pointed out, of protecting the first amendment right of peaceful picketing. It did not deprive employers of a constitutionally protected right or remedy and when the Supreme Court upheld the act, it had no need to consider any such issue.

And in *Ex parte McCardle*, the Supreme Court held only that Congress could lawfully take away the right of direct appeal it had previously granted under a particular Reconstruction Era Habeas Corpus Statute. The power of the lower Federal courts to grant habeas corpus writs to persons restrained in violation of their constitutional rights remained unimpaired (which would not be true of the legislation before you) as did the discretionary appellate power of the Supreme Court to review lower court habeas corpus decisions under the act of 1789 granting it the right to issue writs of certiorari. And one year after *Ex parte McCardle* it actually reviewed a lower court habeas corpus decision by certiorari, and again this is the power that these bills before you would take away.

In most all of the other cases where the congressional power to bar Federal courts from issuing injunctions has been upheld, the decisions have made clear that other adequate judicial remedies remained available. The *Younger* case which we cite here holds that notwithstanding even the old statute cited by the Acting Attorney General, barring Federal courts from enjoining proceedings in State courts, that when such an injunction was necessary to protect a fundamental Federal constitutional right, the Federal courts could issue such an injunction.

Moreover, the Supreme Court has held many times that the congressional authority to grant or remove jurisdiction in broad classes of cases does not include the authority to review decisions within a court's jurisdiction before permitting those decisions to become effective, or to require the courts to decide such cases in congressionally specified ways. And that is something these bills would do. And that principle has been reaffirmed in a long line of cases that we cite at the top of page 7 of our prepared statement.

Moreover, when jurisdiction has been conferred on Federal courts to adjudicate the existence of a constitutional right, the courts must have the power to grant an effective remedy. Some effective remedy at the very least.

And that is the clear import of *Sterling* v. *Constantin* and other cases cited at the bottom of page 7. In the light of those principles we believe the moratorium bill would plainly be unconstitutional if it were of indefinite duration.

Viewed as an attempt to deprive all Federal courts, including the Supreme Court, of jurisdiction to adjudicate 14th amendment rights—and that is what it does even on appeals from State court cases—contrary to what the Acting Attorney General told you, it could not possibly stand. Viewed as an attempt to deprive the courts of power to grant the only remedy for an adjudicated impairment of constitutional rights that the courts have found adequate on the facts of a particular case, its unconstitutionality would be clear.

Viewed as an attempt to modify or stay judicial decision within jurisdiction previously conferred, or to require that future cases be decided in a particular way, it would be equally invalid.

Now, the bill, of course, does not provide for an indefinite moratorium. It limits the period to July 1, 1973 or such earlier date as the Congress enacts the contemplated legislation defining what constitutes a denial of equal educational opportunities and of the equal protection of the laws, and providing standardized remedies, and at least equally effective remedies. So viewed it might present a constitutional issue of first impression, one, as we mentioned in the footnote on page 9, that would not be governed by *Blaisdell*, the case involving the mortgage foreclosure moratorium during the depression.

Its constitutionality would depend on whether Congress had clearly demonstrated that the moratorium was needed to enable Congress to enact contemplated remedial legislation and that in the remedial legislation, most important, that the Congress intended to protect and enforce rather than to limit the fourteenth amendment rights involved, and to provide at least equally effective remedies.

Now, one might argue that because it is 17 years since the *Brown* decision, Congress might lawfully delay effective relief for an additional year today. But in those 17 years, as all the members of this committee know, there has been the long line of Supreme Court decisions mentioned on page 10. Some of the quotes here were read by the chairman, himself, just a few moments ago and I will not go over them, but the end result of all those cases is that the "deliberate speed" standard for desegregation is no longer constitutionally permissible and "the obligation of every school district is to terminate dual school systems at once."

If, on the facts of the particular case, the court has finally determined, as many courts have, and as many courts will, that some form of busing is the only presently available means of achieving the effective remedy required by the Constitution, then for Congress to deny anyone that remedy, even for an additional school year, is a very serious matter. It would really be Congress, itself, that would be imposing constitutional injury on schoolchildren by staying the effectiveness of the new busing order which a court has finally found in a particular case to be an indispensable element of prompt and effective relief.

Such an act might even raise a serious question under the fifth amendment.

The only possible countervailing constitutional justification would be a clear demonstration of facts convincingly establishing the necessity of the moratorium to enable Congress to establish standardized and nationwide remedies that are at least equally effective. And under the cases cited on page 12, these would be constitutional or jurisdictional facts which a court testing this moratorium would have the right to review for itself.

When we examine the moratorium bill and the companion equal educational opportunities bill, we are persuaded that this essential demonstration has not been made.

The bill, itself, contains no findings, no statement that it is needed to enable Congress to enact the contemplated definitive legislation.

There are only these findings such as the one we quote at the bottom of page 12—as the chairman did earlier—that in the interim while Congress is deciding what to do, many local educational agencies, will be required to implement desegregation plans that impose a greater obligation than that required by the 14th amendment and permitted by such pending legislation and that these plans will require modification in the light of the legislative requirements.

Even if that were true, we do not believe it demonstrates that the moratorium is needed to enable Congress to enact the contemplated remedial legislation.

As several of the members pointed out in their questioning, this moratorium would apply only to the effectiveness of future orders, orders not yet issued, and not to the effectiveness of orders previously issued, which may not yet have been implemented.

If Congress saw no need to stay the orders which have already been entered but not implemented, and that is what the administration is proposing to you, if that is unnecessary for Congress to consider the definitive remedial legislation, we believe that it would be most difficult for Congress to show why there is a compelling need to stay orders that have not yet been issued. They fall in precisely the same category.

Either would impose the same sort of burdens, if they are burdens, on school districts and neither in fact imposes any sort of a problem as far as congressional ability to legislate is concerned.

Congress could go right ahead and consider the definite remedial legislation without stopping for this moratorium.

A further flaw in the present moratorium bill is that it prohibits all new busing orders, even those that would later be permitted under the contemplated definitive legislation.

It would forbid them, even though the court finds no other adequate remedy available and even though the relief, therefore, does not meet the test of the findings in the moratorium bill itself of being an order that would impose a greater obligation than that required by the 14th amendment and permitted by the pending legislation.

Indeed, it would be permitted by the pending legislation; and in that important respect, we say the moratorium bill plainly exceeds its own stated objective.

Since the only justification claimed for this bill is to allow time to enact this contemplated definitive legislation which is expressly referred to in the moratorium bill, itself, the constitutionality of the moratorium bill, as Professor Bickel has pointed out in his letter to the committee, also depends very much on whether the provisions of the contemplated definitive legislation are themselves constitutional.

It may well be, as Prof. Archibald Cox has recently suggested, that under paragraph 5 of the 14th amendment, Congress may enact a uniform nationwide program of effective remedies for school desegregation that replace or modify remedies previously decreed by the courts.

However, we believe that some provisions of the contemplated legislation go beyond the broadest permissible reading of this congressional power and well beyond the terms of the hypothetical legislation that Professor Cox outlined in his article.

We draw attention to a footnote on page 15 to the fact that in *Katzenbach* v. *Morgan* and *Oregon* v. *Mitchell*, on which the Attorney General relies so heavily, the opinions in those cases expressly note that the power to enforce the 14th amendment, perhaps permits expanding the rights defined in the 14th amendment, but does not include the power to limit the rights granted by the 14th amendment. Professor Cox, himself, in his article says that there was no reason to equate the power to expend found in *Katzenbach* v. *Morgan* with power to dilute.

The most glaring example of a dilution, an express limitation on 14th amendment rights, is section 403 of this equal educational opportunities bill; and we would certainly agree with your observation earlier, Mr. Chairman, that you cannot really consider this mortarium bill unless you have the equal educational opportunities bill also before this committee, at least for the purpose of determining whether the moratorium bill is justified.

Subsection (a) of section 403 imposes an absolute prohibition on any court-ordered busing plan that increases over the levels of the preceding year either the average daily distance or the time traveled by all students in the sixth grade or below, or the average daily number of such students who are bused.

That is an absolute prohibition no matter what, and it contrasts starkly with subsection (b) which would allow such busing for children above the sixth grade if the court finds by clear and convincing evidence that there is no other adequate remedy for the impairment of their 14th amendment rights.

The plain intent of those two subsections read together is to forbid court orders requiring additional busing in the sixth grade and below, even if the court finds on the facts of the particular case that there is no other adequate remedy.

Mr. Hungate. Pardon me. I want to clarify, because as I understand the Attorney General's answer to me—and I questioned him on that point—I thought he said that the State laws could provide an escape valve there.

Mr. Cutler. If I understand him correctly, what he was saying was that the administration had carefully left recourse for the discrimination against the child to the State courts, and that the State courts could enforce the Federal Constitution, even though the Federal courts could not.

He implied that the State court decision in answer to a later question could ultimately be reviewed by the Supreme Court, notwithstanding this moratorium and the definitive legislation, but that is not the way either of those bills read. Either of those bills would take away the appellate jurisdiction of the Supreme Court.

Mr. Hungate. Your construction of the statute would be that the State courts would not have authority to increase busing for students in the sixth grade or below?

Mr. Cutler. No, sir.

I am not saying that. The State courts would have the power, I assume, if no one takes it away, to enforce the Federal constitutional right against the discriminatory school system by a busing order: but if the State court denies the issuance of such an order, and let us think of the State court of Mississippi, or Michigan, this bill would deny to the Supreme Court the right to correct that order of the State court.

Mr. Mikva. Could we stop on that, Mr. Hungate, because this issue focuses on the constitutional aspect of the bill. Page 3, line 2, of the bill reads: "The implementation of any order of a court of the United States entered during such period shall be stayed."

Is there any doubt that the Supreme Court of the United States is a court of the United States?

Mr. Cutler. None whatever.

Mr. Mikva. Do you know any case that says Congress can restrict the jurisdiction of the Supreme Court of the United States to hear a constitutional question arising under the Constitution of the United States?

Mr. Cutler. With respect to the appellate jurisdiction of the Supreme Court, the congressional power to make exceptions has, at least in *Ex parte McCardle*, been construed to allow Congress to take away the direct appeal type of appellate jurisdiction of the Supreme Court over a habeas corpus, but in a context in which the Court retained its certiorari jurisdiction and in fact exercised it 1 year later.

Mr. Mikva. I want to understand what the Attorney General is saying because it seems to me it concerns whether we are doing anything or doing anything constitutional.

If we are doing anything constitutional then there is nothing in this bill which would take away the power of the Supreme Court of the United States to decide—however a case got before it—whether or not a constitutional right was impaired.

Mr. CUTLER. I am glad to hear that, but I do not think that is the way the bill reads.

Mr. MIKVA. I agree, but maybe we can have the power to interpret a bill the way we like to make it constitutional. But then we are not doing anything because it is only changing the route for such litigation.

It would go through State courts and then up to the Supreme Court of the United States, and the only change would be in the lower Federal courts.

Mr. CUTLER. Yes, but changing the route in that manner would, as a practical matter, be the equivalent of a 2-, 3-, or 5-year moratorium.

Mr. MIKVA. I understand, but in terms of the substance of what it says we are doing, at that point if the Attorney General makes the exception he says he is making, then it is only changing what way you get your remedy in, but it does not change the remedy.

Mr. CUTLER. If the bill meant to retain the appellate power of the Supreme Court to hear these cases coming up through State courts, then in due course and without the help of lower Federal courts, ultimately the Supreme Court after many years might be able to bring about the same results that are now accomplished through the lower Federal courts.

Mr. HUNGATE. Pardon me once more.

If I understand what the Attorney General said and what you said with regard thereto, you could go to a State court and if it enlarged the busing remedy, that would be permissible. If that court refused to increase the busing, you would find yourself without a remedy.

Mr. CUTLER. As we read their bill, he told one of you in response to a question, he thought that the bill did not interfere with the appellate jurisdiction of the Supreme Court over the State court decisions.

Mr. HUNGATE. Thank you.

Mr. CUTLER. There would be a remaining constitutional issue, the one raised by Mr. Justice Story in *Martin* v. *Hunter's Lessee*, as to whether Congress could in fact deny jurisdiction, at least in cases arising under the Constitution, to some lower Federal court.

Mr. Justice Story in his day thought that Congress had an obligation to confer that jurisdiction at least in constitutional cases on some lower Federal court. Congress has never tried this, and other cases have said to the contrary.

Mr. ZELENKO. Mr. Cutler, section 3(a) of the moratorium bill deprives a court of its authority to implement its judgment. Unlike the *McCardle* case, it does not deprive the court of jurisdiction to hear and determine constitutional questions, does it?

Mr. CUTLER. That is correct.

Mr. ZELENKO. So, let us spell out exactly what would happen in the Supreme Court either with respect to an appeal from a State court or an appeal from a lower Federal court. The Supreme Court would hear the case, determine whether a violation of the 14th amendment existed, agree or not agree with the remedy afforded below, and issue an order.

If the order "directly or indirectly" required additional or new busing, its order would be stayed.

Now, are you saying that that constitutes interference with powers of the Supreme Court which are vested in the Court by article III and not subject to regulatory authority of the Congress?

Mr. CUTLER. Yes, we would say, saving or notwithstanding what power Congress has under the 14th amendment and not withstanding what power Congress has under article III, that Congress may not under the *Gordon* case and *Klein* case and the others cited earlier in our statement, Congress may not in a case in which it has given jurisdiction to the Court, say to the Court, "You may not grant any remedy or you must wait before you grant any remedy until we decide whether it is a good remedy or not." Congress cannot place itself in effect as a higher court of appeal over the Supreme Court or any other court.

And you will recall at the time when Congress made the decisions of the Court of Claims subject to review by the Congress in the sense that you could decide whether or not to make an appropriation, the Supreme Court declined to exercise appellate jurisdiction in such cases because its final action would still be subject to your review.

Mr. POFF. If the chairman will permit, but if there are multiple remedies available, the Congress would have power to restrict the use of one remedy.

Mr. CUTLER. If there are multiple remedies available, and if Congress were to say that the course of judicial review should take one path rather than another path, or that one adequate remedy is the only remedy we will permit and we will not permit another adequate remedy, I think Congress could do that as long as it was not simply deciding a particular case.

That is not the case we have here.

Mr. MCCLORY. Notwithstanding everything that you have said, you would not deny, would you, the authority of the Congress to spell out, as I believe were indicated in the *Swann* case, limitations on busing in carrying out desegregation?

Mr. CUTLER. Not at all, Mr. McClory, as long as the net result of what you did was to maintain and enforce the 14th amendment rights and to leave at least some adequate remedy.

Mr. MCCLORY. Do I understand correctly that you are not necessarily agreeing with each and every Federal court order involving busing but are rather defending the constitutional rights in question.

Mr. CUTLER. That is correct, sir. Where the lower courts have made errors on particuar school desegregation orders, they can be corrected on appeal; and when and as the Congress or the States have provided other true remedies, it may well be at that point busing remedies would be unnecessary.

Mr. POFF. Well, Mr. Chairman, we are going to have to adjourn because the bell has rung and we will have to answer that bell. I think I understand from the thrust of the witness' testimony—and I think he has been very fair and intellectually honest in his approach—that the moratorium bill would be constitutional if properly fashioned.

Mr. CUTLER. It might be.

Mr. POFF. I beg your pardon.

Mr. CUTLER. There has never been a decision, and Mr. Doar would not go that far.

Mr. **Poff**. The case may be one of first impression, and yet you are entitled to the opinion, and I share it that if properly fashioned, it would be constitutional. I think that was stated almost explicitly in your statement, but if this is true, would you be able to offer the committee a suggestion about how much a bill should be fashioned?

Mr. **Cutler**. I would like to have Mr. Doar speak to this in a moment, sir, because his views would go, I think, further than my own, but I do not see how you could write any moratorium bill except one that was married to a bill which itself provided an adequate remedy and did not curtail the 14th amendment rights, and you do not have that kind of a bill, and if you are going to put that kind of a provision in your ultimate bill, you might as well put it in your moratorium bill.

Mr. **Poff**. There would be no occasion to have a moratorium bill if you could decide instantly what substantive legislation would be effective.

Mr. **Cutler**. You could have substantive legislation now and decide to change it in a year.

Chairman **Celler**. Mr. Doar, do you have a comment?

Mr. **Doar**. Mr. Chairman, I believe the moratorium bill is unconstitutional because, on its face, it clearly and unequivocally suspends constitutional rights. I think there comes a time when a remedy for a constitutional right becomes the right, itself, and where the suspension of the remedy becomes the suspension of the right, itself.

The fact is that in these cases, that is what the circumstances are, the courts are requiring the transportation of schoolchildren when there is no other way of liquidating a formally State-imposed school system. I believe that this legislation reaches State-imposed segregation in the public schools within a school district and it is made after our Federal courts have made and are making tireless efforts to rid the Nation of the last vestige of the dual school system.

This legislation contradicts a clear requirement of the 14th amendment, that the States convert dual school systems into a unitary system. It seeks to prohibit the use of transportation in cases where the courts find that there is no other way to disestablish the dual school system. It is a blanket ban, even when the court determines that it is essential to vindicate the right of the particular schoolchildren. If what I say is so, and I believe it to be, with all due respect, then I say that the Congress cannot abolish this remedy, it can not suspend it, because it is in effect suspending constitutional rights.

Chairman **Celler**. You mean we could not reshape a moratorium bill to fit your views?

Mr. **Doar**. I do not believe you can reshape the moratorium bill to fit my view; no, sir.

Mr. **McClory**. If you will yield, I think the Attorney General cited the Norris-LaGuardia act as an analogy. Am I correct that the Norris-LaGuardia act set up guidelines for the courts but left the ultimate decision to the court that if it made certain findings, it could issue the injunction even though there were competing constitutional rights involved in the case?

Mr. **Cutler**. There are really no competing constitutional rights. The employer had no constitutional right.

Chairman **Celler**. There is a vote on the arms bill, and I am afraid we have to terminate the proceedings. You may submit any——

Mr. Cutler. Mr. Chairman. I would like to call your attention to the second *Swann* decision. On the same day that *Swann* v. *Charlotte-Mecklenburg* was decided, the Supreme Court struck down a North Carolina statute that would have prohibited busing, on the ground that such a statute would interfere with the only effective remedy that was available under *Swann* and would therefore violate the 14th amendment.

Now, if the State cannot step in and ban busing orders, how can we say that the Federal Congress can step in and ban busing orders when, in the second *Swann* decision, a State ban on busing orders was held to deprive the plaintiff in *Swann* and other children of fundamental 14th amendment rights.

Mr. Poff. Of course, you are not banning busing, are you—are you not suspending busing?

Mr. Cutler. Now for a year you are banning all busing, and afterward you are banning it for sixth grade and below.

Mr. Poff. If the moratorium legislation now contemplated becomes law, of course Congress may not decide to write a bill just exactly in that style.

Mr. Cutler. Then you should not have a moratorium until you know what bill you are writing because then you are doing exactly what Mr. Doar says, you are suspending the constitutional right.

Mr. Poff. You would need a moratorium to provide time to search out all alternatives that would be both effective and constitutional.

Mr. Cutler. But you can do both of those without depriving children of constitutional rights. You may deliberate for 3 years.

(The prepared statement of Mr. Cutler follows:)

Statement of John Doar and Lloyd N. Cutler, Cochairmen of the Lawyer's Committee for Civil Rights Under Law

Mr. Chairman and members of the committee, we appear here today at the committee's invitation to testify concerning H.J. Res. 620 and H.R. 13916.

We are the present cochairmen of the Lawyers' Committee for Civil Rights Under Law. The Committee is a nonprofit, tax-exempt organization. It was formed in 1963 at the request of President Kennedy and it has continued its activities at the request of every succeeding President.

The committee's purpose is to mobilize the legal resources and the moral force of the nation's lawyers to defend and uphold the civil and constitutional rights of the nation's racial minorities and other disadvantaged citizens. Our board of trustees consists primarily of leading lawyers throughout the country who, in today's vernacular, would be regarded as part of the legal "establishment."

Our principal activity is to take part in the trial and appeal of cases that raise significant issues relating to the rights of minority and other disadvantaged groups. We function as lawyers, not as a political or pressure group. Attached to our statement is a copy of our most recent annual report, which describes our activities in detail and contains the names of our national Board of Trustees and members of our local committees in Atlanta, Boston, Chicago, Indianapolis, Kansas City, New York, Philadelphia, San Francisco and Washington.

Mr. Chairman, as a matter of policy our Committee, as such, does not advocate the passage or defeat of any legislation. In response to your invitation, we are submitting our opinion, as lawyers with some qualification in this field, as to the constitutionality of the moratorium bill and as to the constitutionality of the moratorium bill and as to he constitutional implicaions of the proposed constitutional amendment. We should also note that the views we express were unanimously approved after appropriate notice by a quorum present at a regular meeting of the Executive Committee of our Board of Trustees in Washington, D.C. on April 3, 1972. Nevertheless, since we are presenting a professional legal opinion, we present it only as the opinion of the Executive Committee members whose names are attached to the statement, and who either attended the meeting on April 3 or subsequently notified us of their concurrence.

We shall first address H.R. 13916, the Student Transportation Moratorium Act, and then the Joint Resolution providing for a constitutional amendment.

H.R. 13916

We believe H. R. 13916, the moratorium bill, is unconstitutional for the reasons set forth below.

Proponents of the bill have urged that Congress may lawfully impose a stay on the effectiveness of future judicial orders providing specific relief for an adjudicated impairment of a constitutional right, when Congress finds the stay necessary to allow it time to enact another measure intended to provide standardized and at least equally effective remedies.

The question so framed is one of first impression, one that, in our judgment, would be very difficult to answer. However, it is not the question we see posed by H. R. 13916. For this bill—whether taken on its own terms or in conjunction with the companion Equal Educational Opportunities Bill that the Administration has also proposed (H. R. 13915)—has not been shown to be necessary for, or likely to result in, the enactment of standardized and equally effective remedies for adjudicated impairments of constitutional rights. To the contrary, and accepting its stated intentions, it appears on its face to enact a congressional limitation on judicial remedies for previously adjudicated constitutional rights, while Congress considers other measures that would impose still further limitations on those rights and remedies.

Congress, of course, has constitutional power to create lower federal courts and to define their jurisdiction, as well as power to make exceptions to the appellate jurisdiction of the Supreme Court. But like any other constitutional power, this power is not an absolute one. It must be exercised consistently with other constitutional grants of power and other declarations of constitutional rights. For example, no one would suggest, we assume, that Congress could enact a statute denying original or appellate access to any federal court for all claimed violations of First Amendment rights. The federal judicial power granted under Article III extends to "*all* cases in law and equity arising under this Constitution," (emphasis supplied) and Congress cannot constitutionally bar *all* federal courts from exercising this power. *Martin* v. *Hunter's Lessee*, 14 U.S. 304 (1816); *Eisentrager* v. *Forrestal*, 174 F. 2d 961, 966 (D.C. Cir. 1949), reversed on other grounds *sub nom. Johnson* v. *Eisentrager*, 339 U.S. 763 (1950). To take an even more obvious example, Congress could hardly define the jurisdiction of the lower federal courts so as to require that, nothwithstanding the Sixth and Seventh Amendments, all cases must be tried without juries. Perhaps Congress could constitutionally abolish the lower federal courts entirely, although Mr. Justice Story's opinion in *Martin* v. *Hunter's Lessee, supra*, suggests that it could not. But having created the lower Federal courts and conferred on them jurisdiction over cases arising under the Constitution, Congress cannot limit this jurisdiction in ways that violate other provisions of the Constitution or prevent courts from granting effective relief.

Nothing in the Norris-La Guardia experience or in *Ex Parte McCardle*, 74 U.S. 506 (1868) is to the contrary. The curtailment imposed by the Norris-La Guardia Act on the right to an injunction in a labor dispute had the effect of protecting the First Amendment right of peaceful picketing. It did not deprive employers of a constitutionally protected right or remedy, and when the Supreme Court upheld the Act, it had no need to consider any such issue. See *Lauf* v. *Shinner*, 303 U.S. 323 (1938). In *Ex Parte McCardle*, the Supreme Court held only that Congress could lawfully take away the right of direct appeal it had previously granted under a particular Reconstruction era *habeas corpus* statute; the power of the lower federal courts to grant writs of *habeas corpus* to persons detained in violation of their constitutional rights remained unimpaired, as did the discretionary appellate power of the Supreme Court to review lower court *habeas corpus* decision under the Act of 1789 granting it the right to issue writs of certiorari. *Ex Parte Yerger*, 75 U.S. 85 (1869). And in other cases where the congressional power to bar federal courts from issuing injunctions has been upheld, the decisions have made clear that other adequate judicial remedies remained available. *Phillips v. Commissioner*, 283 U.S. 589 (1931); *Younger* v. *Harris*, 401 U.S. 37, 45 (1971).

Moreover, the Supreme Court has held many times that the congressional authority to grant or remove jurisdiction in broad classes of cases does not include the authority to review decisions within a court's jurisdiction before permitting those decisions to become effective, or to require the courts to decide such cases in congressionally specified ways. This has been true ever since *Hayburn's Case*, 2 U.S. 408 (1792). The principle has been reaffirmed in a long line of cases, of which the most important are the opinion of Chief Justice Taney in *Gordon* v. *United States*, 173 U.S. 167 (1864); *United States* v. *Klein*, 80 U.S. 128 (1871); and *Muskrat* v. *United States*, 219 U.S. 346 (1911). Even *Ex Parte McCardle* notes the unconstitutionality of "the exercise of judicial power by the legislature, or legislative interference with courts in the exercise of continuing jurisdiction." 74 U.S. at 514.

When jurisdiction has been conferred on the federal courts to adjudicate the existence of a constitutional right, the courts must have the power to grant an effective remedy. This is the clear import of Chief Justice Hughes' opinion for the Court in *Sterling* v. *Constantin*, 287 U.S. 378 at 403 (1932). As Mr. Justice Rutledge put the matter in *Schneiderman* v. *United States*, 320 U.S. 118, 168-9 (1943) (concurring opinion):

"Congress has, with limited exceptions, plenary power over the jurisdiction of the federal courts. But to confer the jurisdiction and at the same time nullify entirely the effects of its exercise are not matters heretofore thought, when squarely faced, within its authority."

In the light of these principles, the moratorium bill would plainly be unconstitutional if the moratorium were of indefinite duration. Viewed as an attempt to deprive the courts of power to adjudicate Fourteenth Amendment rights and provide adequate remedies, it could not possibly stand. Viewed as an attempt to modify or stay judicial decisions within jurisdiction previously conferred, or to require that future cases be decided in a particular way, it would be equally invalid. Viewed as an attempt to deprive the courts of power to grant the only remedy for an adjudicated impairment of constitutional rights that the courts have found adequate on the facts of a particular case, its unconstitutionality would be clear.

The bill, of course, does not provide for a moratorium of indefinite duration; it specifically limits the period of the moratorium to July 1, 1973 or such earlier date as the Congress enacts the contemplated legislation defining what constitutes a denial of equal educational opportunities and of the equal protection of the laws, and providing standardized remedies. As we said at the outset, a moratorium bill carefully limited to the period required to accomplish such an objective would present a constitutional issue of first impression.[1] Constitutionality in our view would depend on whether Congress clearly demonstrated that the moratorium was needed to enable Congress to enact the contemplated remedial legislation, and that in the remedial legislation Congress intended to protect and enforce rather than to limit the Fourteenth Amendment rights involved, and to provide at least equally effective remedies for their impairment.

One might perhaps argue that because seventeen years have already passed since the Supreme Court issued its opinion in *Brown* v. *Board of Education*, 349 U.S. 294, 301 (1955) (Brown II), Congress may lawfully delay effective relief for an additional year today. But Congress today must take into account the long line of Supreme Court decisions culminating in *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), placing ever greater urgency on school desegregation and suggesting strongly that any delay in the implementation of court-ordered plans inflicts continuing and irreparable harm on schoolchildren. In *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964), the Court said that the time for mere "deliberate speed" had run out; in *Green* v. *School Board of New Kent County*, 391 U.S. 430, 438-9 (1968), the Court said the burden on school boards is to come forth with desegregation plans that "promise[s] realistically to work *now*"; in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969), the Court said that the "deliberate speed" standard for desegregation "is no longer constitutionally permissible," and ruled that "the obligation of every school district is to terminate dual school systems at once . . ."

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[1] The only Supreme Court decision dealing with a legislative moratorium on judicial action is *Home Building & Loan Ass'n* v. *Blaisdell*, 290 U.S. 398 (1934), which sustained a Minnesota statute allowing courts to extend the redemption period of mortgages and thus postpone judicial foreclosure, but did so on the ground that the mortgage contract was inherently subject to modification by state law so that the constitutional ban on impairing the obligation of contracts had not been violated. The case is no precedent for a moratorium which by definition postpones the only relief a court finds effective for the adjudicated impairment of a constitutional right.

If a lower court enters a busing order that goes beyond what is necessary to remedy the impairment of a constitutional right, that error can of course be corrected on appeal. But if, on the facts of a particular case, the courts finally determine that some form of busing is the only presently available means of achieving the effective remedy required by the Constitution, then for Congress to deny anyone that remedy, even for an additional school year, is a very serious matter. Frustration or denial of court-ordered remedies for school desegregation can no longer be distinguished from frustration or denial of the underlying Fourteenth Amendment right. See *Cooper* v. *Aaron*, 358 U.S. 1, 17 (1958); *Griffin* v. *School Board of Prince Edward County, supra*, 377 U.S. at 232. Action that perpetuates an unconstitutional dual school system not only delays the remedy, it compounds the harm of such a system. *Green* v. *School Board of New Kent County, supra*, 391 U.S. at 438. Thus Congress itself would be imposing constitutional injury on schoolchildren by staying the effectiveness of any new busing order which the courts have finally found in a particular case to be an indispensable element of prompt and effective relief. Such an act would raise serious questions under the Fifth Amendment (see *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Gautreaux* v. *Romney*, 448 F. 2d 731, 740 (7th Cir. 1970)). The only possible countervailing constitutional justification would be a clear demonstration of facts convincingly establishing the necessity of a moratorium to enable Congress to enact standardized and nationwide remedies that are at least equally effective. These facts would have the status of constitutional or jurisdictional facts, in the sense that a court considering the constitutionality of the moratorium would be entitled to satisfy itself that Congress had demonstrated a compelling need for such a postponement of effective relief for an impairment of a constitutional right. *Sterling* v. *Constantin, supra; Ng Fung Ho* v. *White*, 259 U.S. 276 (1922); see Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts; An Exercise in Dialectic*, 66 Harv. L. Rev. 1362, 1386 ff. (1953). Examination of the moratorium bill and the companion Equal Educational Opportunities Bill persuades us that this essential demonstration has not been made.

To begin with, the findings contained in Section 2 of H.R. 13916 contain no statement or other showing that the moratorium is needed to enable Congress to enact the contemplated definitive legislation. Instead, the bill merely contains a finding (Section 2(a)(5)) of "a substantial likelihood that pending enactment of such legislation, many local educational agencies will be required to implement desegregation plans that impose a greater obligation than that required by the Fourteenth Amendment and permitted by such pending legislation, and that these plans will require modification in light of the legislation's requirements. . . ."

Even if this were so, it does not demonstrate that the moratorium is needed to enable Congress to enact the contemplated remedial legislation. The moratorium would apply only to the effectiveness of subsequently issued busing orders, leaving existing busing orders in effect. However, Section 406 of the Equal Educational Opportunities Bill would authorize the reopening and require the conforming modifications of all busing orders "in effect on the date of enactment of this Act." Aside from its own constitutionality, which we doubt, the reopening provision would reach orders issued during the moratorium period just as effectively as orders already issued. If orders already issued need not be stayed at once to enable Congress to enact remedial legislation, it is difficult to understand why orders hereafter issued need be stayed for this purpose. We therefore believe it would be most difficult for Congress to sustain its burden of showing a compelling public need to stay new busing orders to remedy adjudicated impairments of constitutional rights while the Equal Educational Opportunities Bill is being considered.

A further flaw in the present moratorium bill is that it prohibits *all* new busing orders, even those that would later be permitted under the contemplated definitive legislation. For example, Section 402 of the Equal Educational Opportunities Bill would permit a court, as its seventh and last relief option, to order compulsory busing above the sixth grade if the court finds that no other adequate remedy for the denial of Fourteenth Amendment rights is available. H.R. 13916, however, would stay such relief during the moratorium period *even though* the court finds no other adequate remedy is available, and even though the relief concededly does not, in the words of Section 2(a)(5) of the moratorium bill, impose on educational agencies a "greater obligation than that required by the Fourteenth Amendment and permitted by [the] pending legislation." In this important respect, the moratorium bill plainly exceeds its own stated objective.

Since the justification claimed for the moratorium bill is to allow time to enact the contemplated definitive legislation, the constitutionality of the moratorium bill also depends upon whether the provisions of the contemplated definitive legislation are themselves constitutional.

It may well be, as Professor Archibald Cox has recently suggested, that under Paragraph 5 of the Fourteenth Amendment Congress may enact a uniform nationwide program of effective remedies for school desegregation that replace or modify remedies previously decreed by the courts. (Cox, *The Role of Congress in Constitutional Determinations*, 40 Cincinnati L. Rev. 199, 259 (1971)). However, we believe that some provisions of the contemplated definitive legislation go beyond the broadest permissible reading of this congressional power and well beyond the terms of the hypothetical legislation outlined by Professor Cox in his article.[2]

The most glaring example is Section 403 of the Equal Educational Opportunities Bill. Subsection (a) of Section 403 imposes an absolute prohibition on any court-ordered busing plan that increases over the levels of the preceding year either the average daily distance or the time travelled by all students in sixth grade or below, or the average daily number of such students who are bused. It contrasts starkly with Subsection (b), which would allow such busing for students above the sixth grade if the court finds by "clear and convincing evidence" that there is no other adequate remedy for the impairment of their Fourteenth Amendment rights. The plain intent of the Section as a whole is to forbid any court orders that would result in a net increase in busing for children in the first six grades of any school district, even if the court finds on the facts of the particular case that there is no other adequate remedy for an adjudicated and unrelieved infringement of their constitutional rights.

In *Swann* v. *Charlotte-Mecklenburg*, 402 U.S. 1 (1971), Chief Justice Burger recognized that travel times should be taken into account in framing busing orders, particularly for younger students (402 U.S. at 31). But the need to consider this factor can hardly justify an absolute congressional prohibition on future court orders requiring the busing of additional students in the first six grades. In this connection, it is significant that on the same day the court decided *Swann* v. *Charlotte-Mecklenburg*, it also decided *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971), in which the Chief Justice and a unanimous court struck down a North Carolina statute imposing "an absolute prohibition" on involuntary busing of any student on grounds of race or to bring about racial balance. The court said that this ban "would inescapably operate to obstruct the remedies granted" in the *Charlotte-Mecklenburg* case, and noted that "bus transportation has long been an integral part of all public educational systems and it is unlikely that a truly effective remedy could be devised without continued reliance upon it." (402 U.S. at 46.) If a state anti-busing statute violates the Fourteenth Amendment "when it operates to hinder vindication of federal constitutional guarantees," it is difficult to conclude that a congressional statute achieving the same result could possibly be constitutional.

The absolute prohibition of busing in the first six grades beyond previous year levels seems unconstitutionally arbitrary in other important respects. It would prevent a court from ordering an agency to bus children at the voluntary request of their parents as, for example, when a black child wants to shift from a majority black school to a majority white school—a remedy that Chief Justice Burger said was "indispensable" in *Swann* v. *Charlotte-Mecklenburg* "for those students willing to transfer to other schools in order to lessen the impact on them of the state-imposed stigma of segregation." 402 U.S. at 26. In this respect, it goes even farther than the North Carolina statute struck down in the second *Swann* case. Moreover, as applied to any given educational agency, these prior year ceilings are arbitrarily and randomly affected by agency decisions to increase or decrease busing for reasons wholly unrelated to segregation or race. Such limits cannot possibly have the "standardized" or uniform effect throughout the country that is the assumed congressional objective, since their future application must necessarily depend on the many differing factors that affect present and future busing patterns in each school district.

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[2] In the most recent decisions considering the scope of Section 5 of the Fourteenth Amendment, several of the opinions suggest that the congressional power to enforce the Amendment does not include the power to limit the rights it confers. *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 (1966); *Oregon* v. *Mitchell*, 400 U.S. 112, 128-9 (1970). The same principle would seem applicable to the denial of an effective remedy.

For all of the above reasons, Mr. Chairman and Members of the Committee, we believe that H.R. 13916, taken either on its own bottom or in conjunction with the contemplated Equal Educational Opportunities Bill, is unconstitutional.

H.J. RES. 620

Turning our attention to the Joint Resolution, we find no question of constitutionality presented by the proposal to amend the Constitution in the manner that the Constitution provides. As to the constitutional implications of that proposal, however, we share the concern voiced by others about "trivializing" the Constitution by an amendment that tries to resolve in 22 words issues as fluid and transitory as busing and school assignments, that limits the basic human rights guaranteed by the Fourteenth Amendment, and that bars even the busing of minority children whose parents want them to be bused to better and less segregated schools. We believe that such an amendment would be a backward step in our steady progress toward becoming a nation no longer divided against itself.

Respectfully submitted.

Lloyd N. Cutler,
John Doar,
Co-Chairmen, the Lawyers' Committee for Civil Rights Under Law.

Members of the Executive Committee of the Board of Trustees of the Lawyers' Committee for Civil Rights Under Law, Concurring in the Foregoing Statement

Morris B. Abram, Esq., New York, N.Y.; Richard Babcock, Esq., Chicago, Ill.; E. Clinton Bamberger, Esq., Washington, D.C.; Thomas D. Barr, Esq., New York, N.Y.; G. d'Andelot Belin, Esq., Boston, Mass.; Berl I. Bernhard, Esq., Washington, D.C.; Bruce Bromley, Esq., New York, N.Y.; Warren M. Christopher, Esq., Los Angeles, Calif.; Ramsey Clark, Esq., Washington, D.C.; William T. Coleman Jr., Esq., Philadelphia, Pa.; Lloyd N. Cutler, Esq., Washington, D.C.; James T. Danaher, Esq., Palo Alto, Calif.; Arthur H. Dean, Esq., New York, N.Y.; Richard C. Dinkelspiel, Esq., San Francisco, Calif.; John Doar, Esq., Brooklyn, N.Y.; John W. Douglas, Esq., Washington, D.C.; Alexander D. Forger, Esq., New York, N.Y.; Lloyd Garrison, Esq., New York, N.Y.; Arthur J. Goldberg, Esq., Washington, D.C.; John B. Jones Jr., Esq., Washington, D.C.; Nicholas deB. Katzenbach, Esq., Armonk, N.Y.; Maximilian W. Kempner, Esq., New York, N.Y.; Henry L. King, Esq., New York, N.W.; Otis King, Esq., Houston, Tex.; George M. Lindsay, Esq., New York, N.Y.; Robert B. McKay, Esq., New York, N.Y.; Milan C. Miskovsky, Esq., Washington, D.C.; James M. Nabrit III, Esq., New York, N.Y.; Robert L. Nelson, Esq., Washington, D.C.; Louis F. Oberdorfer, Esq., Washington, D.C.; D. Robert Owen, Esq., New York, N.Y.; Robert P. Patterson, Jr., Esq., New York, N.Y.; William Pincus, Esq., New York, N.Y.; Stephen J. Pollak, Esq., Washington, D.C.; Barbara S. Preiskel, Esq., New York, N.Y.; Francis E. Rivers, Esq., New York, N.Y.; James Robertson, Esq., Washington, D.C.; John H. Schafer, Esq., Washington, D.C.; Bernard G. Segal, Esq., Philadelphia, Pa.; Jerome J. Shestack, Esq., Philadelphia, Pa.; Asa D. Sokolow, Esq., New York, N.W.; Theodore C. Sorensen, Esq., New York, N.Y.; William B. Spann Jr., Esq., Atlanta, Ga.; Cyrus Vance, Esq., New York, N.Y.; and John W. Wade, Esq., Nashville, Tenn.

Mr. Hungate (acting chairman). Any further questions? If not, thank you, gentlemen, very much.

I would like to say that your testimony contains some of the finest legal expertise we have had the privilege to hear.

Mr. McCulloch. Mr. Chairman, I would like to say that I am pleased to listen to Mr. Cutler today. We sat at his feet for a long time during the life of at least one presidential commission.

Mr. Hungate. At that, we will adjourn until 10 o'clock tomorrow.

(Whereupon, at 1:15 p.m., the subcommittee adjourned, to reconvene at 10 a.m., April 13, 1972.)

SCHOOL BUSING

THURSDAY, APRIL 13, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler presiding.

Present: Representatives Celler, Hungate, Mikva, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Chairman **Celler**. The committee will come to order.

Each member will find before him copies of additional communications received by the Chair on the so-called busing moratorium bill.

The first is an expression of opposition from Prof. William Van Alstyne of Duke University. The second contains a statement signed by 15 members of the University of Pennsylvania Law School faculty.

Copies of these communications will be placed in the record.

(The communications referred to follow:)

April 11, 1972.

Emanuel Celler,
Chairman, U.S. House of Representatives, Committee on the Judiciary, Washington, D.C.

Dear Congressman Celler: I have read H.R. 13916 as you requested, and I believe that its basic provision, Section 3(a), is quite clearly unconstitutional as a violation of that separation of powers which precludes Congress from directing an Article III Court to apply a different and more restrictive interpretation of the Constitution than that which the Supreme Court has already determined to be required. In essence, the constitutionality of this bill cannot be sustained consistent with the description of judicial power in *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803), *Martin* v. *Hunter's Lessee*, 14 U.S. (1 Wheat) 304 (1816), *Cohens* v. *Virginia*, 19 U.S. (6 Wheat) 264 (1921) and *United States* v. *Klein*, 80 U.S. (13 Wall.) (1872). The reasons for this conclusion are these.

By *Brown* v. *Board of Education*, 347 U.S. 483 (1954) it was settled that a local educational agency may not segregate public school children according to race. In 1968, a similarly unanimous Supreme Court held that the substantive constitutional entitlement of equal protection included affirmative assurance of access to schools not identifiable by race, and that further delay or postponement of such access was itself unconstitutional. *Green* v. *County School Board*, 391 U.S. 488, 439 (1968):

> The burden on a school board today is to come forward with a plan that promises realistically to work . . . now . . . until it is clear that state-imposed segregation has been completely removed.

In brief, in the Court's view the timing of relief in behalf of plaintiffs was held to be an inseparable part of their substantive constitutional right to equal protection and no longer simply one of several factors within the discretion of lower courts (or legislative bodies) to consider in fashioning an appropriate remedy.

The point was reiterated the following year, in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969) ;

> [C]ontinued operation of segregated schools under a standard of allowing "all deliberate speed" for desegration is no longer *constitutionally* permissible. (Emphasis added.)

So declaring, the Supreme Court held that "the Court of Appeals should have denied all motions for additional time."

That immediate vindication of the substantive right to equal protection, may, in a given case, necessarily include provision for transportation, moreover, is settled by *Swann* v. *Board of Education*, 402 U.S. 1 (1971). Where the local educational agency had operated a dual system and where it had also manipulated its authority over site selection and school location, minimum effective immediate relief necessarily involved some busing of students not previously bused and some busing of students to schools to which they were not previously bused. Fully recognizing that complementary measures should also be employed and that "an objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process" (402 U.S. at 30–31), the Court in *Swann* then observed :

> Desegregation plans cannot be limited to the walk-in school. * * * In *Green*, *supra*, this Court used the term "feasible" and by implication, "workable," "effective," and "realistic" in the mandate to develop "a plan that promises realistically to work, and . . . to work now." On the fact of this case, we are unable to conclude that the order of the District Court [requiring busing] is not reasonable, feasible and workable. *Ibid.*

Equally significant were two companion cases decided the same day with *Swann*. In the first of these, *Davis* v. *School Commissioners of Mobile County*, 402 U.S. 33, the "desegregation" plan acceptable to the court of appeals utilized "unified geographic zones, and no transportation of students for purposes of desegregation." *Id* at 36. Reversing, the Supreme Court declared:

> [I]nadequate consideration was given to the possible use of bus transportation and split zoning. For these reasons, we reverse the judgment * * * and remand the case for the development of a decree "that promises realistically to work, and promises realistically to work now." *Id.* at 38.

In the other case, *North Carolina State Board of Education*, 402 U.S. 43, the Supreme Court unanimously affirmed the judgment below declaring a state statute unconstitutional insofar as it attempted to forbid "involuntary" busing or the use of public funds for any such busing :

> [S]tate policy must give way when it operates to hinder vindication of federal constitutional guarantees. * * * As noted in *Swann*, bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it. 402 U.S. at 46.

With this settled background, we may now consider the effect (and the constitutionality) of the proposed Moratorium Act in a particular case arising late this summer, 1972. Additional children shall doubtless come of school age by that time, none of whom will previously have been bused to any school. According to the Act, no court of the United States may enter and implement an order assuring them of busing. Some of these children, however, doubtless live in public housing which the district court has in *Swann*, previously determined to have been situated as it is for purposes of racial segregation. The nearest school moreover, is one which the district court has previously determined also to have been situated as it is for purposes of racial segregation. The entire district is that which historically operated a dual system, with bad faith noncompliance by the local educational agency years after *Brown*. It is unimaginable under these circumstances, in light of the foregoing authority I have briefly recapitulated in this letter, that the federal court would not regard the implementation of a new busing order in behalf of these children as indispensable to the vindication of their substantive constitutional right to equal protection. Reliance by the defendant school board upon the Moratorium Act must thereupon result in a firm and unexceptional decision by the federal court that that Act is beyond congressional power and doubly unconstitutional :

1. As a federal statute authorizing state action denying substantive equal protection, it is violative of the implied equal protection clause of the fifth amendment. See *Shapiro* v. *Thompson*, 394 U.S. 618 (1969) ("Congress may not au-

thorize the States to violate the Equal Protection Clause.") See also *Bolling* v. *Sharpe*, 347 U.S. 497 (1954).

2. As a federal statute which leaves jurisdiction in an Article III court to hear and to decide the constitutional question presented by the plaintiffs, but which then mandates a result inconsistent with that which the court would otherwise determine within its province to interpret the law of the Constitution, it violates the separation of powers:

> So if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution; or comformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137 (1803).

3. While the Moratorium Act omits state courts from its ban, it evidently applies to mandate the result of Supreme Court review of state court judgments inconsistent with *Swann*. In permitting the Supreme Court to take appellate jurisidiction, but in precluding it from rendering a judgment it otherwise deems essential correctly to decide the case in according with its own interpretation of the fourteenth amendment (*e.g.*, to reverse and to remand with direction to great relief involving some busing), the Moratorium Act violates the separation of powers once again. Cf. *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1872) with *Ex Parte McCardle*, 74 U.S. (7 Wall.) 506 (1968). To paraphrase the late Professor Hart, the power of the Supreme Court to decide the case at all must necessairly include the power to decide it according to the Constitution. See Hart, *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362 (1953).

This, in essence, is a succinct statement of my views respecting the unconstitutionality of the Moratorium Act and there frankly is no need to qualify them further. Because of what I understand to be the different views elsewhere offered to sustain this bill, however, it may be well to put some of these into perspective. One such view is that this bill purports to be an exercise of congressional power sursuant to section five of the fourteenth amendment, the power to enforce the provisions of section one (including the guarantee of equal protection) by "appropriate legislation." That this bill is not maintainable pursuant to that claim of power seems to be evident from all of the following considerations:

1. It nowhere purports to provide any remedy at all for those otherwise found to be denied equal protection by compulsory assignment to racially segregated schools in a *Swann*-type case; it is, in this respect, utterly different from the separate bill submitted by the Administration. Neither does it purport to find that others whom a federal court may include within an order contemplating busing are thereby denied equal protection, or that their exclusion from any such order is essential to assure them of equal protection. As it does not at all preclude state courts from entering *Swann*-type orders, moreover, it is simply not connected with providing uniform means of assuring equal protection.

2. To the extent that the Moratorium Act contemplates additional legislation which might, when adopted, be thought to provide different but equivalent remedies for the enforcement of equal protection without further busing, it could be sustained only by requiring the Supreme Court to render an advisory opinion respecting the constitutionality of that other statute which has neither been adopted in fact nor properly before the Court for adjudication. This, of course, is itself beyond the authority of the Supreme Court to do. See *Muskrat v. United States*, 219 U.S. 346 (1911); *Hayburn's Case*, 2 Dall. 409; *United States v. Ferreira*, 13 How. 840; *Gordon v. United States*, Appendix, 117 U.S. 697; *Correspondence & Public Papers of John Jay*, vol. 3, p. 486.

3. In forbidding any further provision for transportation even when essential in view of the federal court for the immediate vindication of the substantive constitutional right to equal protection, without providing any alternative which, in the view of Congress, is either a better alternative or at least an equivalent alternative, the bill cannot be said to be one which "enforces" the right to equal protection. Rather, it is one which abridges that right, and no such authority is granted by section five of the fourteenth amendment. See *Katzenbach v. Morgan*, 384 U.S. 641, n. 10 (1966); *Shapiro v. Thompson*, 394 U.S. 618 (1969); *Oregon v. Mitchell*, 400 U.S. 112, 128 (1971):

Congress may only "enforce" the provisions of the amendments and may do so only by "appropriate legislation." Congress has no power under the enforcement sections to undercut the amendments' guarantees of personal equality and freedom from discrimination, see ***Katzenbach v. Morgan,*** **384 U.S. 641, 651** n. 10 (1966).

See also *Bivens* v. *Six Unknown Federal Narcotics Agents,* 403 U.S. 388 (1971).

The bill in fact appears to be founded on a claim of congressional authority derived from Article III, plus the necessary and proper clause of Article I, of the Constitution. Presumably, it is derived from the power of Congress to provide for such inferior federal courts as it deems appropriate, and to make such exception and regulation of the Supreme Court's appellate jurisdiction as it deems expedient. There is, no doubt, great latitude of authority in these powers but I think it clear from the materials and authority set forth earlier in this letter that the Moratorium Act is not sustainable on such a basis. It does not deny jurisdiction to hear the case, it does not withdraw authority to consider a claim otherwise presented in the case, it does not propose the substitution of some remedy believed to be more appropriate than that which it withdraws, nor does it simply foreclose a remedy inessential to provide consistent still with the power to decide the case. Rather, it operates to mandate a judicial result otherwise foreclosed by the Supreme Court's interpretation of what the *Constitution* requires as part of adjudication. As it would make the courts the instrument of adjudication inconsistent with the exercise of judicial power, it violates the separation of powers and is, accordingly, unconstitutional. Neither the labor injunction cases nor the depression moratorium statutes are similar in this respect, and neither affords suitable precedent to sustain this Act. Rather, the sense and sensibility of *Marbury* v. *Madison* is at stake here, and nothing short of an amendment to the Constitution may properly destroy it.

Sincerely,

WILLIAM VAN ALSTYNE.

UNIVERSITY OF PENNSYLVANIA,
Philadelphia, Pa., April 7, 1972.

Re: Anti-busing legislation.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I submit herewith a statement in opposition to the pending anti-busing legislation proposed by President Nixon. As you will see, the statement has been signed by fifteen members of this Law Faculty. I hope very much that you and the other members of your committee will give the statement serious consideration.

Sincerely,

BERNARD WOLFMAN, *Dean.*

The undersigned law teachers are strongly opposed to the two bills proposed by President Nixon for passage by Congress on the subject of busing of school children. We believe that the two bills, if enacted, would sacrifice the enforcement of constitutional rights, impair the functions of the judiciary under a rule of law, and jeopardize improved schooling for many, many children. More specifically, our reasons for opposition are as follows:

(1) The Supreme Court declared the segregated dual school system unconstitutional in the *Brown* case 18 years ago. For much of that period, opponents of the *Brown* decision have successfully avoided and delayed its enforcement. Only recently has the enforcement process achieved any momentum. Enactment of the two bills at this time will certainly be seen—by blacks and whites alike—as a major break in the Nation's resolve to realize the constitutional rights of black children under the *Brown* decision. Moreover, the very proposal of these bills—especially given the psychological impact of the President's speech—will seriously hamper and may well cripple efforts to achieve compliance with *Brown* now underway.

(2) The two bills call for a very substantial change in the standards and modes of enforcement of *Brown* by the courts. Their enactment by Congress under Sec-

tion 5 of the Fourteenth Amendment invokes a rarely exercised power whose limits are not at all clear. Strong doubts of constitutionality exist, with constitutional lawyers differing as to the outcome if the bills become law and their legality were tested in the courts.

Whatever may be the scope of the Congressional power, the proposed bills clearly would misdirect it. The President is encouraging Congress to react in a panic to busing, as though that were the key issue, when he should be exercising his leadership to calm the public and to call on Congress to deal with busing as one aspect of a comprehensive program for ending dual systems of segregated schools. This failure of leadership is highlighted by two key facts. According to Administration sources, while about 40% of the Nation's school children are bused to school, at most 1% or 2% of this total are bused for reasons of desegregation. Secondly, in calling for an expenditure of 2.5 billion dollars on "inner-city schools," the Administration has not added one dollar to existing programs or proposals it has previously made. The net effect of the present proposals is to cut back sharply on existing remedies for segregation while offering little or nothing in their place.

(3) The two bills involve a needless and dangerous disruption of the proper relationships between the President and the Congress on the one side and the Supreme Court and other federal courts on the other. As recently as one year ago in the *Swann* case, in light of almost 20 years of experience with enforcing *Brown*, the Supreme Court approved of court-ordered busing as one means of disestablishing dual school systems—a means which in particular cases might be necessary to bring about a unitary, desegregated school system. The Court did not insist that busing was required in any mechanical way or that its disadvantages should be ignored by federal judges.

The President has suggested that lower federal courts have gone beyond the Supreme Court—and in his view, improperly so. One would then expect the Administration to press appeals of these decisions to the Supreme Court, and perhaps to ask that Congress mandate stays of execution pending the appeals. Instead, the Administration presents proposals which amount to a declaration of no confidence in the courts and a repudiation of what they have done under the Constitution and laws of the United States. If we take the President at his word, this is premature and unnecessary. It risks the very undermining of the Supreme Court's standing that the President has on other occasions said should be avoided.

(4) One need not be an advocate of large-scale busing to see the harms and dangers in the proposed scheme. Serious questions about various aspects of busing have been raised by both blacks and whites. But the Administration has not asked Congress to regulate alleged excesses of busing in a selective, sensitive way. Rather, the Administration seeks to eliminate all busing as a remedy for desegregation by placing rigid, mechanical limitations on it. The practical effect is that busing could no longer be used even as a minor but necessary part of a desegregation plan that emphasized, for example, new geographic districts, or school pairings. It is in cases of this kind that the threats to the enforcement of *Brown* and to the proper role of the courts are cleared.

We call on Congress to reject the two proposed bills on busing.

Martin J. Aronstein
Paul Bender
Paul W. Bruton
Martha A. Field
David Filvaroff
Jefferson B. Fordham
Daniel I. Halperin
Howard Lesnick
Clarence Morris
William Nelson
Covey Oliver
Richard Sloane
Edward Sparer
Ralph S. Spritzer
Bernard Wolfman

University of Pennsylvania Law School

Chairman CELLER. This morning we have before us a very distinguished member of the administration, the Honorable Elliot L. Richardson, Secretary of the Department of Health, Education, and Welfare.

We are very happy to have you here, Mr. Richardson. Will you please identify your associates for the record.

STATEMENT OF HON. ELLIOT L. RICHARDSON, SECRETARY, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, ACCOMPANIED BY DR. SIDNEY P. MARLAND, U.S. COMMISSIONER OF EDUCATION; STEPHEN KURZMAN, ASSISTANT SECRETARY FOR LEGISLATION; WILMOT HASTINGS, GENERAL COUNSEL; STANLEY POTTINGER, DIRECTOR, OFFICE FOR CIVIL RIGHTS; AND CHRISTOPHER T. CROSS, DEPUTY ASSISTANT SECRETARY FOR LEGISLATION (EDUCATION)

Secretary RICHARDSON. Thank you very much, Mr. Chairman and members of the subcommittee. I am very glad to present to the subcommittee my associates. On the far right the Director of the Office of Civil Rights, Mr. J. Stanley Pottinger. Next to him, the Commissioner of Education, Dr. Sidney P. Marland. On my immediate right, the General Counsel of the Department of HEW, Mr. Wilmot Hastings. On my immediate left is the Assistant Secretary for Legislation, Stephen Kurzman, and on his left is the Deputy Assistant Secretary for Education Legislation, Mr. Christopher T. Cross.

I have what I hope is a reasonably brief prepared statement which I would like to read and then my colleagues and I would be glad to respond to your questions.

Mr. Chairman, I am pleased to appear before this committee to explain aspects of the President's recommendations relating to a temporary moratorium on new or additional student transportation in school desegregation cases.

Our national quest for equal educational opportunity is now at a crossroads. Unfortunately, our attainment of this objective has become mired in the current debate on the busing of school children for desegregation purposes. Surely few issues of domestic policy have produced so much heat and so little light.

Nonetheless, I believe that there is general agreement that we must now rechart our national course. We need time to think the issues through, rationally, fairly, and with great care. The issues are difficult but they must be faced. If one thing is clear, it is that we cannot continue the current degree of social pressure on our school system.

As the President said 2 years ago:

> One of the mistakes of past policy has been to demand too much of our schools: They have been expected not only to educate, but also to accomplish a social transformation. Children in many instances have not been served, but used—in what all too often has proved a tragically futile effort to achieve in the schools the kind of a multiracial society which the adult community has failed to achieve for itself.
>
> If we are to be realists, we must recognize that in a free society there are limits to the amount of government coercion that can reasonably be used; that in achieving desegregation we must proceed with the least possible disruption of the education of the nation's children; and that our children are highly sensitive to conflict, and highly vulnerable to lasting psychic injury.

But to rechart our course is not abandon it, not to lose sight of our fundamental objectives, nor to break faith with the progress achieved since *Brown* v. *Board of Education* was decided, some 18 years ago.

The problems of achieving equal educational opportunity have, themselves, changed during those 18 years, because the dual school systems in our Southern States have now been substantially disestablished.

Let us put aside the question of who deserves the credit for this progress. The facts are that in the 11 Southern States since 1968, the percentage of black children in all-black schools has dropped from 68 percent to 9.2 percent and the percentage of black children in majority white schools has increased from 18.4 percent to 43.9 percent. More of the minority children in the South now attend effectively integrated schools than those in the North.

Now, in looking at the distance we have yet to travel, we find a whole complex of problems which face us at the end of the road that began with *Brown* 18 years ago. We face the vast ghettos in our large cities, the occasional problems of in-school discrimination, the few districts that still operate de jure segregated systems, the widespread belief that remedies have been imposed that harm more than they help, and, above all, the enormous educational disadvantages afflicting our poor and minority children.

As we look to the future, we must now focus much more specifically on education itself: on assuring that the opportunity is not only equal, but adequate, and that in those remaining cases in which desegregation has not yet been completed it be achieved with a greater sensitivity to educational needs.

The parents of all children—black and white alike—are demanding more and better education from our school systems. They are not all convinced that our schools are delivering that education. They have legitimate concerns that the results in some desegregation cases are not educationally sound for at least some of the children involved.

We must reestablish by action, not words alone, the primacy of the educational objectives which underlie the original *Brown* cases. We must reduce our reliance on the transportation of students between schools or school systems as a tool to achieve equal educational opportunity. Transportation can never do the whole job. It can never reach the core areas of our cities where educational deprivation is the greatest.

The choice is not desegregation or compensatory education. Sometimes, desegregation improves the achievement of low-income children: sometimes it does not; and the same is true of compensatory education. There is no need for a choice between these two approaches to equal educational opportunity. But there is a need to encourage local planning that will combine and coordinate them most effectively. Any local school district which genuinely seeks to solve its problems of educational deprivation will, I trust, achieve that part of the solution which desegregation can achieve by desegregating and achieve that part which will persist, because of poverty and environment, through good compensatory programs. I cannot emphasize too strongly our combined commitment to the enforcement of constitutionally required desegregation: and to a search for all possible means to improve the educational opportunities for all children.

The reestablishment of the primary of educational objectives is what the measures submitted by the President to the Congress 4 weeks ago seek to achieve.

The whole of the President's program for action is described in great detail in his March 17 message to the Congress. I need not repeat that material here.

I would like first to describe the President's proposed Student Transportation Moratorium Act of 1972. H.R. 13916. Its purpose is to give the Congress time to consider statutory approaches to the problems of achieving equal educational opportunity, approaches involving less emphasis on student assignment plans requiring extensive transportation.

I believe that this period of time is critical. Without a breathing spell during which the Congress and the country can rationally address this emotionally charged issue, we are likely to face a continued escalation of concern and of pressure for action which we may later find unwise.

We do not need more emotion.

We do need to quiet fear.

We do not need reactive, poorly thought-out legislative actions.

We do need a comprehensive, carefully thought-through congressional enactment.

The Congress has not addressed the issues of school desegregation policy in any systematic fashion since 1964. And even then it did not address the enormously complex problems of defining appropriate remedies.

The complexity and difficulty of these issues should not be underestimated. We will have to deal with an enormous variety of school systems and great differences among existing and proposed desegregation plans. But we should no longer stay out of the kitchen for fear of the heat. The President has offered the Congress his initial proposals, to start the process. The Congress should review them with care, should provide a forum for a rational debate and should come to its own judgment. We are open to any suggestions for improvements in our proposals. We are seeking the best answers, not just answers with our own stamp.

The Congress has a role in this process, a role made explicit by section 5 of the 14th amendment. The need for uniform and consistent national criteria to guide the development of remedies in desegregation cases seems to us to be abundantly evident. Those criteria can only be developed by congressional action.

During this period of deliberation the Congress should, in aid of its own jurisdiction, maintain the status quo.

These are the reasons we request speedy enactment of the Student Transportation Moratorium Act of 1972. If we stop for a moment, if we dampen the fears so evident among our people, if we provide a time for reassessment, we can create an atmosphere more conducive to a serious and substantive review of the country's policy options in this area.

The moratorium proposal is simple in design. It would not affect any determinations of constitutional rights. Litigation and administrative action could continue. However, new desegregation plans entered after enactment would be stayed during the moratorium period, to the extent they involved any new or different public transportation of any student. At the expiration of the moratorium period, all plans stayed to that extent would go into effect, provided they met the new statutory standards which we have proposed for enactment by the Congress.

Since some questions have arisen as to the effect of this proposal, let me take a moment to describe both the effects of H.R. 13916, and some of the things it would and would not do.

The moratorium would stay every order which required the public transportation of any student not previously transported or of any student who previously was attending a different school, if the order was entered during the moratorium period. Thus, it would have no effect on any order entered before its effective date.

It would have no effect on changes in school assignments resulting from natural events such as the opening of a new school, the graduation of students or the coming to town of new families. So long as the natural changes occur within the scope of any existing court order or title VI plan, they would not be affected by the moratorium.

The moratorium would affect only the student transportation aspect of any order or plan. It would not provide a stay of any walk-in student assignment remedy, of any teacher-assignment remedy, or of any remedy for in-school discrimination, denial of equal access to education programs and the like.

The moratorium would affect only Federal action. It would not impact on State court proceedings, State administrative proceedings, or on any school district's voluntary initiatives toward school desegregation, even though new or additional school transportation is involved.

The moratorium would stay all new Federal orders to the extent described. Like any freeze imposed to consider the subject matter in detail on its merits, it does not attempt to define exceptions which might otherwise be deemed appropriate. The question of appropriate limits is the very question to be addressed by the Congress pursuant to the President's proposed Equal Educational Opportunities Act of 1972, H.R. 13915. The moratorium is designed only to preserve the status quo for the period of congressional deliberation.

The Acting Attorney General has already described some of the court-order districts which could be affected by the moratorium, if promptly enacted: for example, Memphis, Tenn.; Austin and Dallas, Tex.; Atlanta, Ga. The HEW districts which could be affected are Prince Georges County and Wicomico, Md.; and Tift County, Ga.

In closing, let me say that I believe it critical that the Congress address the issues of equal educational opportunity and school desegregation together and now. We must move forward to fulfill our national commitment to equality in a rational and orderly fashion. We need uniform national standards. We must give renewed emphasis to educational values. We must decide how to achieve what we all know we must achieve for all our children.

But to address these issues fairly and without emotional distortion, we need the time provided by the President's moratorium proposal. We must lower our voices and open our minds. The Congress is the only appropriate forum in which these grave issues of national policy can be addressed. I urge enactment of the moratorium as the first step in this difficult process.

That concludes my statement, Mr. Chairman. My colleagues and I will be glad to respond to the questions of the subcommittee.

Chairman **Celler**. Mr. Richardson, as you know, no doubt, a petition is pending which seeks to discharge this committee from further consideration of House Joint Resolution 620, a proposed constitutional amendment banning busing.

On February 7, this committee wrote to you, requesting the views and comments of your Department on House Joint Resolution 620 and a number of other proposed amendments to the Constitution.

To date we have received no reply. It appears that the President does support some sort of constitutional amendment but seeks to postpone taking a formal position. We do not have the administration view on the provisions of House Joint Resolution 620, but think it would be helpful to the committee if you would express the views of your Department on it.

Mr. **Richardson**. Let me comment first, Mr. Chairman, that the only reason you do not have a report from my Department on the resolution is simply that during this interval, the administration has been developing legislative proposals which are now before the Congress and which constitute what we believe is a reasonable and comprehensive approach to dealing with the problem.

As to the resolution itself, the administration has, for these reasons, not reached a formal position. We have said that we believe that the best way of dealing with the problems arising out of the excessive transportation of children, while at the same time furthering the objective of equal educational opportunities, is to pass our legislation, and, if you do this, then you do not reach these constitutional amendments. I would say simply for myself, as I have said before, that I find the various resolutions pending before the subcommittee to be highly ambiguous. One reading of this resolution introduced by Congressman Lent would be simply that it is merely declaratory of the *Brown* case and all of those which have followed it. A more extreme reading on the other side would conclude that it intended a complete reopening or could bring about a complete reversion of any or all desegregation orders. Probably neither of these interpretations is within the intent of the sponsors and, yet, the fact that they are possible interpretations is illustrative of the difficulty of dealing with this problem by means of a constitutional amendment rather than through the comprehensive legislative approach which the administration has recommended.

Chairman **Celler**. At a press conference which you held on February 16, 1972, you were quoted as saying with respect to House Joint Resolution 620:

> This amendment, and other amendments, could have the effect of actually undercutting and rolling back the measures that have been taken to dismantle the dual school systems even in situations that did not involve massive transportation * * * and certainly I do not believe that the Administration wants to bring about that result.

Is that your view today?

Secretary **Richardson**. Yes; as I said a moment ago, that is a possible interpretation of the amendment. It could also be interpreted to have no effect at all because it was merely declaratory of *Brown* and all subsequent decisions.

I am simply making a point I made a moment ago that it is ambiguous.

Chairman **Celler**. I take it, therefore, that you do not think too well of this amendment.

Secretary **Richardson**. I do not.

Chairman **Celler**. Would you advise that we vote against it?

Secretary Richardson. If I were a member of the subcommittee, I would vote against it, but I do not believe I am necessarily the best source of advice to the subcommittee.

Chairman Celler. Mr. Secretary, can you give us information as to how many schoolchildren will ride a bus to school this year?

Secretary Richardson. It is almost 19 million children, 18.9 million for the 1971-72 school year.

Chairman Celler. How does that relate to the total enrollment of schoolchildren?

Secretary Richardson. 43.5 percent as of the school year 1970-71, which is the last for which we have national figures.

Chairman Celler. How many children rode a bus to school last year?

Secretary Richardson. For 1970-71, the figure was 18.6 million.

Chairman Celler. What number and percent of pupil busing is attributable to desegregation, if you know?

Secretary Richardson. We can only estimate this by looking at the school districts where there have been desegregation orders. For example, the South, where the most desegregation has taken place, in 1967, had very little desegregation, and 52.5 percent of the pupils in the South were transported at public expense.

In 1970, when a significant amount of desegregation had taken place, 55.5 percent of the pupils were transported at public expense. That leaves a difference of 3 percent, which could be attributable to desegregation.

If you look at the 100 largest districts, the picture is different. Of course, the problem really is not so much a growth problem for the South as a whole, because in some districts desegregation was accomplished with less busing than there had been before.

So, if you look at the picture in terms of the situations where the busing problem has been acute, you can identify among the hundred largest districts, 23 which, in 1971, had desegregation plans and 69 which did not have desegregation plans.

Of the remaining six, we have no data. The 23 with desegregation plans had an average 7.5 percent more pupils transported in 1971 than in 1970. The 69, without desegregation plans, had 0.7 more pupils transported in 1971 than in 1970, and that, I think, is probably a more relevant comparison. In other words, about 10 times greater increase in busing in the large districts with desegregation plans than those without.

I also have here, Mr. Chairman, a tabulation which shows districts which have had very substantial increases in busing as a result of desegregation plans ranging from the 27.3 percent increase in Little Rock to 14.5 percent in Alexandria.

Mr. Zelenko. Mr. Secretary, in the districts in which you account for the largest increases in busing occurred—how much busing took place before?

Do you have figures as to numbers of pupils transported before 1970-71 in those districts?

Secretary Richardson. Yes; we do. In the districts that I mentioned, for example, where there have been substantial increases, we have the numbers of pupils who were transported, in 1970, and the number who were transported in the following year with the percentage in each case. This shows the relative gains which, as I said, in these districts have been very substantial.

The highest has been in Raleigh, where in 1970, 5.7 percent of the pupils were bused. In 1971, 45.9 percent, or an increase of 40.2 percent in that year.

Chairman CELLER. Would you care to submit to the committee the material from which you are reading?

Secretary RICHARDSON. We would be glad to do so, Mr. Chairman.

(The information referred to follows:)

THE 10 SCHOOL DISTRICTS WITH PUPIL MEMBERSHIP OVER 10,000 SHOWING THE GREATEST PERCENTAGE INCREASES IN PUPILS TRANSPORTED

School district	Total pupils in membership	Percent of pupils transported
Little Rock, Ark		
1970	24,454	0.2
1971	23,306	27.5
	−1,148	+27.3
San Francisco City Unif, Calif:		
1970	91,150	7.4
1971	83,584	27.1
	−7,566	+19.7
Hillsborough County, Fla:		
1970	105,347	28.4
1971	101,298	47.6
	−4,049	+19.2
Chatham County, Ga:		
1970	40,897	34.1
1971	37,712	51.3
	−3,185	+17.2
Jackson MSSD, Miss:		
1970	30,758	6.9
1971	29,627	26.5
	−1,131	+19.6
Forsyth County-Winston/Salem City, N.C:		
1970	49,514	47.3
1971	47,937	76.7
	−1,577	+20.4
Greensboro City, N.C:		
1970	32,291	33.0
1971	30,007	56.4
	−2,284	+23.4
Raleigh City, N.C:		
1970	23,469	5.7
1971	22,236	45.9
	−1,233	+40.2
Nashville-Davidson County, Tenn:		
1970	95,313	34.2
1971	88,190	48.9
	−7,123	+14.7
Alexandria City, Va:		
1970	17,555	10.3
1971	16,702	24.8
	−853	+14.5

Chairman CELLER. Mr. Secretary, what interpretation would you give to the expression "extensive transportation of students" as set forth in so-called finding No. 1, of the moratorium bill, the first finding on page 1 of the bill?

Secretary RICHARDSON. This is a finding which deals with the very kind of data that I was just citing and which would be the subject of the material which I have just submitted in the record. The best answer I think is that same tabulation showing very substantial increases from 1970 to 1971 in communities which have been carrying out desegregation orders requiring transportation.

Chairman CELLER. Of the largest school districts, say of the 100 largest school districts, approximately how many were operating under 1971 desegregation plans?

Secretary **Richardson**. There were 23 of the 100 largest districts operating under new desegregation plans in the 1971–72 year.

Chairman **Celler**. Can you give us an idea of the purpose of the findings set forth in the moratorium bill, pages 1, 2, and 3 of the bill? What is the purpose of those findings?

Secretary **Richardson**. These findings are contained in the bill to point up the importance on the part of the Congress of dealing with the underlying facts that have led to the President's proposal in the first instance. The point I think was made very well in testimony before this subcommittee yesterday by Mr. John Doar and Mr. Lloyd Cutler in which they point out that the constitutionality of the moratorium legislation would substantially depend upon the underlying facts.

On page 11, for example, of their testimony, it is pointed out that the basis for the constitutionality would depend upon "facts convincingly establishing the necessity of a moratorium to enable Congress to enact standardized and nationwide remedies that are at least equally effective."

And, of course, that is essentially what I have been testifying to today.

Chairman **Celler**. Of course these findings do not have the effect of law.

Secretary **Richardson**. They would have the effect, however, of making clear to the Supreme Court of the United States what was the underlying basis for the conclusion of the Congress in its wisdom that there should be a temporary stay in aiding its own jurisdiction to determine what the consistent long-range remedies for excessive busing should be.

Chairman **Celler**. Finding No. 1, page 1, line 7 through 10, refers to extensive transportation. Can you furnish any specific additional information to document that finding?

Secretary **Richardson**. I could only add to what I have already given the subcommittee, what you might call anecdotal information with respect to particular communities where the increases in busing have been most substantial. For example, in Winston-Salem, the longest bus ride is 80 minutes each way.

In Jacksonville, a substantial number of elementary schoolchildren have round trips that average 2½ hours a day. In Tampa, where there was a 19 percent jump in busing, the school transportation budget went up by 80 percent so we have what you might call fragmentary information that is illustrative of the gross picture displayed in the statistical data that I have already mentioned.

(The following information was subsequently submitted by the Department of HEW:)

The following examples represent the extent of hardships that these particular districts have encountered because of increased transportation ordered by Federal courts. It should be noted that many of these hardships could be eliminated with additional buses and transportation funds.

NASHVILLE, TENN.

The Federal court order requires the busing of 49,000 students, 28,000 are transported from their original school zones to new school zones; the total number of new students bused is 15,000.

The transportation mileage will approach 6 million miles compared to 3 million miles for the 1970–71 school year.

In order to meet pupil transportation needs required by the court order, the high school day was shortened from 7 hours to 6 hours; 141 school openings were staggered to begin at 20 minutes intervals from 7 a.m. to 10 a.m. Buses that serve schools opening at 7 a.m. begin their routes at 6:05 a.m., which is 34 minutes before sunrise. Since children walk to pickup points, those at the beginning of the route may be on the streets as much as 1 hour before sunrise. On late runs, a few which require 60 to 90 minutes will return to their pickup points well after sundown. Those elementary children on late shifts who live 1½ miles or less from school will be walking home in the darkness. (NOTE: It should be noted that many of those hardships could be eliminated with the additional buses and transportation funds that the district requested.)

SAVANNAH, GA.

The school system is operating under two Federal court orders. One for the elementary schools and one for the secondary schools.

The results of the two orders made it necessary to transport 21,336 students to and from school daily. This is an increased burden on the transportation system of 7,488 over the 13,848 students transported during the school year 1970–71.

The additional busing for secondary schools require 52 extra trips per day totaling 1,400 miles per day or 189,280 miles per school year over the busing mileage of 1970–71.

The additional busing for elementary schools amounts to 63 extra trips per day, totaling 1,800 miles per day or 340,200 miles per year.

An example of one of these extra trips is the bus leaving Chatham High School in the city at 7 a.m. and arriving 45 to 60 minutes later at Beach School located at Savannah Beach.

Thus implementation of the Savannah court order increased transportation miles by 529,480 miles. (NOTE: It should be noted that many of these hardships could be eliminated with an additional 61 buses at a cost of approximately $549,000.)

TAMPA, FLA.

Prior to 1971–72 the Hillsborough County schools transported approximately 32,000 students in the rural areas of the school district. Now in addition to these 32,000, another 25,000 students are being transported because of the court order requiring the desegregation of the schools.

Some of the schools begin classes as early as 7 a.m. and others begin as late as 9:30 a.m. Some school dismiss students as early as 12 noon and others as late as 5 p.m.

JACKSONVILLE, FLA.

The court order increased the number of transported students from 33,870 in 1969 to 65,000 in 1972. The number of buses increased from 200 to 411. There are a few round trip bus rides that total 2½ hours per day.

PALM BEACH, FLA.

The court order increased the number of transported students from 17,758 to 31,209. The number of buses increased from 328 to 641.

COLUMBUS, GA.

Transportation routes for students attending Banchard Elementary, Carver High, and Carver Elementary have been extended 15 to 16 miles coming and going. These bus routes average 45 to 55 minutes one way. The total number of transported students increased from 10,649 to 14,238.

WINSTON-SALEM, N.C.

The number of transported students increased from 17,876 to 22,300. The longest time on a particular bus is 80 minutes.

CHARLOTTE-MECKLENBURG, N.C.

The number of transported students increased from 22,023 to 37,367. The aggregate miles increased from 2 million to 3.7 million. The longest bus ride on a particular bus is 90 minutes.

Mr. ZELENKO. Mr. Secretary, the Civil Rights Commission testified 2 days ago and said that such evidence, however, is only anecdotal. For example, in Charlotte-Mecklenburg, as a consequence of the desegregation order there, bus trips were cut to a maximum of 35 minutes.

Similarly in Richmond, the Civil Rights Commission testimony 2 days ago before the Committee on Education and Labor suggests that the average bus ride would be about 30 minutes, which is less than current average in the adjacent districts involved in the litigation.

Regarding busing in Alabama, desegregation of schools the Civil Rights Commission testified, resulted in 1 million fewer passenger miles.

Are you suggesting to the committee that finding No. 1 applies uniformly throughout all desegregated school districts or only in some?

Secretary RICHARDSON. Certainly not in all and clearly only in some. The desegregation accomplished to date in formerly de jure school districts has largely been accomplished without additional busing. But, the problem with which our legislation is concerned, and the problem with which we are asking the Congress to deal, is the problem that arises in those situations where there has been very substantially increased busing and where the amounts of time and distance involved have been, we believe, excessive.

Chairman CELLER. Would it help your recollection if I call your attention to the fact that you made the following statement on March 27 to the House Committee on Education and Labor as follows, on this subject:

> We do not have clear data indicative of the precise increase in the quantity of busing which has been brought about by desegregation orders.

About 2 weeks ago you made that statement.

Secretary RICHARDSON. That is because, within any given district, it is impossible to be definitive as to the precise proportion of an increase in busing that is attributable to a desegregation order and what proportion of it might have occurred anyway.

In the comparison I gave a moment ago as among 23 largest districts which have carried out desegregation orders and 69 that have not, I pointed out that there had been a 0.7 percent average increase in busing in the 69 that are not carrying out desegregation orders, and 7.5 percent increase in those that are.

Well, this suggests that there would have been some increase at least 0.7 percent, in the districts that are carrying out desegregation orders, and what I meant was that we cannot give you a precise breakdown within any given district as to the amount of the increase that would have occurred anyway.

Mr. ZELENKO. Mr. Secretary, 2 months ago the committee requested of the Department data such as the type you are discussing now. In a letter dated March 7, signed by Mr. Pottinger, Director of the Office of Civil Rights, in discussing 23 of the 100 largest districts that have transported pupils and had an increase in busing because of desegregation, is this statement:

> As indicated, 23 of these districts underwent new student desegregation in the 1971-72 year, according to our knowledge. We would caution, however, that al-

> though desegregation may have influenced the transportation trend in these cases, it is also possible that other factors may have had a bearing, such as changes in total enrollment and in the educational programs offered in the districts.

Mr. Secretary, how much busing must there be to be extensive? How much busing is excessive?

Finding 1 says "There has been extensive busing." What is the standard you suggest this committee apply?

Secretary RICHARDSON. May I comment first, Mr. Zelenko, on your earlier observation which is, of course, essentially what I just said to the subcommittee. But I would add further that the inference that the greatest relative increase in busing in these districts which is attributable to desegregation orders is pointed out by the comparison that I gave you.

But another point needs to be made in commenting on Mr. Pottinger's reference to the fact that one would need to look at factors other than merely the number of children involved in busing in the districts.

We have done that since that letter was submitted to you. It turns out that in every single one of the large communities in the South in the tabulation I gave you earlier where there have been major increases in busing, there has been a decline in total enrollment. This is an educational byproduct of massive busing which we ought to take into consideration.

On the question of how much is too much, the best approach we have been able to make is to say that with respect to elementary schoolchildren, we should look at the past practice of the district, and that the Congress can and should appropriately establish averages as a limit since our studies indicate that substantial, if not complete desegregation, can ordinarily be accomplished without increases in aggregate busing of elementary and secondary schoolchildren.

With respect to children in the secondary schools, we would ask the Congress to agree with us that the courts should be required by legislation under section 5 of the 14th amendment to exhaust all alternatives before requiring any additional busing. Then such busing would be subject to the absolute limitation that the additional busing may not—paraphrasing the *Swann* case—impinge upon the education or adversely affect the health of the children involved.

We have given a lot of thought to more precise yardsticks and have felt that this would not be as practical a way to do it as the way which is ordered.

But, as I also said in my testimony, we invite the Congress to participate in the process of establishing this kind of uniform standard. We think that there is a need to do this. We think that the Supreme Court of the United States itself in the *Swann* case virtually invites congressional participation in the establishment of consistent rational limits.

Chairman CELLER. Mr. Secretary, finding No. 2, page 2, lines 1 through 8, claims that busing has caused substantial hardships and has impinged on the educational processes.

Again, can you furnish the committee with specific information to document that finding?

Secretary RICHARDSON. I can again, of course, and this is the sort of thing that comes clear most graphically in a specific situation. For example, Nashville where the Federal court order requires the busing of 49,000 students.

Mr. Zelenko. That was an HEW plan, was it not, Mr. Secretary?

Secretary Richardson. No; it was a court plan developed on the basis of advice from experts, including people at HEW. But we have made very clear in this situation that the plan is not a plan that we proposed or developed. It is the judge's own plan.

For the 1971–72 school year, busing mileage is approximately double the 1970–71 mileage. It has gone from 3 million to 6 million miles. In order to do this, the high school day has been shortened from 7 hours to 6 hours. 141 school openings were staggered to begin at 20-minute intervals from 7 a.m. to 10 a.m. Buses that serve schools opening at 7 a.m. begin routes at 6:05 a.m. Since children walk to pickup points, those at the beginning of the route may be on the street as much as 1 hour before sunrise. On late runs, a few of which require 60 to 90 minutes, they return to their pickup points well after sundown. Elementary children on late shifts who live a mile and a half or less from school, will be walking home in darkness.

In Savannah, to take another example, the additional busing for secondary school requires 52 extra trips a day totaling 1,400 miles a day or 189,000 miles above the previous year. In one of these trips, the bus leaves Chatham High School in the city at 7 a.m., and arrives 45 minutes to an hours later at the Beach School at Savannah Beach.

In short, what we have is a situation that helps to account for the fact that people see in these——

Chairman Celler. Are there a great many other such cases or is that the only one you have? I ask that because you stated in a letter to me, Mr. Secretary—or rather HEW stated in a communication dated March 7, 1972:

> We do not maintain information which would indicate the average time spent in transit, and average distance traveled by public school students transported, either on a district-by-district basis or on a statewide basis.

Secretary Richardson. That is true, Mr. Chairman. What we have done is to develop information about those situations we knew about where the court orders are most far-reaching.

I think it is important to emphasize to the committee that what we are asking the committee to do is to legislate in a situation that has aroused a great deal of concern. What has happened in the past after all, is only illustrative of a trend.

Chairman Celler. We are asked to sanction or rather to subscribe to certain findings which result from things that have happened in the past.

Secretary Richardson. This is true, Mr. Chairman, but the relevance of the findings is the need to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to assign and transport children and discharge its obligation under the 14th amendment.

If you were to draw a curve and project the trend that is developing, you would then see why so many communities that have not yet been struck by extensive busing orders are saying that something ought to be done, and what we are saying to this subcommittee is that this "something that ought to be done" can better be done by uniform and consistent rules than by allowing the extent of busing to depend upon the individual orders of individual judges, not attempting to apply any consistent standard.

Mr. **Zelenko**. Mr. Secretary, will the proposed moratorium bill permit the Federal courts to modify the Nashville order if new or additional busing resulted?

Secretary **Richardson**. The moratorium bill is only a bill designed to give the Congress the opportunity to develop standards. As soon as those standards have been enacted, the moratorium bill, by its terms, would terminate.

Mr. **Zelenko**. But there is now an attempt to remand the case to the district court in Nashville to seek a reduction in the amount of busing. Would such an order be enforceable under the moratorium if it "directly or indirectly" ordered children to schools other than the ones they were being transported to under the previous order?

Secretary **Richardson**. The moratorium would presumably affect any new order. Now, I am not prepared without analysis of the pleadings to characterize in this case a resulting order or a possible order or a new order.

Mr. **Zelenko**. Mr. Kleindienst was asked this question yesterday: It would help the committee to know how the moratorium would affect the Nashville case where the Government has sought to have the case remanded by the appellate court. Would the moratorium, in fact, deny relief—that is, a reduction of busing—if the resulting order shifted children to schools other than to the ones they presently are being transported?

Secretary **Richardson**. In the light of your interest, we will be glad to furnish you further response to that question.

(The response referred to follows:)

If the court in Nashville had to enter a formal order that the school board must reduce busing, the Moratorium would apply and the order be stayed. Nonetheless, this result may be avoidable by the exercise of lawyer's ingenuity. For example, if Nashville found a way to reduce busing within the general outlines of the present plan, in a manner agreeable to the court, it presumably could do so voluntarily, without any new order. Thus, the reduction in busing could be accomplished despite the Moratorium.

Chairman **Celler**. Mr. Richardson, with reference to finding No. 2 which declares that desegregation has required transportation in excess of that required to desegregate, what examples can your Department furnish to substantiate this finding?

Secretary **Richardson**. Often in excess of that necessary to accomplish desegregation. That finding is in our judgement best reinforced by the study, which we have referred to from time to time, called "The Lambda Study," which was undertaken at our request in order to determine what minimal amounts of transportation were necessary in order effectively to carry out a desegregation program.

This study indicates that it is possible in most situations to do this without substantially increased busing. The point here is that there have been situations in which we think that more busing has been conducted than was necessary or desirable, taking into account the educational objectives of the desegregation process.

Mr. **Zelenko**. Mr. Secretary, can those instances be identified for the record?

Secretary Richardson. They are essentially the kinds of instances that we have refererd to, but we would be glad to furnish the Lambda study, which deals with 44 cities, to the committee.

Chairman Celler. Mr. Richardson, apparently the busing moratorium is predicated on the finding of potential harm to children caused by busing; for example, finding No. 2.

Does the bill prevent new busing only if it is shown to be injurious or cause a hardship, or does the freeze or moratorium apply to any busing whether or not it imposes a hardship?

Secretary Richardson. The freeze would apply to any new busing.

We gave a good deal of thought as to whether to include in the moratorium bill the same kind of limitations that are included in the subsequent legislation, the Equal Educational Opportunities Act.

We thought that, since the purpose of the moratorium would be to enable the Congress to deliberate upon the question of what the substantive limits ought to be, the freeze, therefore, should apply to any new busing, so that the Congress would not be required simultaneously to address the desirability of a freeze and the question of what the substantive limits should be.

Chairman Celler. Another ground set forth in the findings for the busing freeze is that school districts may be required to expend large amounts of funds for transportation. Does the proposed freeze only apply where additional financial investments would be required, or does it apply whether or not greater financial resources must be used?

Secretary Richardson. The latter, Mr. Chairman. It would apply regardless of any expenditure, because its function is to enable the Congress to decide what more substantive remedy or limitation should be applied. It is analogous to decisions of the courts in aid of a court's jurisdiction. The *United Mine Workers* case is probably the most conspicuous example. There it was held that a court was justified in punishing defendants for contempt of an injunction which the court was ultimately determined to have no constitutional authority to issue, but the Court could invoke contempt in aid of its own jurisdiction to determine that jurisdiction.

Now, what we are saying to the Congress is that the Congress has an equal right to freeze the status quo while it is exercising its undenied legislative authority under the 14th amendment to determine what legislative limits should be. But we say in the meanwhile, we ought to freeze any new transportation because, by definition, the question addressed to the Congress is, what more specific limitations should be imposed?

Mr. Polk. On this point, I would like to ask the Secretary if he could supply a single case where the court has granted relief as a preliminary injunction greater than that which the plaintiff sought on the merits?

Secretary Richardson. In every case in equity where a court issues a temporary restraining order against further action, the court has open to it, in equity, the whole range of possible remedies. The court is not restricted to the relief sought by a petitioner. Its function in equity is to frame a remedy designed to deal with the issue at hand, and it would obviously require a search of authorities.

In fact, I might suggest to my good friend, the Acting Attorney General, if the committee wishes to have such, that they might supply the legal citation for this, but it does not seem to be surprising at all that a court may simply say that no further action in this matter until we decide what should be done about it, and then decide that what should be done about it may be in some respect more far reaching than the petitioner who brought the matter to the equity court anticipated.

Mr. POLK. That is certainly true. But what about a situation where the plaintiff is seeking relief on the merits, relief which is not so far reaching as that sought by way of a preliminary injunction?

Secretary RICHARDSON. I would say to this committee that, if the committee is prepared to conclude that our substantive limitations are meritorious and limit the moratorium to the terms of those substantive limitations, this would be a reasonable way to proceed. We did consider submitting moratorium legislation along these lines. The only reason we did not was the one I stated earlier, which is that we think that the Congress should have the opportunity to consider whether more or less than we had proposed is the ultimately desirable solution.

If Congress was prepared to enact substantive legislation immediately, of course there would be no need for the moratorium; and, by definition, the moratorium would not apply anyway since it would expire upon enactment of such legislation.

Chairman CELLER. Mr. Richardson, may I ask you to turn to page 10 of your statement, the paragraph at the bottom, where you state: "At the expiration of the moratorium period, all plans stayed to that extent would go into effect, provided they met the new statutory standards which we have proposed for enactment by the Congress."

What you mean is provided the bill that has been referred to the other committee passes, am I correct?

Secretary RICHARDSON. Yes, or more precisely still, Mr. Chairman, the bill declared by the Congress to be the legislation.

Chairman CELLER. But suppose no such bill is passed, and you have only the moratorium, then what happens?

Secretary RICHARDSON. Then it expires, at least we have proposed that it should expire, on July 1, 1973.

Chairman CELLER. What would happen to the school districts, in which there had been a freeze on implementing desegregation plans? What would be the effect?

Secretary RICHARDSON. The orders that have been stayed would go into effect.

Chairman CELLER. And there would be no new standards to replace the old regimes, is that it?

Secretary RICHARDSON. That is right.

Mr. ZELENKO. It is not quite clear, Mr Richardson, because your statement on page 10 implies that, if the moratorium is enacted, school districts and courts should be on notice to follow the standards proposed in the administration's substantive bill. It suggests that only plans that comply could go into effect after the moratorium, whether or not the substantive legislation is enacted. As a practical matter, do you think that would occur?

Secretary RICHARDSON. I am not sure that I follow the question.

Mr. ZELENKO. What standards would guide the courts in the development of school desegregation plans if the moratorium bill were enacted?

Secretary **Richardson**. Well, here, of course, the courts would presumably follow the sense of what the current law is.

I suppose a judge might consider alternatives depending (a) on his assessment of the likelihood of congressional action and (b) his view of the constitutionality of such action perhaps as a way of deciding how to deal with the situation. I think all we need to say is that the court would be likely in the interval to proceed on the basis of current law since it cannot know what Congress is ultimately going to do until Congress has acted.

Mr. **Zelenko**. So the language on page 10 which says "provided they met the new statutory standards" is not quite accurate.

Secretary **Richardson**. No, it is not, in the sense you have used it. What it does is to tell us of a process which would involve some modification of the order in the light of congressional action as soon as that action had become final.

Chairman **Celler**. Mr. Hungate.

Mr. **Hungate**. Thank you, Mr. Chairman.

Mr. Secretary, on page 14 of your statement, we are urged to open our minds. I think I have heard that exhortation before. A fellow said the last time he lowered his voice, they raised his taxes.

On page 4, you state: "* * * the few districts that still operate de jure segregated system." Mr. Secretary, how many such districts are there in the United States?

Secretary **Richardson**. Well, may I say in preface to the answer that in schools in States which never had legislation requiring a dual school system, the question of whether or not there has been de jure segregation may be subject to investigation or a court finding. Putting those situations aside, since we obviously do not know about them en masse, there are about 68 former dual school systems with remaining student assignment problems. These constitute under 4 percent of the total number of school districts which have had former dual school systems.

To put it the other way around, more than 96 percent of all school systems that were formerly illegally segregated have been desegregated.

Mr. **Hungate**. And we have 4 percent that are still operating de jure segregated systems.

Secretary **Richardson**. Yes.

Mr. **Hungate**. Where would those be located, by States, Mr. Secretary?

Secretary **Richardson**. May I ask Mr. Pottinger to answer?

Mr. **Pottinger**. Mr. Congressman, may we supply that for the record? We do have the information.

Mr. **Hungate**. What would be a reasonable time?

Mr. **Pottinger**. I think we can do it tomorrow.

Mr. **Hungate**. Fine. Thank you.

(The information requested follows:)

At present we estimate that there are approximately 68 former dual school systems in the 17 Southern and Border States which have been contacted about the need to adopt additional student assignment measures under Title VI of the Civil Rights Act of 1964, or where there is a possibility of additional student assignment measures as a result of Federal court action to which the Department of Justice may or may not be a party. The States involved are: Alabama, Delaware, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia

Mr. Hungate. Mr. Secretary, are suits brought by the Department of Justice pending in those areas so far as you know, to abolish those de jure segregated schools?

Secretary Richardson. Yes, as far as I know, in every case there is either a Department of Justice suit pending or a suit that has been brought by a private plaintiff.

Mr. Hungate. And some cases are brought by private citizens and not by the Department of Justice?

Secretary Richardson. Yes.

Mr. Hungate. And, yet, in other areas, Mr. Secretary, we have suits brought by the Department of Justice which, if successful, would involve increased busing in what would not be called the old style de jure segregated systems: would that be correct?

Secretary Richardson. There are Justice Department actions in northern school systems in some cases where there has never been a law formally requiring segregation. There are some HEW administrative proceedings in such districts, too.

Mr. Hungate. Pardon me, sir.

Secretary Richardson. There are also HEW administrative proceedings in such districts, including, for example, Boston, Mass.

Mr. Hungate. Now, perhaps you and Mr. Zelenko explored this earlier. On page 12, you say "the moratorium would affect only Federal action."

As I recall the Attorney General's testimony yesterday, the State courts and State agencies could still issue orders that might result in increased busing.

If that was a necessary tool to abolish the evil, would you think that is correct?

Secretary Richardson. You are certainly correct that the moratorium statute would permit it.

Mr. Hungate. Under the moratorium statute, would you think an appeal from any such State court decision would lie to the Supreme Court?

Secretary Richardson. Presumably it would, assuming of course that the State court action purports to rest on the requirements of the Federal Constitution. Some States, for example, Massachusetts, have their own laws that require desegregation. Appeals would ordinarily not lie in such cases.

Mr. Hungate. Would you think the Supreme Court then had full power to determine this regardless of whether this statute and its companion statute were passed in its offered form?

Secretary Richardson. Clearly the court would have full power to determine the merits of the issue. The only remaining question, as I understand the colloquy with the Attorney General yesterday, deals with the question of what happens when the Supreme Court has determined the issue on the merits, sustained a State court order that requires busing, does the State court order go into effect? I would say the answer to that is "Yes." The Supreme Court of the United States does not purport to issue an order affecting busing. It would simply declare, in substance, that the actions of the lower court should stand or that the matter should be reversed and remanded for further proceedings. The Supreme Court would not be issuing its own mandate directly to the parties to the case.

Mr. Hungate. If the State court should decline to issue an order to increase busing, I presume the same would apply, the appeal would follow to the Supreme Court and the Supreme Court then would have power to order increased busing if it determined such remedy appropriate.

Secretary Richardson. The Supreme Court would not, itself, be entering an order directing busing. It would say that the State court had failed to apply proper constitutional standards and remanded the case so that this could be done.

Mr. Hungate. Thank you.

Do we have any examples where such orders have been issued? We talked about the number of miles that pupils might be bused and the number of pupils that might be bused. But do we have figures on the increased costs for the purchase of buses that were not required by school districts previously?

Secretary Richardson. We have gross figures for transportation costs. But we have only incidental information about additional costs.

Mr. Hungate. Pardon me. I suppose what I am inquiring is, would your statistics or studies indicate that because of busing orders in these cases, there would be any increase in the cost of capital purchases for school buses throughout the Nation and if so, approximately what would that increase be in dollars?

Secretary Richardson. As I say, we have figures which can be correlated with the figures on the increased busing which show an increase in expenditures for transportation, so you can derive the percentage of increase.

Mr. Hungate. Pardon me. I do not think I made myself clear.

I think we had testimony from Dallas that they used no buses at all and now they have to buy buses. I believe the witness said $900,000 worth of buses would be required. Do you have any figures corroborating those stories or disputing them?

Secretary Richardson. We have information which may help to answer your question. You recall the emergency school assistance programs that provided $75 million in each of 2 years to assist school systems that were carrying out desegregation plans. In August of 1970, we had applications for $11 million to cover increased busing costs anticipated in the 1970–71 school year from 89 districts. And so since the total requests from the districts came to about $113 million, this increased transportation cost represented about 10 percent of funds requested.

Mr. Hungate. Thank you, sir.

Now on page 13 of your statement, as I understand it, this moratorium is designed to preserve the status quo.

Secretary Richardson. Yes; for the period of congressional deliberation on the President's other legislative proposals.

Mr. Hungate. In closing, the statement says, "it is critical that Congress address the issues of equal educational opportunity and school desegregation together and now. * * * We need national standards." Now title VI of the Civil Rights Act of 1964 makes an effort to establish national standards. Title VI calls for rules under which Federal agencies may deny funds to districts which are not making a sincere effort to accomplish integration or desegregation. Section 602 stated, "no such rule or regulation or order shall become effective until approved by the President." Would that be your understanding that all such regulations would have to be approved by the President?

Secretary Richardson. Yes.

Mr. Hungate. Title 4 of the Civil Rights Act of 1964, section 407, relating to suits and the Attorney General as I understand it, states that he determines whether the complaint is meritorious, certifies that the complainants are unable, in his judgment, to maintain appropriate legal proceedings and that the action would materially further orderly achievement of desegregation of public education.

Would you think a discretion rests in the Attorney General as to whether or not to initiate such suits?

Secretary Richardson. Yes.

Mr. Hungate. Then if the policy adopted by the executive branch were to be one that opposed further busing, would you think it possible legally for the President to direct the Attorney General not to institute such suits, or to dismiss such suits as he had pending?

Secretary Richardson. It would be possible for the Attorney General, perhaps, to avoid bringing suit, but the problem essentially is the same kind of problem that we, in HEW, face. We both, the Attorney General and Secretary of HEW, are charged by the President and the Congress with carrying out the requirements of the law.

Now, the problem here is that the law, itself, can be unclear; and so we, in effect, together with the school systems have come to a point where we need clearer standards to be applied.

We are not in a position, in the absence of congressional action, for example, to say that there cannot legally be required by a desegregation order more busing in the aggregate of elementary children than we have now.

Mr. Hungate. I suppose what I am trying to stress is this broad area of discretion that resides in the Attorney General. I think we would agree there is a broad area of discretion necessarily in any such office.

And as to the HEW guidelines, I thought that the Nashville plan, where the students left before sunrise and got back after sunset—do I have that right; is that the right town?

Secreary Richardson. Yes.

Mr. Hungate. As I understand it, the court consulted with HEW experts for advice. Was the HEW suggestion as to busing in conflict with the order issued by the court?

Secretary Richatdson. I cannot answer that. I do not think we ever in effect submitted a plan to the court. The court in that instance kept all of the basic data in the court's hands and called upon HEW people for reactions to things that the court contemplated doing.

Mr. Hungate. We have had other testimony here, I think, that part of the problem that citizens relate to us is that they might comply with HEW guidelines and find that the court imposed on them more stringent requirements. In other instances, they say they might comply with the court order plan, and then HEW guidelines would be submitted and they were more stringent. Would such testimony be accurate?

Secretary Richardson. What you are saying could relate to a distinction that needs to be made between the exercise of HEW responsibilities under the Civil Rights Act, on the one side, and the implementation by HEW of the emergency school assistance program, on the other. The emergency school assistance program (ESAP) has had guidelines which may in some respects go beyond a given case of what was required by an outstanding order particularly in the area of teacher assignments. This has given rise to a good deal of confusion. The guidelines were in our judgment required by the very stringent conditions attached to the availability of the money by the Congress. In this instance, therefore, you might have a situation where we were requiring application of the so-called Singleton rule in the districts where the outstanding desegregation order does not apply the Singleton rule.

But that is a special case. The emergency school aid legislation passed in varying forms by both branches and now in conference, would not have that effect. I have made clear that as we interpret both versions of the legislation, we would in no case require any school system to take any action going beyond the terms of any outstanding order.

Mr. HUNGATE. That would include under ESAP to which you refer.

Secretary RICHARDSON. Well, the emergency school aid legislation would be a permanent or a basic substitution for the ESAP program which was enacted by essentially point-of-order language.

Mr. HUNGATE. In your judgment, the Department has that discretion.

Secretary RICHARDSON. Well, in the case of an ESAP program, we believe that we were required by the terms under which the money was appropriated to go beyond the court order. We do not think that that should be the policy we apply under the emergency school aid legislation now pending; and, as we read it, we would not be required to apply any such policy.

Mr. HUNGATE. In reading cases such as *U.S.* v. *Jefferson County Board of Education*, decided by the fifth circuit, I find forms in the opinion that I would be surprised that the court had prepared. I understand it is not uncommon for HEW to submit rather detailed guidelines to the courts to apply in these instances.

Secretary RICHARDSON. We would not ordinarily submit guidelines to the court to apply. A good deal of misunderstanding has arisen over the years as to the role of the U.S. Office of Education in providing expert assistance to courts. This is ordinarily done by request of the school board which asks for this help, often in the direction of a court, and, of course, the Office of Education or Office of Civil Rights would be calling on prior experience.

Mr. HUNGATE. In this instance, I am not questioning whether or not the aid was sought, rather I am trying to find whether there was one case, 10 cases, or several cases where this aid has been sought and provided?

Secretary RICHARDSON. May I ask Mr. Pottinger to respond.

Mr. POTTINGER. Mr. Congressman, frequently what has happened in the past has been that a court in seeking to devise or have devised for it several alternative remedies, has asked HEW officials to prepare a plan, has then turned to school authorities and asked them to prepare a plan independent of each other and has in some cases even asked third parties to prepare a plan and in still other cases the court, itself, has prepared plans. Having several alternative plans before it, the court will then frequently choose one, and by doing so, giving an appearance to the public that the other plans are in conflict. But that does not mean that HEW is, therefore, imposing or preparing plans pursuant to its own guidelines.

Mr. HUNGATE. I never told a witness what to say, but I consulted with a lot of them before they testified. Would you say any of those plans submitted at the court's request would have required additional busing?

Mr. POTTINGER. Would any of them be submitted by HEW officials?

Mr. HUNGATE. Yes.

Mr. POTTINGER. Yes; some of them would have, that is correct. Under the *Swann* decision as the court interpreted it, in many cases the court has said this is an objective we must reach, and I ask for assistance in reaching that objective, and that objective would include additional busing.

Mr. HUNGATE. Thank you.

Chairman CELLER. Mr. McCulloch.

Mr. MCCULLOCH. I would like to suggest to the Secretary that where percentages are supplied to demonstrate a fact, the actual number of whatever is measured also be included. This will make the point far more understandable to us people from the country than mere percentages. And I think, sir, you have made a good statement this morning.

Secretary RICHARDSON. Thank you.

Chairman CELLER. Mr. Poff.

Mr. POFF. Mr. Chairman, I would like, if I may, to explore a suggestion I put to yesterday's witness. The witness in the chair is himself a distinguished lawyer, the former attorney general of his State and fully qualified in all particulars to render an opinion. Yet, if he thinks it would be inappropriate to respond to my question, he will have the liberty to decline. I suggested yesterday, since there is so much dispute about the constitutionality of the moratorium bill, that it might be useful to write into the moratorium bill a provision calling for expedited judicial review, perhaps patterned after that used in the 18-year-old vote title of the Voting Rights Act Amendments of 1970.

Would the witness care to give his appraisal of that suggestion?

Secretary RICHARDSON. I would be glad to, Mr. Poff.

I thought you would ask this. I saw the Acting Attorney General's response. I fully agree with it. I think this would be a helpful way of clearing the air so that we could go forward from there.

Mr. POFF. Thank you.

Chairman CELLER. Would the gentleman yield?

Mr. POFF. I yield.

Chairman CELLER. As the bill is now written, do you have any qualms as to whether or not it is proper?

Secretary RICHARDSON. We recognize the issue is not entirely free from doubt, even though we agree that the weight of authority substantially supports our side of the matter.

Chairman CELLER. Mr. Poff.

Mr. POFF. I have no further questions, Mr. Chairman.

Chairman CELLER. Mr. Hutchinson.

Mr. HUTCHINSON. Mr. Chairman, thank you.

Mr. Secretary, I want to pose only a single question, and, before I state it, I want to make clear to you that I am in support of the legislation that is now the subject of the hearings.

I believe that the moratorium bill is constitutional. But the President has submitted two measures, only one of which is before this committee. The other one is before the Education and Labor Committee of the House. Is the administration pursuing the substantive legislation with equal urgency and diligence as it is pursuing the moratorium legislation in this committee?

If so, the substantive legislation might pass first, in which case the moratorium legislation would have no effect, is that correct?

Secretary **Richardson**. That is correct. We are pursuing the legislation with every resource at our command. In fact, I testified a total of 12 hours in its support before the Committee on Education and Labor in a meeting of the full comimttee chaired by Mr. Perkins. I also testified in its support before the Education Subcommittee of the Senate Committee on Labor and Public Welfare.

Mr. **Hutchinson**. Thank you, Mr. Secretary.

Chairman **Celler**. Mr. McClory.

Mr. **McClory**. Thank you, Mr. Chairman. I want to compliment you, Mr. Secretary, on a very forthright and very illuminating statement which you have presented to us this morning. I might say, however, that I have genuine doubts as to whether the moratorium bill will be enacted in this Congress. And that leads me to my inquiry.

We have been holding hearings here now for 2 months primarily on the subject of the proposed constitutional amendment, but also on possible legislative remedies. In my opinion, this subcommittee is very calm, very deliberate, very unemotional in trying to debate and resolve this difficult problem.

It seems to me that we do not need an extended moratorium for the purpose of entertaining legislative standards or guidelines which could be responsive to the limitations on busing outlined by the Supreme Court in the *Swann* case to which you made reference. H.R. 13915 in a sense contains some of these standards, and I suppose we could take them from the Office of Education guidelines as well. But what I am wondering is, is it not possible here in the course of these hearings in this Congress to develop a reasonable, rational, workable standard which would be genuinely responsible to the needs of the Nation and the problems we have, so that we could resolve this sensitive problem in a practical way? Do you have any thoughts on that?

Secretary **Richardson**. I would certainly hope that the Congress could do exactly as you have described, and certainly from this hearing, the deliberations of this committee fully deserve the characterization that you have given them.

The only impediment I see to the possibility of this committee's pursuing the substantive limitations issue forthwith, is that legislation containing these provisions is now before another committee. I believe that consideration was given to the possibility that the bill might be split so that the substantive limitations on the remedy in effect could be considered by this committee, and the affirmative assistance to equal educational opportunity could be considered by the other committee; but we get into the problems of committee jurisdictions, as to which I have no expertise.

Mr. **McClory**. Aside from the question of the jurisdictional overlap for the two committees with respect to the busing issue, is it not your view that this could be resolved in this Congress?

Secretary RICHARDSON. Yes, I think it could be, and, of course, if it were, that would mean then that this resolution had obviated the need for the proposed moratorium.

Mr. MCCLORY. You have been very kind in recent days with regard to an administrative problem that I have presented to your office with regard to a Follow-Through program in Waukegan, Ill., which is in my district. In my opinion, the Follow-Through program is a worthy idea and should be continued.

My question is this: Do you think that it is preferable, consistent with the position that you are taking here today on behalf of the administration to continue a Follow-Through program which is producing results in the learning process of disadvantaged black children rather than to take these children out of this good program and bus them some miles away in the hope that perhaps they are going to get some educational advantages in this other school environment?

Secretary RICHARDSON. We certainly share the feeling that you express that the Follow-Through program is a valuable experimental way of seeking to achieve the benefits of compensatory education.

Its purpose, as you know, is to take children who had the preschool opportunity to benefit from the Headstart program and then to carry the compensatory effort through the early grades.

The best solution we believe that creating this kind of compensatory educational opportunity would be the combination of resources that would be made available by our Equal Educational Opportunity Act through the emergency school aid legislation and title I, ESEA.

The problem with the follow-through program as a principle in reliance upon this purpose is simply that it is a limited experimental program with a total appropriation currently of only $67 million for the whole country, whereas the emergency school aid program would provide an additional $1.5 billion for desegregating schools and for compensatory education over the coming school year and the following year.

Mr. MCCLORY. I judge that it is your view that such a compensatory school program should be administered or should be funded under the Emergency School Act in lieu of this part of the poverty program which existed previously. Is that correct?

Secretary RICHARDSON. Yes.

Well, the Follow-Through program is a valuable program, but it is only a means, in effect, like other OEO activities, of funding experimental projects. We would like to be in a position to support compensatory education on a much broader scale.

Mr. MCCLORY. I may conclude then, may I not, that in seeking to achieve the goal of equal educational opportunity, favorable consideration would be given to the kinds of programs which have demonstrated their success by raising the educational level and the learning ability of disadvantaged minority children.

Secretary RICHARDSON. That is certainly so, yes.

Mr. MCCLORY. Thank you very much.

Chairman CELLER. Mr. Richardson, I recognize the tremendous burdens that rest on your shoulders and, as far as I am concerned, I feel the job you are doing is a good one. These questions are not directed at you personally. We simply ask them to clear the atmosphere.

I want to say at this point you have been forthright and direct and have been very fair-minded in your answers.

I take it that you believe in desegregation, am I correct?

Secretary Richardson. Yes, sir.

Chairman Celler. The Supreme Court in the second *Swann* case has this to say for the whole court:

> As noted in the *Swann* ante, page 25, bus transportation has long been an integral part of all public educational systems and it is unlikely that a truly effective remedy could be devised without continued reliance upon it.

Now, if there can be no busing, how can you bring about desegregation?

Secretary Richardson. Mr. Chairman, I think I should make clear that we are not urging the elimination of busing as a remedy for unconstitutionally segregated schools. What we are urging is a temporary stay on new busing pending a determination by the Congress of reasonable limits for the use of the remedy. As we have pointed out earlier, the objective of desegregation can be accomplished to a very large extent without additional busing in most situations and so what we are saying in effect is that although busing is and will continue to be a necessary tool for desegregation in many situations, it can be made subject to rational and consistent limits such as those we have proposed in our substantive legislation.

Chairman Celler. You are aware also that the Court said there could be no further delay in implementing any plans for the purpose of desegregation.

That was an admonishment to HEW by the Supreme Court.

Secretary Richardson. Well, the Court, in effect, said in the *Green* case that we and the lower courts, and school systems had to get at the job of carrying out desegregation process, and that there must be an acceleration.

Chairman Celler. In the *Holmes County* case we have these words:

> The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children who are presently attending Mississippi schools under segregated conditions contrary to applicable decisions of this court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. 396 U.S. 19, 20.

How can there be under those circumstances, without a declaration of unconstitutionality by the Court, any delay such as you seek?

Secretary Richardson. As I pointed out, Mr. Chairman, in my prepared statement, remedies other than additional busing can continue to be applied to the desegregation of school systems. In any event, it seems to me that the language that you have just quoted is addressed to the process of desegregation.

Chairman Celler. Suppose those other remedies require some form of busing?

Secretary Richardson. If the Court finds that the remedy of busing is necessary in a given situation, then we come back to the basic question of the constitutionality of a stay in aid of the jurisdiction of the Congress which, of course, is the central constitutional issue before you. There we say in effect, that we believe that this is constitutional, that there are precedents under article III of the Constitution which say in substance that the Congress may limit the exercise of a remedy in equity.

The Norris-LaGuardia Act is probably the most explicit example of a situation where Congress has said to a court that you may not issue an injunction and we believe that is, of course, permanent legislation.

We believe that article III permits the Congress to withhold temporarily the remedy of busing since the withholding of that remedy does not purport to undercut the existence of the basic constitutional rights an issue.

Chairman CELLER. It was brought out yesterday that the Norris-LaGuardia Act did not deny injunctive relief to redress constitutional violations. Rather, the Norris-LaGuardia Act furthered the congressional policy of protecting labor organizations expressed in the Clayton Act by its exemption of labor unions.

I think it was made clear yesterday by Mr. Cutler and others that the Norris-LaGuardia Act is no precedent at all for the proposed moratorium.

Secretary RICHARDSON. Mr. Cutler and others I think quite clearly recognized that the question of the constitutionality of the moratorium bill is, as they put it, a matter of first impression and they go on to say that constitutionality, in their view, would depend on whether Congress clearly demonstrated that the moratorium was needed to enable Congress to enact the contemplated remedial legislation.

I read that as an explicit reinforcement of the position we are urging upon this committee.

Chairman CELLER. Here you have a situation where the Supreme Court held that no State can force a child to attend a segregated school. That is a constitutionally protected right. Now, how can the Congress legitimately delay the enjoyment of such a constitutional right? To delay justice is to deny justice.

Secretary RICHARDSON. Mr. Chairman, we come at this point I think to the central distinction between the right and remedy. We believe that is a relevant distinction to this purpose.

We believe that it is illustrated by the whole history of the implementation of the constitutional rights declared first by the *Brown* case in 1954. We have been through a history of 18 years in which the process of framing remedies for the implementation of these rights has gone forward until the *Swann* decision. Nobody supposed that extensive busing in situation involving noncontiguous zoning was a required and available remedy. We and the Department of Justice negotiated and enforced desegregation orders that did not invoke that remedy because we did not believe it was available. If this were a matter of right, what happened then during 16 years in which children were not being bused? What we are saying in effect now, is that since we are dealing with the matter of remedy, the Congress has the jurisdiction to clarify the application of that remedy and during the interval has the jurisdiction to stay its use. Even today courts provide for an effective stay of busing orders, for example, in the *Richmond* case where the fourth circuit has just issued a stay. That stay, in effect, prevents the execution of the order in the interval and we are saying that the Congress has no less power to maintain the status quo in exercise of its ultimate jurisdiction to determine what should be the most desirable resolution of the problem on the merits.

Chairman Celler. The Attorney General, Mr. Kleindienst, made the statement, I believe, that the other bill that is before the Education and Labor Committee, if passed, could affect and cause the reopening of all past desegregation cases. Do you agree with that judgment?

Secretary Richardson. I think what the Attorney General-Designate said needs to be understood as meaning in effect that there would be a right to go to court.

Chairman Celler. I do not mean that.

Secretary Richardson. We do not believe that the practical result would be to change existing orders.

Chairman Celler. Would the courts reopen all of these other cases under that so-called substantive bill?

Secretary Richardson. No.

Chairman Celler. You disagree with Mr. Kleindienst, then?

Secretary Richardson. No; I do not disagree with Mr. Kleindienst because I interpret the effect of what he said to mean there would be a right to go to court, a right to ask for a new relief. It is like saying that anybody in an automobile accident can sue. That does not mean they are going to recover. The only cases, on the face of it, in which there would be any genuine opportunity to reopen cases on the merit would be cases that required busing in excess of whatever limits the Congress decides upon.

Chairman Celler. There is a big difference between merely going to court, and a court actually reopening a case. I understood Mr. Kleindienst to say that the courts could reopen all of the old desegregation cases.

Secretary Richardson. They might already have the power to do so in certain cases.

Chairman Celler. If he said that, would you agree with it?

Secretary Richardson. Let me make clear, I do not think that what he said and what I had previously said are in contradiction nor what I am saying now is in contradiction with what he said. The distinction is between going to court and reopening a case, on the one hand, and changing the result, on the other; and, on the face of it, there would be no reason or basis for a court to change the result or modify its order in a case where the existing order did not transcend the limits laid down by the proposed bill or by the final congressional action. And since the number of court decisions which have required busing in excess of the limits that are proposed to the Congress is comparatively small, this then is the relevant number with respect to the actual modification of outstanding orders.

Mr. Zelenko. Mr. Secretary, could you supply those cases to the committee?

Secretary Richardson. Yes, I would be glad to. We have already prepared such a list as it happens.

I would make one further point because although this will be made in the prefatory statement to the list, I think it should be made clear for the record that it will be a list of post-*Swann* orders. The num-
in question could not elect to take advantage of the opportunity to go
ber of eligible districts will be modified because some school systems

back, on the basis that they would rather live with what they have rather than be subject to further disruption.

(The prefatory statement and list referred to by Secretary Richardson, together with a letter of transmittal, are as follows:)

A. PREFATORY STATEMENT

The following is a list of school districts which implemented new or revised student assignment plans in the fall of 1971. District-by-district information is provided on total enrollment, number and percent of minority pupils, number and percent of pupils transported at public expense and number and percent of schools responding to questions on student transportation. The data recorded has been taken from forms submitted by the local school districts in response to the annual Elementary and Secondary School Survey conducted by the Department's Office for Civil Rights.

Forty-three of the districts listed implemented student reassignment plans in Fall, 1971, pursuant to HEW Title VI requests. The remainder—111 districts—implemented student reassignment plans pursuant to Federal court orders.

The districts listed are those which implemented new or revised student assignment plans after the *Swann* decision of April 1971. It is not asserted that all or any particular number of the districts listed herein have plans which would be inconsistent with the proposed Equal Educational Opportunities Act of 1972, and therefore subject to a successful reopening under Section 406 of the Act. It is, of course, impossible to project how many districts would actually seek modification of their plans (we suspect that many would not wish to endure the disruption of a new rearrangement) or to predict definitely that any particular district could secure modification if they requested it. Whether any particular post-*Swann* order would be affected, or how it could be affected, would, under the President's proposal, be left to the courts (or HEW for Title VI plans) to decide under the new general standards.

The post-*Swann* cases were chosen as an approximate measure of the maximum probable range of potentially eligible districts, because these cases have tended to result in some increased busing with—in some cases—bus routes designed in haste, under tight court deadlines. Thus, these cases might involve individual situations of student hardships which should be remedied if a case is reopened.

B. LIST

TABLE I.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR

[Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)]

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent of C	Number	Percent
ALABAMA								
Bessemer City:								
1970	7,481	4,949	66.2	NA	NA	NA	NA	NA
1971	7,134	4,960	69.5	7,134	0	0	15	100.0
Butler County:								
1970	4,805	2,565	53.4	NA	NA	NA	NA	NA
1971	4,498	2,797	62.9	4,498	3,038	67.5	8	100.0
Calhoun County:								
1970	10,463	1,484	14.2	NA	NA	NA	NA	NA
1971	10,880	1,240	11.4	9,629	8,300	86.2	19	86.4
Hale County:								
1970	4,781	3,744	78.3	NA	NA	NA	NA	NA
1971	4,516	3,577	79.2	4,142	3,266	78.9	8	88.9
Hartsville City:								
1970	36,241	4,994	13.8	NA	NA	NA	NA	NA
1971	35,886	5,471	15.2	32,897	0	0	37	94.9

TABLE I.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—Continued

[Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)]

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent of C	Number	Percent
ALABAMA—Continued								
Jefferson County:								
1970	59,717	16,776	28.1	59,717	30,640	51.3	91	100.0
1971	56,573	15,160	26.8	54,161	30,713	56.7	76	96.2
Limestone County:								
1970	6,983	1,460	20.9	NA	NA	NA	NA	NA
1971	6,975	1,379	19.8	6,975	6,229	89.3	11	100.0
Madison County:								
1970	11,227	3,124	27.8	10,503	10,503	100.0	21	95.5
1971	10,822	2,796	25.8	10,822	9,679	89.4	21	95.5
Marenco County:								
1970	3,632	2,868	79.0	NA	NA	NA	NA	NA
1971	3,670	2,828	77.1	3,670	3,304	90.0	7	100.0
Midfield City:								
1970	1,574	18	1.1	NA	NA	NA	NA	NA
1971	2,396	657	27.4	2,396	0	0	3	100.0
Mobile County:								
1970	69,791	31,114	44.6	69,791	18,147	26.0	83	100.0
1971	66,593	31,045	46.6	66,593	26,285	39.5	82	100.0
Oxford City:								
1970	2,350	68	2.9	NA	NA	NA	NA	NA
1971	2,249	333	94.8	2,249	1,644	73.1	2	100.0
Perry County:								
1970	3,158	2,666	84.4	3,158	2,513	79.6	7	100.0
1971	2,705	2,423	89.0	2,705	2,246	83.0	7	100.0
Russell County:								
1970	4,787	3,365	70.3	NA	NA	NA	NA	NA
1971	4,513	3,193	70.8	4,513	3,510	77.8	8	100.0
Wilcox County:								
1970	4,785	3,877	81.0	NA	NA	NA	NA	NA
1971	4,740	3,865	81.5	NA	NA	NA	NA	NA
ARKANSAS								
Blytheville:								
1970	5,659	2,401	42.4	5,659	1,027	18.1	10	100.0
1971	5,558	2,542	45.7	5,558	2,060	37.1	11	100.0
Camden:								
1970	2,827	1,521	53.8	2,827	233	8.2	6	100.0
1971	2,701	1,456	53.9	2,701	297	11.0	5	100.0
El Dorado:								
1970	6,423	2,196	34.2	6,423	1,893	29.5	13	100.0
1971	6,225	2,259	36.3	6,225	2,221	35.7	14	100.0
Forrest City:								
1970	6,013	3,474	57.8	6,013	2,644	44.0	11	100.0
1971	5,810	3,467	59.7	5,810	2,280	39.2	11	100.0
Little Rock:								
1970	24,454	9,639	39.4	24,454	40	.2	45	100.0
1971	23,306	10,214	43.8	23,306	6,418	27.5	41	100.0
North Little Rock:								
1970	12,979	3,003	23.1	12,979	120	.9	26	100.0
1971	12,590	2,891	23.0	12,590	62	.5	28	100.0
West Memphis:								
1970	7,640	3,580	46.9	7,640	900	11.8	13	100.0
1971	7,049	3,472	49.3	7,049	643	9.1	13	100.0
CALIFORNIA								
Oxhard Elementary:								
1970	9,458	5,539	58.8	9,458	1,366	14.4	14	100.0
1971	9,264	5,708	61.6	9,264	3,117	33.6	14	100.0
San Francisco City University:								
1970	91,150	57,549	63.1	89,808	6,662	7.4	163	99.4
1971	83,584	55,242	66.1	79,095	21,436	27.1	159	96.4

TABLE I.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—Continued

[Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)]

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent of C	Number	Percent
DELAWARE								
Milford (HEW):								
1970	4,157	1,175	28.3	4,157	2,889	69.5	8	100.0
1971	4,120	1,221	29.6	2,906	2,146	73.8	5	83.3
FLORIDA								
Broward County:								
1970	117,324	29,412	25.1	117,324	28,299	24.1	124	98.4
1971	122,376	30,849	25.2	122,376	40,799	33.3	141	100.0
Collier county (HEW):								
1970	8,961	2,039	22.3	8,961	5,384	60.1	15	100.0
1971	9,871	2,317	23.6	9,871	5,600	56.7	16	100.0
Duval County:								
1970	122,493	36,054	29.4	122,493	35,963	29.4	138	100.0
1971	117,576	36,769	31.3	117,576	42,651	36.2	133	100.0
Hendry County:								
1970	3,135	1,048	33.4	3,135	1,182	37.7	5	100.0
1971	3,298	1,137	34.5	3,298	1,368	41.5	6	100.0
Hillsborough County:								
1970	105,347	27,553	26.2	101,211	28,698	28.4	122	94.6
1971	101,298	25,904	25.6	100,756	47,969	47.6	124	99.2
Jackson County:								
1970	8,312	3,115	37.5	8,312	5,217	62.8	17	100.0
1971	8,107	3,031	37.4	8,107	5,548	68.4	17	100.0
Orange County:								
1970	85,270	15,398	18.1	85,270	25,150	29.5	98	100.0
1971	84,928	16,880	19.9	82,750	31,010	37.4	93	97.9
Palm Beach County:								
1970	66,760	20,609	30.9	66,009	19,321	29.3	92	98.9
1971	65,609	21,358	32.6	65,038	25,920	39.9	83	98.8
Pinellas County:								
1970	85,117	14,192	16.7	85,117	34,183	40.2	112	100.0
1971	86,878	14,710	16.9	86,878	36,332	41.8	114	100.0
St. Johns County:								
1970	6,860	2,130	31.0	6,860	3,497	51.0	13	100.0
1971	7,072	2,157	30.6	7,072	4,501	63.6	13	100.0
Santa Rosa County (HEW):								
1970	10,046	791	7.9	10,046	5,700	56.7	19	100.0
1971	10,438	847	8.1	10,438	6,190	59.3	19	100.0
GEORGIA								
Bulloch County:								
1970	6,921	2,940	42.6	6,921	5,112	73.9	14	100.0
1971	6,728	2,838	42.2	6,728	5,236	77.8	13	100.0
Chatham County:								
1970	40,897	18,115	44.3	40,297	13,749	34.1	61	98.4
1971	37,712	18,342	48.6	37,712	19,378	51.3	61	100.0
Clayton County:								
1970	26,896	1,585	5.9	26,896	16,421	61.1	31	100.0
1971	28,410	2,718	9.6	28,410	17,726	62.4	32	100.0
Dougherty County:								
1970	23,117	9,649	41.7	23,117	7,004	30.3	35	100.0
1971	22,632	9,841	43.5	22,632	7,690	34.0	35	100.0
Muskogee County:								
1970	42,010	13,359	31.8	42,010	10,580	25.2	67	100.0
1971	40,341	13,317	33.0	40,224	14,916	37.0	66	98.5
Stewart County:								
1970	1,949	1,493	76.6	1,949	1,302	66.8	5	100.0
1971	1,784	1,424	79.8	1,407	583	41.4	3	75.0
Upson County:								
1970	2,698	1,286	47.7	1,978	1,530	77.4	5	71.4
1971	2,661	1,135	42.7	2,661	2,483	93.3	6	100.0
Valdosta:								
1970	7,803	3,577	45.8	7,803	0	0	13	100.0
1971	7,658	3,705	48.4	7,008	0	0	12	85.7

TABLE I.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—Continued

[Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)]

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent [illegible] C	Number	Percent
KANSAS								
Wichita (HEW):								
1970	63,811	10,943	17.1	63,811	15,108	23.7	113	100.0
1971	59,868	11,007	18.4	59,868	16,317	27.2	107	100.0
KENTUCKY								
Covington City (HEW):								
1970	8,460	839	9.9	8,460	0	0	15	100.0
1971	8,359	780	9.3	8,359	0	0	14	100.0
Elizabethtown City (HEW):								
1970	2,581	402	15.6	2,581	77	3.0	5	100.0
1971	2,608	386	14.8	2,608	25	1.0	6	100.0
Henderson City (HEW):								
1970	3,111	709	22.8	3,111	0	0	7	100.0
1971	3,036	697	23.0	3,036	0	0	7	100.0
Maysville City (HEW):								
1970	[illegible],312	368	28.0	1,312	0	0	7	100.0
1971	1,246	317	25.4	1,065	0	0	5	71.4
Paducah (HEW):								
1970	6,038	1,477	24.5	6,038	2,784	46.1	11	100.0
1971	5,846	1,549	26.5	5,846	3,048	52.1	10	100.0
LOUISIANA								
Ascension Parish:								
1970	9,565	3,559	37.2	9,565	7,533	78.8	14	100.0
1971	10,284	3,631	35.3	10,284	7,725	75.1	14	100.0
Caldwell Parish:								
1970	2,438	810	33.2	2,438	2,314	94.9	5	100.0
1971	2,517	776	30.3	2,517	2,008	79.8	6	100.0
Grant Parish:								
1970	3,991	1,124	28.2	3,991	3,060	76.7	8	100.0
1971	3,371	1,018	30.2	3,371	2,643	78.4	8	100.0
Jefferson Parish:								
1970	62,572	14,264	22.4	61,538	41,880	68.1	73	96.1
1971	61,763	13,870	22.5	59,628	43,691	73.2	73	96.1
Lafayette Parish:								
1970	28,537	7,209	25.3	28,537	19,964	70.0	38	100.0
1971	28,638	7,150	25.0	28,638	21,313	74.4	38	100.0
La Salle Parish:								
1970	3,498	541	15.5	4,498	3,158	90.3	11	100.0
1971	3,437	512	14.9	3,427	3,427	90.4	11	100.0
Lincoln Parish:								
1970	5,111	2,298	45.0	5,111	4,043	79.1	13	100.0
1971	4,851	2,195	45.2	4,851	4,365	90.0	10	100.0
Morehouse Parish:								
1970	8,351	4,698	56.3	8,351	5,597	67.0	16	100.0
1971	8,220	4,683	57.0	6,916	4,873	70.5	20	87.0
Rapides Parish:								
1970	28,038	9,767	34.8	28,038	16,404	58.5	49	100.0
1971	28,397	9,972	35.1	28,397	16,440	57.8	50	100.0
St. Helena Parish:								
1970	2,753	2,018	73.3	2,753	2,469	89.7	8	100.0
1971	2,584	2,023	78.3	2,187	2,011	92.0	7	87.5
Tangipahoa Parish:								
1970	14,741	7,254	49.2	14,741	11,835	80.3	36	100.0
1971	14,977	7,327	48.9	14,977	11,493	76.7	32	100.0
MARYLAND								
Calvert County (HEW):								
1970	5,891	3,122	53.0	5,891	5,753	97.7	13	100.0
1971	6,117	3,181	52.0	6,117	5,992	98.0	13	92.9
Dorchester County (HEW):								
1970	6,615	2,791	42.2	6,615	4,985	75.4	22	100.0
1971	6,467	2,856	41.1	6,467	5,148	79.6	22	100.0

TABLE I.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—Continued

Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)

	A	B		C	D		E	
	Total pupils in membership	Minority pupils: Number	Minority pupils: Percent of A	Total pupils in schools which answered the transportation question	Pupils transported: Number	Pupils transported: Percent of C	Number and percent of schools which answered the transportation question: Number	Number and percent of schools which answered the transportation question: Percent
MICHIGAN								
Kalamazoo City:								
1970	17,827	3,149	17.7	NA	NA	NA	NA	NA
1971	17,181	2,920	17.0	16,873	9,305	55.1	39	97.5
Pontiac City:								
1970	24,055	9,100	37.8	NA	NA	NA	NA	NA
1971	21,286	9,202	42.4	21,286	9,397	44.1	36	100.0
MISSISSIPPI								
Biloxi MSSD:								
1970	9,131	1,795	19.7	8,724	315	3.6	13	92.9
1971	8,802	1,803	20.5	8,802	987	11.2	12	100.0
Clarkdale MSSD:								
1970	4,165	3,230	77.6	4,165	0	0	11	100.0
1971	4,348	3,477	80.0	2,876	0	0	9	81.8
East Tallahatchie Cons.:								
1970	2,649	1,735	65.5	2,649	1,944	73.4	3	100.0
1971	2,403	1,676	69.7	2,403	2,039	84.9	4	100.0
Greenville MSSD:								
1970	11,386	6,991	61.4	11,386	798	7.0	18	100.0
1971	10,468	6,905	66.0	10,468	487	4.7	18	100.0
Greenwood MSSD:								
1970	4,720	3,073	65.1	4,720	99	2.1	8	100.0
1971	4,640	2,827	60.9	4,640	194	4.2	6	100.0
Gulfport MSSD (HEW):								
1970	8,919	2,156	24.2	8,919	70	.8	17	100.0
1971	8,549	2,199	25.7	8,549	65	.8	17	100.0
Hattiesburg MSSD:								
1970	7,718	3,518	45.6	7,718	0	0	15	100.0
1971	7,323	3,543	48.4	7,323	0	0	15	100.0
Humphreys County:								
1970	4,294	3,660	85.2	4,294	2,836	66.1	1	100.0
1971	3,896	3,451	88.6	3,896	2,873	73.7	1	100.0
Jackson MSSD:								
1970	30,758	18,729	60.9	30,758	2,127	6.9	55	100.0
1971	29,627	19,075	64.4	29,627	7,856	26.5	54	100.0
Leflore County:								
1970	5,809	4,943	85.1	5,296	4,565	86.2	8	88.9
1971	5,436	4,868	89.6	5,436	4,020	74.0	9	100.0
McComb MSSD:								
1970	3,901	2,049	52.5	3,901	1,484	38.0	10	100.0
1971	3,671	1,982	54.0	3,671	2,387	65.0	8	100.0
Madison County:								
1970	4,065	3,375	83.0	4,065	3,835	94.3	11	100.0
1971	4,076	3,367	82.6	4,076	3,901	95.7	7	100.0
Senatobia MSSD:								
1970	1,225	693	56.6	1,225	445	36.3	2	100.0
1971	1,173	657	56.0	1,173	387	33.0	2	100.0
Simpson County:								
1970	5,062	2,192	43.3	5,062	3,389	66.9	10	100.0
1971	4,878	2,032	41.7	4,878	4,168	85.4	5	100.0
Vicksburg MSSD:								
1970	5,460	3,564	65.3	5,460	627	11.5	9	100.0
1971	5,226	3,602	68.4	5,266	372	7.1	9	100.0
NORTH CAROLINA								
Alamance County (HEW):								
1970	13,165	2,940	22.3	12,739	8,465	66.4	23	95.8
1971	13,020	3,007	23.1	13,020	9,889	76.0	21	100.0
Bladen County:								
1970	7,238	3,665	50.6	7,238	5,460	75.4	13	100.0
1971	7,245	3,683	50.8	7,425	5,868	81.0	14	100.0
Burlington City:								
1970	9,476	2,000	21.1	9,476	2,110	22.3	13	100.0
1971	9,555	2,093	21.9	9,555	3,091	32.3	13	100.0

Footnotes at end of table.

TABLE I.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—Continued

[Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)]

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent of C	Number	Percent
NORTH CAROLINA—Con.								
Fayetteville City:								
1970	13,214	6,586	49.8	13,214	4,121	31.2	20	100.0
1971	12,510	6,444	51.5	12,020	4,347	36.2	18	94.7
Forsytn County-Winston Salem City:								
1970	49,514	13,824	27.9	49,514	23,440	47.3	67	100.0
1971	47,937	14,193	29.6	47,516	32,194	67.7	66	98.5
Goldsboro City:								
1970	7,249	4,078	56.3	6,335	3,293	52.0	9	90.0
1971	6,909	4,032	58.4	6,909	4,710	68.2	9	100.0
Granville County (HEW):								
1970	7,819	4,225	54.0	7,819	4,737	60.6	15	100.0
1971	7,652	4,135	54.0	7,652	5,157	67.4	14	100.0
Greensboro City:								
1970	32,291	10,737	33.3	32,291	10,671	33.0	46	100.0
1971	30,007	10,528	35.1	30,007	16,920	50.4	47	100.0
Mecklenburg County-Charlotte City:								
1970	82,507	25,688	31.1	82,507	46,076	55.8	108	99.1
1971	81,042	26,116	32.2	80,488	46,849	58.2	105	97.2
Moore County (HEW):								
1970	9,857	3,246	32.9	9,857	7,483	75.9	19	100.0
1971	10,172	3,362	33.1	10,172	7,554	74.3	19	100.0
Nash County (HEW):								
1970	12,095	6,582	54.4	12,095	8,349	69.0	18	100.0
1971	11,752	6,344	54.0	11,752	8,899	75.7	18	100.0
New Barn City (HEW):								
1970	5,838	2,213	37.9	5,839	1,859	31.8	10	100.0
1971	5,600	2,301	41.1	5,600	2,894	51.7	11	100.0
New Hanover County:								
1970	19,600	5,466	27.9	19,600	5,847	29.8	30	100.0
1971	19,410	5,519	28.4	19,410	10,232	52.7	30	100.0
Pender County (HEW):								
1970	4,685	2,659	56.8	4,685	3,837	81.9	11	100.0
1971	4,598	2,566	55.8	4,598	3,553	77.3	11	100.0
Raleigh City:								
1970	23,469	6,785	28.9	23,203	1,332	5.7	39	97.5
1971	22,236	6,916	31.1	22,052	10,133	45.9	37	97.4
Rocky Mount City:								
1970	7,242	3,434	47.4	NA	NA	NA	NA	NA
1971	6,932	3,345	48.3	6,932	2,784	40.2	14	100.0
Sanford City (HEW):								
1970	5,333	1,519	28.5	5,333	2,118	39.7	10	100.0
1971	5,269	1,499	28.4	5,269	2,125	40.3	10	100.0
Shelby City (HEW):								
1970	5,089	1,367	26.6	5,089	1,231	24.2	10	100.0
1971	5,091	1,425	28.0	5,091	1,557	30.6	10	100.0
Wake County (HEW):								
1970	27,381	7,491	27.4	27,381	19,056	69.6	43	100.0
1971	28,487	7,494	26.3	28,487	16,533	58.0	43	100.0
Wayne County (HEW):								
1970	14,246	4,368	30.7	14,246	8,055	56.5	20	100.0
1971	14,324	4,390	30.6	13,295	8,635	64.9	18	90.0
OKLAHOMA								
Crooked Oak:								
1970	3,365	748	22.2	3,365	2,947	87.6	5	100.0
1971	3,047	806	26.5	3,047	2,883	94.6	6	100.0
Hugo (HEW):								
1970	1,825	498	27.3	1,825	267	14.6	8	100.0
1971	1,942	603	31.1	1,912	341	17.6	9	100.0
Sapulpa (HEW):								
1970	4,288	704	16.4	4,288	1,381	32.2	10	100.0
1971	4,217	608	14.4	4,048	1,271	31.4	10	100.0
Tulsa City:								
1971	77,822	13,745	17.7	77,822	6,716	8.6	108	100.1
1971	75,069	13,679	18.2	74,349	9,354	12.6	105	98.0

Footnotes at end of table.

TABLE 1.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971–72 SCHOOL YEAR—Continued

Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent of C	Number	Percent
SOUTH CAROLINA								
Aiken County (HEW):								
1970	24,465	7,507	30.7	21,958	13,284	60.5	45	90.0
1971	23,531	7,409	31.5	23,535	14,686	62.4	49	100.0
Chester County (HEW):								
1970	7,785	3,940	50.6	7,785	4,455	57.2	14	100.0
1971	7,631	3,905	51.2	7,108	4,463	62.8	13	92.9
Florence County No. 1:								
1970	14,651	5,991	40.9	14,651	5,895	40.2	23	100.0
1971	14,445	5,983	41.4	13,594	6,513	47.9	21	95.5
Hampton County No. 2:								
1970	1,780	1,479	83.1	1,780	1,617	90.8	3	100.0
1971	1,767	1,466	83.0	1,767	1,542	87.3	4	100.0
Marlboro County (HEW):								
1970	7,566	4,046	53.5	7,566	5,053	66.8	17	100.0
1971	7,629	4,152	54.4	7,629	5,141	67.4	17	100.0
Orangeburg County No. 5:								
1970	7,380	4,486	60.8	7.380	2,169	29.4	11	100.0
1971	6,787	4,533	66.8	6,787	4,263	62.8	12	100.0
Richland County No. 1 (HEW):								
1970	39,433	19,640	49.8	39,433	14,160	35.9	62	100.0
1971	37,699	20,200	56.6	37,699	18,871	50.1	59	100.0
Spartanburg County No. 7 (HEW):								
1970	13,095	4,727	36.1	13,095	5,279	40.3	19	100.0
1971	12,837	4,791	37.2	12,837	6,939	54.1	18	100.0
Williamsburg County (HEW):								
1970	10,406	8,017	77.0	10,406	9,138	87.8	22	100.0
1971	9,981	7,875	78.9	9,981	8,693	87.1	19	100.0
TENNESSEE								
Bedford County (HEW):								
1970	5,589	802	14.8	5,472	3,089	56.5	17	94.4
1971	5,479	811	14.8	5,479	3,514	64.1	18	100.0
Chattanooga City:								
1970	26,506	13,153	49.6	26,197	1,865	7.1	47	97.9
1971	23,382	12,918	55.2	23,382	2,670	11.4	44	100.0
Franklin City Elementary:								
1970	1,779	658	37.0	1,779	0	0	3	100.0
1971	1,746	658	37.7	1,746	0	0	3	100.0
Nashville-Davidson County:								
1970	95,313	23,710	24.9	95,313	32,574	34.2	141	100.0
1971	88,190	24,076	27.3	88,190	43,132	48.9	136	100.0
Shelby County:								
1970	22.967	7,776	33.9	22,967	14,159	61.6	37	100.0
1971	23,454	7,449	31.3	23,125	14,951	64.7	37	100.0
Williamson County (HEW):								
1970	6,624	961	14.5	6 624	5,706	86.1	17	100.0
1971	6,936	932	13.4	6,936	6,869	99.0	17	100.0
TEXAS								
Amarillo ISD (HEW):								
1970	28,784	4,101	14.2	28,784	161	.6	49	100.0
1971	28,215	4,300	15.2	28,215	192	.7	49	100.0
Austin ISD:								
1970	54,974	19,574	35.6	54,662	2,875	5.3	73	98.6
1971	55,565	19,749	35.5	55,565	6,381	11.4	72	100.0
Beeville ISD (HEW):								
1970	4,534	2,583	57.0	4,125	545	13.2	7	87.5
1971	4,499	2,639	58.0	4,459	664	14.8	8	100.0
Bryan ISD:								
1970	9,229	3,712	40.2	9,229	1,668	18.1	14	100.0
1971	9,324	3,791	40.7	9,324	3,451	37.0	14	100.0
Daingerfield ISD:								
1970	2,083	556	26.7	2,083	1,284	61.6	5	100.0
1971	2,290	760	33.2	1,685	1,100	65.3	14	80.0

TABLE 1—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971—72 SCHOOL YEAR—Continued

[Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols. A and B, 1970)]

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent of C	Number	Percent
TEXAS—Con.								
Dallas ISD:								
1970	164, 736	70, 343	42. 7	157, 742	5, 079	3. 2	176	97. 2
1971	157, 799	72, 893	46. 2	156, 394	12, 154	7. 7	179	97. 8
Fairfield ISD:								
1970	1, 017	383	37. 7	1, 017	454	44. 6	3	100. 0
1971	1, 268	557	43. 9	1, 268	645	50. 9	3	100. 0
Fort Worth ISD:								
1970	88, 095	31, 956	36. 3	87, 673	2, 979	3. 4	115	99. 1
1971	82, 418	31, 725	8. 5	81, 935	6, 861	8. 3	112	99. 1
Henderson ISD:								
1970	3, 285	1, 203	36. 6	3, 285	1, 318	40. 1	7	100. 0
1971	3, 468	1, 361	29. 2	3, 468	2, 271	65. 5	8	100. 0
Hillsboro ISD (HEW):								
1970	1, 636	473	28. 9	1, 636	294	18. 0	5	100. 0
1971	1, 666	491	29. 5	1, 666	293	17. 6	5	100. 0
Houston ISD:								
1970	241, 139	121, 958	50. 6	206, 718	9, 162	4. 4	203	88. 3
1971	225, 681	122, 002	54. 1	218, 401	15, 202	6. 9	219	96. 9
Oakwood ISD:								
1970	259	143	55. 2	259	114	44. 0	1	100. 0
1971	403	289	71. 7	NA	NA	NA	NA	NA
San Felipi-Del Rio CSD:								
1970 [1]								
1971	7, 236	4, 85[illegible]	67. 1	7, 236	3, 914	54. 1	11	100. 0
WACO ISD:								
1970	18, 360	6, 333	34. 5	18, 360	1, 265	6. 9	37	100. 0
1971	19, 244	7, 809	40. 6	17, 689	2, 090	12. 2	33	91. 7
Weslaco ISD:								
1970	5, 703	4, 900	85. 9	5, 703	1, 607	28. 2	8	100. 0
1971	5, 289	4, 508	85. 2	5, 289	2, 022	38. 2	8	100. 0
West Orange Cove ISD (HEW):								
1970	7, 284	2, 139	29. 4	7, 284	1, 766	24. 2	15	100. 0
1971	6, 593	1, 983	30. 1	6, 593	2, 851	43. 2	14	100. 0
VIRGINIA								
Accomack County (HEW):								
1970	6, 274	3, 386	54. 0	6, 084	5, 596	92. 0	14	93. 3
1971	6, 164	3, 331	54. 0	6, 164	4, 681	75. 9	15	100. 0
Alexandria City:								
1970	17, 555	5, 284	30. 1	17, 555	1, 809	10. 3	22	100. 0
1971	16, 702	5, 289	31. 7	16, 702	4, 139	24. 8	23	100. 0
Chesterfield County (HEW):								
1970	24, 063	2, 370	9. 8	24, 063	20, 603	85. 6	35	100. 0
1971	23, 754	2, 294	9. 7	23, 754	18, 854	79. 4	36	100. 0
Charles City:								
1970	1, 887	1, 739	92. 2	1, 887	1, 813	96. 1	4	100. 0
1971	1, 832	1, 711	93. 4	1, 832	1, 769	96. 6	4	100. 0
Chesapeake City:								
1970	24, 835	6, 964	28. 0	24, 835	18, 558	74. 7	31	100. 0
1971	25, 253	7, 229	28. 6	25, 253	19, 908	78. 8	32	100. 0
Culpeper County (HEW):								
1970	4, 425	1, 435	32. 4	4, 425	3, 703	83. 7	8	100. 0
1971	4, 581	1, 441	31. 5	4, 581	3, 878	84. 7	8	100. 0
Hampton City (HEW):								
1970	31, 899	8, 948	28. 1	31, 899	6, 491	20. 3	39	100. 0
1971	32, 662	9, 859	30. 2	31, 642	7, 505	23. 7	38	100. 0
Henrico County (HEW):								
1970	34, 274	2, 962	8. 6	34, 274	20, 067	59. 5	40	100. 0
1971	34, 288	3, 231	9. 4	34, 288	21, 825	63. 7	44	100. 0
Henry County:								
1970	12, 939	3, 599	27. 8	12, 939	11, 610	89. 7	24	100. 0
1971	13, 043	3, 656	28. 0	13, 043	11, 901	91. 2	24	100. 0
Hopewell City:								
1970	5, 433	1, 008	18. 6	5, 433	0	0	8	100. 0
1971	5, 398	1, 044	19. 3	5, 398	0	0	7	100. 0

Footnotes at end of table.

TABLE 1.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971–72 SCHOOL YEAR—Continued

[Pupil transportation and membership data for fall 1971, compared with fall 1970 (data is unedited except for cols A and B, 1970)]

	A	B		C	D		E	
	Total pupils in membership	Minority pupils		Total pupils in schools which answered the transportation question	Pupils transported		Number and percent of schools which answered the transportation question	
		Number	Percent of A		Number	Percent of C	Number	Percent
Virginia—Con.								
Nansemond County:								
1970	9,272	6,102	65.3	9,272	7,643	82.4	17	100.0
1971	9,377	6,071	64.7	9,377	7,412	79.0	16	100.0
Newport News City:								
1970	31,581	11,653	36.9	31,581	21,604	68.4	39	100.0
1971	30,891	11,513	37.3	30,891	24,878	80.5	38	100.0
Norfolk C[illegible]y:								
19[illegible]	55,117	25,473	46.2	52,605	703	1.3	70	97.2
1971	50,791	24,961	49.1	49,693	637	1.2	71	98.6
Northhampton County:								
1970	3,521	2,361	67.1	3,521	3,077	87.4	10	100.0
1971	3,474	2,308	66.4	3,474	3,056	88.0	9	100.0
Petersburg City:								
1970	8,431	5,629	66.8	8,431	0	0	11	100.0
1971	8,032	5,763	71.8	8,032	827	10.3	10	100.0
Portsmouth City:								
1970	26,796	14,466	54.0	26,796	2,945	11.0	34	100.0
1971	25,844	14,556	56.3	25,660	4,436	17.3	32	97.0
Roanoke City:								
1970	19,685	4,854	25.6	18,976	2,717	14.3	35	100.0
1971	18,177	4,993	27.5	17,774	4,046	22.8	33	97.1
Virginia Beach City (HEW):								
1970	45,245	5,330	11.9	45,245	41,525	91.8	47	100.0
1971	46,802	5,437	11.6	46,802	42,071	89.8	47	100.0
WEST VIRGINIA								
Marion County (HEW):								
1970	11,878	590	5.0	11,878	7,400	62.3	53	100.0
1971	11,983	615	5.1	11,914	7,696	64.6	49	100.0

[1] Consolidated, operated as separate school districts prior to 1971.

Note: NA—Not available.

C. LETTER OF TRANSMITTAL

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., April 12, 1972.

Mr. BENJAMIN L. ZELENKO,
General Counsel, Committee on the Judiciary,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. ZELENKO: We are sending you herewith fifteen (15) copies of data indicating the extent of school busing in 154 school districts which to our knowledge implemented new student reassignment measures in 1971–72, pursuant to Federal desegregation requirements.

As you will recall, when we discussed this further Committee request it was agreed that the Office for Civil Rights would provide you with the statistical information assembled as of April 12. The additional information requested by the Committee, relating to the extent of desegregation undertaken in the 154 districts, will be submitted as soon as possible.

You will find that 23 of the 154 districts identified here also appear in the previous list furnished to the Committee on March 13, relating to the amount of school transportation in effect in the nation's largest school systems.

The data transmitted herewith was taken from survey forms completed and returned by the local school districts. The information provided for each district is total enrollment, the number and percent of minority pupils enrolled, the

number and percent of pupils transported at public expense and the number and percent of schools responding to the survey questions on student transportation.

If you have any questions, please let me know.

Sincerely yours,

Bill
W. H. VAN DEN TOORN,
Assistant to the Director Office for Civil Rights.

Mr. **ZELENKO.** Mr. Secretary, I have a few questions about how the moratorium bill would operate on HEW procedures. We have not discussed that yet this morning.

I direct your attention to section 3(c) of the bill, page 24, lines 15 to 23, which exempts new or additional busing adopted by a school district pursuant to a "voluntary" desegregation plan.

What does the term "voluntary" mean in the context of the busing moratorium bill?

Secretary **RICHARDSON.** It means a plan that was not required by a court order or by the terms of the Civil Rights Act as enforced by the Office for Civil Rights and HEW.

Mr. **ZELENKO.** In other words, school districts in Massachusetts obeying a State law requiring school desegregation or racial balance, would be "voluntarily" desegregating under the terms of 3(c)? Such districts would not be subject to the moratorium.

Secretary **RICHARDSON.** Yes.

Mr. **ZELENKO.** And that is true in Illinois as well?

Secretary **RICHARDSON.** Yes.

Mr. **ZELENKO.** And is this true in any State which requires school districts to desegregate?

Secretary **RICHARDSON.** Well, let me say this. The legislation by its terms is directed toward the stay of Federal court orders. We have discussed earlier the effect on State court orders enforcing State law. The reason for the reference to "voluntary" here is in context of the school systems which may be subject to Federal jurisdictions which go beyond what we or the court order would require.

I do not think that a State school system carrying out a State requirement is doing so voluntarily. It is just beyond the reach of the legislation.

Mr. **ZELENKO.** It is beyond the reach unless someone seeks a court order to enforce State law and unless the court order were to be enforced.

Secretary **RICHARDSON.** Perhaps it needs clarification. In any event, we do not intend to reach any action taken by a school system in fulfillment of the State requirement.

Mr. **ZELENKO.** Mr. Secretary, suppose HEW, in the process of reviewing a particular school district's compliance, finds that the school district segregates its children on the basis of race. In response the school district then adopts a desegregation plan to bring itself in compliance with present HEW guidelines. Would the action of that school district—adopting a so-called voluntary compliance plan—"voluntary compliance" is the term used in your regulations, Mr. Secretary—would that compliance plan be a voluntary act under the terms of this bill and be exempt from the moratorium?

Secretary **RICHARDSON.** I would say, if the plan were adopted pursuant to the exercise of administrative authority by the Office for Civil Rights in the implementation of title VI, if it came about by that process, it would not be a voluntary plan under the terms of this legislation. In other words, if it resulted from negotiation and if the negotiation were carried out and were understood to be carried out subject to the potential threat of a fund cutoff until and unless the school system did something, then the plan would not be voluntary within the terms of this bill.

On the other hand, if the school system genuinely—it becomes a question of fact—elects to do more than the negotiating process required or other than we proposed, certainly that should not be disturbed.

Chairman **Celler.** Mr. Hungate.

Mr. **Hungate.** Mr. Secretary, let me see if I follow your argument. Thus far, the testimony has established that there are no court decisions on all fours in support of the administration's moratorium proposal. I think you are in agreement with Mr. Cutler that the moratorium would be a matter of first impression for the courts.

However, you argue by the use of analogy—you haven't got a white mule, but you suggest that if you had a blue parrot and a yellow parrot you might be able to produce a green parrot. You rely on Professor Cox's article distinguishing between rights and remedies and cite the Norris-LaGuardia Act and *Ex parte McCardle* decision suspending habeas corpus by restricting the appellate jurisdiction of the Supreme Court. Would that be a fair statement of the general tenor of your argument?

Secretary **Richardson.** Very fair and very succinct, yes.

Chairman **Celler.** Mr. Polk?

Mr. **Polk.** Mr. Secretary, I have a problem with the way the moratorium bill might operate. If tomorrow the Congress were to enact the moratorium bill and subsequent to that the Senate were to vote down the bill containing substantive standards, I take it that the moratorium bill would still remain in effect. Do you think that would be appropriate?

Secretary **Richardson.** Yes. I would not consider that such a vote by the Senate represented a final determination of the will of the Congress in the matter.

Mr. **Polk.** Is any determination of Congress ever final?

Secretary **Richardson.** It is, of course, subject to revision by such consequential congressional action but the moratorium provides in effect that it would terminate upon either of two events, whichever is earlier. One is the enactment by the Congress of legislation which it declares to be that contemplated by the moratorium, or July 1, 1973. The second possibility, July 1, 1973, is designed to give an interval in which Congress has an opportunity to act affirmatively.

The fact that it had acted negatively in the interval would not terminate the moratorium.

Mr. **Polk.** It would seem to terminate the justification for the moratorium, would it not?

Secretary **Richardson.** Of course, the easy way to answer that is for the Congress, in deciding not to enact substantive legislation, at the same time to declare an end to the moratorium. The moratorium would not come into being in the first place unless Congress had enacted it and if Congress, having deliberated upon the question of whether or not to establish substantive limits to busing, decided not to, as a matter of deliberate consideration of the issue, the obvious thing for it to do at that point would be to declare an end to the moratorium.

Mr. POLK. Except that it would take both Houses of the Congress to repeal the moratorium, whereas it would take only one House to answer the question negatively.

Secretary RICHARDSON. In that case I would say that the Congress might still be enlightened in the remaining life of the moratorium and that it was fair enough, therefore, that it should continue until that hope had finally been extinguished by the expiration date of the moratorium itself.

Mr. POLK. I would like to determine the desegregation remedies that would be available to a Federal court during the moratorium. Could you indicate those to us?

Secretary RICHARDSON. Yes. On pages 11 and 12 of my statement I touch on some of these. It would not prevent any walk-in student assignment remedy. It would not affect the teacher assignment remedies or remedies for in-school discrimination, or deny all of the equal education rights and the like.

In the substantive legislation, under section 402, there is a list of remedies which would in any case have to be looked at first before a court would ultimately reach a question of whether or not busing was absolutely necessary and any of those remedies could be applied.

Mr. POLK. Those would be building new schools or reassignment of students in a way which would not require busing, is that right?

Secretary RICHARDSON. Yes.

Mr. POLK. Do you think that the first suggestion is very practical, that while we stop busing for a year we build new schools?

Secretary RICHARDSON. You would not be stopping busing. You would be saying we will not have new busing for a year until we know what the final rules of the game are. If there is anything else we can do in the meanwhile, we will do it, and included among the things that could be done in the meanwhile would be consideration of the question of whether or not any additional busing was necessary. And even an order requiring that could be framed. The only effect would be that the order could not go into effect.

Mr. ZELENKO. Mr. Secretary, Justice Burger writing for a unanimous court in the first *Swann* case, explicitly declared: "Desegregation plans cannot be limited to the walk-in school." Apparently a remedy you rely on as effective during the moratorium period is one that the Court explicitly has disapproved of as a meaningful remedy for racial segregation.

Secretary RICHARDSON. This is a way of restating the problem. The moratorium then would have some effect and the question then is what happens in the meanwhile. The Court there recognizes the point, with which we agree that desegregation in many situations will require new busing or additional busing but it will not necessarily require busing transcending the limits that are proposed in our substantive legislation.

Mr. ZELENKO. However, the moratorium will apply to any new or additional busing, sir.

Secretary RICHARDSON. The moratorium will, and we discussed this earlier as to whether or not the stay should be a comprehensive stay or whether it should in itself purport to define limits.

Mr. POLK. Mr. Secretary, with regard to the second remedy—the first one being building new schools and the second one being student reassignment which would not require busing—I have a problem determining who decides whether a reassignment is such that busing would be required? Could you help me out on that?

Secretary RICHARDSON. This would be a matter before the court which is faced with the issue of the applicability of the moratorium. It would be essentially a question of fact.

Mr. POLK. Some States have laws that say, in effect, that if a student lives more than a mile and a half or 2 miles from a school, he is entitled to a bus ride. If the court takes State law into account in determining what the effect of the moratorium is, that seems to lead to the problem that we are empowering the State legislatures or anybody that could affect the problem to provide the standards for determining the availability of busing as a remedy and thereby empowering State legislatures to expand or contract the remedial powers of the Federal courts.

Secretary RICHARDSON. I would put it the other way around. We are dealing with a situation in which we seem to be within the proper authority of State and local school systems to determine.

We then find that there has been discrimination, *de jure* segregation of children. Something has to be done about this. So what then happens is an otherwise extraordinary intrusion of Federal authority into a local situation.

Such an intrusion may be necessary in order to remedy constitutional rights, but to allow a temporary reversion to the situation that would exist anyway seems to me not subject to be stressed as allowing States to determine what remedies are but rather to let the ordinary processes of the local school system apply until the Congress can decide what general rules should be applicable.

Mr. POLK. Thank you, Mr. Secretary.

Chairman CELLER. We are very grateful to you, Mr. Richardson, and to your colleagues. You have been knowledgeable and direct and unhesitating. You have given us a great deal of information. We thank you and your colleagues.

Secretary RICHARDSON. Thank you very much, Mr. Chairman, and gentlemen.

Chairman CELLER. Our next witness is Mr. Clarence Mitchell, director of the Washington bureau of the National Association for the Advancement of Colored People.

Mr. Mitchell.

STATEMENT OF CLARENCE M. MITCHELL, DIRECTOR, WASHINGTON BUREAU FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Thank you, Mr. Chairman.

Chairman CELLER. Mr. Mitchell, you have been before us a number of times and we are glad to have you with us again.

Mr. MITCHELL. Thank you, Mr. Chairman.

With your permission, since my statement does contain technical observations, I would like to read it.

I wish to say before I begin, Mr. Hungate, that I think I am a bit older than you are and in my generation, the term "white mule" referred to a form of gin which is highly intoxicating and I think there is a lot of white mule in the administration proposal with respect to school desegregation.

Mr. Chairman and members of the subcommittee, I am Clarence Mitchell, director of the Washington bureau of the National Association for the Advancement of Colored People.

Thank you for this opportunity to appear here. The National Association for the Advancement of Colored People is opposed to H.R. 13916, a bill to impose a moratorium on new and additional student transportation.

It is well known that there are approximately 20 million children riding buses to school each regular school day. We also know that only about 2 percent of these children are being bused in connection with desegregation plans. Taking those two facts together it is plain that the purpose of H.R. 13916 is to impose a moratorium on implementation of rights guaranteed to black children under the 13th and 14th amendments to the U.S. Constitution.

Today the National Association for the Advancement of Colored People makes a plea to the members of this subcommittee to reject this sophisticated, but nevertheless transparent, attempt to revive the segregation of races in our public school systems.

Coming, as it did, after the Florida primary, the clearly political motivation of President Nixon's advocacy of this so-called moratorium burgeoned from almost each word, each gesture and each facial expression of the Chief Executive when he made his speech on school busing over a nationwide television hookup on March 16, 1972.

Perhaps the most shameful part of that speech came when Mr. Nixon called on the people of our country to join him in urging Congress to bar the school doors so that black children could not enter. Some of us who have heard similar appeals from George Wallace, the White Citizens Councils, the Ku Klux Klan, and other advocates of racial segregation were not surprised by what was said. We were deeply angered because this was the first time in the history of our Nation that these words were being uttered in a major speech by a President of the United States.

We assert that the President called upon Congress to pass an unconstitutional law. We assert that H.R. 13916 is no different from the doctrines of interposition, nullification, and advocacy of defiance by manifesto that were used so extensively to delay implementation of the 1954 school desegregation decisions. Those doctrines were well known to many Members of Congress and especially to the present chairman and the ranking Republican member of the House Judiciary Committee. You, Mr. Celler, and you, Mr. McCulloch, were then—as you are now—the Chairman and the ranking minority member of the committee.

The moving finger of history has written your names as heroes on a mountain of greatness which will endure as long as fairness and justice are honored virtues among men. You put aside party consideration, you were color blind and you stood shoulder to shoulder in the successful battle to pass the civil rights bills that continued the Nation's long campaign to complete Abraham Lincoln's unfinished job of ending the badges of slavery as well as ending slavery itself.

There is a remarkable similarity between the position of the House Judiciary Committee as it considers H.R. 13919 on this day of April 13, 1972, and the position of the U.S. Supreme Court in 1880 when it decided *Ex parte Virginia*, 100 U.S. 339, 25 L. Ed. 676. For you the events that led to the enactment of all civil rights bills from 1957 to 1972 are matters within your personal recollection. For the Supreme Court in 1880 many of the events that led to the ratification of the 13th amendment in 1865 had taken place during the adult lives of the Justices who heard the case. They were alive and cognizant of the problems that led to the ratification of the 14th amendment in 1868.

Section 4 of the Civil Rights Act of March 1, 1875, which made it a misdemeanor punishable by a $5,000 fine to exclude citizens from jury service because of race, had been approved by Congress only 5 years before their decision.

In the *Virginia* case, the Court was called upon to decide an issue which was every bit as much of a political problem then as some have made public school transportation today.

A white judge in Pittsylvania County, Va., in 1878 excluded and failed to select as grand and petit jurors certain citizens of the county who were of "African race and black color, said citizens possessing all other qualifications prescribed by law."

The judge was arrested and "held in custody under an indictment found against him in the district court of the United States for the western district of Virginia." The State of Virginia joined him in petitioning for his release under a writ of habeas corpus. The Court held:

> The act of Congress upon which the indictment of Petitioner was founded is constitutional and he is correctly held to answer it and, as, therefore, no object would be secured by issuing a writ of habeas corpus, the petitions are denied.

Although the Court based its decision on the 14th amendment, its opinion said:

> The provisions of the Constitution that relate to this subject are found in the 13th and 14th Amendments . . . one great purpose of these amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the States.

Eighty-eight years later in *Jones* v. *Mayer*, 392 U.S. 409, 88 S. Ct. 2186 (1968) the Supreme Court reminded the Nation that the 13th amendment, even standing alone, was a sufficient foundation on which legislation designed to end the badges of slavery could rest. In that case the Court held that the Civil Rights Act of 1866, 42 U.S.C. 1982, bars all racial discrimination, private as well as public, in the sale or rental of property. The Court construed that statute to be a valid exercise of the power of Congress to enforce the 13th amendment. Mr. Justice Douglas, in his concurring opinion, said:

> Some badges of slavery remain today. While the institution has been outlawed, it has remained in the minds and hearts of many white men. Cases which have come to this Court depict a spectacle of slavery unwilling to die.

The Justice then listed the cases. They include exclusion from juries, segregated seating in courtrooms, segregated eating places and a host of others. Most pertinent to the issue before us is the listing of segregated and inferior schools. The footnotes to the Douglas opinion describe some of the "numerous strategies and devices" that have been used to delay school desegregation.

The list of these strategies and devices includes the free transfer plan, the freedom-of-choice plan, the closing of schools, the rezoning of school districts, the pupil assignment law, State aid to private segregated schools, the cutting off of State funds to integrated school districts and numerous others.

In one way or another, all of these plans were designed to continue the badge of slavery in the public schools by keeping the schools separated on the basis of race. Like the Supreme Court in 1880, you gentlemen do not need to look at Mr. Justice Douglas' list to know what it contains. You have lived through the events that are described in that list. You have heard about them in the committee room when you met in the Cannon House Office Building. You have heard about them and dealt with them in this new structure, the Rayburn House Office Building.

Some of you have heard me many times. Most of you know that I cherish the friends of civil rights on this committee. My heart is filled with respect, love, and gratitude for your high character, your great fidelity to human rights and your legislative accomplishments. But I say to you that I simply cannot believe that you do not see the similarity between H.R. 13916 and all of the other delays on the Douglas list in the manner of school desegregation. I cannot believe that you fail to perceive that, nearly a century after the 13th amendment was ratified, the President of the United States is at war with the purposes of that amendment when he asks Congress to pass this so-called moratorium on busing.

Let us now turn to the President's attack on the 14th amendment. Mr. Nixon's call for a moratorium has something of a nightmare quality in that all of the obstruction which formerly came from county sheriffs' offices and recalcitrant legislatures now comes from the White House.

In the past our organization has placed its back to the wall of the 14th amendment with the secure knowledge that the power and prestige of the United States was behind us. We faced great odds. Our opponents could draw on State treasuries, they could enact laws overnight in the State legislatures and they could even cripple our legal efforts with unconstitutional laws designed to prevent our counsel from engaging in the practice of law itself. But, until the present administration came into power, we knew that, in the end the White House and the Department of Justice would support the Constitution and laws of the United States. That changed when Mr. Nixon took his oath of office.

In 1969, 15 years after *Brown I*., the State of Mississippi was still asking for delay on school desegregation. What is worse, the U.S. Department of Justice supported that plea for delay. In *Alexander* v. *Holmes County Board of Education*, 396 U.S. 20, 90 S. Ct. 29 (1969), the Court said:

> **Continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools. *Griffin* v. *County School Board*, 377 U.S. 218, 234, 84 S. Ct. 1226,**

1235, 12 L. Ed. 2d 256 (1964); *Green* v. *County School of New Kent County*, 391 U.S. 430, 438–439, 442, 88 S. Ct. 1689, 1694–1695, 20 L. Ed. 2d 716 (1968).

For one brief period the administration seemed to accept the Supreme Court's admonition against delay. But now the iron hand of blind restraint has been applied to the Department of Health, Education, and Welfare to prevent that Department from speeding desegregation by enforcing title VI of the 1964 Civil Rights Act.

To appreciate the enormous mischief created by Mr. Nixon's instruction to executive agencies to follow the spirit of his March 16 message on school busing, one has only to go across the District line into Prince Georges and Anne Arundel Counties in Maryland. There Federal funds will be used in schools still tainted with racial segregation and the issue of busing has become a political football in the congressional and presidential primaries to be held on May 16, 1972.

Even as we meet at this hearing the Department of Justice is perverting the purposes of title IX of the 1964 Civil Rights Act by attempting to use that statute as the basis for making the United States a party to the maintenance of segregated schools in the city of Detroit, Mich.

Thus, 18 years after *Brown* v. *Board of Education*, the President under the pretext of halting extensive transportation of schoolchildren, is still trying to stand in the schoolhouse door and turn away the children whose skins are black.

Meanwhile, what is the state of the law? In clear language that even he who runs may read what the Supreme Court has said of decisions on school desegregation:

> In the fashioning and effectuating of decrees, the courts will be guided by equitable principles . . . The Courts may consider problems related to Administration, arising from the physical condition of the school plant, the school transportation system.

Mr. Richardson, a moment ago in his testimony said nobody had thought about school transportation as cited in *Brown*. Here spelled out the Supreme Court in the remedies applied are the words "on public" as to major school transportation. Continuing, the Supreme Court said:

> They may consider personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis and revision of local laws and regulations which may be necessary in solving the foregoing problems.

What clearer language is there on which to base such a decision as that in Richmond, Va.? They have said also in the *Brown* decision that one can consider areas of school districts in fashioning adequate remedies.

> They will also consider the adequacy of any plans the defendants may propose to meet these problems and to effectuate transition to a racially non-discriminatory school system. (*Brown* v. *Board of Education* II, 349 U.S. 294, 75 S. Ct. 753 99 L. Ed. 1083 (1955))

The Supreme Court has duly noted that bus transportation:

> . . . has long been an integral part of all public educatioanl systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it. *North Carolina State Board of Education* v. *Swann et al* 91 S. Ct. 1284 (1971).

How did the administration react to the simple and clear statement on busing? Apparently the White House speech writer did not read it before Mr. Nixon made his panic-provoking speech via television on March 16. Those who framed the language of what is now H.R. 13916 seem to be under the impression that in areas like Charlotte and Mecklenburg County, N.C., busing was unheard of until desegregation was required. But what are the facts in that particular section of the country? One finds in the footnotes of *Swann* v. *Charlotte-Mecklenburg Board of Education*, 91 S. Ct. 1267 (1971) that:

> In Charlotte-Mecklenburg, the system as a whole, without regard to desegregation plans, plans to bus approximately 23,000 students this year, for an average daily round trip of fifteen miles.

And here is one of the statements nobody ought to forget.

> More elementary school children than high school children were to be bussed and four and five-year olds travel the longest routes in the system.

In other words, all of this ruckus about having little children travel long distances is already happening even without desegregation and is happening as is stated in this case to a greater extent than even in the high school category.

It is especially pertinent to note that the district court's decree in that case provided trips for elementary students that averaged 7 miles in contrast to the overall average for all students of 15 miles in effect before the decree.

What this means is that the *Mecklenburg County* case resulted in lesser busing for the children.

Mr. Richardson did not point that out, Mr. Chairman, and gentlemen of the committee. The whole administration case reminds me of the story of the judge who had somebody before him and the person finished telling his story. When the opponent got ready to say something, the judge said "Now, wait a minute. I have heard everything that has got to be said and I have made up my mind. If I hear you, I will just get mixed up and, therefore, you keep quiet because I am going to make my decision."

The administration has brought a whole pile of statistics in here without stating what is the other side of the coin.

The decree required a time of about 35 minutes for the bus ride of elementary children in contrast to an hour which was the average for all-grade levels under the busing plan used before the *Swann* decision.

To show the public reaction interpretation—and I was sitting in this hearing room when the Secretary made the statement that in some areas it required an hour or so for children to get to school on a bus; there was sort of a gasp among the listeners because it did sound awful. What he did not say is that even without the matter of desegregation here in a case before the Supreme Court already there were requirements that children ride for more than an hour in order to attend school.

On these facts the Supreme Court said:

> In these circumstances, we find no basis for holding that local school authorities may not be required to employ bus transportation as one tool of School Desegregation. Desegregation plans cannot be limited to the walk-in school." *Swann* v. *Charlotte-Mecklenburg Board of Education*, *Supra* p. 1283.

Now that the Supreme Court has held that time has run out on delaying tactics by the States and that busing is sanctioned as a means of accomplishing desegregation, the President has jumped into the fray on the side of the obstructionists.

He is attempting to use naked executive power to prevent compliance with existing decisions and he is calling in Congress to help by nullifying the 14th amendment. This action on the part of the Chief Executive could well be a precedent for destroying the decrees of courts in any case or controversy. School busing is not the only question on which demagogs seek to make political hay. In the truest sense, H.R. 13916 is an attack upon the courts and upon the rights of all litigants who resort to courts for vindication of those rights.

Of course there are those who argue that Congress has the power to curtail "remedies" as distinguished from "rights."

Mr. Richardson is an eminent lawyer but has a bad client. That is why he was up here making that kind of argument.

We believe that the argument of remedies versus rights is the usual nit-picking that has characterized the statements and theories of the opponents of school desegregation from 1954 to the present.

Section 1 of the 14th amendment commands the States to give equal protection of the law. We assert that it would be the most bizarre interpretation of the 14th amendment if the Supreme Court would hold that the time-honored principle of Ubi jus, Ibi remedium would not be violated if Congress dilutes the 14th amendment by passing a law which would prevent black children from riding to schools where they can enjoy their right to a desegregated education.

On the matter of equity powers—and Mr. Richardson was duly respectful of the equity power of the courts—we refer advocates of the eye-dropper approach to granting human rights to these words of the Supreme Court in *Swann:*

> The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck down by *Brown I* as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by remedial measures of *Brown II*. That was the basis for holding in *Green* that school authorities are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U.S. at 437–438, 88 S. Ct. at 1964.
>
> If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 91 S. Ct. p. 1275, 1276.

You gentlemen are all lawyers. You know that is black-letter law, you do not have to go past the first year of law school to know this is the basic principle of equity. It would mean nothing if equity courts sitting did not have that kind of power.

We assert that neither the 13th nor the 14th amendments give Congress the power to dilute rights protected by those amendments. In *Katzenbach* v. *Morgan*, 384 U.S. 641, 86 S. Ct. 1717 at 1724 n. 10, we find these words on section 5 of the 14th amendment:

> Section 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the states to establish racially segregated systems of education would not be—as required by Section 5—a measure to "enforce the equal protection clause, since that clause of its own force prohibits such state laws."

It is well established by an abundance of facts that racial segregation in housing, zoning patterns, and a host of other physical barriers make some busing necessary to achieve school desegregation. A moratorium, as proposed by H.R. 13916, is but another attempt to sanction public school segregation by Federal law.

Apparently, the White House believes that, because the 14th amendment prohibits States from depriving Negroes of their constitutional rights, Congress is not subject to such a prohibition. In this connection, the Supreme Court's reference to the fifth amendment in *Bolling* v. *Sharpe*, 347 U.S. 497, 74 S. Ct. 693, 98 L. Ed. 884 (1954), offers advice that should give administration moratoriumists reason to pause in their headlong effort to turn back the clock in school desegregation. In *Bolling* v. *Sharpe*, the Court said:

> The equal protection of the laws is a more explicit safeguard of prohibited unfairness than the due process clause and, therefore we do not imply that the two are interchangeable phrases. But, as this court has recognized, discrimination may be so unjustifiable as to be violative of due process * * *.
>
> In view of our decision that the constitution prohibits the States from maintaining racially segregated public schools, it would be unthinkable that the same constitution would impose a lesser duty on the federal government. We hold that segregation in the public schools of the District of Columbia is a denial of the due process of law guaranteed by the Fifth Amendment to the Constitution.

There is one final point that we wish to make. Somehow the impression has been created by advocates of racial segregation that 14th amendment rights may be granted or denied by plebiscite or referendum. Again and again one hears reports about so-called black spokesmen who are advocating a return to racial segregation in the public schools. There are also references to resolutions passed at Gary, Ind., and views asserted at other conferences on education. It is difficult to learn just what was said or not said about busing in Gary. There is not much I can give you on exactly what did occur.

Also, we do not attempt to evaluate pronouncements of individuals who carry their membership on the rear seat of a Volkswagen or hold their policy sessions in a telephone booth. We do know that the NAACP is the largest, oldest, and most consistent organization in the civil rights field. We do know that by votes at our national, regional, and State conventions, the members of the NAACP remain firmly committed to full implementation of the *Brown* decision.

But even if this were not the case, as long as one black person wanted redress in the form of attending a desegregated school, he would be entitled to have it as a matter of constitutional right. That question was settled as far back as 1938 when the Supreme Court in *Missouri ex rel Gaines* v. *Canada*, 305 U.S. 337, 59 S. Ct. 232, 83 L. Ed. 208, held that the right to equal protection is a personal right.

In that case, the State sought to prove that unlike the plaintiff, most of the Negroes were content to accept segregated arrangements or schooling outside the State instead of seeking admission to the University of Missouri which then was for whites only. The Supreme Court brushed this argument aside by saying:

> Here petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders, facilities for legal education substantially equal to those which the state there afforded to persons of the white race, whether or not other Negroes sought the same opportunity.

The NAACP earnestly hopes that reason will prevail in the Congress and that the antibusing madness which now infects this great legislative body will pass into limbo to which nullification, massive resistance, and similar spurious doctrines have been consigned. But make no mistake about our intention to fight against this shameful effort to deprive black children of their constitutional rights. The U.S. Constitution, in addition to granting opportunities for redress in the courts, gives many weapons with which to oppose wrongdoings who have long sought and continue to seek ways of keeping black citizens in a status of second-class citizenship. We shall use all of those weapons, if necessary, to win this battle for justice in the public schools of our country.

Chairman **Celler**. Any questions?

Mr. **Hungate**. Could you distinguish between segregation and integration, Mr. Mitchell?

Mr. **Mitchell**. I do not distinguish between those terms primarily because after the 1954 decision, there were some people who did not want to offend the feelings of some whites. They suggested that the word "integration" had an implication of commingling and social equality, plus other things that would make white people mad, and therefore instead of using "integration" we should use "desegregation." I think that is the genesis of those terms, and they are interchangeable.

Mr. **Hungate**. I was thinking that there might be some communities or schools which are not segregated but nonetheless not integrated. Do you see a possibility of that?

Mr. **Mitchell**. I would say the absence of black children would, to me, indicate that the schools were segregated, not only segregated, de facto, but in most cases as we are finding out in the cases we are taking into court, they are really de jure segregated, because while there was no direct statute prohibiting the attendance of black children, various other devices were used that had the legal effect of denying children admission to those schools.

Chairman **Celler**. Any other questions?

Mr. **McClory**. I would like to make a few comments and ask a few questions if I may, Mr. Chairman. You made a very emotional statement here today. When we talk about emotions on this issue, I think it should be noted that you probably have been as emotional as any other speaker whose testimony we have heard in the course of these hearings.

Mr. **Mitchell**. I plead guilty to that, Mr. McClory. I cannot deal with the future of black children on a dispassionate basis.

Mr. **McClory**. Frankly, I have read statements you made, and you may want to reconsider them later. Now, the thing that has surprised me—and I consider myself a staunch civil rights advocate in my own right, Mr. Mitchell—is that staunch civil rights advocates have come out in support of a constitutional amendment with regard to busing. This has surprised me, and yet I think it is an indication of something that has occurred, and a situation that exists in this country. You may feel that the black witnesses who have been before this committee opposing busing could contain their membership in the rumble seat of a car. I do not want to compare the size of their membership as related to the size of the NAACP, and I do not want to relate them as far as their quality is concerned, either. But there are some blacks and some civil rights advocates on the other side of this issue. More than race is involved. Moreover, the President did not create this issue. When the President made his statement—and I do not want to say that I agree with all of it—the issue was a very live issue throughout this country.

As a matter of fact, he deferred his statement on the issue until after a very tense political campaign had been resolved in the State of

Florida. Now, I pose my question: Do you think there is no issue involved here? Isn't there a need for anything to be done by this Congress? Are you satisfied with all of the decisions of the Court? Are you satisfied with busing that takes children from good schools and places them in inferior schools?

Mr. Mitchell. I would say that I am not aware as a fact that there is busing into inferior schools. I do not want to make the same mistake that the President has made by stating something that cannot be proved.

I would say this: I feel that we are far safer as black people in the hands of the courts for vindication of our rights then we are under this administration and in this Congress.

Let me say what I mean. The President of the United States has talked about busing, but that is only the tip of the iceberg. I heard him at the Republican National Convention when he attacked the Supreme Court on school matters.

The administration went into court for the first time, and all of the power of the Government of the United States to advocate slowing down school desegregation, and I am happy to say they lost. I was present, Mr. McClory—I guess it was nearly 3 o'clock in the morning when the Congress was considering the question of whether to instruct—no, it was not 3 o'clock in the morning, it was an early hour, because the 3 o'clock time was when the bill was first passed; that is, the Higher Education Act was being passed—and the House finally got down to title 17, I believe it was, which involved busing, and that finally passed. When the Senate acted and that legislation came back to the House of Representatives, I was also present. To my best recollection, you voted against the motion to instruct the conferees—and, if my recollection is correct, I certainly want to thank you for what I considered a very statesmanlike act—and some of the other members of the subcommittee did likewise. But, Mr. McClory and gentlemen of this committee, I was present at a lynching in 1933 in the State of Maryland, and there was just as much mob spirit in the Congress, on the floor of the Congress that day, as there was in that lynching that occurred in 1933. I do not trust the Congress to handle these matters.

Mr. McClory. Let me say, Mr. Mitchell, in my opinion a great deal of progress has been made by this administration in housing, in employment, and in school desegregation. I would like to read this part of the statement that Mr. Richardson just gave, and then, if you have some other evidence to dispute that, I would like to have it. He said this:

> The dual school system in our Southern States has now been substantially disestablished. Let us put aside the question of who deserves the credit for this progress. The facts are that in the eleven Southern States since 1968 the percentage of black children in all black schools had dropped from 68 percent to 9.2 percent and the percentage of black children in majority white schools has increased from 18.4 percent to 43.9 percent. More of the minority school children in the South now attend integrated schools than those in the North.

Is that a correct statement?

Mr. Mitchell. The part that says "proportionately more of the black children attend desegregated schools in the South than in the North" is correct.

But figures that I have seen state that approximately 39 percent of the black schoolchildren go to desegregated schools in the South, which certainly is a big difference from what Mr. Richardson said, and that about 29 percent of them go to desegregated schools with white children in the North.

So, I would say that I would question that figure. I am like Mr. McCulloch, I think we ought to have figures.

Mr. McClory. Well, if instead of this administration making substantial progress, it has gone in the other direction, I would like to know about it.

Mr. Mitchell. Mr. Richardson was very wise when he said that he did not want to identify who was entitled to the credit because this administration has been dragged kicking and screaming all the way into school desegregation.

For example, the *Alexander* case was the first item in the whole history of our appearance in court that he had the Department of Justice on the other side. What is happening right now?

Mr. McClory. Let me make this comment. I have seen some yelling and screaming and kicking on the floor of the House of Representatives because of the very aggressive actions that have been taken by this administration with regard to school desegregation.

Mr. Mitchell. I suppose, if somebody does not want any action at all, then the slightest kind of action would be too much. On the other hand, when we worked to try to get the President's $1,500 million program approved, who was it that jerked the rug out from under us and injected the busing issue? It was the President of the United States.

I might say, Mr. McClory, in that situation, the NAACP was 100 percent behind the President's $1,500 million bill, even at a time when some of the Democrats charged us with collaborating with the administration: but we felt it was right, and we did it.

Mr. McClory. Let me make this comment because it affects my district and it affects something that the Secretary spoke of.

That is, I think that a comprehensive equal educational opportunity bill would be far superior to the sort of hit-or-miss projects that we have had under OEO. The President's message recommended substantial additional funds to provide greater educational opportunity, particularly for minority students. That is essential. I agree with the President on that.

Mr. Mitchell. What you have just said shows how deceptive the administration has been in this matter. The President has not proposed any substantial additional funds. What he has proposed is a reallocation of moneys which are either already appropriated or in the process of being authorized by Congress.

So, it is not $1,500 million really—it is not new money and a lot of people believe that it is—but more than that, Mr. McClory——

Mr. McClory. I want to review that and, of course, I think it is premature to judge how much money is going to be involved because the issue is still pending in the conference. I think there will be additional funds which will be recommended and approved by the Congress for this purpose.

Mr. Mitchell. I would hope you are right but when the President had an opportunity to approve the additional funds under title I of the Elementary and Secondary Act, he vetoed it.

I would like to say with respect to what you said about the difficulty of having a dozen different places which are making these decisions as opposed to one overall statute passed by Congress, again, and I say this with a real sense of regret because I love the Government of the United States, I love my country and I love this legislative body in which I am happy to say my youngest brother serves as the first black man elected to Congress from the State of Maryland—but I would say that this Congress has been utterly irresponsible on the question of school busing.

I know many of my dearest friends who have gone with me through thick and thin on questions of civil rights. No, they go down on the floor of the Congress and vote against busing on a purely political basis, and I add to that, taking due cognizance of Mr. Poff's presence here—I am happy to say, Mr. Poff, for the first time, I am able to come before a committee of the Congress of the United States and say with respect to a civil rights matter that I have the greatest respect and admiration for a Congressman from the State of South Carolina. When others were running for the escape hatches and deserting the ship after punching holes in it so it would sink, Mr. Dorn of South Carolina got on the floor of the Congress and said, "Mr. Speaker, again to deny Federal aid to those school districts already busing is grossly unfair. In my congressional district, school districts have now been using busing for many years. Some of the busing was a result of HEW decrees and Federal court orders."

Then he went on to say that the dual system had been abolished in South Carolina and he said, "In the schoolyard of my hometown high school at this moment there are 88 buses. To deny Federal aid to continue this busing is to hamper and hamstring quality education."

I salute Mr. Dorn and every other southern Member who was fair enough to oppose the so-called antibusing amendment.

Chairman Celler. Will you yield?

Mr. McClory. I will yield.

Chairman Celler. To get the record straight on the question of progress, I read from a statement made by Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights, before the Committee on Education and Labor, on April 11, 2 days ago testifying on the administration's desegregation proposals:

> The legislation declares in its findings that the dual school system has been virtually disestablished. This conflicts directly with school enrollments of districts from the Department of Health, Education, and Welfare which show that in 1971–1972 school year approximately one-third of all black students in 11 Southern States are attending nearly all black schools, those between 80 to 100 percent minority enrolled. These figures show that, while we have made great progress within the last ten years to desegregate schools, we still are a long way from the elimination of the dual-system and its vestiges.

Mr. Mitchell. I want to thank you, Mr. Chairman, for mentioning that statement because that is the fact and, as I understood it, what the administration was trying to do. I am sure its lawyers knew if they had any chance of staying in court at all while defending his so-called moratorium, they had to establish some rational basis for Congress taking the action proposed on H.R. 13916. But under your questioning and the questioning of counsel, I think it is very clear that there is no rational basis for what they are proposing. There is no showing that this is such an enormous problem. There is no showing that the courts have exceeded their powers under the 14th amendment.

It is just a lot of speculation which has been thrown in here to attempt to justify a contemptible position on school desegregation.

Mr. McClory. Let me make this comment and then ask a question. This is more than just an ephemeral, imaginary problem. We have pending on the desk of the Speaker, as you know, a discharge petition which has a great many names on it. There are a number of witnesses that came before the committee and said they did not sign the discharge petition but wanted this committee to do something about a constitutional amendment or take some other action. The question I ask is this: Don't you think that you should recommend something, some legislation, some standard or guideline that can help us to help all of the children? This is a problem that is going to stay with us unless we do endeavor to resolve it legislatively and equitably. I think that the courts are looking to us to do more than we have done in the past. Do you think we should do nothing?

Mr. Mitchell. I am reminded of that old expression in the Army, "when in doubt, do something, anything." That is really what is here. The administration is confronted with a practical situation so the dreamers and planners have come up with a proposal. They do not know whether it is going to be constitutional or not but it supposedly is to operate as a stopgap. That is the reason I said, Mr. McClory, that I do not trust the White House, I do not trust the Congress to handle this matter. I think they have gotten so confused with politics and trying to beat George Wallace and also some responding to mob violence in their home communities that I think they just are not being rational. For that reason, I would say we are far safer in this period to keep this matter in the courts. When calm returns and people begin to look at these matters in an objective way, that you and some of your colleagues look at them, and I am not saying that to curry favor—I say it as a fact—I think then we can do something.

But in this state of hysteria, I think it would not be a surprise to me if somebody would get through a resolution in the House to repeal the 14th amendment.

Mr. McClory. Thank you, Mr. Mitchell.

Chairman Celler. Mr. Mitchell, we find in your statement knowledgeable and direct statements. You have been very helpful. You are always welcome before this committee. We are grateful to you and thank you very much.

Mr. Polk. Mr. Chairman, I have one question, Mr. Mitchell, you indicated in the beginning of your statement that about 2 percent of the children were being bused in connection with desegregation plans. Could you provide the subcommittee with the source of those figures?

Mr. Mitchell. I could but the source of that was testimony of Secretary Richardson in the Senate when he was testifying on the so-called equal educational opportunity bill.

Senator Javits asked him for the figures and I believe he came up with a figure of something in the neighborhood of 300,000 children who were affected because of desegregation or something to that effect and this worked out to about 2 percent of the total.

I might say, too, I hope this committee will look at that colloquy because Senator Javits did just what the chairman and you other distinguished gentlemen have been doing, he began putting this problem into perspective, showing that all of the hullaballoo was not about some great revolution that was taking place in the country but an orderly process under court supervision which was resulting in people getting their constitutional rights.

Chairman CELLER. We will terminate the hearing this morning and meet next Wednesday and next Thursday.

Now, the following statements will be included at this point in the record.

A statement of Hon. William G. Bray, a U.S. Representative in Congress from the State of Indiana.

A statement of Hon. Lawrence J. Hogan, a U.S. Representative in Congress from the State of Maryland.

A statement of Hon. John W. Davis, a U.S. Representative in Congress from the State of Georgia.

A resolution adopted by the board of trustees of the Katy Independent School District, Katy, Tex.

A statement of William D. Lynch, chairman, Austin Anti-Busing League, Austin, Tex.

Statement of Charles R. Holloman, Esquire, Raleigh, N.C.

A letter to House Judiciary Committee from Pontiac Area Women's Coalition, Pontiac, Mich., dated March 10, 1972.

A letter to the chairman from Mrs. B. J. Hamilton, president, League of Women Voters of Tulsa, Okla., dated March 13, 1972.

A letter to Hon. James D. McKevitt from H. S. Roth, president, Colorado Labor Council, AFL-CIO, dated March 21, 1972.

A statement of Thomas Hobart, president, New York State Teachers Association.

A letter to Hon. Wilmer D. Mizell from John A. Redding, president, Lewisville-Clemmons Branch of Forsyth Citizens Against Busing, February 28, 1972.

A statement of Hon. Speedy O. Long, a U.S. Representative in Congress from the State of Louisiana.

A letter to Chairman Emanuel Celler from Hyman Bookbinder, Washington representative, the American Jewish Committee, dated March 21, 1972, enclosing a statement "Busing—The Wrong Issue."

A letter to Chairman Emanuel Celler from the American Association of University Women, dated March 29, 1972.

A statement of Hon. M. Gene Snyder, a U.S. Representative in Congress from Kentucky, together with a statement of Mr. Jean Ruffa and Mrs. Joyce Spond, "Save Our Community Schools, Inc.," Louisville, Ky.

A statement of the Association of the Bar of the City of New York, Committee on Federal Legislation.

A statement of Church in Society and Christian Education of the Christian Church (Disciples of Christ).

A statement of Dan W. Routh, president, Forsyth Citizens Against Busing of Winston-Salem, N.C.; attaching an addendum statement.

A letter to Chairman Emanuel Celler from Mrs. Bruce B. Benson, president, the League of Women Voters of the United States, March 30, 1972.

All of these statements will be included in the record at this point.

(The documents referred to follow:)

STATEMENT OF HON. WILLIAM G. BRAY, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to submit this statement in support of a constitutional amendment to prohibit forced busing of school children. I am the sponsor of one myself—H.J. Res. 927—and have signed the discharge petition to bring the matter to the Floor of the House for a vote.

My first major speech on this matter, in opposition to busing, was made in July 1969, entitled Education or Social Experimentation? In October 1970 I again addressed the House on the topic, with remarks headed Classroom for Chessboard: Pupils for Pawns. Last year, in 1971, my public opinion poll had the very unusual development of carrying a unanimous response—in the negative—to an unasked question—school busing—and in October these findings, with my comments on the poll returns, were inserted into the Congressional Record, on October 19, 1971.

The following excerpts from a letter to the editor of the New York Times, printed in that paper on March 3, 1972, sum up quite neatly what those opposed to busing feel:

"Somehow, as one follows the debate on whether to bus or not to bus children to achieve a racial mix (for whatever reason), there emerges a nightmarish quality to this volatile issue. Columnists, editorial writers, educators, legislators and jurists batter opponents of busing with the necessity—nay, the unswerving duty of the Republic—of establishing a virtual racial quota for each component of the public school system.

"However, the quite rational consideration of the rights of the affected parents and the children who are to be bused to unfamiliar and often inhospitable areas is seldom mentioned. How have so many of this country's public figures come to exult in coercion of children, ignore the rights of family and community aggregations, and glibly mouth the glory of a racial amalgam which most Americans reject? . . ."

"Most Americans" is an accurate term indeed. The Florida primary on Tuesday, March 14, carried two questions touching the issue. On a constitutional amendment to forbid busing, the approval was 74–26; and on an accompanying question on favoring equal educational opportunity for all, approval was 79–21. It is worth noting that there was no organized statewide effort in Florida to promote the anti-busing vote. On the contrary, Florida's Governor had put his own prestige on the line in urging a "No" vote on the constitutional amendment question.

A similar question will be put to a state referendum in Texas and Tennessee, later this year. I have no doubt the returns will show figures somewhere between those in Florida, and those in the latest Gallup Poll. Gallup's figures, on a question asking if the individual favored school desegregation, showed 66% in favor, 24% opposed, and 10% having no opinion. Compulsory busing was turned down 20–69–11. A constitutional amendment was favored 46–35–19.

I count it a tragedy that the situation has reached the point where solution through a constitutional amendment seems to give the only hope of relief. I differ sharply and strongly with the sentiments that this route would be to "trivialize" the Constitution. This is no trivial matter we are dealing with. As I plan to develop, further along in my presentation, the concept is far greater than simply that of loading children on buses. It is social engineering at its most reckless and irresponsible.

I also feel the use of the term "trivial" is questionable on other grounds. The amending process to the Constitution is the closest thing the American Republic has to a national referendum. Much hysteria about this particular proposed amendment—as well as others—has given the mistaken impression that approval by Congress means almost automatic and instantaneous approval by the States. Considering all the amendments added in this century, beginning with the 16th, we find the time from submission by Congress to taking effect with ratification by three-fourths of the states varies from three months (in 1971, Article XXVI, 18-year-old vote) to as much as four years. Around two years seems to be the average; this proposed amendment gives the states seven years to act, as has been customary.

There is an increasing body of evidence that pro-busing activities, no matter where taken or initiated, simply have not been carefully thought out. It is time for the matter to get national attention, national approval (or disapproval), and to involve the entire country in the decision.

After all, is this not the essence of democracy, that the people be allowed to speak on these questions, and that the wishes of the people be respected? James Madison wrote in The Federalist, # 51:

"The great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments on the others."

And to those who would say that this proposed amendment, as well as other suggested measures, such as limiting the scope of federal courts, constitutes encroachment on the federal judiciary, I would reply that the judiciary is neither infallible nor sacrosanct. For support, I cite Thomas Jefferson:

"At the establishment of our Constitution, the judiciary bodies were supposed to be the most helpless and harmless members of the government. Experience, however, soon showed in what way they were to become the most dangerous; that the insufficiency of the means provided for their removal gave them a freehold and irresponsibility in office; that their decisions, seeming to concern individual suitors only, pass silent and unheeded by the public at large; that these decisions, nevertheless, become law by precedent, sapping by little and little the foundations of the Constitution, and working its change by construction, before anyone has perceived that that invisible and helpless worm has been busily employed in consuming its substance. . . ."

And on another occasion Jefferson wrote: "The judges are practicing on the constitution by inferences, analogies, and sophisms . . . It has long, however, been my opinion . . . that the germ of dissolution of our federal government is in the constitution of the federal judiciary . . . working like gravity by night and by day, gaining a little today and a little tomorrow, and advancing its noiseless step like a thief, over the field of jurisdiction . . ."

For a more current observation on the limits of the federal judiciary, I turn to Mr. Justice Harlan, who wrote, in one of his opinions: "The federal judiciary, which by express constitutional provision is appointed for life, and therefore cannot be held responsible by the electorate, has no inherent general authority to establish the norms for the rest of society. It is limited to elaboration and application of the precepts ordained in the Constitution by the political representative of the people. When the Court disregards the express intent and understanding of the Framers, it has invaded the realm of the political process to which the amending power was committed, and it has violated the constitutional structure which it is its highest duty to protect."

And for a non-judicial opinion, directly pertaining to the question at hand, the following by Edwin A. Roberts, Jr., writing in the National Observer, February 26, 1972:

"A racially integrated society is a worthy, indeed a necessary, goal. But this business of doctoring the symptoms by using children for social experiments is a terrible miscarriage of judicial authority.

"Whenever a jurist, who is not elected by the people, can confound the wishes of the overwhelming majority of citizens, then something is amiss in our scheme of government. Individual judges have taken to issuing edicts in a manner denied to any other American, including the Congress and the President . . ."

"The men and women in the black robes perform a central function, and for the most part they evoke citizen confidence in the court system and that system's working relationship with the other branches of government. But there are a few judges who have been eating red meat lately, and these few pose a threat to the democratic process . . . let's restrain our power-happy judges from using our children for any experiment in social surgery."

I said earlier I considered it tragic that matters have gone as far as they have. This is a divisive, highly emotional, volatile topic; we can do without them, if they can be avoided, and this one should have been. The fact that under law—court decisions as well as Congressional action—nothing remotely approaching busing was ever intended or given sanction makes a complete and total prohibition all the more important. Let's go back twenty years; what was intended is a far cry from what has taken place.

The Supreme Court's decision in *Brown v. Board of Education*, in 1954, eliminated the "separate but equal" doctrine and held that seregation imposed by law—*de jure* segregation—was unconstitutional. When the five cases that were ultimately decided under the name of *Brown* were being argued before the Court in 1952, Thurgood Marshall, now Mr. Justice Marshall of the Supreme Court, was chief counsel for the NAACP and taking part in the presentations. He made his objective quite clear, and also the limitations of what he was seeking: ". . . we are not trying to force any child into any school. All we are trying to do is remove the State-imposed policy of separation by race; and if that is removed, the child will have the choice to attend any school he desires. . . . If this Court would reverse and the case would be sent back, we are not asking for affirmative relief. That will not put anybody in any school. The only thing that we ask for is that the state-imposed racial segregation be taken off, and to leave the county school board, the county people, the district people, to work out their own solution of the problem to assign children on any reasonable basis they want to assign them on. . . ."

Mr. Justice Frankfurter wanted to make sure of what was meant, and asked Mr. Marshall: "You mean, if we reverse, it will not entitle every mother to have her child go to a nonsegregated school in Clarendon County?"

And to this Mr. Marshall answered: "No, sir."

Now let's move ahead to 1964, and the Civil Rights Act, adopted that year, that went onto the books as Public Law 88–352, 78 Stat. 246. I cite Title IV. Desegregation of Public Education: Sec. 401(b) should have been perfectly clear to anyone: "'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance . . ."

This was the first Congressional injunction against the busing concept. It was ignored by the Federal bureaucracy, most notably and infamously by Harold Howe II who took office as Federal Education Commissioner in 1966. A Wall Street Journal story of August 12, 1966, about Howe, was headlined:

"Integrating Classes—Federal Officials Now Favor End to Tradition of Neighborhood School—New Education Commissioner Calls for Busing, 'Plazas'; Suburbanites Are Alarmed—His Only Weapon: U.S. Cash."

Congress responded when the civil rights bill of 1966 came up, and adopted an amendment aimed primarily at Howe's ideas. The Washington Star commented editorially on the matter: "The thrust of the amendment is in this sentence: 'Nothing in this title shall be construed to authorize action by any department or agency to require the assignment of students to public schools to overcome racial imbalance.' . . . What he (Howe) intends to do, in brief, is to bus school children back and forth, to achieve a racial mix satisfactory to himself, and if necessary to abolish the neighborhood schools in the process. This has never been required by the Supreme Court nor intended by Congress."

Key House votes aimed at the school busing concept began in 1968, with the "Whitten amendments" to Labor-HEW appropriations measures. I have consistently supported these, and the list of supporters has grown steadily longer over the years. In essence the amendment has forbidden HEW to withhold funds from school districts in order to force them into busing. The first time, in 1968, the House reversed itself. In 1969 and 1970 Senate-added language weakened the amendment to the point of its being useless. Then, in April 1971, the House refused to cut the language of the amendment from the education appropriations bill for fiscal 1972 and in November 1971 threw down the gauntlet to the probusing forces with the toughest language yet.

Taking the higher education bill as a vehicle, three amendments were added in the House. One would restrict the authority of federal officials to require school districts to use state and local funds for the purpose of busing, using the threat of denial of federal aid if they refused. Another forbade the use of federal funds for busing. The third prohibited any federal court busing order from taking effect until all appeals are exhausted.

When the Senate was finished with the bill, as in the past the language had been weakened and watered down so as to be remote from what the House had originally intended. In a very rare move, before the bill went to conference, the House voted 272 to 139 to forbid its conferees from compromising with the Senate on these three particular amendments. And there the matter stands as of this date. It is true that the conferees do not have to remain bound by these instructions from the rest of the House, but given the overwhelming majority voting for instructions, the bill would almost certainly be rejected by the House if any changes were made.

It is worth noting here that the Senate very narrowly rejected (by two votes—50–47 and 49–48) after having first equally narrowly accepted (43–40) on amendment that would have taken away the power of federal courts to order busing. This would surely have been accepted by the House. I have no doubt of that.

The Supreme Court's last major decision on busing was in *Swann* v. *Charlotte-Mecklenburg County Board of Education*, with a unanimous decision handed down on April 21, 1971. In this case the Court upheld a plan aimed at achieving racial balance—the same racial balance—at each school in Charlotte, North Carolina. It approved busing as an implement for that purpose. But the Court's decision was by no means a green light for busing. From the decision:

". . . We are concerned in these cases with the elimination of the discrimination inherent in the dual school systems, not with the myriad factors of human existence which can cause discrimination in a multitude of ways on racial, religious or ethnic grounds . . .

". . . Our object in dealing with the issue presented by these cases is to see that school authorities exclude no pupil of a racial minority from any school, directly or indirectly, on account of race; it does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools.

". . . The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole . . ."

There are some very disturbing signs that lower federal courts have started to decide that there is no such thing, really, as *de facto* segregation—where it exists as a result of economic, social, housing or specific population patterns. This logic—if one can call it that, which I certainly cannot—was put in this fashion by Ramsey Clark, former Attorney General of the United States: "In fact, there is no *de facto* segregation. All segregation reflects some past actions of our governments. The FHA itself required racially restrictive covenants until 1948. But, that aside, the consequences of segregated schooling are the same whatever the cause. Segregated schools are inherently unequal however they come to be and the law must prohibit them whatever the reason for their existence."

This incredible statement is endorsement of a vicious absolutism that truly defies belief. But there are indications it is being subscribed to. A Federal judge, handing down a sweeping desegregation decision in San Francisco, had waited until after the Charlotte-Mecklenburg case was settled by the Supreme Court to get some sort of guideline. He took, from the Court's decision, the assumption (which he made on his own) that the Court had intended to outlaw *de facto* segregation and proceeded accordingly.

Astonishingly, in his decision, in which he placed every child in the San Francisco elementary school system into one of four racial or ethnic categories and made subject to busing or some form of transportation, to attain a suitable racial balance in each school, he has this quotation from another judge some years before:

"The problem of changing a people's mores, particularly those with an emotional overlay, is not to be taken lightly. It is a problem which will require the utmost patience, understanding, generosity, and forbearance from all of us, whatever race. But the principle is that we are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God."

How can these words possibly be squared with those in the judge's decision, in which he ordered the San Francisco School District to prepare a plan to accomplish:

"Full integration of all public elementary schools so that the ratio of black children to white children will then by and thereafter continue to be substantially the same in each school. To accomplish these objectives the plans may include:

"a. Use of non-discriminatory busing, if, as appears now to be clear, at least some busing will be necessary for compliance with the law.

"b. Changing attendance zones whenever necessary to head off racial segregation."

And according to the judge, the law even requires:

"Avoidance of the use of tracking systems or other educational techniques or innovations without provision for safeguard against racial segregation as a consequence."

Then in early 1972 we had the Merhige decision, when Judge Robert R. Merhige, Jr., ordered consolidation of the city school system of Richmond, Virginia, with the systems of two adjoining suburban counties. Purpose: broad, urban-area school integration.

Judge Merhige's theory is simple: school systems with sharp and easily recognizable racial differences, if they are part of one single metropolitan community, cannot exist side by side, even though they follow housing and population patterns. This is an exact duplication of the matter at issue in Indianapolis as well as dozens of other communities throughout the United States.

The Judge's opinion also holds that quality education in and by itself can be achieved only in an integrated setting and therefore total abandonment of neighborhood schools is not worth worrying about. The Judge says this is so even though neighborhood school attendance plans might be more economical in time and transportation cost, might facilitate the operation of more extra-curricular school activities, and might make possible the benefits many give to the walk-in school. It makes no difference to the Judge whether or not these things may be "valid or rational educational goals" because "the end of desegregation may not be subordinated to them."

Is there anything remotely resembling understanding, or generosity, or patience, or forebearance, in any of this? Can this be anything other than blind, near-fanatic absolutism, with total denial of any sort of qualifying facets? This is utopianism run amok, with potentially disastrous consequences for the American educational system and, very likely, social upheaval and turmoil on a scale no one can foresee.

The tenor of some of the arguments in favor of busing have about them a shrillness and frenzy that is hard to believe. Dr. Kenneth B. Clark, Professor of Psychology at City College of New York, is quoted as saying:

"A constitutional amendment to prohibit the busing of children for the desegregation of the public schools would pervert and demean the Constitution of the United States and would make it an instrument for the perpetuation of racism rather than a protector of the rights of all American citizens."

And, representative of the truly far-out on the matter, we have the following, by Dr. Eugene TeSelle, of Vanderbilt Divinity School, Nashville, writing in *Christian Century*, March 8, 1972:

"What exactly should we be seeking over the long haul? I think we should keep on pressing for integration plans that encompass a large metropolitan area—and (Chief Justice Burger's recent ukase notwithstanding) at very nearly the same ratio among the races in all schools. To be sure, transportation is still a problem. But in every metropolitan area freeways are rapidly being built, and if parents can use them for going to work, children can use them for going to school. The inconveniences and costs involved (and there is no denying that these exist) should be considered a 'social tax' well worth paying to correct the injustices of the past and create something better for the future."

The kindest comment I can make on the attitude and charges leveled by these gentlemen is that they have totally missed the point of the whole issue and are carrying on their own particular brand of confusion and deliberate obfuscation. Too, there are implied in these statements—and not too subtly implied, at that—unwarranted and completely false slurs on the motivations of those who oppose busing. I would refer them, and others, to the statement of Charles Hamilton, a black, and political scientist at Harvard, who was quoted in the New Republic of December 18, 1971, as follows:

". . . we should be concerned essentially with quality education and not with the superficial bringing together of black and white students . . . The bringing together of black and white students has been primary in our thinking as a result of the pre-1954 mentality. I think that those who do not focus on something else are failing to adapt to the times."

But there has always been school busing, so the argument goes, and what difference does it make if we continue it for purposes of integration? This is probably the most spurious argument of the lot. It was aptly answered in a letter to the editor of the New York Times, appearing on February 24, 1972:

"That times have changed is obvious but few with partisan viewpoints are willing to acknowledge it. It is one thing to bus a child twenty miles through open country to attend the only available school in his region; it is quite another to bus him the same twenty miles, away from his nearest school, to another part of the city, sometimes the worst part, to pursue some goal of social reconstruction that at this writing is poorly defined. It is a mystery that anyone would compel children to go to school in areas where grown men now hesitate to walk in broad daylight. Indeed, the very judges who demand such action by others would never accept this burden for themselves."

Let us look at a few more comments on busing, from sources that in no sense of the word can be considered racist or ultra-conservative. From a New York Times editorial, quoted in the Philadelphia Inquirer of February 27, 1972:

". . . objections to long-distance busing, with its inconvenience, dislocation and high cost in time and money, are thoroughly well-founded. Furthermore, it is undesirable and impracticable to transport children of more favored socio-economic backgrounds, regardless of color, into schools located in poverty neighborhoods."

Rabbi Jacob J. Hecht, executive vice president of the National Committee for Furtherance of Jewish education:

". . . Busing removes from a child one of his most powerful sources of security—his neighborhood. It places him smack into an alien atmosphere he could only react to with anxiety."

Alexander Bickel, professor of law and legal history at Yale University and, I might add, an opponent of a constitutional amendment to prohibit busing:

". . . it is, in any event, highly doubtful that the attainment of racial balance by busing, even where possible, is the only, or the most effective way to improve the education of black children."

The black newspaper columnist William Raspberry, writing in the Washington Post of February 16, 1972:

"Integration is a noble goal. But there comes a time when thoughtful men wonder with Joseph Alsop: 'Is it really worth it?'

"If white people, either because they wish to avoid contact with black people or for any other reason, choose to move far from where most black people live, how can it make sense—in terms of education or common sense—to send black kids chasing after them?

"At some point, it becomes obvious that there must be a cheaper way to achieve the goal which is the education of our children.

"But even the goal gets confused. Some of the advocates of massive busing, it seems to me, are being guided by the wrong ideal.

"They start off with the assumption that in melting-pot America, racial integration is a good thing. But they take the melting pot metaphor altogether too literally, and it becomes their goal to make every classroom of every school (and every block of every neighborhood) an accurate cross-section of the makeup of the total population.

"They would like to put us all into that metaphorical melting pot and ladle out enough portions of homogenized Americans to fill every school room, work room and living room in the country. . . ."

The resolution, drawn up by the Congress of Racial Equality (CORE) and adopted at the National Black Political Convention in Gary, Indiana, on March 12, 1972:

"We condemn racial integration of schools as a bunkrupt, suicidal method of desegregating schools based on the false notion that black children are unable to learn unless they are in the same setting with white children. As an alternative to the busing of black children to achieve racial balance we demand equality education in the black community through the control of our school districts and a guarantee of an equal share of the money."

And what of the cost in terms of money alone? There may very well be a taxpayers' revolt of near-major proportions in the offing, with a great deal of spleen being reserved for what is spent on education. All across the country, in community after community, proposals to raise more money for local educational expenses have gone down to defeat and more than one school district teeters precariously on the brink of insolvency. Teachers being paid in scrip, if they are paid at all; suspension of many educational services and facilities that had formerly been taken for granted; doubling up of classes—these things and more are commonplace, due to a lack of money, and none of this does anything to sweeten the taxpayer's mood. He is already angry over having seen fantastic sums ladeled out on the educational process, then finding his children, upon graduation from high school, are unable to do simple arithmetic or write or read a simple sentence.

The educational structure is already badly shaken and assailed on many fronts. A major storm is starting to develop over finding new methods of financing education. Use of property taxes for the purpose has been ruled unconstitutional by the California State Supreme Court, and the U.S. Supreme Court will have to face the issue before long.

The U. S. educational structure is in absolutely no shape to be subjected to further deep shocks, such as widespread enforcement of busing would be.

Then, too, there is, as always, the nagging uncertainty that there is a very good probability that some traditional wisdom is completely wrong.

In 1966 the U. S. Office of Education collected data on 570,000 students at 4000 schools, for a report on educational equality, the most comprehensive ever taken before, or since. Directed by James S. Coleman, a sociologist at Johns Hopkins University, it came to bear his name. The Coleman Report, up until very recently, had been said to bear out the contention that what happened in the classroom was all important, in the overall development of a child, and also that integrated classrooms were most beneficial.

Now, It has been re-evaluated, and by persons who cannot be remotely placed anywhere right of center in their philosophy or for that matter too close to the center itself. The new analysis of the Report's findings say that academic achievement depends more on family background than what happens in the classroom. Improvement of jobs and incomes do more to raise levels of educational achievement than either spending more on schools, or on integration. Indeed, one facet of the new analysis flatly said that raising expenditures is the least promising approach to raising the level of pupil achievement. To quote directly: "The most promising alternative would be to alter the way in which parents deal with their children at home."

Prominent among supporters and advocates of busing, regardless of where they may be—Federal bureaucracy, Federal judiciary, professional reformers, ordinary, day-to-day run-of-the-mill meddlers, individuals desperate for something to salve their own guilt complexes—is the strain of utopian thinking and planning, and the frenzied, gasping desire for total leveling of all distinctions among all people. I find this impossible to understand.

Recently, 300 ethnic leaders met in New York City. Keynoting the conference, a Roman Catholic priest, Msgr. Geno Baroni, director of the National Center for Urban Ethnic Affairs, asked for a "new American dream—the urban ethnic pluralistic society"—to enable "diversity to become an asset instead of a liability."

Then Bayard Rustin, the black civil rights leader, spoke on the idea of the "melting pot":

"There never was a melting pot. There never will be a melting pot. If there ever were, it would be such tasteless soup that we would have to go and start all over."

Where does this desire and urge come from, that would dissolve, without trace, in vats of sociological acid, the diversity that is the wonder and, indeed, the glory of the human race? Is this dream of dismantling individuality a preliminary step on the road to a hideous enforced collectivism of mind and will? This does not offer utopia; this is a vision of hell.

The chronicles of ancient Rome tell us that the mad Emperor Caligula, in a moment of insane fury, shrieked his desire that all mankind should have but one head, so he could chop it off with one blow. Dr. Thomas Molnar, commenting on this, observed that:

"So, too, the utopian; he wants to deal with one entity so as to simplify his own task of transforming human nature into a slave . . ."

In 1896, in its decision in *Plessy* v. *Ferguson*, the U. S. Supreme Court wrote the doctrine of "separate but equal" into American constitutional law, where it stayed until 1954 and *Brown*, which I have already cited, overturned it. It was a historic case; in his dissent, Mr. Justice Harlan made one point that was, I believe, even more historic in and of itself than the rest of the case combined, and has special pertinence today:

"Our Constitution is color blind and neither knows nor tolerates classes among citizens."

We violate that injunction if we tolerate an attitude that selects, enumerates and assigns pupils on the basis of color—which is exactly what is done by school busing.

We are practicing a cynical and blatant racism if a child is forced into doing something he would not normally do, solely because of his race or color.

We affirm that all of our citizens are equal before the law. Under this premise, then, there can be no recognition based solely on race or color, no matter how well-meaning or well-intentioned this might be, nor how it may be disguised.

By continuing to tolerate usurpation of power by sources without any responsibility or accountability to their fellow citizens, who blatantly ignore the clearly-expressed wishes of these same citizens, we are violating the very essence of our republican form of government.

We are acquiescing in the no-longer-slow and no-longer-subtle destruction and denigration of individuality, and that all-important personal feeling of dignity that is the birthright of every human on this earth.

By maintaining that black children can learn only in the company of white children, or that white children can receive a truly rounded education only in the company of black, we are dealing a gross and grievous insult to both races.

We are reducing individual human beings into lines on a graph, dots on a chart or figures in an equation. We give tacit approval and consent to a form of unchecked utopianism of a peculiarly virulent strain that if carried out to its logical extension could be the death of our culture.

We are seeking a remedy for this poisonous, cancerous and divisive force that is tearing at the fabric of our American society. There are many avenues by which this remedy may come. It may be from the United States Supreme Court itself. It may come from intervention in school busing suits by the U. S. Department of Justice.

And it may have to come from a constitutional amendment. But, however it does come, it will come legally, within the structure and framework of our constitutional system. The American people will have it no other way.

Statement of Hon. Lawrence J. Hogan, a U.S. Representative in Congress From the State of Maryland

Mr. Chairman, members of the subcommittee, I appreciate this opportunity to present my views in support of a resolution proposing a constitutional amendment to prohibit forced busing for the purpose of achieving racial balance.

This is an emotionally laden issue and an issue of vital importance to the education of the children of this country and consequently to the future of the Republic. It is the purpose of this amendment to insure that every child, regardless of race, creed or color, has the optimum opportunity to develop his potential in the public school system of the nation, nothing less. At the present time, the vast majority of public schools are neighborhood schools. They were planned and constructed at locations to serve the school-age children of a particular vicinity. Even if the neighborhood school were not an effective means of educating children for life in our society, massive busing would not be the solution. Our commitment to the concept of neighborhood schools in terms of facilities, planning, and money is so great that an effective turnabout would require at least a generation of planning and construction. Merely reshuffling the school-age population across the face of the map in pursuit of some elusive balance of racial distribution would not be the reasonable approach.

But nobody has demonstrated to my satisfaction, nor, I believe, to the satisfaction of the majority of Americans that the neighborhood school is not an effective instrument for the education of our children. Certainly, our schools could be better. The best school could be better. But it is reasonable to assume that the vast sums required for buses, drivers, maintenance and all the concomitant costs of massive busing schemes could be better applied to the direct improvement of schools.

Some opponents of this constitutional amendment have complained that it is frivolous to burden the Constitution with such an amendment when the same objectives could be achieved by statute. Unfortunately, however, past legislative efforts at proscribing busing on a racially discriminatory basis have proved ineffective. Court interpretations and bureaucratic meddling have consistently overturned the purpose of Congress and the pubic, whom we represent. Establishing this principle as a constitutional amendment appears to be the last available means of achieving what I think is quite clearly the will of the public.

It is indeed astonishing that we find ourselves compelled to resort to a constitutional amendment to assure that "No public student shall, because of his race, creed, or color, be assigned to or required to attend a particular school." To me, that is already implied in the Constitution, but this point is ignored by the Department of Health, Education, and Welfare. But even more astonishing is the fact that this principle of color blindness has been called by some of its more volatile opponents '"racist." In simple English, this amendment prohibits discriminatory treatment on the basis of race, creed, or color. Mr. Chairman, what could be more anti-racist than that?

Quality education, not race, is the issue. In my own district, the Prince George's County School Board found itself this past summer presented with a massive busing plan which would have required the busing of some 7,000 elementary school children up to 14 miles at an estimated cost of over $1 million.

Accustomed as we are in the Congress to tossing about figures hundreds or even thousands of times that amount in our debates, one million dollars may not sound like much. But let me assure you that in a school district $1 million will buy a lot of books, pay a lot of teachers, provide a lot of audio-visual aids. One million dollars could be spent in a school district in numerous ways that would have an immediate and measurable effect on the quality of education. Forced busing of school children to schools distant from their homes is not one of those ways.

STATEMENT OF HON. JOHN W. DAVIS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. Chairman, I am glad to have the opportunity to testify before this distinguished Committee on the important matter of busing and its attendant issues.

One might say that I and those whom I represent are fortunate because there exists little actual busing to achieve a racial balance in the Seventh District of Georgia. One might think that, due to this circumstance, I would not have particularly strong feelings, either one way or the other, on the issue at hand. However, to the extent that we are all part of one nation, and to the extent that something which affects the people of New York or Alaska or California also affects the people of the Seventh District of Georgia, I am vitally interested in busing and its ramifications. Indeed, I am deeply concerned over what I regard to be the callous indifference exhibited by many public officials toward our nation's children and their educational opportunities, safety, comfort and happiness.

I know that many of my colleagues will be testifying at these hearings, and I feel certain that all the important considerations in this issue, on both sides of the question, will be brought forth. For this reason, I would like to state at the outset that I am opposed to forced school busing to achieve a racial balance, and that I am committed to the concept of neighborhood schools. Beyond that, I would like to dwell for just a moment on what I consider to be the central point with regard to busing—its moral implications—with the knowledge that many of the more specific points will be referred to by my colleagues who share my point of view on this matter.

In this current debate over busing, much has been made of the Southern example of the past which saw Negro children bussed past neighborhood schools in order to pereptuate a segregated school system. Although I consider this practice a dead issue, inasmuch as it has been both rectified and discredited, I do want to point out that it is sheer folly to use this bygone practice of excess on one side as a justification for similar excesses on the other side. A great many persons ignore this logic, but I am hard put to understand why a practice that was considered unjust, unsafe and counterproductive ten or twenty years ago should be considered in a more favorable light today. I am, of course, well aware of the motivations which have been attributed to those who instituted past busing programs, and I am also aware that such programs undoubtedly contributed to lesser educational oportunities for our black citizens in certain areas of the country. Today's busing proponents, in my mind, are guilty of the same double standard as those of the past.

They advocate busing certain children out of neighborhood schools and into other schools to artificially change the racial composition of those institutions. While they speak of improving educational opportunities for certain children, the overall result of their actions is negative—both to those who are bused to better schools and certainly to those who are transported to poorer schools. In the former instance, the result is negative in terms of wasted time spent in busing, disruption of the child's friendships, anxiety of his parents, etc. In the latter instance, the result is obvious—a lowered educational opportunity.

To my mind, assuring the very finest educational opportunities for all our children, irrespective of any consideration except that they represent our nation's greatest resource, is paramount. Arguments have been advanced that minority schools suffer from inadequate funds, qualified teacher shortages and additional handicaps which could be overcome by busing. Undoubtedly, many of these handicaps do exist in poorer schools, and most assuredly they must be alleviated. But, I do not think that the solution is to uproot children from their environs.

Rather, the solution I would advocate is one which would improve the quality of education at all schools, irrespective of their racial composition. I do not believe that any useful purpose can be served by redistributing our children, some of them to better schools and some of them to poorer schools. I am not one who holds that to bring up the disadvantaged, we must bring everyone else down. This runs counter to our heritage and our system of values, and to my way of thinking represents a great step sideways or even backwards. If we are to achieve any progress at all on this score, then I believe that we must aim for a higher quality of education for all citizens, not just for one particular group.

On another facet of this problem, proponents of busing have argued that without busing many school districts and many residential areas will continue to be segregated. Their aim here seems to be to promote integration more than to promote education, sometimes even at the expense of education. I would say to those persons that to achieve this end, they should seek alternate means, introduce legislation if they wish, and argue their case on the basis of that goal alone. To involve our nation's children in a fantastically expensive scheme which is considered, and I believe rightly so, physically dangerous, demoralizing and counter-productive, in order to achieve a hidden goal is more than folly. It is dishonest.

I have not yet specifically mentioned the concept of neighborhood schools, and I would like to briefly touch upon that before I close. Neighborhood schools, like neighborhood grocery stores or neighborhood recreation centers, are a way of life for the American people. They are a binding force for a particular group of people, who because of accident or design, find themselves living in close proximity to one another. They promote a sense of participation in one's community, both from the standpoint of children, who must be educated to civic responsibilities, and from the standpoint of parents. In many communities, I know that the schools are the focal points for many related activities. They are often, especially in small towns and rural areas, cultural and social centers as well as centers for learning. To deprive children and parents of this feeling of participation in their communities is a serious matter. And, indeed, if one adheres to the philosophy that communities are merely extensions of the family, then tampering with the individual's participation in his larger family is certainly not to be taken lightly.

Mr. Chairman, I sincerely hope that the Congress will soon have the opportunity to make its full sentiment on the issue of busing known to the people of the United States, and I consider these hearings to be both beneficial and necessary to the public whom we serve. Thank you.

RESOLUTION BY KATY INDEPENDENT SCHOOL DISTRICT, KATY, TEX.

Whereas, We the undersigned members of the Board of Education of the Katy Independent School District recognize locally controlled free public schools are a basic American instituion, and;

Whereas, the proposed changes in public school financing may weaken that control, and;

Whereas, the forced consolidation of independent school districts is being effected in precedent-setting rulings which sweep away the concept of political boundaries in order to achieve a numercial "balance" for integration purposes, and;

Whereas, there is strong and persistent pressure from special interest groups for the elimination of neighborhood schools, and;

Whereas, the forced bussing of children to distant schools to weaken local control of public education is being proposed, and;

Whreas, the foregoing will result in chaos in the educational system and our chidlren will suffer educational deprivation;

Now, therefore, Be it resolved that the Board of Trustees of the Katy Independent School District unanimously adopts the following resolutions in order to protect the integrity of said school district:

1. Resolved, that the local school districts retain the control of education and be accountable for its progress and enrichment.

2. Resolved, that the ad valorem tax system be maintained as one of the primary sources of school financing in the State of Texas.

3. Resolved, that the State of Texas adopt a true market value property tax formula to replace the economic index.

4. Resolved, that local funds be used for capital outlays and educational improvements, and the State of Texas provide the funds necessary for the operation of an optimal instructional program, not excluding peripheral costs.

5. Resolved, that the proposed constitutional amendment, providing that children may not be forced to attend a particular school because of race, color or creed, be endorsed.

6. Be it further resolved, that the Board of Trustees of the Katy Independent School District supports the autonomy and integrity of the local school district in the operation of the schools and that it is opposed to the consloidation of independent school districts without the consent of the qualified voters of each school district involved."

STATEMENT OF WILLIAM D. LYNCH, CHAIRMAN, AUSTIN ANTI-BUSING LEAGUE

Mr. Chairman, I am William D. Lynch, Chaiman of the Austin Anti-Busing League, Austin, Texas. I am a practicing attorney and believe that I understand the Constitutional principles upon which our Country is founded, although I do not profess to be overly knowledgeable in Constitutional law.

In many articles and statements I see confusion over Constitutional principles. I would urge this Honorable Committee to use caution as they review pronouncements submitted to them in determining the difference between the language of the Constitution and judicial interpretation thereof which may be misleading.

Article VI of the our Constitution states: "This Constitution, and the Laws of the United States which shall be made in pursuance thereof; . . . shall be the supreme law of the land;". Nowhere therein are court decisions mentioned or Judicial utterances declared to be a part of the supreme law of the land. The Judicial system is designed to interpret the law of the land and determine what laws are properly promulgated under the Constitutional requirements; The Judiciary is not authorized to make "Law."

The recent civil rights litigation area has severely clouded this Constitutional principle. Now we have Judges mistakenly relegating to themselves the legislative function. This is fundamentally wrong, irrespective of the aim sought to be adjudicated.

I would like to direct your attention to the fact that *Brown* v. *Board of Education*, the famous 1954 civil rights case, was to prevent a school board from forcibly busing black children past white schools to reach all black schools, i.e. busing to achieve segregation. Now, however, after several recent cases, of which your Committee is aware, white children and black children are forcibly being bused past neighborhood schools in order to achieve integration. Some Judges have avoided the Congressional prohibition against forced busing by the assertion that the busing that they require is to wipe out the vestiges of the former dual schools.

I defy any member of this Committee and all the learned witnesses that have appeared before this Committee to find a single mention of the word integration or even segregation in the Constitution. My statement is not designed as a racial argument but simply as fact. The Constitution does not require integration. The Amendments to the Constituion do not require integration. Only the Judges require integration.

It is because I favor effective integration that I oppose forced busing. For as sure as the object of integration is greater understanding and cooperation between races, just that certain is it that forced busing is an obstacle to the achievement of this goal. This is obvious to anyone.

Non-discrimination is the law of this land. Non-discrimination involves all of us. I do not now nor will I later support discriminatory practices. The Courts are now discriminating. When a Judge orders sixty (60%) percent of one racial component of an area to go to a school of another racial component that Judge has discriminated against those in the sixty (60%) percent who do not want to go and against those in the receiving area who do not want the forced association. It cannot be racial to say this because people in both races are being discriminated against.

I do not quarrel with the *Brown* v. *Board of Education* decision as the Court there properly ordered an end to discrimination. Under that order, so long as a child was not racially assigned to a school the school district was not violating the student's rights. The Court refused to permit separate schools to be operated.

What has happened to the non-discriminatory decision of *Brown I*? Austin, Texas, has not for years assigned students on the basis of their color or race. Now, however, under Court order black students are being assigned on the sole ground of race or color. Black students are forcibly bused throughout Austin, Texas, irrespective of the distance to schools. The greatest trauma in Austin was the closing of the black high school. What happened to *Brown I* when the more conveniently located black high school was closed and because of their color children were bused many miles into white areas. There were many who would not go. They dropped out of school or for a while attended an alternate school that was started within the black community. Was not that order and is it not still discrimination? Courts have ruled in the past that it is the act itself that is discriminatory, not necessarily the results of the act.

In view of the full circle following the *Brown I* decision, I believe it should be obvious that relief is needed. Certainly the "polls" being taken and the outcries of many organizations indicate that action is necessary. Let us then look to remedies.

As a Congressional Committee you should be concerned about the Congressional pronouncement—in the 1964 Civil Rights Act prohibiting "forced busing" being so obviously violated in the *Swann* decision. Your proviso in that act:

"provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the Court to insure compliance with Constitutional standards". 42 U.S.C.A. 2000 c–6(a).

This proviso has carried such little weight or persuasiveness in the Courts that it would seem logical to seek a stronger remedy.

Suggestions have been made concerning statutory limitations of Judicial jurisdiction. Several objections to that remedy appear to me. First, the Court would probably ignore the statute, saying that the statute is ruling upon issues covered by the Fourteenth Amendment. Second, a statute might require placing greater administration over schools in H.E.W., which hardly seems to be a remedy. And finally a statute would not eliminate the present Court decisions that are so strongly influencing our lives.

Let us then turn our attention to a Constitutional Amendment. This would transcend Judicial determination. A specifically worded amendment would not be in conflict with present Constitutional language and would not permit discrimination to be loosed again upon the community. An amendment would truly reflect the views and support of the Country by the time it became official. An Amendment would level the extremely strong and vicious club that has been held and is still being held over the heads of School Board members throughout this Country. No one single remedy gives solidarity of purpose and positiveness of commitment.

What language should be used? Many variations have been proposed. I do not believe myself capable of presenting language that will solve all problems or reduce all ills. Let me suggest we use the language of the Lent Amendment (H.J. Res. 620). Why? Simple!

The principle upon which the Lent Amendment is based has been approved by the Supreme Court in the *Brown I* decision. That was a widely acclaimed decision by our more learned members of the legal community and civil rights advocates. Therefore, what greater compliment could we make than inscribing this principle indelibly in our Constitution.

Please, let me say that I believe it to be a tragedy that our Constitution should be required to be amended for this purpose, since correct interpretation of the document would not require this amendment. However, judicial oligarchy has made this means necessary to return freedom to the individual. To remove from parents the control of their children is a cruel and unusual punishment for the crime of segregation which should now be barred by limitation.

How can it be any less tyrannical to forcibly transport a child from the parents' home, than it is to forcibly quarter a soldier within that home? If the latter is against the Constitution (as stated in the 3rd Amendment) so should be the former. If not, we are being both paradoxical and inconsistent.

Austin, Texas, has approached the subject of education for underprivileged children in an open and objective manner. To permit the pressures of *Swann* (which was the factor in eliminating the resolve of the local school board) to undermine traditional education for those who need it so badly and substitute substantial expense and loss of educational time in a so-called cultural enrichment program of the magnitude proposed in our area is a most cruel punishment to the parents of school children in Austin, Texas.

I therefore respectfully request that your Committee consider these remarks. In consideration of the feelings of the 19,000 people in Austin who signed petitions opposing "forced busing", in consideration of the effect of this social reorganization upon our Country and of the discrimination imposed upon the children involved, I request that you favorably vote out of Committee H.J. Res. 620 at your earliest possible moment.

STATEMENT OF CHARLES R. HOLLOMAN, ESQ., VICE CHAIRMAN, THE FREE ASSEMBLY OF EAST AND SOUTH RALEIGH, N.C.

I am writing to you as Vice Chairman of the Free Assembly of East and South Raleigh, an organization of approximately 5,000 citizens of Raleigh, North Carolina. Our membership is composed of approximately twelve percent blacks and eighty-eight percent whites.

We wish to register with your Committee our opposition to any legislation, including proposed Constitutional amendments, designed to prohibit or discourage busing school children to achieve racial balance in public schools. In Raleigh school administrative unit, we had the situation such legislation and such amendments are designed to produce. This situation was corrected by order of the Federal District Court for the Eastern District of North Carolina last summer. It was an unfair and insufferable situation which was imposed by the Raleigh City Board of Education which adopted and maintained policies deliberately and ingeniously designed to effect an overall policy of racial containment in Raleigh. Under that policy, the City Board of Education sought to confine racial integration in the schools to those white residential areas adjacent to the black (once legally segregated) residential areas of the city.

The public and low-income housing placement policy of the city government was deliberately designed to perpetuate and reinforce this policy. All such housing was built in East and South Raleigh. It had long been the policy to bus blacks from the few residential pockets of blacks that were outside the area into the black major residential area schools. Some outlying white residential areas were provided school bus service to reach white segregated schools in North Raleigh. When our organization petitioned the City School Board to give meaning to its hitherto phoney "freedom of choice for blacks" school admissions policy by providing school bus service for those blacks desiring to attend schools in white residential areas beyond walking distance of the major black residential district, the response was to withdraw school bus transportation from all children except white children who were being bused from an outlying area of upper class families attending the white segregated schools in North and West Raleigh. Following this, our organization went to the Federal Court for relief and obtained it. The Parent-Teachers Association of the large junior high school in our area (East Raleigh) helped to finance the suit and has been publicly denounced by a leading member of the City Board of Education for doing so.

Prior to the Federal Court's granting the requested relief, there was a growing exodus of white residents from this area. There was, in effect, a "skirmish line" existing between the black and white residential districts in East and Southeast Raleigh. The East Raleigh formerly white schools accepted integration without serious opposition or disorder and both blacks and whites worked together to keep our schools operating effectively and happily. Yet, each year the proportion of blacks in the formerly white schools of East Raleigh increased by large increments. This was the result of (1) the city government building Federal assisted low-income housing projects along the "skirmish line," and (2) the flight of whites who had been residents of areas adjacent to these housing projects. Blacks, being pushed out of South Raleigh's ghetto by the City's urban renewal activities, purchased the homes of the whites who fled. It became obvious that the process would continue and that the "skirmish line" would continue to sweep gradually across East Raleigh and around to the northward until Raleigh, within a few years, would become, in effect, a reservation in which blacks would be more or less confined as more and more white fled to the surrounding countryside, pushing off the farms the black farmers who would necessarily seek a place to live in the black reservation.

Busing school children for racial balance was absolutely the only way to stem the impending abolition of Raleigh as a viable city. We insisted as publicly as possible and on all appropriate occasions upon the principle that all of the people of Raleigh *must share the burdens and the benefits of school integration*—and there are both burdens and benefits.

Segregation has never been fair—and never will be fair—to citizens of a disfavored minority race. "Freedom of choice" is a phoney phrase unless busing is provided. To tell a black child two miles deep in the South Raleigh ghetto that he has "freedom of choice" to attend one of the superior schools in the white residential area of North or West Raleigh is like telling a deaf-mute that he has freedom of speech or telling an illiterate that he has freedom of the press. It is sheer mockery. It is cruel and it is the kind of "freedom" that frustrates individual hopes and expectations and that can kill our city and anyone else's city. If I am correctly informed by the press articles, the legislation and the proposed amendments in general have the object not only of stopping the busing of white children from white residential areas into schools located in predominantly black residential areas but it also would seek to prevent black children leaving the black residential areas to attend the superior schools in white residential areas by eliminating the necessary public school transportation upon which almost all of them must depend to exercise such a freedom of choice. It means that there would be no school integration of more than a token character in any schools except those in rural areas and those near "the skirmish line" in deteriorating city school administrative units. This is a hell of a note to insert in American history books.

Another phoney phrase being flung out as a substitute for straight thinking and sound reasoning is the phrase "quality education." Our colleges and universities have been preaching that bit of propaganda vigorously since the 1954 decision in *Brown* v. *Board*. Its most conspicuous feature has been the adoption of entrance examinations loaded with cultural bias; and the "acceptable" scores have been set and reset with the professed aim of maintaining "quality education" but to the real effect of keeping out blacks and any others who come from poor home backgrounds. It is a well known fact that educated parents, if they are worth their salt, will do as much or more to educate their children than will the teachers at school. Consequently, colleges and universiites, under the slogan of "quality education" are systematically seeking to limit their enrollments to young people who are substantially already educated. In other words, they boast of *offering* quality education *when they are, in fact, taking no educational risks.*

Public schools must never strive for a kind of "quality education" that must be attained by avoiding or rejecting those pupils who come from poor home backgrounds and whose uneducated condition and low motivation make them "educational risks" to a degree that teachers must use all the material and intellectual resources at their command to motivate and to teach them. Segregation and semi-segregation is the public school way of doing the same thing that the colleges and universities are doing with entrance examinations. They are not really talking about providing "quality education". They are really talking about segregating pupils into "quality" schools by minimizing attendance in some schools of those pupils who come from underprivileged backgrounds.

There has always been a widespread assumption that children from poor and ignorant families are inherently of low mental ability—that they cannot learn. Pioneers in public education have always had to wrestle with those who have held this assumption. If these pioneers had given in to this traditional underestimate of human intelligence, we would still have a phenomenal illiteracy rate and a vast population of serfs and slaves. I recall seeing once some morons who spoke Chinese—a langage few university students in America have the courage to try to master. Those morons were Chinese but they were not born speaking Chinese. They learned it. I decided right then that human intelligence is greatly underrated. Quality education worthy of the phrase will take the conquest of ignorance as its goal rather than the easy task of sailing off with a select crew of those who are already well advanced in education and who, if the teacher is less than able, will further advance their own education.

We have learned from our experience with school integration in the formerly white schools of East Raleigh that black pupils make remarkably rapid progress once they have transferred to an integrated school situation. We know that they learn from the students who come from better home backgrounds as well as from their teachers. And, of course, children from good home backgrounds learn from children who come from poorer home backgrounds. At first there is undoubtedly a decline in achievement in the average but this is reversed after a few months unless the school continues to receive massive infusions of the underprivileged students and reaches a condition of imbalance so great that the style of student life and participation is set by the underprivileged. As that point is approached, the flight of whites will accelerate until the school becomes virtually re-segregated. That has happened to one of the schools in East Raleigh that was formerly all white. It would have happened in others had not the Federal Court ordered racial balancing of the schools throughout the Raleigh City School Administrative Unit—and such an order required busing students. Wherever the "quality of education" has been reduced in any school by forced busing in Raleigh, the "quality of education" in another school has been improved—which means that equal educational opportunity has been extended to a much greater degree to all of the children of Raleigh. There are no longer "quality" schools for the privileged and inferior schools for the underprivileged. Under the program of racially balanced (or at least semi-balanced) schools, we know the quality of education throughout the city will have to be the concern of all citizens and that there will not be the situation where a third or half of the schools will be neglected and slighted in order that the others may be specially beneñtted. The burdens and the benefits of integration are more nearly equally shared by all neighborhoods, rather than being imposed on the blacks and their nearest white neighbors.

Blacks and whites in East, South and West Raleigh are learning to work together politically and otherwise for the good interest of Raleigh as a viable city. We have noted that all of the representation from this county in the State legislature comes from the northwest quadrant. So does all of the membership on the City Board of Education. So does all but one of the members of the City Council. We managed by selective voting in the last election to get some much needed representation on the City Board of Education and on the City Council. Our political efforts will continue. But, as we see it, the proposed legislation and the proposed amendments are intended not only to foreclose relief by way of the Federal Courts and other Federal apparatus but also to preclude our forcing busing by local political action. If the Federal establishment is going to abandon a course that it has pursued so vigorously and with great cost and some bloodshed, it might at least consider leaving out language that would frustrate political action on the local level to force busing for racial balance in school integration. To do otherwise would be to intensify the caste system and further polarize our people.

PONTIAC AREA WOMEN'S COALITION,
Pontiac, Mich., March 10, 1972.

Attached is a letter to the House Judiciary Subcommittee in Washington, D.C., supporting the Pontiac Urban Coalition's stand on busing and backing Mr. Dave Doherty's presentation in Washington.

The Pontiac Area Women's Coalition has been in existance for a little over a year and has organizational support from: AAUW, Pontiac, AAUW, Birmingham, League of Women Voters, Birmingham-Bloomfield, Junior League of Birmingham, Pontiac Urban League, YWCA, Pontiac, Birmingham Unitarian Church, Negro Business and Professional Women, Pontiac, and North Oakland Child Guidance Center.

The purpose of the Coalition is to develop a forum for an exchange of ideas, to set up study groups for political guidance and to function as a non-partisan political pressure group.

BEVERLY REEVES,
PECOLA BURNS,
Cochairmen.

MARCH 10, 1972.

HOUSE JUDICIARY SUBCOMMITTEE,
U.S. Congress,
Washington, D.C.

GENTLEMEN: The Pontiac Area Women's Coalition, being highly cognizant of the need for quality education for all, wholly endorses the resolution by the Board of Governors of the Pontiac Urban Coalition on behalf of the transportation of students for the achievement of integrated education.

The Pontiac Area Women's Coalition also joins with the Pontiac Urban Coalition in voicing strong opposition to any constitutional amendment that will endanger the progress which has already been made in the Civil Rights area.

The Pontiac Area Women's Coalition agrees with the Pontiac Urban Coalition in the belief that transporting students for the achievement of quality education will promote successful participation in our pluralistic society by *all* people.

PONTIAC AREA WOMEN'S COALITION.

League of Women Voters of Tulsa,
Tulsa, Okla., March 13, 1972.

Hon. Emanuel Celler,
Chairman, Judiciary Committee,
House of Representatives, Washington, D.C.

Dear Mr. Celler: The League of Women Voters of Tulsa wishes to present this letter in opposition to House Joint Resolution 620 and other school segregation bills. We understand that Subcommittee No. 5 will conclude its hearing on March 15, 1972. If the hearings are extended, we would appreciate the opportunity to furnish the Committee with statistics and other data to document Tulsa's situation. Will you please notify us if such testimony would in fact be used?

The majority white population of America may indeed at this time support legislation to keep children attending segregated neighborhood schools. Majority rule is one of the basic foundations of democratic government. But majority rule in the United States may not be used to deprive any person of constitutionally guaranteed rights.

This supremacy of specific individual rights over majority rights has been safeguarded by American statesmen since Thomas Jefferson said, "Though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; . . . the minority possess their equal rights, which equal law must protect, and to violate would be oppression." We ask that members of the Judiciary Committee take courage in joining statesmen such as Jefferson, to reject H.J. Res. 620, for this bill will deny minority citizens "equal law," by maintaining racial isolation in schools and neighborhoods.

In Tulsa, "there is no institution for, nor is the physical design of the city conducive to, significant interaction between the races . . . (The LWV of Tulsa's report to Mondale Senate Select Committee on Equal Educational Opportunity). In fact, local authorities have seemed inclined to have the Justice Department solve Tulsa's desegregation problem, rather than to provide leadership for a local solution. Senator Henry Bellmon of Oklahoma has provided us with national leadership in rejecting school segregation legislation in the Senate and in supporting the 1954 *Brown* decision in his public statements. Senator Fred R. Harris also voted against segregation amendments. We need further support from the House of Representatives for affirmative actions to erase dual school systems.

The school integration situation in Tulsa has improved over the last few years—in response primarily to outside influences. However, at the high school level, only two out of nine schools have any significant integration (that is above 5% and less than 40% black); at the junior high level, eleven out of nineteen (this degree of integration resulted because of the closing of the only black junior high in the city and involves forced busing for blacks only) at the elementary level, only nine out of 79 are really integrated with 10 predominantly black and 55 all-white schools.

If statutory or constitutional restrictions are imposed, even this degree of integration will probably not endure.

Community leadership did enable Tulsa to pass a Public accommodations ordinance. However, official actions in regard to school segregation have been limited to a narrow, legalistic interpretation of the 1954 *Brown* decision and outright rejection of 1971 *Swann* decision. Community support for democratic behavior does exist—500 Tulsans, including many prominent civil leaders, signed an advertisement (copy attached) supporting community-wide school integration. The Chamber of Commerce developed a set of criteria for school integration. Media opinion in the last year shows acceptance of more positive action.

Community-wide school integration in Tulsa would deal with the interrelationships of exclusionary zoning, new school construction, and the perpetuation of residential segregation. Excessive support of the neighborhood school concept has been used to maintain segregated housing. In Tulsa, inner city and ghetto schools are under-enrolled; suburban schools are over-crowded. With positive leadership, Tulsans could combine this enrollment problem with its segregation problem, using methods such as magnet schools, educational parks, etc. to offer educational superiority in integrated settings.

Passage of H.J. Res. 620 would tacitly encourage further school board actions which support housing segregation. We ask you to give us the leadership and the laws which would enable us to solve our interrelated problems in positive ways.

Sincerely yours,

Mrs. B. J. Hamilton,
President.
Mrs. Terrence Luce,
Cochairman, Human Resources Committee.

Enclosures.

[From the Tulsa Daily World, Oct. 17, 1971]

500 SIGN PETITION HERE ON SCHOOL INTEGRATION

More than 500 Tulsans, local business institutions and civic and church organizations have petitioned the Board of Education to adopt a city-wide plan of school integration.

The petition appears in today's Tulsa Sunday World as a full-page advertisement.

The petition says "We believe the Board of Education must adopt an equitable and clear-cut policy on school integration and develop a long-range plan for integrated quality education—fair to all—representing a geographic and economic cross-section of School District No. 1."

The petition was drawn up and circulated last week by the Committee for Integrated Quality Education.

Mrs. Estelle Hamilton, president of the Tulsa League of Women Voters, who is a committee member, said the group was formed several days ago to express the views of Tulsans from all walks of life. "We were not going after numbers," Mrs. Hamilton said.

"We wanted the school board to know that they have a great deal of support for choosing an elementary integration plan for the whole community. People are more aware that Tulsa's growth and progress are related to the quality of our school system. Any school system involved in a court suit for many years drains the energies, time and talents of its professional school staff. We have an excellent staff, and we should allow them to devote full attention to increasing quality education in Tulsa."

Among businesses and institutions signing the petition were Fourth National Bank, National Bank of Tulsa, The Williams Companies, Oral Roberts University, and Pan American World Airways.

Other signers include state Sens. James Inhofe, Peyton Breckinridge, and Joe McGraw; Dr. Paschal Twyman, president of the University of Tulsa; former Mayor James M. Hewgley Jr.; County Commissioner Robert Newhouse; City Auditor Francis Campbell; Bill Miller, president of the Tulsa Labor Council, and Dr. Warren Hultgren, pastor of the First Baptist Church.

Mrs. Hamilton said the response to the appeal was so "strong" that there was insufficient space in the advertisement to list all of the petitioners.

On Saturday, Mrs. Hamilton released an additional list of names that will be added to the petition for presentation to the Board of Education at its Wednesday meeting. They are:

The Rev. William K. Wiseman, senior pastor of the First Presbyterian Church; Rev. Curt Junker, rector of the Trinity Episcopal Church; Bill Watts, president of the Central Labor Council and Mr. and Mrs. Raymond F. Kravis.

Also Mr. and Mrs. Gerald M. Bauer; Mrs. R. R. Myall; Mr. and Mrs. Gordon Coulter; Mr. and Mrs. Jeff Nix; Mr. and Mrs. James Goodwin; Mr. and Mrs. Donald H. Newman; Mrs. Earl Plumlee; Mr. and Mrs. Edward B. Butlery and Will Brewer.

And Mrs. P. P. Manion, Mr. and Mrs. S. Carl Mark, Mr. and Mrs. Don McCorkell, Mrs. Fannie Webster, Dr. and Mrs. Harold E. Goldman, and Dr. and Mrs. Jed Goldberg, Mr. and Mrs. Donald C. Falletti and J. Michael Bartlett.

Also Mrs. Tennessee Perryman, Mrs. Vera Jean Gilton, E. J. Jenkins, Mr. and Mrs. Walter Bazille, Marilyn McDaniel, William Cronin and Mr. and Mrs. Mack Polk.

[From the Oklahoma Eagle, Oct. 21, 1971]

PETITION

Another ray of light was shed abroad in the Tulsa community Sunday when a full page ad was carried in the daily paper under the imprint of 500 prominent citizens calling for an equitable school integration plan. The ad did not criticize the Tulsa School Board but merely suggested to the board that they

(The full-page ad referred to is at page 1269, opposite.)

WE CAN

There is more public support for city-wide school integration than you think.

We believe the Board of Education must adopt an equitable and clear-cut **policy** on school integration and develop a long-range **plan** for integrated quality education — fair to all — representing a geographic and economic cross-section of School District No. 1.

We believe our school problem is a community problem.

Mr Alfred Aaronson
Legislative Program, AAUW
Mrs Kenneth Ackley
Dr and Mrs Daniel J Alexander
Father Daniel R Allen
Janet Allen
Drs Harry and Sarah Allison
Alpha Kappa Alpha Sorority
Alpha Phi Alpha Fraternity
Alpha Chi Omega Chapter
Mr and Mrs Roger Ames
Mr and Mrs W C Anderson
Mr Irving Antell
Irma Jean Anthony
J D Arble
Grady Asberry
Mr and Mrs John S Athens
Ruth and J Leighton Avery
Mrs Paul Bachman
Julia Baker
Mr and Mrs Waldo Bales
Mr and Mrs Reginald Barnes
Wannetta Barrett
Mr and Mrs John Beck
Mr and Mrs David Beckwith
Mrs Betsy Beakly
Mr and Mrs Pat Cremin
Sisters of Benedict
Dorothy Berry
Mr and Mrs Troy Bishop
Black Women United
Mr LeRoy Blackstock
Blue Bird Club
Mrs B K Boone Sr
Mr and Mrs Bill Bowles
Mr and Mrs John Bradley
Dr and Mrs Donald Brawner
Sen and Mrs Peyton Breckinridge
Mr and Mrs Sam Brenner
Mr and Mrs Robert Bresnahan
Mrs C E Brookfield Jr
Dr and Mrs Duane Brothers
Mrs Bervie Brown
Bobby G Brown
Dr and Mrs Charles Brown
Mr and Mrs Duncan Brown
Dr and Mrs Paul Brown
Patricia Burton
Elsie S Burnes
Mrs Mary A Burns
Mr and Mrs Al Bush
Mr and Mrs Ernest E Byrd
Cal Johnson Real Estate
Mr and Mrs R W Caldwell Jr
Mr and Mrs Francis Campbell
Mr and Mrs Jack Campbell
Mr George Carnes
Madeline Caruthers
Mrs Sandra Caswell
Mr and Mrs Nathaniel Cheney
Rev and Mrs T Oscar Chappelle
Mr and Mrs Earl Cherry
Dr Charles Christopher
Church of the Advent
United Presbyterian USA
Church in Society Committee
of John Knox Presbyterian Church
Mr Major Clark
Naomi Clayton
Mr and Mrs George Clulow
Coalition for Quality Education
Mrs Carolyn Cocking
The League of Women Voters
of Tulsa
Yla Eason
Mr Henry Meyer III
The Rev William R Wiseman
pastor of First Presbyterian
Church
Rev Curt Junker
rector of Trinity Episcopal Church
Mr Bill Watts
Mr and Mrs Raymond F Kravis
Mr and Mrs Gerald M Bauer

Mr Ross Cockrell
Mr and Mrs Wilbert Collins
Community of the Living Christ
Mr and Mrs Robert Copeland
Steve Cowen
Mr and Mrs Hoyt E Crawford
Mrs Howard Crosby
Mr and Mrs Danny Cruz
Mrs Olean Curry
Rev Donald Dahlman
Rev Richard W Daniels
Dr and Mrs James F Deal
Debonnair Club
Mrs Mary Dees
Delta Sigma Theta Sorority
Mr and Mrs Joseph Dempsey
Mrs Prake Dickey
Harold Dickson
Harold Dixon
Mr and Mrs Cal Dixson
Mr and Mrs William Doenges
B J Dogans
Mr and Mrs Robert Donnelly
Rev J Paul Donovan
Rev Robert Dotson
Faye Dougherty
Judge and Mrs Hayden Downie
Mr and Mrs John Duffy
Mrs Wilma Dumas
Felis Dunesant
Mrs Argelia Durom
Mrs Karl Dyk
Joanne Eason
Doris Edson
Mr and Mrs Emmett Edwards
Mrs J F Edwards
Mary C Edwards
Mr and Mrs John W Elder Jr
Mr Lloyd Elkins
Mrs John H Eloso
Mr William H Elson Jr
Mrs Jim Evans
John Eyberg
Dr and Mrs Charles Farah
Mr and Mrs Raymond G Feldman
Mr and Mrs C Fetch
Mr and Mrs Ray Fillmore
Mr and Mrs Rod Finlayson
Mr and Mrs Ren D Floyd
Mr and Mrs Charles Folger
Mr and Mrs Claude Forte
Fourth National Bank
Mr and Mrs G Douglas Fox
Mr and Mrs Irving Frank
Mr and Mrs Orville Frazier
Seborie Fue
Marion Gainey
Josephine Galloway
Mr George Galloway
Rev and Mrs Richard Galusha
Dr and Mrs John G Gammie
Norman Gares
Mr and Mrs Owen Gartrell
Mr T Austin Gavin
Gay Lyn Real Estate
Mr and Mrs John W Gernhardt
Mrs Adell Gibbs
Goals for Tulsa
Social Concerns Task Force
Mr Charles Goodall
Mr and Mrs E L Goodwin Jr
Mr and Mrs E L Goodwin Sr
Mrs Jerald M Schuman
Mrs R R Myall
Mr and Mrs Gordon Coulter
Mr and Mrs Jeff Nix
Mr and Mrs James Goodwin
Mr and Mrs Donald H Newman
Mrs Earl Plumlee
Mr and Mrs Edward B Butler
Mr Will Brewer
Mr Brasel Thomas
Mrs P P Manion
Mr and Mrs S Carl Mark

Gerald J Goodwin
Mrs Paul Graber
Mr and Mrs John C Graham
Mr and Mrs Charles B Grant
Mr Ken Greenwood
Mr and Mrs Morgan Greenwood
Rev and Mrs Scott Griffin
Dr H Russell Grow
Mr E H Guboer
Mr and Mrs Calvin Hagar
Dr and Mrs E L Hairston
Judge and Mrs Amos Hall
Mr and Mrs J Charles Halpine
Mr Ray Halton Jr
Mr and Mrs B J Hamilton
Professor Donald J Harrington
Lance Harrison
Harvard Hills Neighborhood Association
Mr and Mrs A C Hawkins
Mrs O E Hazley
Mr and Mrs Allan Heath
Mrs Lawrence Healey
Mrs A B Henderson
Dr and Mrs Robert Henderson
Mr and Mrs T L Hendris
Mr James M Hewgley Jr
Mrs Ben H Hill
Dr and Mrs Harold Hill
Mr and Mrs Dale Hogg
Mrs H H Holloway
Mr Burt B Holmes
Mrs J B Hopkins
Rubye Hornbostel
Mr and Mrs Donald Horner
Dr and Mrs Leon Horowitz
Mr and Mrs Millard L House
Mr and Mrs Philip Howell
Mr and Mrs Jesse D Hudson
Mr and Mrs Dick Hughes
Mary Hughes
Dr Warren Hultgren
Pastor First Baptist Church
Mr and Mrs Russell Hunt
Sen and Mrs James Inhofe
Ann Jackman
Norman Jackson
Mr and Mrs Robert Jackson
Mr and Mrs Curt Jacobs
Dr and Mrs David Jenkins
Mr and Mrs Elmer E Jenkins
Dennis Jennings
R L Jennings
Dr and Mrs Manly Johnson
Mayrene Johnson
J Homer Johnson
Mrs Richard Johnson
Mrs Gertrude Jones
Mr James R Jones
Mrs Jacquelyn Jones
Mr and Mrs Robert L Jones
Mr and Mrs Waldo Jones Sr
Mr and Mrs Waldo Jones Jr
Rev Leroy Jordan
Pastor First Baptist of North Tulsa
Mr and Mrs Bill Joyce
Rabbi Arthur D Kahn
Mrs Hari Kalandas
Mrs W L Kelley
Dr and Mrs Berry Kinney
KLM Royal Dutch Airlines
Community Relations Commission
Mr John B Jarboe
Mr and Mrs Don McCorkell
Mrs Fannie Webster
Dr and Mrs Harold E Goldman
Dr and Mrs Jed Goldberg
Mr and Mrs Donald C Fallotti
Mr J Michael Bartlett
Mrs Tennessee Perryman
Mrs Vera Joan Gilton
Mr E J Jenkins
Mr and Mrs Walter Bazille
Marilynn McDaniel
Mr William Cronin

Rev John Knotts
Mr and Mrs Max Knotts
Mr and Mrs Miroslav Kolpas
Mrs A E Kowalski
Mr and Mrs Galand Kramer
Mary Ann Kramer
Mr George Kravis
Mr and Mrs George Krumme
Mr and Mrs Oscar Ladd
Mr and Mrs Excell Lafayette
Mr Gary LaGere
Mr and Mrs James Lambert
Rev David Landholt
Mr and Mrs Fred Lane
Mr and Mrs Robert Larson
Dr Charles Lewis
Mr and Mrs Louis Levy
Dr and Mrs Charles Lindahl
Mr and Mrs Richard Lieser
Mrs Mable Little
Rev and Mrs Fred Lipp
Hope Unitarian Church
Mr E H Lockwood
Mr and Mrs Robert Lockwood Jr
Mr and Mrs Thomas Looby
Tom Loffinette
Mr and Mrs Benedict Lubell
Dr and Mrs Terry Luce
Mr Oliver Lusk
Mr and Mrs Robert Lyon
Mrs T M McCullough
Mr and Mrs Murray McCune
Dr and Mrs Joseph McDonald
Mrs Lucille McElroy
Mr and Mrs Robert McGowen
Sen and Mrs Joe McGraw
McIntosh Humphrey Real Estate
Mr Bernard I McIntyre
Mr and Mrs Don Major
Pat Malloy
Mr and Mrs Earl Mansker
Mrs Waldo Marsland
Marie Marks
Allie Beth Martin
Mr and Mrs Doug Martin
Mr and Mrs Robert Mathews
Mr and Mrs Burch Mayo
Mayors Youth Council
Hudson R Meadors Jr
Betty Jo Miller
Bill Miller
Mr and Mrs Allan Mitchell
Mr and Mrs James Monday
Conway Moore
Mr and Mrs Bernard Moroney
Robert Moser
Mr and Mrs Frank Moskowitz
Mr and Mrs Kenneth Muncy
Mr and Mrs David Murray
Mr and Mrs L C Murray
Frank W Murphy Jr
Ruth Ann Murphy
National Bank of Tulsa
National Conference
of Christians and Jews Inc
NCCJ Youth Committee
Mrs C B Neeley
Mr and Mrs John Nehring
Neighbor for Neighbor
Mrs Lester Neinheis
Mr Bill Wilson
Mr and Mrs Mack Polk
Dorothy Usdin
Mr Quentin Brown
Mrs Vera Nell Boatman
Mr and Mrs Dan C McDougall
Mr and Mrs Gene C Reid
Rev and Mrs George Y Stuart
Jim and Thelma Thompson
Mr and Mrs Jim T Weldron
Mr and Mrs Kenneth Hurd
Mrs Primus Wade
Dr and Mrs Adolf Williams
Mr and Mrs Joe Fulton

Dr and Mrs Franklin Nelson
Rev and Mrs Donald Newby
Mr Robert Newhouse
Mr and Mrs Howard Newman
Mr and Mrs L H Nicholas
Mike Nobles
Mr and Mrs Charles Norman
North Branch of YWCA
Mr and Mrs Rick Oglesby
Mr and Mrs Charles Oliphant
Father Lee O Neal
Oral Roberts University
Mr Scott E Orbison
Otis Williams Real Estate
Mr and Mrs Gene Pace
Mr and Mrs Ted Padeh
Mrs Martha Paige
Dr Cecilia Palmer
Mrs Velma Palmer
Pan American World Airways
Mrs Billy Parker
Mr and Mrs Gerald Parker
Mr Joe Parker
The Parish Council of Christ
the King Catholic Church
Mrs Taft Peevy
Mrs Bettye Peevy
Julius Pegues
Patricia Perry
Mr and Mrs John Pickle
Rev Andrew Phillips
Mr and Mrs Donald Polleson
Mr and Mrs Troy Price
Ramsey Real Estate
Religion and Action Department
of All Souls Unitarian Church
Clara Mae Rand
Rep Roger Randle
Mrs Shirley Ratliff
Joan Ray
Dr L A Reed
Carol Reeder
Dr and Mrs Earl Reeves
Mr and Mrs Troy Rice
Mr and Mrs Carmel Richardson
William S Richey
Mr and Mrs Harold Ridenhour
Rep and Mrs M David Riggs
Rosa Riley
Dr John Riley
Rev and Mrs B S Roberts
Rev Oral Roberts
Mr and Mrs C L Robinson
Mrs Carolyn Rogers
John Rogers
Mr and Mrs Robert Rogers
Rabbi Norbert Rosenthal
Mr and Mrs Mark Ross
Mr J A Rouce
Rosanna Bell Real Estate
Royal House, Inc
Mrs Zenobia Ruby
Jack Santee
Kathleen Scrutor
Rev Harry Sebren
Session of
John Knox Presbyterian Church
Rosemary Sheehan
Mr and Mrs Otto Senger III
Mrs Venerice Sims
Father Sheehan, Pastor Church
of the Resurrection
Mr and Mrs James S Bates
Mr and Mrs Neil O Brien
Rev and Mrs Harold Lamont
Mrs S O McCree
Masina Burns
Yvonne Hutton
Evelyn Crooms
Mrs Janet Crooms
Mr and Mrs Willie Ingram Jr
Mr and Mrs David Johnson Jr
Rachel Simmons

Mr and Mrs Dick Sloss
Mr and Mrs Eugene Smith
Mr and Mrs James Smith
Mr Robert A Smith
Mrs Ruric Smith
Ohren Smulian
Mr and Mrs James Snider
Rev and Mrs John Spearman
Mr and Mrs Winford Spears
Mr Edward C Squire
Dr Thomas Staley
Kathrine Stearns
Ada May Stetton
Mr and Mrs George Stevens
Mrs Robert Stotts
Dr Edwin Strong
Dr and Mrs Paul Strong
Mr and Mrs Tom Swatek
Mr and Mrs Eugene Swearingen
Mrs Janelle Swearingen
Mr and Mrs Wayne Swearingen
Mrs Bernice Taylor
Mr Marion M Taylor
Dr Thad Taylor
Mr and Mrs Brasel Thomas
Mr and Mrs Marcus Tower
Mr and Mrs James Tranary Jr
Tulsa Chapter, Links Inc
Tulsa City Federation
of Colored Women's Clubs, Inc
Tulsa Economic Opportunity Task Force
Tulsa Urban League
Mr and Mrs Ernest Troupe
Mrs Lucille Turner
Dr Paschal Twyman
Mr and Mrs Maynard Ungerman
Mr and Mrs Paul Van Dusen
Mr and Mrs R V Vanderburg
Mr and Mrs Joe Vaughan
Rev and Mrs Ray Walther
M C Ward
Mrs Judy Warren
Mrs Robert Warren
Mr and Mrs J Greg Watson
Mr and Mrs James M Welch
Dr and Mrs Bruce Wenger
Mrs Gerald Westby
Mr and Mrs Jim Wheeler
Mr and Mrs Ben Whitehill
Thelma Whitlow
Verna Whitney
Mr Ed Wienecke
Mr and Mrs James Wiley
Mr and Mrs Gerald Wilhite
Mr and Mrs James Wilkerson
Mr and Mrs Adolph Williams
Joe and Thelma Williams
Mr and Mrs Joseph H Williams
The Williams Companies
Mr and Mrs T D Williamson Jr
Rev and Mrs John Wolf
Pat Woodrum
Mr and Mrs Clyde Wyant
Mrs Selma Yager
Dr and Mrs Hays Yandell
Willy Yarbrough
John and Pat Young
Young Democrats
Executive Committee
of Metropolitan YWCA Board
Zoan Shrine
Jimmy J Foster, Potentate
Mr Xenophon Jones
Mr Carroll Thompson
Marnie Cope
Betty Williams
Mr Eugene Usdin
Coalition for Progress
Mr and Mrs C L Ragsdale
Mr and Mrs Osborn Hawkins
Mr and Mrs Wilbert Reed
Mr and Mrs William Grundy
Mr and Mrs Glen Burkhalter

PREPARED BY EDWARD SPILMAN & ASSOCIATES, ADVERTISING AND PUBLIC RELATIONS

* * * believe that "the Board of Education must adopt an equitable and clear-cut policy on school integration and develop a long range plan for integrated quality education—fair to all—representing a geographic and economic cross section of School District No. 1."

The ad was another example of interracial cooperation in a matter vital to the interest of the total city. The petition cannot be lightly dismissed for it represents some of the most powerful interests in the city. Precisely the kind of power necessary to cause a revision of the present Board policy.

We have the League of Women Voters to thank for taking the initiative in drawing up and circulating the petition and securing the support of the signees. They are to be commended not only for recognizing the need for the action but in having the courage to follow through on the project.

The ad suggests that there are people in Tulsa who recognize the vital relationship between good community relations and a business climate that can entice new industry.

The ad also recognizes the fact that the tolerance of the black community is no longer unlimited. That there are acts perpetuated upon it from the outside which are unacceptable. Hopefully out of this climate can come the kind of understanding and action necessary to reopen Carver and prevent the need for future "freedom schools."

COLORADO LABOR COUNCIL, AFL–CIO,
Denver, Colo., March 21, 1972.

Hon. JAMES D. MCKEVITT,
Congressman from Colorado,
Cannon Building, Washington, D.C.

DEAR MIKE: We are not aware that a telegram was forwarded from anyone in our office or on our staff opposing busing as a tool for school desegregation.

There happens to be no other way to desegregate schools than some mode of transportation and since we have integrated rural and small community schools in Colorado over the years by busing and since even Denver has bused as many as 8,000 students a day when areas of population had no schools but other sections of the city had empty schools and since we don't have high speed transit, what other way can schools be balanced in enrollment whether for school educational opportunity or other purpose?

The AFL–CIO has a position on integration of schools that favors busing whenever natural redrafting of housing patterns and school boundaries will not otherwise provide educational opportunities that are equal. Our own convention of 1969 adopted a position that supported integrated schools in Colorado and we have not changed it.

Please do us two favors: (1) send us a copy of the wire that supposedly emanated from this Council so that we can find its authenticity and then advise you of it; and (2) please advise Chairman Celler that until bicycles are substituted for buses, we think buses are safer than bicycles to integrate schools.

Sincerely,

HERRICK S. ROTH, *President.*

STATEMENT OF THOMAS HOBART, PRESIDENT, NEW YORK STATE TEACHERS ASSOCIATION

On behalf of the more than 100,000 members of the New York State Teachers Association, may I express my appreciation for the opportunity to submit testimony regarding amendment of the Constitution to place restrictions on the assignment of school children to integrate the schools of the Nation.

POSITION

The New York State Teachers Association is firmly opposed to any constitutional amendment which will reduce the ability of local school districts, the states, or the courts to bring about school integration:

Since 1967 our legislative body has endorsed a statement of policy calling upon "every member of the teaching profession to do everything within his power to eliminate racial imbalance in every school in New York State . . ." It has further affirmed its belief in achievement of equal educational opportunity through quality integrated education, multiracial experiences, integrated curriculum and fair housing practices.

In 1969 and 1970 that same body adopted an additional resolution supporting repeal of Chapter 342 of the Laws of 1969 (New York State's "anti-busing" legislation, since declared unconstitutional by the courts) and urging its affiliated associations to continue active support of voluntary busing programs.

In the spring of 1971, the Association's Advisory Committee on Instruction and Equal Educational Opportunity developed a policy statement on multiethnic and cross-cultural education which was released with the approval of the NYSTA Board of Directors. That position is based on the premise that "wherever possible, children from different ethnic and economic groups should be educated together . . . "

Taken together, these actions constitute a clear indication of the will of the 100,000-member New York State Teachers Association. Quality integrated education is a means of achieving equal educational opportunity. Busing, where necessary, is a valid means of achieving that goal.

RATIONALE

The academic benefits which may accrue to children in desegregated classrooms, particularly to children from lower socio-economic backgrounds who are placed in classrooms with a majority of children from higher socio-economic backgrounds, have been well documented.

But perhaps even more significant than academic gains are the potential social benefits which accrue to both minority and majority students through quality integrated education. Integrated schools offer a vehicle for young people of all backgrounds to learn to live together with mutual respect, to learn to participate fully in a multiracial multiethnic society.

It has been suggested that the white child may stand to benefit most in this regard: ". . . we believe," said the U. S. Commission on Civil Rights in its 1967 report, *Racial Isolation in the Public Schools*, "that white children are deprived of something of value when they grow up in isolation from children of other races, when their self-esteem and assurance may rest in part upon false notions of racial superiority . . ."

This sentiment was echoed by the Association's Advisory Committee on Instruction and Equal Educational Opportunity last spring:

"While most Black, Indian, Oriental, and Puerto Rican children in the State are exposed to Caucasians through school and community experiences, many white children are not fortunate enough to have this multiracial experience. Their isolation prevents them from learning how to communicate with others different from themselves and may handicap them throughout their lives."

Any constitutional amendment which would deny white children access to multiracial, multiethnic education deprives them of their right to equal educational opportunity as surely as it denies minority group children.

HISTORY OF BUSING IN NEW YORK STATE

Busing of school children has long been an accepted practice in New York State. In fact, state funds have been used to bus school children since 1925, when the Cole-Rice Equalization Act was passed, providing state reimbursement of 50 percent of school district costs for pupil transportation. This statute significantly extended educational opportunities to rural children in New York State who previously were unable to acquire a high school education because their families could not afford the cost of weekly in-town boarding.

Since 1962, the state has assumed 90 percent of each district's approved transportation expense. The amount of state aid for the basic pupil transportation program totalled more than $134 million in 1970–71.

At present, some two million school children, or more than half the school children in New York State outside of New York City, are bused to school daily. Given this kind of public acceptance of, and state support for, busing as a means to transport children from home to classroom, it seems apparent that the current outcry of white parents against busing is based either on racial prejudice (which can scarcely be expected to decrease as long as black and white children are educated separately) or on concern that their children will be assigned to inferior schools. Certainly no one is going to advocate that students be transferred to inferior schools: rather, school integration should be capitalized upon as a stimulus to reexamine and improve the quality of education.

It must be noted that increasing numbers of minority group parents are also raising their voices in opposition to school busing. Some of these are parents who are tired of one-way busing programs that place the burden of integration on their children. Others fear a decrease in opportunities for community control with the abandonment of the neighborhood school. Again, positive integration plans will make provision for shared transportation responsibilities, for involvement of all groups of parents in school planning and decision making, and for an educational program that provides each student with the chance to develop an appreciation for both his own and others' cultural backgrounds.

RACIAL IMBALANCE IN NEW YORK STATE

The fact is that racial and ethnic segregation in New York State is a growing problem. Between 1968 and 1970, the percentage of black students attending majority black schools in the state rose from 67.7 percent to 71.2 percent. During the same period, the percentage of Spanish-surnamed Americans in similarly segregated schools increased from 82.4 percent to 83.4 percent. And the percentage of all minorities—including Blacks, Spanish-surnamed Americans, Indians and Orientals attending schools with more than 50 percent minority enrollment has increased from 72.1 percent in 1968 to 74.7 percent in 1970.

A recent analysis of the extent of racial imbalance in New York State schools revealed the following:[1]

Six hundred and twenty-one of the state's 760 school districts are white isolated. That is, their student bodies include less than 4 percent minority students. A total of 1,582,900 students (45.2 percent of the state's public school children) attend schools in districts which are 98.6 percent or more white.

One district in the state is minority isolated, with 96.3 percent of its enrollment coming from minority groups.

Eighty-four districts (only 6.7 percent of the state's public school children) attend school in desegregated districts.

The remaining 54 districts have sufficient numbers of white and minority students to achieve racial balance but are not desegregated. A total of 1,683,000 children—nearly half the total of New York State's public school children—attend school in these districts.

In sum, 92.4 percent of the white children and 96.0 percent of the minority children in the public schools in our state are in racially isolated or segregated districts. While housing patterns, especially those which concentrate minority group students in the cities and white students in rural and suburban areas, will prohibit integrated schooling for all children in the foreseeable future, it is evident that all means possible—including busing and the ability to restructure zones and school district lines—must be left available to local school districts if they are to reverse the trend of segregated schooling with its potential for increasing polarization of our society.

HISTORY OF DESEGREGATION IN NEW YORK STATE

Racial imbalance has been increasing in New York State despite repeated efforts of the New York State Regents and the Commissioner of Education to the contrary. As far back as 1960, the Regents issued a policy statement calling for the elimination of racially isolated schools. In June 1963, then Commissioner James E. Allen, Jr. requested that all districts submit assessments of racial imbalance and plans for correcting it. In 1968, and again in 1969, the Regents issued strong policy statements supporting school integration.

As indicated earlier, 84 New York State school districts may now be considered racially balanced. More than 20 districts have tried to achieve better racial balance by instituting comprehensive programs. Some of these, beginning with Greenburgh, in 1951–52, have desegregated voluntarily: In 1964–65, White Plains became the first city district in the nation known to voluntarily abolish *de facto* segregation in elementary school buildings by closing a core-area school and by setting minimum and maximum enrollment quotas for all remaining school buildings in the district. Just last fall, Rochester, the state's third largest city, began a major reorganization of its public schools which will result in complete desegregation by 1974. (This city has also pioneered in an urban-suburban busing program which has received national attention.)

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[1] *Report of the New York State Commission on the Quality, Cost and Financing of Elementary and Secondary Education.* Manly Fleischann, Chairan. Chapter 4. New York: 1972.

Other New York State districts have desegregated involuntarily: In 1963–64, New Rochelle integrated its schools as a result of a federal court order. Six additional districts followed suit in the school years 1966–67 and 1967–68 as a result of appeals brought to the Commissioner under Section 310 of the New York State Education Law. (That statute provides that any person conceiving himself aggrieved in consequence of any action by local school authorities may appeal directly to the Commissioner.)

The movement toward school desegregation in New York State was slowed in 1969 with the passage of Chapter 342 of the Laws of 1969 which prohibited appointed school boards and the Commissioner from assigning students and altering school boundaries or attendance zones for the purpose of reducing racial imbalance.

This statute, popularly known as New York's "anti-busing" law, was struck down by the Supreme Court in May of 1971.[2] (It is interesting to note that even during this period, the Legislature continued at least token financial support to school integration by continuing appropriations of $3 million yearly in school integration funds. This Racial Imbalance Fund was finally eliminated for the fiscal year beginning April 1, 1971 as part of an overall state belt-tightening effort.)

Since last spring, when Chapter 342 was declared unconstitutional, movement toward racial imbalance has been resumed by the State Education Department, with the Commissioner requiring implementation of a racial balance plan for Utica and requesting Buffalo, the state's second largest city, to prepare a new plan.

IMPLICATIONS FOR THE FUTURE

In the above testimony, we have stated our commitment to quality integrated education and set forth some of our state's experience in trying to attain that goal. It may be seen that, in spite of the best efforts of the State Education Department and interested citizens, the problem of racial imbalance is not only substantial, but growing, and may be expected to continue to grow as long as existing housing and population migration patterns continue. If quality integrated educaton is ever to be attained to a significant degree—or even if racial imbalance is to be restrained to its present level—all possible means of achieving desegregation, including busing, must be utilized.

Specifically, what kinds of integration programs in New York State would the constitutional amendments endanger? As noted above, the Utica schools have been directed to integrate. The Utica Teachers Association has been outspoken in its support for a desegregated public school system, knowing full well that busing must be one component.

Likewise, the Buffalo Teachers Federation has been supportive of desegregation of that city's schools. In 1970–71 minority group students comprised at least 98 percent of the student population of 18 city schools in Buffalo. It appears that no less than a major reorganization, including busing, can effect desegregation in that district.

As mentioned earlier, a reorganization plan now underway in Rochester will not be complete until 1974. Again, the Rochester Teachers Association is strongly supportive of this plan, which is dependent on rezoning and school busing.

Not only is it important for Rochester to be allowed to complete its voluntary integration, but also it is important that federal funds be available to districts like Rochester. Last year Rochester received $250,000 in state racial imbalance funds to conduct a districtwide teacher inservice program to help prepare teachers for reorganization. Human relations teams are being trained in each school building and funding is being sought for a program to provide human relations training for additional members of the school community and community at large. If school desegregation is to result in true integration, it is of the utmost importance that such worthwhile programs receive support.

It is also highly desirable that the door be left open to urban-suburban busing programs. While the number of districts participating in such programs in this state been has been small to date, they may be expected to increase as white parents come to realize the shortcomings of racially isolated schools and as the movement toward statewide financing of schools gains momentum.

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[2] The New York State Teachers Association and its largest local affiliate, the Buffalo Teachers Federation, were among the organizations which filed an *amicus curiae* brief requesting the courts to declare Chapter 342 unconstitutional.

The Rochester Urban-Suburban Transfer Plan, for example, has exhibited a pattern of modest but steady growth since its inception in 1965. At that time, 24 inner-city children were transported from Rochester to one suburban district. By 1970, 616 inner-city children were being bused to five suburban districts. Not only has this program been well accepted in the suburban districts, but at least one suburb has been able to point to an opening up of housing to black families as a result of the increased interchange between Blacks and whites in the schools.

CONCLUSION

The New York State Teachers Association is not so naive as to believe that school desegregation is the answer to all of society's problems. It is not. But school desegregation, given appropriate support at all levels, can result in quality integrated education. And quality integrated education is a primary means of providing each child in this Nation with the equal opportunity he has been promised and of preparing him to function in a multiracial, multiethnic world in which whites are a minority.

Even if we did not believe that busing is one of the alternatives which educators must have available to help provide equality of educational opportunity, we would still strongly oppose the proposed constitutional amendments on busing. If adopted, these proposals would produce untold litigation and confusion in American education. We further believe that any policy statement on the assignment of pupils to schools is at best an administrative or legislative issue and that it has no place in the Constitution of the United States of America. We urge this Committee to do everything in its power to see that the Constitution is not lessened by unnecessary and unwise amendment.

LEWISVILLE, N.C., *February 28, 1972.*

Mr. WILMER D. MIZELL,
Congressman,
Washington, D.C.

DEAR CONGRESSMAN MIZELL: In reference to your letter of February 17, 1972, regarding my statement about cross-busing, I submit the following to you.

First cross-busing is a dangerous and time consuming operation that is being used in the name of education. It is a costly operation, which if curtailed, could finance a lot of curriculum improvements. I cannot see where there is anything educational about children having to get on a cold school bus at 6:50 A.M., which is before daylight, and riding around for approximately one hour and sometimes an hour and ten minutes to get to school to start the days educational process.

I will try to enumerate some things I feel I can substantiate in regards to cross-busing.

(1) Children have ridden buses in 10 degree weather recently without a heater on the bus.

(2) One child's hair was set on fire by another child, which could be from a lack of discipline or from boredom due to the long bus rides.

(3) Another child was burned on the hand with a cigar due to the same cause.

(4) Busing has been very demoralizing to all students that I have had contact with.

(5) There has been a lot of minor accidents and eventually it could lead to fatalities in a major accident.

It is my feeling that a lot of your fellow Congressmen are unaware of our predominately rural structure here in Forsyth County and are therefore unaware of the long distances required to achieve a superficial numerical ratio of blacks and whites in our schools.

I am enclosing two recent articles from our local paper which may be of interest and value to you.

One article is about two little girls that were struck by an auto while going to catch a school bus, true the accident was unavoidable but yet so unnecessary.

The other is an enlightening article about one of North Carolina's largest transportation systems. You will note that we are transporting 32,000 of our approximately 48,000 students and a greater portion are being cross-bused, not just being transported to school.

It is my hope that this will help you and other good men like you to come to the right decision regarding cross-busing of our greatest natural resource and that is our children.

I want to thank you for all your help in regards to this and other problems of our area and if it can be arranged I would consider it a privilege to come to Washington to testify as outlined in your letter.

With kindest personal regards, I am

Sincerely,

JOHN A. REDDING,
President, Lewisville-Clemmons Branch of Forsyth Citizens Against Busing.

Enclosures.

CAR HITS 2 GIRLS ON WAY TO BUS

Two girls who attend Bolton Elementary School were injured yesterday morning when they were struck by a car in Atwood Acres.

Robin Leipert, 9, of 2875 Mann Court was admitted to Forsyth Memorial Hospital. Her condition was listed as fair last night by a hospital spokesman.

Debra Horlick, whose age and address were not immediately available, was treated at the hospital and released.

The accident happened shortly after 7:30 a.m. on private property on Mann Court.

School officials said they were told the girls were hit by a car driven by a woman who was blinded by sunlight. The girls were going to meet a school bus, an official said.

The accident was investigated by State Highway Patrolman R. D. Woods, but his report was not available late last night.

[From the Twin City Sentinel, Winston-Salem, Feb. 15, 1972]

32,000 PASSENGERS A DAY—"A LOT OF THINGS HAVE TO GO RIGHT FOR EVERYBODY TO GET TO SCHOOL ON TIME"

(By Stephen Hoar)

What is Forsyth County's largest mass transit operation?

Safe Bus Co., Inc.? Greyhound? Or perhaps Piedmont Airlines?

The answer is none of these. It is the city-county school system, which gives about 32,000 youngsters a ride to school five mornings a week and gets them home in the afternoon.

During the last two years, students living inside city limits became eligible for bus rides and federal courts required extensive cross-county busing for racial balance in public schools. As a result, the busing operation has mushroomed—from 216 buses traveling about 7,000 miles a day in 1969–70 to 365 buses traveling 18,000 miles a day this year.

The man in charge is lanky, soft-spoken P. Morris Hastings, who has been the director of transportation ever since city and county schools consolidated in 1963. His mission control center is the school bus garage on Carver Road. There by telephone and two-way radio, he directs what is really two sets of countywide busing operations.

One of these is basically the old neighborhood system that was used until two years ago. About 150 student drivers pick up students along routes that average about 20 miles in length (one way) and take them to schools in the neighborhood. They start about 7 a.m. and are scheduled to reach their schools by 8.

The other operation is the cross-county system, which takes busloads of students from outlying areas to schools in town and brings city students back to outlying areas. These routes start at six "staging areas" around the county, where the buses are parked at night.

The route of John Withers is typical. He picks up his bus about 6:15 a.m. at a staging area on Lansing Drive northeast of town and drives to Clemmons in the southwest corner of the county. There, around 7 a.m., he begins picking up students in fifth and sixth and ninth and tenth grades.

By 8 he delivers the busload—about 55 youngsters—to Brown Intermediate and Kennedy Junior High in central Winston-Salem. He then picks up elementary students from that neighborhood and takes them to school in Clemmons, arriving by 9 o'clock. He returns his bus to the staging area, and that afternoon he makes his rounds in reverse order.

Withers, like about 150 drivers of cross-county routes, is an adult. Because these routes run as long as 130 miles (round trip) and include at least two busloads of youngsters, student drivers cannot handle them without missing part of the school day. However, about 50 student drivers are doing that this year.

It is these cross-county routes that take buses onto Interstate 40 and other four-lane highways, where speed limits range from 45 to 65 miles per hour. Under state law, school buses can go only 35.

Hastings says it is debatable whether the four-lane highways are more dangerous for the buses than two-lane roads, since divided highways have fewer intersections. So far this year there have been no major accidents, and the safety record is significantly better than last year's.

At any rate, says the transportation director, "We had no choice about using the interstates. On some routes it would have taken an additional hour to use back streets."

With present routes, the average length of a bus trip is about 40 minutes, one way. The longest trips sometimes take more than an hour.

At the school bus garage, Hastings and his assistant, Jim Wheeler, coordinate all of the following:

Substitute drivers.
Four radio-equipped buses to pick up students stranded by bus breakdowns.
Roving mechanics to make on-the-spot repairs
A wrecker.
Service and maintenance operations.

Two-way radio links the garage on Carver Road with the six staging areas, and drivers report absences and breakdowns by telephone.

On a typical day six to eight drivers will need substitutes (although during the recent wave of flu as many as 16 were out at once). To fill their slots, Hastings and Wheeler consult a huge roster on the wall.

Every day there are several breakdowns, five or so, to which they must dispatch mechanics, spare buses and, sometimes, the wrecker. One recent afternoon, for example, Bus 134 called the garage at 1:31 from Northwest Junior High School. Its gears were locked.

A mechanic was there within 10 minutes, but he couldn't get the bus going. The students shifted to a spare bus parked at Northwest.

At 3:31, Bus 316 reported from Philo Junior High that its battery was dead. Ten minutes later a service truck arrived and got it started.

About the same time, Bus 363 phoned from Jefferson Junior High . . . transmission trouble. Another bus picked up those students 12 minutes later.

Minor bus repairs can often be made at the scene of a breakdown or in one of the staging areas. Big jobs, like replacing a clutch or even overhauling an engine, are done at the school bus garage, where as many as six buses are under repair at once. Last night the city-county school board approved construction contracts for five more repair stalls that should be finished by June 1.

Hastings has 13 full-time mechanics, nine other maintenance employees (every bus needs gas and an inspection every school day), three safety supervisors, three bookkeepers and a dispatcher. The garage on Carver Road operates from 6 a.m. to 6 p.m.

But on days when bad weather threatens, Hastings and other transportation personnel all over the county are on the roads by 4 a.m. testing the driving conditions. They may travel a total of 300 miles before deciding whether to close the schools. If bad driving weather starts developing during a school day, they use Civil Defense radio to alert all schools and get bus students home early.

On rainy days several buses usually get stuck, often in the driveways of their drivers. And when early-morning temperatures dip as low as five degrees, the older buses are balky about starting.

Although the school system ordered 47 new buses this year (for about $7,000 apiece), it still uses more than 80 "retired" buses borrowed from the State of North Carolina. They are 12 to 15 years old; having been taken out of service in other school systems at about age 11.

"Most of the kids who ride these buses weren't even born when the buses started hauling," says Jim Wheeler.

But aged equipment is not as big a problem as the high turnover among adult drivers. Since the beginning of the school year, about 60 per cent have been replaced.

Adult drivers are paid $1.88 per hour for 20 to 30 hours per week, plus $4 a day for auto transportation to the areas where their buses are parked. Ideally, says Hastings, the school system should set up full-time jobs in which bus-driving was combined with school maintenance and other duties.

The Charlotte schools hire such full-time personnel. But here, because the long-term need for cross-county busing is uncertain, bus driving must remain a part-time job, at least for the present.

Another problem is finding substitutes for the adult drivers, who are more likely to miss work than student drivers. Hastings has only 10 adult substitutes.

He adds, though, that some of the adults have good reasons for being absent. More than half the adult drivers are women, many with families.

Adult drivers seem to have more discipline problems on their buses than student drivers. Perhaps they are just quicker to complain to the transportation director, less likely to work such problems out through school principals.

Hastings admits that, but he has another theory, too. "A student driver has lived in a loud world," he says, "and noises don't bother him the way they would an adult."

Then why can't student drivers replace them? Hastings explains that adult drivers, unlike students, can pick up two busloads each morning. Without adult drivers (or student drivers with shortened class schedules), 20 more buses would be needed.

What about behavior in general on school buses this year? "I think discipline problems have been greater," say Wheeler, "but it's just because we're busing more students, and busing them farther."

Hastings agrees. "I'm not aware of any racial problems," he says.

Could cross-county busing be gradually curtailed by redesigning bus routes? Hastings and Wheeler doubt it.

True, the present routes were planned in just five weeks, after the new pupil assignment plan was ordered into effect in mid-summer. The two men worked 16 to 20 hours a day, seven days a week, to plot more than 700 routes with about 10,000 stops.

Throughout the school year, though, they have kept refining the routes. They think little further reduction in the time or distance of bus rides will be possible without a new pupil assignment plan.

The bill or busing came to $26.32 per child last year in the city-county system. This year it will go higher. The state of North Carolina will pay about $850,000 to operate and maintain the system's buses, and the school system will replace some of the 81 buses it owes the state.

The scope of school busing operations has more than doubled since Hastings became transportation director eight years ago. During 1963–64 about 150 buses carried some 14,000 students a total of 5,000 miles away.

But these days the sprawling transportation system still delivers its 32,000 passengers on time—or almost on time. On the average, about five buses are late to school for mechanical reasons and about 10 buses because of drivers' problems.

Hastings, reflecting on a hectic year, sums it up with a wry grin. "A lot of things have to go right," he says, "for everybody to get to school on time."

STATEMENT OF HON. SPEEDY O. LONG, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Mr. Chairman and members of the Committee, I appreciate this opportunity to express my conviction and the conviction of the overwhelming majority of the people of my State and my district that the Federal Government should not be permitted to dictate personal choices to individual citizens, especially as this federal dictation applies to the choice of schools to which an individual may send his children.

As you know, I have co-sponsored House Joint Resolution 163, which is now before this Committee, proposing an amendment to the Constitution which states our people's widespread disagreement with the use of forced busing of our children, initiated in large measure by either the federal executive or the federal judiciary, in defiance of good practices of educational administration. We are not opposed to the school bus *per se*, but to the legal force employed by the Federal Government, taking from us the right to make our own decisions and the right to obtain quality education for our children. I am personally no stranger to the school bus. I rode one a considerable distance as a boy to attend high school, and although it was at times uncomfortable I did not find it obnoxious to my personal liberties because at least I had the option of walking several miles in the other direction to attend another school in another Parish.

Today in all too many cases, however, the Federal Government has taken away even this limited option from our children and their parents.

Recent events have demonstrated the widespread, even nationwide, disapproval of forced busing as an instrument of federal social policy. The people are telling us in no uncertain terms that there are some things the people want to do for themselves, decisions they want to make for themselves, responsibilities they want to carry themselves. It cannot be lost on members of the Committee, nor of the House, and certainly not on me as a member of Congress and as a parent of school-age children, that the American people will brook no further interference with the lives and education of their children by federal edict.

Mr. Chairman, it has been suggested that a Constitutional amendment is too strong a measure to take for a problem simple legislation should correct, and in normal times and under normal conditions this would indeed be true. I have no desire to encumber our Constitution with unnecessary amendments, normally associated with simple statutes. However, laws passed by the Congress and signed by the President on this subject have been disregarded by the federal courts, in what I consider a usurpation of power by the Judiciary. We have no other alternative. So long as the federal courts assert the law-making function, as they have done for several years to the detriment of the powers of the Legislative Branch, regrettably and unfortunately it will be necessary for the Congress to legislate by Constitutional Amendment. A simple statute, in the case of forced school busing, will not suffice. Only Constitutional change will deter the federal Judiciary from corrupting the will of the people as it is verbalized in the Acts of the Congress.

I strongly urge the Committee to report an amendment to the Constitution which recognizes this public dissatisfaction and which will protect the citizen's right to freedom of choice in all areas of human discretion.

Thank you, Mr. Chairman.

THE AMERICAN JEWISH COMMITTEE,
Washington, D.C., March 21, 1972.

Congressman EMANUEL CELLER,
Rayburn House Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: On March 14, just two days before the President made his TV speech on busing, our Board of Governors, the top policy group of AJC adopted the enclosed statement. I though that you would want to know that we are clearly against any "constitutional, legislative, and executive prohibitions on the use of any busing in desegregation plans that are developed by local communities or directed by courts."

Sincerely,

HYMAN BOOKBINDER,
Washington Representative.

Busing—The Wrong Issue

Seldom in our nation's history has the need for a reasoned approach to our many social, political and economic problems been more clearly felt. Yet, we permit ourselves to be confused and divided by issues that are magnified and distorted out of all relation to reality.

The matter of school busing to achieve integration is one such issue. Our ability to separate out the real problems from the contrived may well prove a supreme test of our ability to maintain a democratic, pluralist society.

The AJC reasserts its unequivocal commitment to an integrated society and to quality public education for all. Integrated public schools offering equal educational opportunity are a necessary component of that society.

We are unalterably opposed to a constitutional amendment against busing or any other executive or legislative technique which would undermine this commitment.

We make no attempt to ignore or minimize the many practical difficulties involved in integrating schools. Many Americans are resisting court-ordered busing because they honestly feel it would jeopardize the quality of their children's education. Many are concerned for their children's safety. Some support has also developed among our racial and ethnic minorities for a retention of separate schools as part of their political and social drives. These real problems have been exploited by cynical politicians who fan hysteria and offer simplistic solutions to complicated social issues.

The current emotional debate over busing loses sight of some of the important facts; a) 18 million school children—40 per cent of the total school population—

are normally bused to and from school for reasons that have nothing to do with racial balance; b) in Mississippi, South Carolina and Alabama there has been a 2–3 per cent decrease in the number of students bused since 1967–1968 in the process of desegregating previously segregated schools. The issue, therefore, is not "massive" or "forced" busing, but rather whether there should be new constitutional, legislative and executive prohibitions on the use of any busing in desegregation plans that are developed by local communities or directed by courts.

The American Jewish Committee believes that there should be no such prohibitions, and that a variety of school integration approaches must be used to achieve the twin goals of integration and quality education.

We must not permit "the busing issue" to divert us from the complex of economic, social and political issues crying out for solution in order to improve the quality—and the equality—of life for all Americans.

Board of Governors, American Jewish Committee, Adopted March 14, 1972.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
Washington, D.C., March 29, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives, Washington, D.C.

DEAR REPRESENTATIVE CELLER: The American Association of University Women is opposed to the proposed amendments to the U.S. Constitution having as their purpose the prohibition of busing to achieve integration in the public schools, or racial balance therein.

The amendments are contrary to AAUW policy on busing adopted in 1964 and to the Association's deeply held commitments to quality education, equality of educational opportunity, a unified society, advancement of individual rights and to programs directed toward improved intergroup and interpersonal relations necessary in an ethnically pluralistic society.

Also, we believe that the subject of school busing—whatever its merits—is not appropriate for an amendment to the U.S. Constitution. This great document has proved enduring because it has been largely confined to fundamental rules and principles of government. It should not be tampered with now to provide for a statutory solution to a narrow and limited problem of the passing hour. In a few years, the busing issue will probably be all but forgotten.

But even more important we interpret the proposed amendment as intentionally or unintentionally rolling back efforts at public school integration in pursuance of the great goals of the Fourteenth Amendment. Hence, if passed, an anti-busing amendment would mark the first time the Constitution has been amended for the purpose of curtailing minority rights and of civil rights generally, scarcely an historic moment of which to be proud.

Furthermore, busing, although not everywhere a successful or even reasonable method, has proved in many communities to be an indispensable way of achieving quality education and equality of educational opportunity for all children. Research, such as the massive Coleman Report, indicates that an integrated environment may be the only answer to better achievement for all children and that compensatory programs in segregated schools are not the solution. Busing in certain instances is the only way to provide for an integrated environment. At the very least we should not lock out one method of reaching our goals; we should not reduce our options.

Finally, much of the impetus for an amendment is based on misunderstanding of the rulings of the U.S. Supreme Court. As examples, the Court has said it opposes unreasonable busing that might harm children or interfere with the education process and has stated that all schools in a district need not have the same racial balance. Further clarification can be worked out without resorting to the drastic method of a Constitutional amendment.

We urge the defeat of anti-busing amendments to the U.S. Constitution.

Sincerely,

JEAN ROSS
(Mrs.) Sherman Ross,
Legislative Program Chairman.
JANICE MAY,
Dr. Janice May,
Member, Legislative Program Committee.

STATEMENT OF HON. M. GENE SNYDER, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF KENTUCKY

Mr. Chairman, busing is too important an issue—too pressing a question—to be overlooked or to be dealt with by any but the most decisive means at our disposal. It is my hope that the Committee, therefore, will proceed with due speed in recommending this decisive course of action.

The policy of busing to achieve a "racial balance" represents the *reductio ad absurdam* of social engineering; the manifest lunacy of government compulsion of its own citizenry in an instance which runs directly contrary to the citizens' own common sense. Government, Mr. Chairman—under the malignant influence of totalitarian ideologues—has gone too far. When the majority of the people in a democratic country oppose a policy—and there is no doubt that a majority oppose this policy—it is extremely dangerous to carry on with that policy in the face of such opposition. It is dangerous for many reasons—the most important being that the people lose confidence in their government, at all levels, among all branches. And can you blame them? The people whom we represent are faced with the extremely distasteful prospect of seeing their children carted all over the countryside to satisfy the whims of some sociological hallucination.

Let us not be so stupid as to delude ourselves into thinking that this ludicrous policy represents any attempt at "Quality Education." This is now and always has been a false assumption and an extremely dangerous preoccupation. The orthodox ideology of busing resembles in many ways the worst traits of our century's totalitarianism, and is reminiscent of the "relocation" projects which, historically, we so abhor.

"Quality Education" cannot be achieved by such means. Busing to achieve a "racial balance" serves only to introduce friction to the school and to the community. It is destructive of education. The money used to bus could obviously be used to strive toward "quality education" through building improvements, teachers' salaries, equipment purchase, etc.

Mr. Chairman, where I come from, in the 4th District of Kentucky, a great portion of the black people I talk to—or who contact my office about this—don't like it any better than anyone else. Hardly anyone wants his children bused just to fulfill some bureaucratic or high-handed social scheme.

There are many other arguments, of course: arguments based on the Constitution, on the 1964 Civil Rights Act, on common sense, on judicial precedent, and so forth. Some of these are set forth in the following testimony by Mrs. Jean Ruffra and Mrs. Joyce Spond, of "SAVE OUR COMMUNITY SCHOOLS, INC." of Louisville, Kentucky. I submit this testimony at this time and urge the Committee's diligent attention to it.

(The above mentioned document follows:)

SAVE OUR COMMUNITY SCHOOLS, INC.,
Louisville, Ky., February 1972.

Save Our Community Schools, Inc., an organization formed by and for parents and taxpayers of Kentucky are opopsed to forced busing of children for any reason and request that you consider our views in your Committee hearings on H. J. Res. 620.

The Constitution of the United States was written for the protection of all citizens, without regard to race, creed, color and national origin. If it is unlawful for any State to deprive individuals of life, liberty or property, then likewise it is unlawful for any department such as the Health, Education, and Welfare Department of the United States Government to threaten to withhold our own tax money from our public school system, solely because we choose to believe that the Civil Rights Act of 1964, Section 401.B—means exactly what it says, that a child shall not be placed in a school solely on the basis of his color. Assigning a child to a school in order to achieve a mathematical ratio of color is just as wrong as assigning a child to a school in order to segregate a particular race.

How can we be obtaining the "protection" of law for a citizen when a State is ordered to take from him a right which the Federal Courts have themselves declared to be a Constitutional right, namely the right not to have his school assignment determined on the basis of his race? The Constitution provision for "equal protection of the laws" recently required that every one be given this right and now does this same Constitution provision require that this right be taken away?

Forced busing of children beyond their neighborhood school is un-democratic! According to a recent poll, 76% of the American people are opposed to forced busing. Opposition has come from every race represented in America, yet the courts continue to order forced busing in public school systems all over our country. Democracy means that the majority rules. Does 76% not constitute a majority? We find it very difficult to teach our children that the American Government is, "for the people, by the people and of the people", when many of our elected officials do not choose to follow the will of the people. Are we to believe that "all men are created equal" except those who can afford private schools? Is the freedom of choice available only to the affluent citizen? It would appear that the recent court rulings were made without regard to the will of the majority. Must the majority submit to the will of the minority, especially when this minority which condones forced busiag, does not choose to follow their own laws, in that many of their children attend private schools in order to escape forced busing?

The cost of forced busing has already bankrupt many public school systems throughout the United States. Many that are not as yet bankrupt have been forced to eliminate textbooks and many other necessities to maintain the huge cost of unnecessary forced busing. The money being spent on forced busing could and should be used to give a better educational opportunity to every American child. These monies could be used to up-grade the education of the socially and financially deprived children by providing educational opportunities that would be applicable to their special needs.

By instituting forced busing, our Federal Courts are bankrupting public school systems all over these United States and deteriorating the quality of education available to every American child.

It is the duty of all American taxpayers to help support public education and most of us do this willingly, but with this duty we want to assume part of the responsibility in determining that this money is spent wisely. Since the majority of American people are opposed to forced busing and do not believe that it is a wise expenditure, our elected officials should take appropriate steps to assure us that in the future our tax money will not be wasted.

You are now in a position to give to the American people the assurance for which they have been asking—that educational appropriations of tax money be used for education, and that no child be required to attend a school solely on the basis of his color. We urge you to do everything possible to see that this Lent Constitutional Amendment is adopted.

Sincerely,

JOYCE SPOND, *President.*
JEAN RUFFRA, *Secretary.*

In the foregoing testimony, Mr. Chairman, the passage of H.J. Res. 620—a constitutional amendment to bar busing solely to achieve "racial balance"—is advocated. I agree with this and I continue to advocate passage of H.J. Res. 620 as the best and most positive means by which to settle this question.

It has been said that to pass a constitutional amendment to prohibit such busing is like "using a cannon to kill a mosquito." Mr. Chairman, this issue is not a "mosquito" to the people I represent, nor to me—though it bugs us very much. The courts are virtually unchallenged now when they issue their destructive *dicta*. It is up to us to make sure that this judicial lunacy ceases once and for all. And the surest way to this end is the decisive action contained in Congressman Lent's proposed amendment. Those who argue that the Constitution should not be changed for "light and transient reasons" are correct. This is *not* a light *or* transient reason. The courts have perverted the Constitution and the most effective way of bringing it right is the way which Congressman Lent and those of us who have signed the Discharge Petition have chosen. I would hope, Mr. Chairman and members of the Committee, that the Discharge Petition will not be needed—as do most of you. I would hope that you—this Committee—will report the proposed amendment out with a favorable recommendation.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, COMMITTEE ON FEDERAL LEGISLATION ON THE ANTI-BUSING OR PUPIL ASSIGNMENT AMENDMENT

There has now come before the House Judiciary Committee a proposal to amend the Constitution, apparently to prohibit busing for the sake of achieving integration or racial balance in schools. The proposed amendment, which we think is actually of broader application, has been set forth in H.J. Res. 620, which describes it as "an amendment to the Constitution of the United States relative to neighborhood schools". It reads as follows:

"SECTION 1. No public school student shall, because of his race, creed, or color be assigned to or required to attend a particular school.

"SEC. 2. Congress shall have the power to enforce this article by appropriate legislation."

We strongly oppose this amendment. In part we oppose it because we disagree with the social policy sought to be effectuated. In our view, the elimination of racial discrimination remains a paramount goal of national policy, not to be diluted. The proposed amendment would significantly impede progress toward that goal. In part we oppose this amendment because, even if one did accept the underlying policy, it is improper to amend our national Constitution to deal with pupil assignments and transfers. The proposed amendment does not address itself to such general issues as race relations, which are indeed of Constitutional dimension, but instead plucks out and condemns a particular remedy which has been used in abating the effects of segregation.

In addition, the draftsmen have either not thought through their problems or have sought covertly to undermine much of *Brown* v. *Board of Education*, 347 U.S. 483 (1954). They have prepared an amendment which would so impair the remedies available to Federal courts as to seriously impede the whole integration process which was set in motion by *Brown*. They have also proposed a Federal restraint on the local control of education which appears to go well beyond their own stated objectives.

For all these reasons, we oppose the proposed amendment and urge that it be defeated.

1. THE SUBJECT OF THE PROPOSED AMENDMENT IS TOO PARTICULAR TO BE INCLUDED IN THE CONSTITUTION

The Constitution of the United States establishes a structure of government and lays down the broad principles which underlie that structure and the relationship of government to the people. The Constitutional amendment process should meet the same standard and be used only where equally broad principles are concerned. It should not be utilized for the promulgation of mere codes of conduct, better left to statutory regulation. Since it is still "a constitution we are expounding,"[1] Congress should be very alert against any temptation to trivialize that Constitution by overly particular provisions better left to legislation.

Though an amendment might well be of Constitutional dimension if it dealt with the entire relationship between races or with the broad question of racial segregation in public education, the proposed amendment does not rise to the level of generality appropriate for inclusion in the Constitution.

The Federal courts have attempted to implement the mandate of *Brown* through a variety of remedies, from requiring local school boards to submit integration plans for judicial approval to injunctions against acts constituting covert segregation, to affirmative direction of specific steps, to be taken by local authorities, to deal with specific problems of school integration. Of these, busing is only one such remedy, though a potentially important one. It has received notoriety because the Supreme Court has permitted it to be used recently by a District Court to deal with problems in integrating a North Carolina school district. *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 29–31 (1971). Nevertheless, it remains only a particular remedy, which may be and has been used to deal with one facet of a fundamental issue, not with the fundamental issue itself. Unless the nation wishes to reverse *Brown*, or to modify the Fourteenth Amendment, the proper course is to deal with the issues raised by the *Charlotte-Mecklenburg* case in the courts and through legislation.

It is true that the constitutionality of such legislation, possibly including the so-called anti-busing bills and riders now before Congress, has been somewhat beclouded by the differences between the Justices of the Supreme Court in the voting age case, *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), and the unclear consequences of *Katzenback* v. *Morgan*, 384 U.S. 641 (1966), which in dictum indicated that Congress could expand the Equal Protection Clause by legislation but could not contract it. Nevertheless, the Supreme Court has not yet ruled that Federal legislation dealing with such problems is unconstitutional. Recent Supreme Court decisions have indicated that State legislation prohibiting affirmative action to remedy racial imbalance in public schools is vulnerable to attack under the Fourteenth Amendment.[2] Since to a significant extent Federal legislation might concern the use of Federal funds, rather than definition of the Equal Protection Clause, the issues may well be different. One cannot now say that Federal legislation would be unconstitutional or inadequate to deal with such problems as the issue of busing.

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[1] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819).

Even if Federal legislation were inadequate to deal with busing, however, resort to the Constitution should still not be had in order to pluck out a particular remedy. If the nation should now choose to circumscribe its commitment to integration of the schools—and we would strongly oppose such a decision—the underlying issues must be faced openly. The proposed amendment does not do so and it does not clearly solve any identifiable issue. It would, however, clutter the Constitution and interfere with the process of rational Constitutional decision which characterizes our judicial system at its best.

II. INTERPRETATION OF THE PROPOSED AMENDMENT AND RELATED DRAFTING PROBLEMS

It may be observed that the proposed amendment makes no reference to busing or neighborhood schools, but bars school assignments and attendance requirements intended to achieve a result involving race, creed or color. Conceivably, proponents of the amendment might therefore argue that it does no more than enshrine in particular language with respect to education the general import of the Fourteenth Amendment, that the Constitution must be "color-blind." If this were so, then the amendment would be redundant at best. It would add nothing to the Constitution except possibly confusion. In any event, such a reading would be implausible. While there has been a good deal of language in court opinions suggesting that the Constitution does indeed require pupil assignment to be made without regard to race,[3] it is now abundantly clear that courts are not only permitted but indeed required to act affirmatively to remedy past segregation, even to the extent of decrees prescribing pupil attendance, faculty assignment, etc., with an eye toward establishing a more equal racial balance.[4] Moreover, a number of State courts have since *Brown* upheld the power of responsible officials to act affirmatively in correcting racial imbalance, even where not necessarily resulting from *de jure* "State action" segregation of the type proscribed in *Brown*.[5] Such remedial measures obviously cannot be taken unless the factor of race can be considered as one of the factors governing such assignment.[6]

In addition, government actions in employment, housing, zoning, and school site selection have deprived many blacks of any choice as to where they lived and, it may be suggested that this has "required" that they "attend a particular school." This has been the effect of the "neighborhood school." It may be argued that a court might interpret the proposed amendment as merely affirming the Supreme Court's determination that such enforced segregation may be overcome by assignment of pupils to schools outside their neighborhood. We do not think that this would be the probable interpretation of the amendment. Rather, it would in all likelihood be interpreted in such a way as to absolve from constitutional infirmity the assignment of pupils to the schools closest to their homes. But if Congress is to be asked to make this far reaching judgment, it should be presented with language which fairly presents the issue, rather than words which are susceptible of different interpretations.

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[2] North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43 (1971) ; Lee v. Nyquist, 318 F. Supp. 710 (W.D.N.Y. 1970), affirmed without opinion, 402 U.S. 935 (1971). The North Carolina case is discussed in footnote 6, *infra*.

[3] E.g., in Alexander v. Holmes County Bd. of Educ., 396 U.S. 19, 21 (1969), the court characterized its aim as a "totally unitary school system for all eligible pupils without (1954), it spoke of the need to determine admission to public schools "on a nonracial regard to race or color," and in Brown v. Board of Educ. of Topeka, 349 U.S. 294, 298 (1954), it spoke of the need to determine admission to public schools "on a nonracial basis'. Cf. Briggs v. Elliott, 132 F. Supp. 776, 777 (E.D.S.C. 1955) ; "The Constitution . . . does not require integration. It merely forbids discrimination."

[4] E.g., United States v. Montgomery County Bd. of Educ., 395 U.S. 225 (1969) ; Green v. School Bd. of New Kent County, 391 U.S. 430 (1968) ; Singleton v. Jackson Munic. School Dist., 348 F. 2d 729, 730 (5th Cir. 1965) ; Kemp v. Beasley, 352 F. 2d 14, 21 (8th Cir. 1965) ; Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), aff'd sub nom. Smuch v. Hobson, 408 F. 2d 175 (D.C. Cir. 1969).

[5] E.g., Guida v. Board of Educ. of City of New Haven, 26 Conn. Sup. 121, 213 A. 2d 843 (1965) ; Jackson v. Pasadena City School Dist., 31 Cal. Rptr. 606, 382 P. 2d 878 (1963) ; Booker v. Board of Educ. of Plainfield, 45 N.J. 161, 212 A. 2d 1 (1965) ; Balaban v. Rubin, 20 App. Div. 2d 438, 248 N.Y.S. 2d 574 (2d Dep't), aff'd, 14 N.Y. 2d 193, 199 N.E. 2d 375, cert. den. 379 U.S. 881 (1964).

[6] In North Carolina State Bd. of Educ. v. Swann, 402 U.S. 43 (1971), the court upheld a lower court's injunction against enforcement of a North Carolina statute which was similar in terms to the proposed amendment, although also containing a specific prohibition against "involuntary busing". Although the Constitution issue is of course different where a Constitutional amendment (or even an Act of Congress) is concerned, we believe the court's logic is persuasive ;

> The legislation before us flatly forbids assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools . . . Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems. (Id. at 45-46.)

Scope of the Amendment

Having asserted that the proposed amendment would indeed change existing Constitutional law, we think it most important to emphasize the magnitude of that change.

A. *Busing.*—We note, first of all, that the amendment would have no effect whatsoever on the vast majority of those students who are transported every school day by bus to their schools and home again.[7] Such busing takes place for a whole host of reasons unrelated to racial segregation—and while doubtless regarded as an inconvenience by many who must avail themselves of it, it does not rise to an affront of Constitutional dimension.

B. *Busing of White Students into "Black" Schools.*—Transportation of white students (who would ordinarily attend schools more or less in their own "neighborhoods") by bus to schools in which minority-group students (black or otherwise) predominate is apparently the principal "evil" sought to be prohibited by the proposed amendment. We think it clear that the amendment would indeed have that effect. (We note, in passing, that in some cases involving various types of affirmative "desegregating" actions the courts have stated that racial balance was not the *only* factor involved, though obviously an important one.[8] We are therefore assuming for the sake of this discussion that the framers of the proposed amendment would intend it to prohibit any pupil assignment in which race was *a* factor, not just those in which it was the *only* factor.)

C. *Re-assignment of Minority-Group Students to "White" Schools.*—We think it important to note, however, that the amendment would apparently also prohibit the assignment (whether accompanied by busing or not) of minority-group students (whether black, Puerto Rican, Mexican-American or whatever) to schools in which the majority of students are not of that group, if such assignment were shown to be wholly or even partly based on factors of race or color. More than that, we interpret the amendment as even prohibiting the operation of any voluntary or "free-choice" plan in which minority-group students are merely given the *option* of attending such a school. (Since the amendment says that no public school student shall, because of his race or color, be "assigned to or required to" attend a particular school, we conclude that the words "assigned to" must be intended to cover even a *voluntary* assignment—since otherwise they would be redundant.) Thus, even the palliative measures with which the States of the deep South sought to stave off the full effect of *Brown*[9] would, under the proposed amendment, be not simply *non*-required—but actually *forbidden.*

D. *Other Methods of Achieving Racial Balance.*—While busing is apparently the principal sore spot, it is far from the only method which has been used to redistribute pupils to counteract racial imbalance. Other techniques include the use of "Princeton plans" (or "pairing"), the redrawing of district lines, selection of sites for new schools with an eye toward racial composition, and the like. Each of these techniques does indeed look toward an increased mingling of the races in the classroom but none necessarily involves busing students for long (or even short) distances to school. Each of these techniques has been previously utilized with judicial approval;[10] each would presumably be forbidden, under the proposed amendment, since each has as one of its aims the eventual assignment of pupils to a particular grade in a particular school in part because of race or color. In short, we think the proposed amendment in its present form could be interpreted to prohibit *any* official action (whether by the executive, legislature or judiciary) at any level of government (local, State, Federal) which has as one of its aims the elimination or reduction of racial imbalance within the public school system. It is difficult to see how any remedial decree under *Brown* could ever again be framed, if the amendment were to be adopted in its present form.

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[7] Chief Justice Burger, in Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 29 (1971), puts the figure at eighteen million (approximately 39% of the nation's public school children) for the year 1969–70.

[8] E.g., Guida v. Board of Educ. of City of New Haven, supra, note 5; Schnepp v. Donovan, 43 Misc. 2d 917, 252 N.Y.S. 2d 543 (Sup. Ct. 1964).

[9] E.g., Green v. County School Board of New Kent County, 391 U.S. 430 (1968).

[10] E.g., Taylor v. Board of Educ. of City School Dist. of New Rochelle, 191 F. Supp. 181 (S.D.N.Y. 1961); Addabbo v. Donovan, 22 App. Div. 2d 383, 256 N.Y.S. 2d 178 (2d Dep't), aff'd mem., 16 N.Y. 2d 619, 209 N.E. 2d 112, cert. den. 382 U.S. 905 (1965).

Alternative drafts should be rejected

The above discussion might suggest that the amendment should be acceptable if more carefully drawn to permit some of the practices just discussed. We believe that no such revision can make it acceptable without causing the measure to fall short of the effect intended by its sponsors.

A. *Amendment to Prohibit "Harmful" Busing.*—The amendment might be a recast so as to prohibit at least any compulsory busing of students which would be of such magnitude as to risk the health of the children involved, or significantly impinge on their education. Since these are precisely the limiting factors already noted by Chief Justice Burger in his opinion for a unanimous court in the *Swann* Case,[11] however, such an amendment would add nothing at all to the Constitution and should be rejected for that reason.

B. *Amendment to Prohibit Compulsory Busing.*—It might also be possible to frame an amendment so as to prohibit only compulsory pupil reassignment involving bus transportation—whether of white students to a "black" school or *vice versa*. Such a "neighborhood school" amendment would not prohibit the "free-choice" plans discussed above. We think it should be rejected for the following reasons:

1. Such an amendment could still be held to prohibit the redrawing of district lines or the pairing of schools, wherever busing would be involved—even if busing would have been required of such students in the absence of such a plan. It would thus be impossible to correct even intentional segregation-by-gerrymander in any case where the distances involved are great enough to necessitate busing for some students.

2. Far more importantly, the proposed amendment even in such a narrow form would exalt one supposed basic principle of relatively recent emergence and dubious importance—the "neighborhood school"—over another principle which was perhaps also late in achieving recognition but is to us of unquestioned high importance: the prohibition of invidious racial discrimination—particularly by segregation—in the operation of our nation's public schools. Judicial reports indicate clearly that courts of an earlier day were only too ready to sacrifice any supposed principle of the "neighborhood" school whenever the plaintiff was a Negro child seeking the right to attend a neighborhood (white) school instead of a distant (black) one.[12] More than one writer has pointed out that the recent burgeoning of devotion to neighborhood schools has been largely the result of *Brown*, and has been most evident in those localities (North and South) where residential segregation also is the rule.[13] In those parts of the South where resi-

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[11] Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 30–31 (1971).

[12] E.g., Dameron v. Bayless, 14 Ariz. 180 (1912); Cory v. Carter, 48 Ind. 327 (1874); Roberts v. Boston, 59 Mass. 198 (1849); Lehew v. Brummell, 103 Mo. 546 (1890); People ex rel. Dietz v. Easton, 13 Abb. Pr. Rep. n.s. [N.Y.] 159 (1872).

[13] District Judge Bohanon observed as follows in Dowell v. School Bd. of Okla. City, 244 F. Supp. 971, 977 (W.D. Okla. 1965):

> "During the period when the schools were operated on a completely segregated basis, state laws and board policies required that all pupils attend a school serving their race which necessitated pupils bypassing schools located near their residences and traveling considerable distances to attend schools in conformance with the racial patterns. After the Brown decision and the Board's abandonment of its dual zone policy, a minority to majority transfer plan was placed in effect, the express purpose of which was to enable pupils to transfer from the schools located near their residences, i.e., the neighborhood school, in order to enroll in schools traditionally serving pupils of their race, and located outside their immediate neighborhood. . . . Thus, it appears that the neighborhood school concept has been in the past, and continues in the present to be expendable when segregation is at stake."

See generally Weinberg, Race and Place—A Legal History of the Neighborhood School (U.S. Gov't Printing Office 1967). An example of the prevailing attitude can be found in McSwain v. County Bd. of Educ., 104 F. Supp. 861 (E.D. Tenn. 1952), rev'd (post-*Brown*), 214 F. 2d 131 (6th Cir. 1954), where the Negro plaintiffs, who resided within walking distance of the white high school, were required to travel by bus to a Negro school located nineteen miles away. The court noted that the trip took only forty minutes, over a "fine highway". Id. at 870.

dential patterns did not facilitate segregation-by-neighborhood-school, no aversion to busing (particularly for black children) was evident on the part of the authorities, even after *Brown*.[14]

We do not think that Congress, in approaching these proposals for amendment, can be oblivious to such considerations. We are ready to concede that many men and women of good will are opposed to "forced busing", not because of any conscious racial bias, but because of the disadvantages to which the bused children will—they feel—be subject. Yet we also cannot ignore the fact that "disadvantaged" schools, if they are such are so because of decades of wilful neglect and conscious discrimination (both *de facto* and *de jure*), and that even the sacred "neighborhood" residential patterns are frequently the product of years of discriminatory practices, both official and unofficial.[15]

III. THE PROPOSED AMENDMENT IS INCONSISTENT WITH THE BASIC PRINCIPLES OF AMERICAN SOCIETY

The foregoing discussion leads to the conclusion that the proposed amendment, though ostensibly aimed only at a particular remedy, threatens the basic principle of *Brown* v. *Board of Education*. This principle, unlike the one ostensibly aimed at by the amendment, is indeed one of Constitutional dimension. But we believe it clear that the nation cannot and must not retreat from its efforts to afford equal access to public education. The amendment's sponsors impliedly acknowledge the strength of *Brown* v. *Board of Education* by not launching a direct attack. Nevertheless, the attack is there and must be repelled.

It may be that to choose between "forced busing" and perpetuation of segregation both *de facto* and *de jure* is to choose between two evils. If so, we believe that the "evil of forced busing is much the lesser of the two—that far greater evil would flow from an official declaration, at the highest level possible in our system of government, that only very limited steps (if any) may henceforth be undertaken to undo the effects of one hundred years of conscious effort by the white community to keep black people ignorant and invisible.

CONCLUSION

The proposed amendment should and must be rejected.

Respectfully submitted March 15, 1972.

SHELDON H. ELSEN,
Chairman,
(And 24 others).

STATEMENT OF CHURCH IN SOCIETY AND CHRISTIAN EDUCATION OF THE CHRISTIAN CHURCH (DISCIPLES OF CHRIST)

This testimony is presented by the departments of Church in Society and Christian Education of the Christian Church (Disciples of Christ), a Protestant denomination of some 1,300,000 members. The policy statements on which this testimony is based are approved by its General Assembly which in 1971 included 5,000 voting delegates. More than one-half of those delegates are lay members of local congregations. While no church statement can pretend to speak for all church members, it is important to realize that our policy statements are approved by a wide cross-section of laity and clergy.

In 1954 the Christian Church voted to "approve and commend the decision of the Supreme Court concerning racial segregation in the public schools." In 1963 the church again voiced its support for the "racial integration of all schools," and in October, 1971, meeting in Louisville, Kentucky when the issue of school busing was being everywhere discussed, the General Assembly of the Christian Church stated its concern and support for public education in this country. As part of that resolution the church urged its members and all citizens to support "programs designed to overcome racial imbalance and thus better prepare children and youth of all races for living in an open society. Such programs include busing of students, redistricting of schools and transfer of teachers."

---

[14] E.g., Shuttlesworth v. Birmingham Bd. of Educ., 162 F. Supp. 372 (N.D. Ala.), aff'd per curiam, 358 U.S. 101 (1958).

[15] Cf. Jones v. Mayer, 392 U.S. 409 (1968); Shelly v. Kraemer, 334 U.S. 1 (1948); Buchanan v. Warley, 245 U.S. 60 (1917). See the discussion in Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 20–21 (1971); see also Weinberg, op. cit. note 13 supra, at 40–53, 72–75.

In addition to noting this specific statement of 5,000 of our church lay and clerical leaders in support of busing as one legitimate technique for improving the educattion offered in our public schools, we would like this Committee to consider the following facts:

1. No one is seriously suggesting that busing be eliminated for public school children in our country. Eighteen million children are bused every day to school now—40% of the nation's school children. Without the bus millions of rural school children would be denied an opportunity for good public education. The decision to close one-room schools and bus children to county-seat towns was not reached without controversy. But the decision was made that busing was necessary to improve the quality of education available to our children.

The issue thus becomes clear. If a 25 mile bus ride provides better education for a child in rural Montana, does a 25 block bus ride improve the educational opportunity for a poor or a black or brown or white child in Indianapolis or San Antonio?

Research in what produces quality education unfortunately has not yet produced many conclusions on which we can all agree. But one fact has been reaffirmed repeatedly. Children from economically deprived families placed in a classroom with children representing an economic cross-section of community significantly improve their test scores. The children from higher income families in that classroom do not show any slowdown in their learning progress. Since test scores, whatever their limitations, continue to be used as one measure of quality education, it is clear that classrooms with children of varying economic backgrounds are the best approach presently available to offer a hope of educational achievement to all children.

Of course we need to experiment with many other approaches for improving the quality of education available to all students. But at the moment, an economic mix in the classroom which will certainly require busing in some situations, is a proven way of offering such educational opportunities now.

2. Secondly, we remind the members of this Committee that American public education has always claimed to have two related but distinct objectives. The first has to do with the teaching of certain skills—the traditional three R's plus some other needed learnings. The second objective is to communicate certain public values and traditions on which our nation is built. Among these, none is more important than the equality of all persons without regard to race or religion.

All of us concerned with public education must ask how such a concept of equality can best be taught. While a racially integrated classroom does not automatically produce racial understanding, it clearly can be a positive force for such understanding. When programs such as busing are proposed to racially integrate schools, these properly should be seen as providing the climate in which the American commitment to racial equality can be better taught. Rocially segregated schools, whether *de jure* or *de facto* provide an inferior climate to teach American values.

3. The third fact which we would call to the attention of this Committee comes out of experience of millions of black Americans. They know full well that busing has gone on in this country for generations. Black parents have paid taxes so that white children could be bused past their neighborhood school to a more distant white school. And in other communities black children were bused past their neighborhood school to a more distant black school. A great many supporters of the neighborhood schools have come to that position rather belatedly.

Yet in spite of such attitudes, the Congress and the courts of America have given leadership in making real the nation's commitment to overcome separate but equal school facilities. It would be tragic if the House of Representatives would now reverse that direction. To do so through a constitutional amendment would be to turn that document against itself, to deny through this amendment what is presently affirmed in our constitution.

The church is in no position to pass judgment on the Congress with regard to racial matters. The church's own actions have too often been too little too late. But as members of the Christian Church, we want to join in supporting your continued leadership toward racial equality and integration in our public schools.

We urge you not to support a constitutional amendment which could only deter us from reaching that goal.

STATEMENT OF DAN W. ROUTH, PRESIDENT, FORSYTH CITIZENS AGAINST BUSING OF WINSTON-SALEM, N.C.

I am the president of the Forsyth Citizens Against Busing. My group was formed in Winston-Salem, Forsyth County, North Carolina in 1971 to peacefully protest forced busing of school students. This forced busing was brought about by a minority suit, judiciary interpretation of the constitution, and board of education implementation.

The Forsyth Citizens Against Busing has 400 active members and 16,000 participants. It is the fourth group of its kind to emerge in our city-county school system. The first group was the Silent Majority which sought legal means of halting forced teacher assignment in 1969. The No Busing Our Children group followed in 1970 with more public exibitions protesting the cluster system of crossbusing six schools in Winston-Salem. The Committee Against Busing and the Forsyth Citizens Against Busing came into being when sixty-five schools were crossbused in 1971. Both of these groups took the stance of peaceful but not necessarily legal protest. For example, we held a one day countywide boycott of students with approximately eight thousand students participating. Each group has become progressively more hostile and we cannot guarantee that the next group that forms will be peaceful.

The main feeling of the people that I represent is not one of separated racism. Most have seen that there have been injustices and accepted the local mixing of opposite races. We resent, however the usurpation of majority rule and protest its application to our children. Everyone seems to be able to give advice. As long as you personally are not affected you can be very objective about what is fair and equal for the other fellow. It disturbs us that a man such as Judge Merhige of Richmond can make a decision for the masses that by nature of his own position and election will not affect his own child. Therefore, we feel that it is not democratic for members of the congress or judiciary to act upon a matter such as a constitutional amendment concerning public education unless they have children or grandchildren in public school. Only those that qualify in this way should be allowed to vote.

One of the necessities in our county to reach a 70 white–30 brown ratio of students in each school was a change from the 6–3–3 to the 4–2–2–2–2 grade structure. This eliminated two previously senior high schools altogether. One former student, T. M. feels that a grave injustice was done the alumni of the schools by destroying the institution, pride and heritage they had worked to build.

A mother of African descent, I. H. feels the frustration of wanting to do more for her children through PTA and visitation to the schools, but has children in five different schools and is thus unable to go after the ones at distant schools even if they are sick.

Even with 365 buses for 21,000 of a total of 48,000 students, we have to use multiple loading and staging which requires 2½ hours. Because of this we have had school canceled one day this year on a weather forecast. It did snow. Again students reached home 3½ hours after the snow began to fall and the order went out to close schools because of the snow storm February 18th.

The quality of education is suffering by a reduction in the school day to allow for transportation time. Some primary schools have students changing classes in order to group learning levels for more efficient use of time. This brings about an early awareness of an intellectual class system which I don't think is healthy for the child emotionally.

Uprooted teachers and students feel the tensions of a forced situation that detracts from learning and provides fertile ground for riots. North Forsyth Senior High School had a winter season of violence last year. Drug traffic is more encouraged by cross travel and distribution is more convenient. B. H. of the Winston-Salem Police Department reports an overwhelming increase in drug traffic this year in the schools.

One of our protest marches pointed dramatically to the safety problem of busing children on high-speed highways. It was a mothers march behind an old school bus followed by a hearse. The wording on the bus read Don't take my child to school in this" and on the hearse "And bring him home in this". You see we bus regularly on Interstate 40 which is the busiest highway in the state.

M. B. , a senior high school teacher states that busing is more physical than actual for its desired intent of a thoroughly mixed social education. She reports that with housing patterns as they are buses are usually loaded with one race. Students in class tend to segregate themselves to one part of the room.

How can we justify the safety hazard, the air pollution with carbon monoxide, and the irreplaceable depletion of our natural resources that 73,744,646,900 passenger miles of school bus travel requires in one nine month period in one county in America? The simple fact is that it cannot be justified nor can it be financed without serious detriment to the education of our young people and the economy of the nation.

ADDENDUM STATEMENT

The March first report by Theodore Hesburgh, Chairman of the U.S. Commission on Civil Rights and President of Notre Dame University, is not factual, is incomplete, and is biased.

The report by Charles Oslin which appeared in the Winston-Salem Journal March 2, quotes Hesburgh as saying, "Desegregation in the Winston-Salem-Forsyth County school system has improved the quality of formerly all black schools and the education of black students without causing any major problems." This statement is unfounded from three standpoints. First, if he is speaking of teachers, teachers have been assigned on a 70–30 ratio, racially, for the past two years. Secondly, last year we saw one of the biggest disruptions our system has ever seen at North Forsyth High School where there was open rioting and the school had to be put under police control. Third, if quality education is guaged by money spent and equipment in use in schools, the previously all black schools have enjoyed a material advantage because of such Federal programs as Titles and Model Cities. Teachers who were assigned to predominately black schools from predominately white schools were amazed at:

(1) The relative newness of the schools, and
(2) The amount of money being spent to equip these schools.

Rev. Hesburgh's report states that classroom facilities are being better used this year and that mobil units have been reduced from 113 to 34. Our information shows that 78 mobil units are still being used this year.

Rev. Hesburgh states that while parents oppose the plan, students seem to be accepting desegregation without significant difficulties. This point is moot, because young people normally accept most changes more readily than older people do. Young people accept the use of drugs more readily than older people do.

Of the five cities on which this commission reported Winston-Salem, Charlotte, Tampa, Pasadena, and Pontiac, they state they had personal interviews in four cities but based their Winston-Salem report on statistical data and documents provided by the school board, and telephone interviews. I would like to ask your indulgence to subpoena this statistical data and documents by the school board so the public may know the source of this information or if Rev. Hesburgh's report is actually based on any statistics or documents.

I think Rev. Hesburgh's figure of 500–600 students leaving public school to go to private school is a very conservative one. School enrollment is 48,000 as compared to a projected 52,000 for the 1971–72 school year.

In short, Mr. Celler, Rev. Hesburgh's statement is indicative of the basis of this entire problem. That is, we have someone in South Bend, Indiana, telling the Congress of the United States what is good for Winston-Salem, North Carolina.

THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES,
Washington, D.C., March 30, 1972.

Hon. EMANUEL CELLER,
Chairman, House Committee on the Judiciary,
Rayburn House Office Building,
Washington, D.C.

DEAR MR. CELLER: We understand that President Nixon's busing moratorium legislation, HR 13916, will be heard before House Judiciary Subcommittee #5 in conjunction with anti-busing constitutional amendments on which the League of Women Voters has already testified.

You and the members of the subcommittee are well aware of the League's opposition to legislation of this type whether constitutional or statutory. This letter, therefore, serves to reaffirm our position, to place our members on record as opposing HR 13916, and to spare you from hearing the same arguments over again in oral testimony. For reference to the reasons for our opposition, your hearing record for March 2, the day I testified, should be more than adequate.

Thank you again for your consistent courtesy and consideration. It is too bad that every citizen cannot have the opportunity to appear before you—I always enjoy it.

Sincerely,

Mrs. Bruce B. Benson,
President.

Chairman Celler. We will now be in recess until Wednesday, April 19.

(Whereupon at 1:05 p.m. the hearing recessed to reconvene at 10 a.m. Wednesday, April 19, 1972.)

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SCHOOL BUSING

HEARINGS
BEFORE
SUBCOMMITTEE NO. 5
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
NINETY-SECOND CONGRESS
SECOND SESSION
ON
PROPOSED AMENDMENTS TO THE CONSTITUTION AND
LEGISLATION RELATING TO TRANSPORTATION AND
ASSIGNMENT OF PUBLIC SCHOOL PUPILS

Part 3

FEBRUARY 28, 29; MARCH 1, 2, 3, 6, 8, 9, 13, 15, 16; APRIL 12,
13, 26, 27; MAY 3, 4, 10, 18, AND 24, 1972

Serial No. 32

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SCHOOL BUSING

WEDNESDAY, APRIL 26, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee), presiding.

Present: Representatives Celler, McCulloch, Poff, Hutchinson, and McClory.

Staff members present: Benjamin Zelenko, general counsel; Herbert E. Hoffman, counsel; and Franklin G. Polk, associate counsel.

Chairman CELLER. The subcommittee will come to order.

The Chair wishes to make a brief statement.

I have a letter dated April 24 signed by 89 attorneys all of whom work in the field of civil rights. I understand they are members of the Civil Rights Division of the Department of Justice. The letter urges the Congress "to reject any proposal which would limit the power of Federal courts to remedy, through busing, the unconstitutional segregation of public school children."

I will make this letter and the signatures appended thereto a part of the record.

(The letter follows:)

April 24, 1972.

Hon. MIKE MANSFIELD,
Majority Leader, U.S. Senate,
Hon. HUGH SCOTT,
Minority Leader, U.S. Senate,
Hon. HALE BOGGS,
Majority Leader, U.S. House of Representatives,
Hon. GERALD FORD,
Minority Leader, U.S. House of Representatives,
Hon. JAMES EASTLAND,
Chairman, Senate Judiciary Committee,
Hon. CLAIBORNE PELL,
Chairman, Senate Education Subcommittee,
Hon. WALTER MONDALE,
Chairman, Senate Select Committee on Equal Education Opportunity,
Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Hon. CARL PERKINS,
Chairman, House Education and Labor Committee,
U.S. Congress,
Washington, D.C.

DEAR SIRS: As attorneys working in the field of civil rights, we wish to urge the Congress to reject any proposal which would limit the power of federal courts to remedy, through busing, the unconstitutional segregation of public school children.

We believe that the enactment of any such legislation would raise serious Constitution questions and would be inconsistent with our national commitment to racial equality.

Respectfully,

ROBERT A. FEDER
(and 88 others).

Chairman CELLER. Our first witnesses this morning are Mr. William E. Poe, chairman, Charlotte-Mecklenburg Board of Education, and Mrs. Julia Watson Maulden, member, Charlotte-Mecklenburg School Board, Davidson, N.C.

STATEMENT OF WILLIAM E. POE, CHAIRMAN, CHARLOTTE-MECKLENBURG BOARD OF EDUCATION

Mr. POE. Mr. Chairman and members of the subcommittee, I am William E. Poe, chairman of the Charlotte-Mecklenburg Board of Education, and I am most appreciative of the opportunity to appear before you as the designated representative of a majority of our board who feel very strongly that some of the insights we have gained while operating our schools under the full impact of the *Swann* decision ought to be helpful to you and to the people at large in attempting to fashion new constitutional or statutory law to help relieve one of our country's most urgent and vexing problems.

Charlotte-Mecklenburg is a consolidated countywide school district with about 80,000 pupils, 104 schools, and a number of special education programs. The county is largely urban, with the city of Charlotte at its center, and it is a prosperous, progressive and growing community. About 30 percent of our student population today is black, and just as is the case in a great many other urban centers in this country, black people in the last decade or so have moved into older residential sections of the city and into adjacent new housing and housing projects. Today, 95 percent of the black students reside in the northwestern innercity quadrant of Charlotte or the fringes thereof. That statistic alone should point out for you the major problem of school desegregation in our city.

Let me say at this point that I am extremely proud of the way in which the people in Charlotte-Mecklenburg have conducted themselves over the past 3 years especially as our children became the most bused and the most racially balanced of any students in any school system I know about anywhere. Like the famed "Hornets' Nest" of Revolutionary War days, we fussed ferociously and stung where we could, we fought a long and discouraging battle, but we don't believe yet we will lose the war; we obeyed the law, and we will keep on doing that even if we don't like it at times, but most of all, we want you to know who we are and what we are—and we want to be dead sure that school children in Charlotte-Mecklenburg not only have a good education, but that they have the same rights, the same privileges and the same responsibilities that students in public schools have in all other cities and counties spread throughout America.

It would seem to me that what is needed at this particular time in our history is a clearly discernible national policy that describes the extent and the limits of our official governmental commitment to public school desegregation. Someone has said that the schools "have been placed at the cutting edge of social reform" and for that matter so have boards of education in almost every city in this land of ours. Because school boards have the unique capacity to assign pupils to almost any facility in the school district and to compel them by force of law to attend, some judges have been quick to seize this handle which they found missing when they sought to integrate swimming pools, parks, golf courses, and housing in particular, and while sometimes in issuing their decrees, the courts have mentioned education, it has usually followed as an afterthought to shore up the weaknesses in the rationale of a decision primarily intended to bring about integration.

In some strange way, we have through a succesion of court decrees moved from the mandate of the 1954 *Brown* decision requiring equal educational opportunity for children of all races—a premise on which we can all agree—to integration by the number or by percentages which some courts have seized upon as a simplistic solution to desegregation of the schools no matter what the effect might be on educational opportunity of the children affected by their orders.

The professional educators themselves have floundered miserably because as some of them will admit, it had never occurred to them in the first place that children had to be mixed, grouped, clustered, satellited and cross-bussed in racial proportions in order to be taught how to read and to write and to master certain other basic skills. Some people, newspaper columnists in particular, delight in saying that those who oppose the extreme court orders which have been entered in various places are simply reacting emotionally, and they imply very strongly that all intelligence and reason is on the side of those who would promote racial balance in the schools as the law of the land.

Admittedly, we have all learned a lot about the advantages which can accrue to our society when people of all races can move freely without official restraint of any sort. And maybe the public schools were as good a place as any for our young citizens to begin learning that lesson. But when official restraints are used against people previously unrestrained in order to carry out a policy formulated in the mind of a U.S. district judge equipped with extremely broad discretionary powers, freedom is again in danger—and this time the freedom is that of even more people than before.

So, then; why not have a clearly stated national policy to which politicians and just ordinary people can address themselves and one that does truly reflect a goal upon which most of us can willingly and cheerfully agree.

In essence, the policy would be a restatement of the national commitment to racial justice and equal educational opportunity in particular, but it would at the same time recognize levels of practicality ranging from rural conditions where desegregated neighborhood or community schools are clearly possible to urban ghetto conditions where desegregation might have to be given low priority behind stepped-up spending and concentration of educational resources in predominantly black areas. This policy would recognize forthrightly the fact that the social, economic, and humanitarian implications of integration are a part of the reason for the desegregation of the schools, but it would also highlight the fact that the primary objective of desegregation is educational—the conviction that equal educational opportunity is best achieved by providing quality education for all children in the different settings in which they must live in our society.

The absence of such a national policy has permitted politicians in other sections of the country to become pious spokesmen against racial injustice in the South while seemingly ignoring rather obvious problems in their own backyards.

As a close observer of this scene for 8 years now, I can't help but feel very strongly that the educators, school board members, and elected public officials at all levels of government have been guilty of almost a total default to the courts who have attempted a task they were not equipped for and have ventured into areas where wiser men would not have gone. It is not surprising that the results have been bizarre indeed.

In Charlotte-Mecklenburg today, for example, it is unconstitutional to operate a school with a majority black student body, and our board is under a continuing order to police the racial composition of the student body in each school to see that none turns predominantly black. We thought the clear language of the Supreme Court in the *Swann* case indicated that even an all-black school was constitutionally permissible and that our district judge had simply misread the opinion, but, even so, the Fourth Circuit Court of Appeals summarily dismissed our appeal in a per curiam opinion.

In Mobile, Ala. today—and you will remember that the *Mobile* case was decided by the Supreme Court simultaneously with the *Swann* case—it is constitutionally permissible to operate 11 all-black schools and other schools that are predominantly black. Mobile is a city very much like Charlotte in a lot of respects, and yet the same constitution under which both cities exist means one thing in Charlotte and something quite different in Mobile.

In Atlanta, Ga., a city with which Charlotte competes in a number of important ways, it is apparently constitutional to maintain dozens of predominantly black schools and only a handful of predominantly white neighborhood schools; and the whole world knows the story of elected representatives here in this city and many other officials and employees of our government who have taken their children out of the District of Columbia schools and sent them to the suburban sanctuaries, thereby depriving thousands of black children in this city of a constitutional education.

Chairman Celler. It is common practice where courts of appeals have differed for the cases to have gone to the Supreme Court for reconciliation.

Mr. Poe. The language of the Supreme Court and the Chief Justice tried to elaborate on this and tried to make it perfectly clear that an all-black school is permissible under the Constitution but the judge in Charlotte has not accepted that interpretation.

To return to my statement, we are told to get rid of the vestiges of the old dual school system and to operate only a unitary school system. No one knows yet what a unitary school system is or what it does for education. Our district judge, when asked, said he couldn't define a unitary school system, but he was sure he would know one when he saw it.

My point is—and I hope it is very clear—that we have long since departed from the Constitution on this issue, and we have permitted district court judges around this Nation to fashion their own version of the Constitution and to proclaim it as the law of the land just as surely as if the Constitutional Convention itself had debated the problems of racial integration in the schools of Charlotte, Pontiac, Richmond, and Mobile.

The appellate courts, including the Supreme Court, have used the convenient dodge of not interfering with the exercise of the broad equity powers of the district judges so long as there is no apparent abuse of discretion shown by the record. And from where I sit as a lawyer and as a school board member in Charlotte, N.C., there is no remedy except that dictated by the whims of a district judge who many months ago dropped the role of impartial arbiter and became the leading advocate of a philosophical viewpoint which he proclaimed to be that embedded within the Constitution itself. Not only did his philosophy prevail, but he managed to find the facts to fit it, whether the evidence justified it or not.

Charlotte-Mecklenburg busing statistics have been misquoted so frequently that we have trouble getting the correct ones into print anymore. In our countywide system with many rural schools, we transported about 23,000 pupils to school each day before the cross-busing plan to achieve racial balance was ordered into effect in 1970. At that time, the vast majority of our schools were integrated.

Today, our system transports or buses about twice that many pupils or almost 46,000 each day, more than half of our entire school enrollment. To accomplish this mammoth undertaking we have pressed into service 168 old buses retired because of age—around 15 years—by other school systems in North Carolina, and, in addition, we have used every available commercially operated bus in the county. Now we are under tremendous financial pressure to replace these wornout buses, and no money is available at either the State or Federal levels of government for this purpose. Recently, our county commissioners have grudgingly released enough funds to be spent in 2 fiscal years to buy 84 new schoolbuses—half enough to replace the antiques now in service.

Bus routes are frequently over 15 miles long transporting elementary school students from one side of the city to the other to provide a ratio of about 2-to-1 to black in paired schools for grades 1 through 6.

In San Francisco last week at the National School Boards Convention, I heard Mr. Clarence Mitchell, director of the Washington Bureau of the NAACP saying to a large audience quite authoritatively that in Charlotte, N.C., the bus routes were much shorter than they used to be and that before Judge McMillan's order we were transporting 4- and 5-year-old children as much as 35 miles one way to school. I submit to you this is simply not true. Bus routes have been increased and they have been lengthened in many, many cases.

The facts are that we do not even have a regular kindergarten program in our system or, indeed, in our State, but we do have three child development centers serving about 800 children and located in strategic spots around the county. Incidentally, this is a federally funded program.

A very few number of children whose parents enrolled them in one of these centers were being transported, and are still being transported, a long distance to school, but that was hardly busing to maintain segregation nor, indeed, is it now forced busing for racial balance, and Mr.

Mitchell should have known it. A visit to Charlotte on any schoolday would quickly convince you that there are hundreds of schoolbuses crisscrossing our city in heavy traffic carrying black children from the northwestern sector of the city across town and well out into the county and carrying white children from almost the whole county into the northwestern quadrant of our city.

In 1968–69, our school system had 82,200 students enrolled, and we were growing at a rate better than 2,000 pupils per year. Our 1971–72 enrollment is now less than 80,000 pupils at a time when we had anticipated that it might exceed 88,000. Charlotte-Mecklenburg is a rapidly growing metropolitan area, and we know of no reason other than resistance to cross-busing which would cause the dramatic decline in school enrollment.

Significantly, in 1965–66, when we voluntarily closed the dual black schools and sent these pupils to the nearest neighborhood schools we saw no decline in school enrollment.

Today, private schols, some of them very elaborate in terms of facilities, have flourished and are still flourishing in our county. Thus far, we see no evidence of a return from these schools to the public school system on anything other than an occasional basis.

Mr. McCulloch. May I interrupt to ask what is the school population in the districts you are talking about?

Mr. Poe. The school population is 80,000.

Mr. McCulloch. What was it at the other time you spoke of?

Mr. Poe. In 1968, it was 82,000 and we have been growing at about 2,000 per year.

Mr. McCulloch. What did you say it is now?

Mr. Poe. 80,000. We have suffered a decrease in enrollments at a time when everything else is increasing.

Mr. McCulloch. Do you have any direct reason for that change in figures? I know you have left an implication, but sometimes I like to have things definitely spelled out for me.

Mr. Poe. The reason for the decrease?

Mr. McCulloch. Yes.

Mr. Poe. The only reason I can come up with is the cross-busing.

Mr. McCulloch. What is happening to those students?

Mr. Poe. They are going to private schools, to adjacent counties, and some are even moving out of the county.

Mr. McCulloch. But people have been sending their children to private schools and have been moving out of the cities for a long, long time.

Mr. Poe. Yes, sir.

Let me speak quite candidly about some of the reasons why we have had to struggle so hard in our school system and why some of our people have simply abandoned the public schools:

1. Busing across a large metropolitan area such as Charlotte-Mecklenburg is a very expensive and very cumbersome operation. Doubling the size of the largest schoolbus fleet in the State of North Carolina overnight with no additional funds to pay the bill has been a terribly hard task. So far as we can tell, no legislative body anywhere wants to pay for a bus fleet to provide racial balance-type busing, and, therefore, busing today is unquestionably siphoning off revenue needed for improvements in our educational programs.

2. The irregular opening and closing schedules of schools necessitated by the inadequate number of buses have caused problems and many inconveniences for students and parents alike. Three of our largest high schools have for 2 years now started their school day at 7:30 a.m., with students leaving home well before daylight during the winter months.

3. Students assigned to attend schools located a considerable distance from their homes have suffered problems not only of inconvenience but also of orientation and adjustment, and have often withheld their loyalty and allegiance to these schools, adding considerably to the in-school discipline problem.

4. Serious disruptions have occurred in a number of our high schools, resulting in the imposition of rigid codes of student behavior and the monitoring of halls and restrooms by the teachers and staff.

5. Many difficulties have arisen with respect to student organizations and sports activities; transportation across town for student athletes and other students participating in afterschool extracurricular activities is frequently not available. Most student organizations have sustained a dramatic decrease in their membership and their activities.

6. Providing a means of racial representation in student organizations, class and student body offices, and other activities has created some very delicate and fundamental problems. The whole concept of guaranteed representation is difficult for people to understand and even more difficult for them to accept willingly.

7. Redrawing school districts to assure a racially mixed school population has nearly always brought severe overcrowding problems that cannot be easily remedied. It seems obvious that a massive rebuilding program is going to be necessary to accommodate the demands of a racially balanced school system.

8. Dealing with new and recurring student problems has required significant staff development programs for teachers who were simply not equipped either by training or experience to deal with the new kinds of demands being placed upon them today.

9. Constant complaints come from some areas of the county where people contend that their busing burden is greater than in other parts of the county. Indeed, anybody who has thought about it at all would know that unless each student is bused away from home, there has to be an assignment policy which is inherently discriminatory in favor of some students and against others. No one wants any more of the busing burden than anyone else, and everyone is quick to find out what his neighbor's burden really is.

10. Busing, as a primary tool for desegregation, has not been generally accepted by school patrons because they know that this technique has not been applied universally throughout the country.

On the other hand, there have been some positive effects which can be attributed to the radical revision of our school system and which I think you ought to know about:

1. The problems that have arisen in the academic area are being dealt with through the use of various instructional techniques such as team teaching, clustered teaching, curriculum revision, and some individualized instruction where the personnel is available.

2. Students have been able to associate more frequently with classmates who come from different ethnic backgrounds and cultural

patterns, and thus have gained a better understanding of each other. In many instances though, it should be said that acute awareness of racial differences has resulted from this exposure.

3. Those families who have stuck with the public schools seem to have shown increased interest in them, as evidenced by large numbers of volunteers who have helped in various ways—as teacher aides, as hall monitors, as additional office help, as health-room aides, as tutors, and in many other capacities. About 4,000 volunteers now work in our school system.

4. There has been an increased awareness of the needs of some of our schools, and greater efforts are being made to achieve equal educational opportunities all over our system.

5. The professional staff has sought to respond in new and different ways to the challenge of meeting the needs of youngsters from divergent backgrounds. Significant progress has been made, for example, in the area of curriculum revision, and some new courses of study have been installed in almost all of our schools.

6. The housing problem has been brought more clearly into focus, although few significant changes have been noted in this area thus far. Our county has debated publicly over several months now the question of location of public housing units and the size of these units, in large part because of the impact which these housing developments have had on our schools and the busing problems which they have created.

In a very real sense, though, we have now reached an educational as well as a functional stalemate or impasse in our school system. We are not yet sure who is really in charge, or where, in fact, we are headed next year and the year after that. We cannot really challenge our citizens by asking them to put up more money to buy new buses when they are not at all convinced that cross-busing really improves our educational program.

We find it difficult to plan a new bond referendum for school buildings and other capital improvements when we are not really sure which students will be enrolled in what schools several years hence.

Where are the real priorities for education today, and what do we, as a board of education, lead our people to support in order to build a better future for all of us? Yes, I know the answer is quality education for everybody, but, frankly, I am confused as to how you reach that objective, and I believe that most of the country is also at the moment.

I suppose that gets us, in a roundabout fashion, to the real issues which are here before this subcommittee.

1. Do we attempt to amend the Constitution of the United States to prevent the courts from becoming super school boards compelling youngsters to ride buses to faraway schools so as to make some given school district arbitrarily unitary; or

2. Do we rely on the Congress of the United States and the legislatures of the various States to adopt policies and standards which perhaps can be applied equally all over this Nation if people of good will honestly seek to implement the stated policy of the Government to give to every child an equal educational opportunity?

I lay no claim to being a constitutional expert, nor can I predict what future court decisions might be in this whole area of the law, but I firmly believe that Americans everywhere in this land today are capable of responding to a national policy on school desegregation that rests solidly on the premise of equal educational opportunity set forth in the *Brown* decision of 1954, a policy that would move us away from our present preoccupation with court decrees which require counting racial noses in almost every school and every classroom.

I find much in the moratorium bill offered by the President that appeals to me in that I believe very firmly that all of us, Federal judges included, need some time to ponder what we have done thus far in the name of guaranteeing constitutional rights to minority schoolchildren. Can we let our frustrations over lack of deliberate speed in some areas overwhelm us to the point that we now in dramatic fashion overreact and permit discrimination and injustice to work in the opposite direction? It is still not too late to debate the real issues in the legislative halls rather than in the courtrooms, and the people whom you represent still need a chance to have their say in a way that they can make it count. Frankly, my friends are tired of writing to Supreme Court Justices who may not read and certainly don't answer. They had much rather write to Congressmen who usually answer.

I think the President is also right in asking you to legislate that the use of busing as a desegregation technique shall be severely limited and, in fact, applied only in rather exceptional cases. Not even the most ardent busing advocate would contend that the black ghettos of New York City and Chicago could be effectively integrated by cross-busing hence, another remedy or other remedies must be used to achieve equal educational opportunities for the thousands of children who live in these areas.

Are we ready to admit here and now that there is no educational answer for these children, and that they are doomed to a life of inequality from here on? If so, then more drastic remedies than even those devised by some of the courts need to be quickly explored. Those who would condemn compensatory education as the white man's cop-out need to give this issue another and a much harder look.

Thus far, the non-Southerner, including Federal judges, has rationalized the big-city ghetto problem by saying that it all happened by chance or circumstance and not by operation of law. And although the impact on children reaching school age today is precisely the same, whether the segregation be in Chicago, New York, or Charlotte, we have indulged in the foolishness that one is constitutionally permissible and the other is not. The problem is the same whether the concentration of black citizens be in Charlotte or in Harlem, or even in the District of Columbia.

There are then good, sound reasons to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in discharging its obligation under the 14th amendment * * * to desegregate its schools" as the moratorium bill states.

As one citizen, I can assure you that my respect for standards adopted in this fashion shall greatly exceed that which I hold for decrees handed down by single district judges exercising undefined equity powers.

I must confess one major area of concern for what I think is a legitimate quest for a legislative answer to this whole problem, and that concern is the remarkable propensity the Supreme Court has shown to circumvent or to ignore almost any expression of Congress which it deems to offend the Constitution in the area of school desegregation.

I could hope that once Congress has spoken thoroughly and completely on this subject and has arrived at the clearly discernible national policy about which I earlier spoke, the Supreme Court and all other Federal courts would voluntarily retire from the public school arena except to prevent what is clearly State action designed to deny equal educational opportunity to any child. This may be a forlorn hope, but I am convinced that it looks in the direction that we must go in one way or another; that is, our educational concerns must outweigh our racial integration concerns.

On the other hand, I would not cast aside at this point the alternative of a constitutional amendment, although I am sure it is a much more tedious process and one that is subject to a great many pitfalls. If the Congress refuses to act and to act promptly to establish some national standards on school desegregation and assuming adoption of those standards, if the courts are not willing to give them an opportunity to work, then I am convinced that the people in this country need to have, and are going to have, a direct voice in attempting to erase some of the law that the courts have written into the Constitution on this subject. My attitude on this point borders on desperation, for I am so convinced that some of the Federal judiciary, if left unbridled, are capable of destroying public support for our schools in some of our great metropolitan centers, that I am willing, as a last resort, to risk the dangers which may lurk in a constitutional amendment rather than to leave public education at the discretion of men like those who sit on the Federal bench in Richmond, Detroit, and in Charlotte.

As Justice Brandeis once put it, "Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficient * * *. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning, but without understanding."

The strongest reason I have for favoring a constitutional amendment is to prevent the judiciary from venturing any further into the business of running the public schools. Indeed, I want to get them out of the schools as quickly as possible before it is too late.

Our school system is in a very crucial and decisive time. Public interest, both positive and negative, has never been so high, nor, unfortunately, has community anxiety over the school system.

In essence, the real issue is that of raising the level of public confidence in the ability of our schools to provide quality education in today's environment, not just for white children, but for everybody's child. We have abolished our dual school system for black children, and we have desegregated our faculty, staff, and students. We now want to get on with the business of education freed of the arbitrary restraints which cause us to devote so much of our energies and time to the logistics of integration by ratio.

We think it is time to quit applying names and labels to people who have different opinions and different points of view about the highly controversial issues that have swirled around the public schools. We think it is time for the national commitment to desegregation of our schools to take its rightful place alongside the national commitment to desegregation of housing, for example.

We think it is time for representative government at its finest to work through some difficult problems, and we think it is high time for district court judges to remove themselves from the school boards all over this country.

In our judgment, the education of our children is the most important task which we face. School desegregation and good education are not mutually exclusive. The success of both to a very large degree rests with the people who live in our school district guided by standards and principles which are applicable the country over.

The Charlotte-Mecklenburg community has a history of providing good schools—we think the best in the State of North Carolina. Given the opportunity to again concentrate our energies, our resources and our talents upon educational programs and techniques we believe that we can provide for all of our citizens that equally of educational opportunity which frees individuals from the burdens and handicaps imposed by varied circumstances, backgrounds and environmental differences.

We feel great moral support for school desegregation among our people. The resentment only comes as a reaction to arbitrary court decrees which seemingly have singled us out as being different from all the rest of the country. We know there is a tremendous challenge ahead for all of us in public education. Our hearts and our minds are geared to proceed in a positive way to meet the needs of every child who comes into our schools. We ask you to help us realize this objective at the earliest possible time.

Chairman CELLER. Thank you very much, Mr. Poe.

Our next witness is Mrs. Julia Watson Maulden, member, Charlotte-Mecklenburg School Board, Davidson, N.C.

STATEMENT OF MRS. JULIA WATSON MAULDEN, MEMBER, CHARLOTTE-MECKLENBURG SCHOOL BOARD, DAVIDSON, N.C.

Mrs. MAULDEN. I have placed in your hands a document which is in essence two documents. When I wrote in early March requesting to appear, the President had not yet spoken, so you will find on page 16 an abrupt change of style which says: "An affirmative report from the Charlotte-Mecklenburg School Board member who has been through it all."

You asked me to speak to House Joint Resolution 620 and H.R. 13916. I am going to ask if you will follow through with me as I try to excerpt from these pages the things that I want to bring to your attention. I am trusting that you are going to read this entire statement in private.

Chairman CELLER. We will accept the complete statement for the record.

(The statement follows:)

STATEMENT OF MRS. JULIA WATSON MAULDEN, MEMBER, CHARLOTTE-MECKLENBURG SCHOOL BOARD

As a citizen of the United States, and more specifically, as an elected local government official, I am unalterably opposed to the passage of H.J. Res. 620 to amend the Constitution. If approved, and if interpreted to mean that the power of pupil assignment hitherto vested in local Boards of Education is removed, there is no question that the giant strides made (toward equal education of all students) in the last seven or eight years will be negated in the South and Southeast.

I have come to plead with you to recognize that desegregation, already so far advanced in southern school districts, must not be retrograded nor deprived of the tools with which to continue desegregation simply because the North and East are facing squarely what we have known all along, namely, that the results of de jure and de facto are one and the same: pitifully inadequate schooling for minority children.

The South has made these advances under duress, specifically, in the case I know best, (Charlotte-Mecklenburg) under a series of court orders beginning in 1965. Painfully, haltingly, expensively, but none the less surely we have dismantled a dual school system and achieved a totally integrated system of education for our young. The Board majority has resisted every step of the way, a large segment of the community has resisted, and we have lost several thousand students to private schools. Nevertheless, the plus factors outweigh the minus. Given time, financial support, and experience in human relations we will realize the goals of equal and excellent education for all the children in our district.

To thousands of professional educators and board members who have by "blood, toil, tears, and sweat" achieved total or near total desegregation of southeastern school systems, it is unthinkable that the President and the Congress would favor a Constitutional amendment that would undo our progress. However blandly the proposal may read, its sole intent is to outlaw all those devices surrounding pupil assignment which have made it possible for us to dismantle dual school systems; closing schools, rezoning geographic areas, pairing, clustering, satelliteing, and bussing.

The assignment of pupils to elementary, middle schools, and secondary schools, coupled with the decisions as to the course of study, extra-curricular activities, and the employment of staff lie at the very core of local responsibility for education. To remove from Boards of Education the assignment of pupils according to *whatever* criteria is a serious matter. The proposed amendment does just that.

Justice Burger wrote in commenting upon a North Carolina statue hurriedly enacted in 1969 in the hope of forestalling the use of transportation:

"To forbid, at this stage, all assignments made on the basis of race would deprive schol authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate dual school systems."

If Boards needed the right to use pupil assignment and school bussing to bring about desegregation in the first stages, they most assuredly need the right to continue using all available tools to maintain desegregation.

No constitutional amendment, please, gentlemen.

A NATIONAL DESEGREGATION STANDARD IS NOT WARRANTED

Likewise, in speaking of H.R. 13916, I am opposed to the imposition of a moratorium on new and additional student transportation; and quite specifically to the language of the Section 2(a), (2) (3).

As a school board member who has experienced six years of difficult decision-making, I can conceive of no greater folly than trying to establish a—"uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in discharging its obligation under the 14th amendment to the United States Constitution to desegregate its schools."

Each school district, like each individual, has a different set of variables with which to work. Geography, traffic patterns, population composition, population density, tax base, methods for financing, social patterns,—all these and dozens of other factors impinge upon the process of creating a unitary school system within a district.

Who is to decide, at a national level, what constitutes "substantial hardship"? Is it the distance traveled? At last week's National School Board Association we learned of high school students in Arizona who travel 80 miles each way to get to school! How far is too far? My last two children rode a bus 20 miles per day, in a ride that had nothing to do with desegregation. Is 20 miles too great a distance? Thousands of us have never thought so. Is a 20 mile ride for transportation different from a 20 mile ride for "bussing to achieve desegregation"?

How young is too young, when purportedly the health of a child is endangered? In my small town of Davidson, on the periphery of Mecklenburg county, the school system operates with Title I funds a kindergarten (Child Development Center) for five year old children of low-income parents. All but a handful of the 125 youngsters ride busses, many for a distance of 40 miles per day. For the first child to be picked up on a route, the distance and time may be as much as 72 miles, and three hours daily.

Is five years too young to be "bussed"? Is one hour (the average time), twice a day, too long? Is 40 miles too far? Not in the eyes of parents who are desperately eager to have their youngsters participate in our program. Mothers weep when they find their children are ineligible because Father makes more than a poverty wage. A number of parents from 20-mile-distant Derita wrote Congressman Jonas in high dudgeon that their children were denied the privilege of participation by virtue of a decent income level in the family. They covet the opportunity for their children to ride 40 miles a day in order to benefit from the education at the end of the ride.

It has become increasingly clear, as city families fought for and won from the North Carolina State Legislature in 1969 the same transportation privileges accorded to rural children, that the bus ride a parent *wants* a his child to take is "needed transportation", whereas the bus ride he has been assigned to take for desegregation is an unspeakable evil called "bussing". The former is a service, the latter is a substantial hardship? Truly, as Paul the Apostle observed so long ago, "Nothing is either good or evil but thinking makes it so."

Bishop Richard Emrich, of the Episcopal Diocese of Michigan, has effectively encapsulated the base of bussing as we face the *real* issue behind it:

"The real enemy in our midst is not the person who is for or against bussing—that is superficial thought that divides: the real enemy is the historical predicament in which we are all caught together, and which, if we cannot solve it, will continue to destroy the happiness, strength, and unity of America. What is this problem?

"It is the fact . . . that we are becoming a radically divided country, that two societies, one black and the other white, are developing side by side. . . .

"This predicament creates (as division always does) anger and unhappiness within America, and weakens us as we face the outside world. It is the greatest single tragedy and problem of all American history; and when we think of the anger on both sides, the acts of violence on both sides, the racial division in the armed services, the groups that arm against each other, the extremists on both sides, we know that, given the right circumstances, this division could bring down in ruins our free institutions. . . .

"Bussing is simply one small, perhaps inadequate attempt to deal with this vast and growing problem and to move this country toward unity. For the sake of unity, and against the background of our residential separation, the schools are being asked to bring us together. And the controversy, anger, fear, and division around busing reveal the deep sickness, for when race is removed from the scene, no one grows angry about bussing. With 50% of our students in America climbing onto busses every day, bussing is as American as apple pie. . . .

"Bussing is expensive, time-consuming, inconvenient, and, taken by itself, rather silly. All of us like the idea of a neighborhood school; and if a child can walk a few blocks to school, there is something absurd about bussing him ten miles to another school. . . .

"But if there are immediate arguments against bussing, surely there must be one big, central, overarching reason for it. . . . All of us must ask ourselves this question: If we are opposed to bussing, what are we going to put in its place? What are we going to do about this problem that grows and grows and will not go away? How are we going to unify this nation?

"If we decide this bussing issue in such a way that America takes another step toward unity, we will have moved to stop the maturing of the contradiction. If we do nothing, or talk and act in such a way that the division is increased, then we must in the long run take the consequences."

LEGISLATION DIRECTED AGAINST RACIAL BALANCE NOT WISE

Though racial balance is not attacked per se, in **H.R. 13916**, it is precisely "bussing to achieve racial balance" which the bill attacks. The Supreme Court decision as Mr. Poe has pointed out to you, which declared bussing to be a valid tool in upholding the Swann decision of the District Court, made it clear that *neither* Court required racial balance in every school in a district in order to comply with constitutional requirements.

Though the Court does not require a balance, the Board has found that the community itself demands that everyone be treated alike. Desegregation, like the military draft and the income tax, is unpopular, to be borne only if everyone is subject to its demands. The feeder plan adopted under court order by the Charlotte-Mecklenburg Board of Education recognizes that while exact ratios need not be maintained, every school of the 104 is desegregated to some degree (7% to 49%).

In the fall of 1971, white parents in the northwest sector of Mecklenburg County, calling themselves Citizens United for Fairness, joined the NAACP suit against the Board in an effort to force the Board to change the Feeder Plan approved by the Court, charging that the Board had discriminated against them and favored the affluent southeastern portion of the city, placing an unfair "burden" on their children. The burden consisted of this: that their children were paired in formerly white elementary schools with children in formerly black elementary schools, grades 1–4 in one school, grades 5–6 in the other. Many of the southeast elementary schools retained their 1–6 grades, receiving black youngsters into their schools but exporting none of their own. In addition, these same northwest youngsters were assigned to two formerly all-Negro junior high schools, and one formerly all-Negro senior high, furnishing the white population for these schools from geographic areas close by. The parents did not claim that the schools themselves were inferior, but that they (the parents and children) were being unfairly treated in being thus assigned. "Fairness", to them, would have lain in bussing white students from the more distant affluent schools over into the northwest sector, said students and parents being made thus to suffer more equally the "burden" of desegregation.

Not only does the community demand some measure of racial balance, but consistent thinking demands it. What Solomon can answer the questions:

"Whom shall we leave segregated?"

"Whom shall we desegregate?"

There is no point in replying that freedom of choice will suffice. Thirteen years after the Brown decision, and two years after the first round of Court action had resulted in closing seven (7) black schools in the rural areas of Mecklenburg (1967), thereby, integrating six (6) elementary schools, the achievement scores in a county-wide testing program revealed these illuminating facts:

The twenty-one (21) elementary schools at the bottom of the list of seventy-six (76) were *all* Negro.

The seven (7) junior high schools at the bottom of the list of nineteen (19) were all Negro, or predominately so.

The two (2) (out of eleven) all Negro senior high schools were at the bottom of the list.

As one perused the findings and regarded achievement scores, the socio-economic background of each school's student body was clearly revealed. The "whiter" the students, the more affluent the area, the higher the scores. It is true that this test revealed more about a child's background than about his intelligence, but it is equally true that opportunities for achievement of personal and academic success were seen to be severely limited by the accident of birth and social class.

Behold the results of freedom of choice!

It is imperative that children from low income, low achievement areas, be exposed to standards and ways of living that raise the level of their aspirations and their possibilities of achieving these aspirations. If this is racial balance, so be it!

Those of us who are fairly launched on a totally integrated system need to continue unswervingly toward the graduation of a class which began its first grade together and continued through twelve years together. By comparing the dropout rates, the achievement levels, and a multiplicity of data with comparable data of previously segregated groups, and by doing this conssitently over a period of years back toward segregation and forward into integration, we will arrive at some objective evaluation of the process in which we are now so emotionally engaged.

Surely it is not too much to ask that we be given one generation in which to overcome the injustices and abuses of several hundred years. Unless you uphold those court decrees which have *compelled* us to do by law what we ought volitionaly to have done through moral judgment, we will slip backward toward separate societies.

ON REBUILDING GHETTO SCHOOLS

In his speech on March 23, and in legislation since formulated, the President proposed granting 1½ billion dollars to improve ghetto schools as a substitute for integrating them. Great idea, improving ghetto schools; if they are not fit for white children they are not fit for black.

But let us not confuse upgrading buildings with upgrading children. The 1954 Brown decision, plus a sharply rising economy, resulted in an unprecedented building of new educational facilities for blacks and whites alike throughout the South. Bond issues were seldom turned down in the 50's and 60's in the Southeast sector of our country, as growth in population and in economic ability swung upward. Charlotte-Mecklenburg is typical of such growth. In the decade of the 60's we abandoned 20 schools and built or rebuilt 32. There are no ghetto schools in our county. There are, to be sure, beautiful buildings in unbeautiful neighborhoods. And white parents whose children are matriculating in these fine buildings have discovered that library facilities, cafeteria equipment, playground fencing, band uniforms, and teaching aids of all kinds are clearly less abundant than in their former all-white schools. But integrated P.T.A.s and School Committees, with help from students and community groups, are using their ingenuity to overcome inequities. They are coming increasingly to the Board itself to make their needs known, a practice little known prior to desegregation.

What I am urging is that we desegregate and rebuild schools simultaneously. The process of rebuilding is facilitated when parents from privileged areas realize first-hand the inequities suffered by schools and minority children. Here again I call on our local experience: one of our inner city elementary schools, long in need of a chain link fence to provide a safe play area, somehow got the fence miraculously erected (by P.T.A. effort) within a few months after white children arrived. Another, a senior high school, whose black band students had paraded for twenty years in the same ancient uniforms, was the object of all-out school and community fund-raising efforts as soon as white know-how and interest supplemented black interest.

In short, why a moratorium on bringing together black and white citizens in support of desegregated schools? Separate will never be equal, as the Brown decision so emphatically stated in 1954.

IN SUMMARY

I am appending to this statement another brief paper prepared in early March when first I requested an audience with this committee. It lists the successes we have encountered during our last two years.

I am also appending a tear sheet from the Charlotte Observer, February 27, 1972, which tells simply but eloquently the story of one elementary school, Billingsville, and how it is succeeding. Multiply this story many times, and you will know why many of us believe the plusses outweigh the minuses.

Finally, I have requested that you be sent a film, produced by WBT and the Jefferson Standard Broadcasting Company, *Division—Decision: The Schools.*

This film was prepared by the station whose conservative editorial policies have urged appeal of court orders at every step of the way. Yet they have produced an essentially affirmative documentary of the desegregation achievements of the past two years. I urge you to view it and ponder its message as you contemplate action that would return us to pre-Swann, dual schools.

AN AFFIRMATIVE REPORT FROM CHARLOTTE-MECKLENBURG FROM A BOARD MEMBER WHO WAS PART OF THE DESEGREGATION PROCESS

Success, like beauty, lies in the eye of the beholder; the poet said first what the Gestalt psychologist said later; that we bring the whole of our past experience to bear in perceiving a new phenomenon. You have heard from those in our district whose negative views on "bussing," expressed with varying degrees of vehemence even prior to the fact, predisposed them inevitably to regard every manifestation of difficult sledding as evidence that integration achieved by bussing is a failure in the Charlotte-Mecklenburg school system.

It is fitting that you should hear from others who view the same scene and draw different conclusions . . . from those whose expectation *was* and *is* that we would arrive, are arriving, painfully and expensively, to be sure, but nevertheless arriving, at improved education for all children and youth. Specifically, in the Charlotte-Mecklenburg experience, the positive gains in human development outweigh the negative costs of money, inconvenience, and sporadic exhibitions of ill-will.

There is no denying that equal education costs more in dollars and cents than unequal education. Whereas 28,600 students were riding orange busses and city coaches to their schools in 1969–1970, at an average annual cost of nearly $40.00 per child, the 1970–71 court-ordered Finger Plan, plus a city student transportation enactment by the State legislature, put 11,000 more riders into busses (total, 39,600); and in 1971–72 the Board formulated Feeder plan added another 7,500 passengers. Thus, over a two year span, pupil riders increased by 18,600 and costs increased by $720,000. This is no small sum of money however, when viewed within the context of the total budget of $67,244,000 (1970–71 figures), costs are seen in truer perspective. Seven hundred twenty thousand dollars equals less than the cost of two days' operation of the schools. Can we evaluate two days' operational costs against the present and future costs of a racially divided America?

There are those of both races who are crying for community control, a new facet of the separate but equal dogma. Under this concept, more money is poured into the inferior school, whose patrons opt for deciding themselves the *what*, *how*, and *by whom* their children shall be taught. If the six-year old Coleman Report was insufficient to demonstrate the fallacy of such claims, I call your attention to the latest account of the nation's best-known experiment in separate schooling for minority children. I quote from an article, "Community Control Revisited" in the February, 1972 issue of *Commentary:*

"The district had 580 professional staff members, making a ratio of one professional to every eight-to-ten pupils. With such a favorable ratio, with the numerous paraprofessionals also on staff, with an unusual concentration of academic and foundation support, with a broad array of innovative materials and expensive educational 'hardware', the educational program might have been expected to produce results. Yet there is no evidence that anything was accomplished by the Ocean Hill-Brownsville Demonstration District, in terms of teaching children to read . . . On the contrary after all the publicity and conflict, the bold rhetoric and revolutionary expectations, *after all the money spent*, jobs allocated, new machinery and programs introduced, the children of the district cannot read as well today as they did five years ago."

But I digress. To return to the Charlotte-Mecklenburg story: it is my understanding that the Chairman of our Board of Education has presented to you a statement which touches on a number of the affirmative results stemming from our forced desegregation. Some few of these are physical improvements, visible to the naked eye: the chain-link safety fence surrounding the playground of an inner-city school, obtained (after years of need) only when the knowledge and buying power of affluent white parents supplemented the lack of same on the part of poor black parents; or the twenty-year-old band uniforms replaced by community and school effort at a formerly all-black high school.

Highly visible also are the 400 volunteer adults who are working regularly on a one-to-one teaching-counseling basis with youngsters in our schools. Not so easily perceived or measured are the benefits of these child-adult associations. Who is to measure—by what instruments can we measure—the benefits derived from the interactions of these thousands of human beings with one another? Eyes and hearts are opened on both sides of the learning problem. Not black children alone, but *all* children are benefitting. Not to mention the tutors: to care intensely for the success and well-being of somebody else's child and to participate in the building of a positive self-image—these are incalculably valuable experiences for the volunteers themselves.

Perhaps the greatest achievement to date is in the area of curriculum improvements. Hard-pressed teachers, principals and supervisors are being forced to improve instructional techniques in order to maintain their self-respect, if not in order to survive. Devastating problems of non-achievement, so long swept under the rug, are now glaringly apparent when the haves and the have-nots are seated shoulder to shoulder in every classroom. Professional in-service training courses have two or three times as many applicants as can be accepted; university extension courses are over-subscribed. Individualized instruction, so long a matter of lip-service, is now receiving implementation. New strategies for problem-solving with input from students, parents, and civic and religious groups are directed toward humanizing and improving the teaching-learning situation. More people are contributing more time, talent, and money to the school program than ever before in the history of the local schools. "Sweet are the uses of adversity", indeed.

Need I point out in closing that the bus is an instrument—no more, no less—to move us *now* toward the elimination of an ancient and pervasive injustice. There may be other instruments later. Are we so unperceptive as to declare that "bussing" is more evil than segregation and its insidious results?

To outlaw transportation is to opt for an end to integration in urban American schools. Toward the many who cry, outraged, for the "neighborhood school", I turn the searching question posed long ago to a master teacher:

"Who then is my neighbor?"

Let us not, for the sake of political expediency, turn our heads and pass by on the other side.

Mrs. Maulden. I will speak first to House Joint Resolution 620 which is page 1 that you have before you.

I state that I am unalterably opposed to the passage of House Joint Resolution 620 to amend the Constitution, and I say in the second paragraph that I have come to plead with you to recognize that desegregation, which has already so far advanced in Southern school districts, must not be retrograded nor deprived of the tools with which to continue desegregation simply because the North and East are facing squarely what we have known all along; namely, that the results of de jure and de facto are one and the same: pitifully inadequate schooling for minority children.

In the third paragraph, I point out to you that we have made terrific advances under duress, specifically, in the case I know best, *Charlotte-Mecklenburg*, under a series of court orders beginning in 1965. I agree with all of the difficulties Mr. Poe has presented to you. Painfully, I say, and haltingly, expensively, but none the less surely we have dismantled a dual school system and achieved a totally integrated system of education for our young. The board majority has resisted every step of the way, a large segment of the community has resisted, and we have lost several thousand students to private schools. Nevertheless, I think the plus factors outweigh the minus, and given your indulgence, I will point that out. Given time, financial support, and experience in human relations we will realize the goals of equal and excellent education for all the children in our district.

To thousands of professional educators and board members who have by blood, toil, tears, and sweat achieved total or near total desegregation of Southeastern school systems, it is unthinkable that the President and the Congress would favor a constitutional amendment that would undo our progress.

Here is the crux of these two pages:

However blandly the proposal may read, its sole intent is to outlaw all those devices surrounding pupil assignment which have made it possible for us to dismantle dual school systems: closing schools, rezoning geographic areas, pairing, clustering, satelliting, and busing.

The assignment of pupils to elementary, middle schools, and secondary schools, coupled with the decisions as to the course of study, extracurricular activities, and the employment of staff lie at the very core of local responsibility for education. To remove from boards of education the assignment of pupils according to whatever criteria is a serious matter—the proposed amendment does just that.

Turning now to page 4 of my statement, I point out here in speaking of H.R. 13916 that I am opposed to the imposition of a moratorium on new and additional student transportation; and quite specifically to the language of section 2(a), (2) (3).

Then I ask some questions and these are questitons that we ask of all folks who are opposed to what we can do under court order.

Who is to decide, at a national level, what constitutes "substantial hardship?" Is it the distance traveled?

At last week's National School Board Association's convention in San Francisco, we learned from a gentleman from New Mexico that there are high school students in New Mexico who travel 80 miles each way to get to school. Now I ask: How far is too far? My last two children rode a bus 20 miles per day, in a ride that had nothing to do with desegregation—the last two just finished in 1970 and 1971. Is 20 miles too great a distance? Thousands of us have never thought so. Is a 20-mile ride for transportation different from a 20-mile ride for busing to achieve desegregation?

How young is too young when purportedly the health of a child is endangered? In my small town of Davidson, on the periphery of Mecklenburg County, the school system operates with title I funds a kindergarten, child development center, for 5-year-old children of low-income parents. All but a handful of the 125 youngsters ride buses, many for a distance of 40 miles a day. For the first child to be picked up on a route, the distance and time may be as much as 72 miles and 3 hours daily.

Is 5 years too young to be bused? Is 1 hour, the average time, twice a day, too long? Is 40 miles too far? It is not in the eyes of parents who are desperately eager to have their youngsters participate in our program. Mothers weep when they find their children are ineligible because father makes more than a poverty wage.

A number of parents from 20-mile-distant Derita wrote Congressman Jonas in high dudgeon that their children were denied the privilege of participation by virtue of a decent income level in the family. They covet the opportunity for their children to ride 40 miles a day in order to benefit from the education at the end of the ride.

It has become increasingly clear, as city families fought for and won from the North Carolina State Legislature in 1969 the same transportation privileges accorded to rural children, that the bus ride a parent wants his child to take is needed transportation; whereas, the bus ride he has been assigned to take for desegregation is an unspeakable evil called busing.

Turning now to page 7: busing is expensive, time-consuming, inconvenient and, taken by itself, rather silly. And I agree with all of this. All of us like the idea of a neighborhood school; and if a child can walk a few blocks to school, there is something absurd about busing him 10 miles to another school. But what are we going to put in its place?

Skipping over to page 9 now, legislation directed against racial balance is not wise. Though racial balance is not attacked per se, in H.R. 13916, it is precisely busing to achieve racial balance which the bill attacks. The Supreme Court decision, as Mr. Poe has pointed out to you, which declared busing to be a valid tool in upholding the *Swann* decision of the district court, made it clear that neither court required racial balance in every school in a district in order to comply with constitutional requirements. But the community demands that everyone be treated alike. For example, certain white parents are having to send their fifth- and sixth-grade children in this pairing arrangement we have to formerly all black schools. They must send their junior high- (7th-, 8th-, and 9th-grade children) to a formerly all black junior high, too. Then their children must go to a formerly all black senior high because they live closest to these formerly all black schools. On the other hand, some of the elementary schools in the affluent white southeastern section of Charlotte have been able to retain their one through six grades and simply import black children without exporting their own children to a formerly all black school.

So, these parents have entered a suit. The judgment found that we, indeed, had probably discriminated against them in a socioeconomic fashion, but there were not sufficient grounds to change our feeder plan as a result of it.

In the last paragraph of page 10, if you will turn there with me, I say that not only does the community demand some measure of racial balance, but consistent thinking demands it. What Solomon can answer these questions:

Whom shall we leave segregated?

Whom shall we desegregate?

Who is going to bear this burden?

I say in reply there is no choice. Freedom of choice will not suffice. Thirteen years after the *Brown* decision, and 2 years after the first round of court action we had succeeded in integrating a few schools by closing seven black schools in the rural areas of Mecklenburg out in the county generally along the periphery in the five small towns which are part of the Mecklenburg school system. In Davidson, my own town, it was simple to close the black school and send everyone to the white school. Everybody lived a mile-and-a-half from everybody else anyway. There was no difficulty in that first round of integration.

But as indicated heretofore, 2 years after that had taken place we had a city-wide testing program; freedom of choice, remember, was the order of the day. If you will look at the top of page 11, you will see what the results of our achievement tests were. I have the results here:

The 21 elementary schools at the bottom of the list of 76 were all Negro, that is, the schools with the lowest accomplishment, 21 of them, all black.

The seven junior high schools at the bottom of the list of 19 were all Negro, or predominantly so, again showing the lowest accomplishment, all black.

The two senior highs that were all black, again, were at the bottom of the list.

This was 13 years after the *Brown* decision, and freedom of choice was operating in our county.

In the middle of the next paragraph, I say, "The 'whiter' the students, the more affluent the area, the higher the scores."

I am sorry I have only one copy of this testing program on March 6, 1969: in the next to the last paragraph on page 11, I say that it is imperative that children from low-income, low-achievement areas be exposed to standards and ways of living that raise the level of their aspirations and their possibilities of achieving these aspirations. If this is racial balance, so be it.

I plead in the last paragraph to continue unswervingly toward the graduation of a class which began its first grade together and continued through 12 years together. We can look backward then into those statistics that we had prior to this first desegregation and then compare them with the statistics which we have gathered during the ensuing 12 years. We will arrive at some objective evaluation of the process in which we are now so emotionally engaged.

Surely it is not too much to ask that we be given one generation in which to overcome the injustices and abuses of several hundred years.

On page 13, if you will go quickly with me to the President's proposition about giving money to improve ghetto schools as a subject for integrating them: this is a great idea. I believe we should spend all the money we can to improve ghetto schools, but I do ask you, do not confuse upgrading buildings with upgrading children. There is a difference.

I point out in the rest of this paragraph here on page 13 that after the *Brown* decision in 1954, certainly because of the upswing of the economic conditions in the South, there has been a tremendous passing of bond issues and tremendous building of schools for black and white alike and very specifically for black. There are no ghetto schools in our county (I can speak only for Charlotte and Mecklenburg). There are some very beautiful buildings in some unbeautiful neighborhoods.

I have quoted the results of the education going on there. When white parents have gotten to these formerly all Negro schools they find that while the building is beautiful, some of the equipment inside is not nearly the equipment they had in the school they came from; so they set their shoulder to the wheel to improve conditions.

I have an article here that I will leave with you. It is a story of one formerly all black school. Recently they passed the hat at a PTA meeting and raised $1,300 in one for some of the needed equipment. In other words, black and white parents are working together to remedy the deficiencies of the former black schools; whereas, the parents and the PTA's, all black, simply had no heart, no will, no know-how to get these things done formerly.

I quote to you here in another area some of the kinds of things that white PTA parents working with black PTA parents have been able to visibly bring about in these former black schools in the heart of the city.

I ask this question on page 14: "Why a moratorium on bringing together black and white citizens in support of desegregated schools?"

Then I summarize this paper by saying to you again, as the Brown decision stated: "Separate can never be equal." I am leaving with you the story of one of our black schools from the February 27, 1972, Charlotte Observer. (There were only seven available copies of this newspaper in the office.) I want you to read this story. It points out some of the kinds of things that happen when people work together in desegregated schools.

I am also offering to have sent to you, if you will view it, a film. I called the vice president of the Jefferson Standard Broadcasting System about the film as soon as I knew I had this appointment to testify, which was last Saturday night. Mr. Jorgenson, the vice president, said, "I would be glad to give you the video tape to take to the gentlemen but I would also be willing to spend the money to make it into a film." This is one of a series of films that the broadcasting company made and showed as a public service during the first week in April. It is called, "Division—Decision: The Schools." The whole series show how our community is divided on so many issues; specifically the issues which they took up on one night were education, on another night jobs, on another night housing. The first night was concerning values and the last night was a wrap-up of all four divisive areas. The films were made by WBTV—a very conservative television station. All their editorials throughout the years have urged repeal of every court order and have indeed reflected the view of the conservative community in which we live and operate; but the film that they made is beautiful. It shows the positive results of desegregating formerly all black schools. They pick out three that were once all black, in the inner city, and are now desegregated, and they show by interviewing children and the teachers what has been accomplished in these last 2 years under desegregation.

I urge you to view it and to ponder its message before you return us to a pre-*Swann* dual school system.

Very quickly, reviewing these last few pages, on page 16, I simply say at the end of the second paragraph that I think the positive gains in human development greatly outweigh the negative costs of money, inconvenience, and sporadic exhibitions of ill will.

There is no denying that equal education costs more in dollars and cents than unequal education. I spend some time showing you how much money is involved (and these figures are taken directly from the court order); we have indeed gone from 28,000 students in 1969–70 riding buses to 46,000, as Mr. Poe has told you, at an increase in cost of $720,000.

But I also point out how, if we take that into the total context of our entire annual budget ($67,244,000) that is the cost of operating the schools for 2 days. Seven hundred twenty thousand is about what we spent on 2 days' operation of our schools. You can get a truer perspective if you look at our entire budget. It is worth the cost, I think, of 2 days' operations of the schools not to have a racially divided community.

As for the President's proposal to "beef up" poor schools, I quote for you (and you can get for yourself from the February issue of Commentary) a study made by the Ocean Hill-Brownsville demonstration district which for 3 years had money poured into it in what was called a community controlled experiment which, in essence, is what Mr. Nixon has proposed. Though the money did not come from the Federal Government, it came from Carnegie and Ford and their friends. That money was to build up the achievement level and build the school up to the point of comparability with other schools in New York City.

At the end of 3 years, indeed, at the end of 5 years, the children read less well than they did, if you use reading scores as a measure of achievement, less well than prior to the upbuilding—note the quotation there.

I show you in the middle of page 18 some very definite results of integration that are visible to the eye in Charlotte-Mecklenburg—a chain link fence up around an innercity playground which had been needed for the entire life of the school, erected immediately within a few months of white students getting there.

A band—this is page 18—an all black high school, equipped from stem to stern by a community rally following desegregation.

I also point out as Mr. Poe has done very ably that we have 4,000 volunteer people working on a 1 to 1 basis with children who are having difficulties. These children have become visible to us now because they are shoulder to shoulder with other children. Before, they were somewhere outside the public eye; we did not know about them.

On page 19, the first paragraph there, you will note that the greatest achievement to date is in the area of curriculum improvements. I am an ex-teacher, and feeling I needed to know a great deal more in order to judge our curriculum progress, I completed a master's degree in the summer of 1971 in elementary education. I cannot tell you the insight this has given to me about curriculum needs. What our teachers are now doing to meet the situation—just to continue existing—means that things have had to start moving and improvements have had to be made. We are really beginning in our in-service educational program to come to life in meeting the needs of children.

New strategies for problem-solving with input from students, parents and civic and religious groups are directed toward humanizing and improving the teaching-learning situation.

We have talked a lot about individualized education. Believe me, it is having to take place now as there is such a wide ability range in each class. We have always had a wide ability range. I think school superintendents use what they call the old two-thirds rule about finding the range of a class in school. They say to judge the range one should compute two-thirds of the expected chronological age in any class. For example, to take an easy one, a fourth-grader would be 9 years old. Two-thirds of 9 is 6. There is a 6-year ability span in the students in the average 4th-grade classroom according to the professional people. The span was there before, but it is greater now, and it is heaviest at the bottom. So, teachers are having to devise ways of meeting individual needs in this span.

I do point out at the end of this page (and this is the end) that the bus is an instrument—no more, no less—to move us now toward the elimination of an ancient and pervasive injustice. There may be some other instruments later but I wonder: are we so unperceptive as to declare that busing is more evil than segregation and its insidious results?

To outlaw transportation is to opt for an end to integration in urban American schools. Toward the many who cry, outraged, for the neighborhood school, I would direct a very searching question that was directed a long time ago to a very great teacher:

"Who then is my neighbor?"

Let us not, for the sake of political expediency, turn our heads and pass by on the other side.

I thank you for this opportunity to testify.

Chairman **Celler**. Thank you both very much. You have been very helpful.

Mrs. **Maulden**. We do get along with each other.

Chairman **Celler**. Our next witness is Mr. J. W. Hemingway, Community Coalition for Public Schools, Jackson, Miss.

Mrs. **Maulden**. Mr. Celler, may I leave these clippings with you? Would you like to have the film sent up by WBVT? It is surely true that "a picture is worth a thousand words." It would cost $400 to turn the tape into film, but Mr. Jorgenson offered to do it.

Chairman CELLER. I do not think we would have the right to ask for it under those circumstances. Thank you.

Mr. Hemingway.

STATEMENT OF J. W. HEMINGWAY, DIRECTOR, COMMUNITY RELATIONS AND INFORMATION, COMMUNITY COALITION FOR PUBLIC SCHOOLS, JACKSON, MISS., ACCOMPANIED BY PETER H. STEWART, EXECUTIVE DIRECTOR

Mr. HEMINGWAY. Mr. Chairman, I am Joe Hemingway with the Community Coalition for Public Schools of Jackson, Miss. We are an emergency school assistance program. Mr. Peter Stewart, my executive director, is on my left.

My statement is brief. I will read it to you. If you have any questions, I will be happy to speak to those.

The Community Coalition for Public Schools, an emergency school assistance program (ESAP), of Jackson, Miss. is here to speak against the proposed legislation, H.R. 13916, known as the "Student Transportation Moratorium Act of 1972."

The testimony will only be significant if the issue being discussed is clearly understood from the beginning.

Transportation is not the issue. Neighborhood school buildings is not the issue. The long and tedious harangue about busing has nothing to do with the transportation of public school students to and from public schools. Busing is clearly the critics' and alarmists' banner under which they fight social integration and the full civil rights and liberties such integration fosters. This fight, which is against inherent education rights, is the issue.

It is not our intent to lead you back through those inherent rights of *Brown* v. *Board of Education* and up to today. But this need not be a legal treatise to point out the well-established fact that the majority of yesterday's white, Anglo-Saxon religious protestors knowingly created and maintained a dual system for education in this country. Whether these were economic and/or religious and/or racial separations, they nonetheless existed as dual public systems were tolerated by society. They cannot and, barring legislative interference, will not be allowed to exist any longer.

Gradually, the number has grown of those who will fight to end dual public social structures and inequities, so that in Jackson, Miss. we now have a good system of educational opportunity being presented. It is also one that is more fair than ever before. Certainly, there is still some racism and philosophical insensitivity, but Jackson now has a better way in education. The tragedy is that thousands of Mississippi students were harmed while school officials ignored a U.S. Supreme Court precedent for 7 years and then stalled the subsequent 10 years with litigation. The present plans being developed were only arrived in *Singleton* v. *Board of Education* (USDC–Miss. June 24, 1971).

The school attendance plan in Jackson, Miss., requires the daily transportation of some schoolchildren to and from assigned schools. That transportation, or busing, is fought because it means the integration of all students, and, in Mississippi, that means black students and white students. Thousands of white children in the South have been pulled out of public schools and put on buses to private academies that are based on no other premise than that old ethnic myth of white superiority.

Let us look at the arguments that the great protectors of "innocent, suffering, little children" use to attack the transportation of public school students, now that riding a bus can mean an opportunity for total motivation, experience, exposure, and accomplish in education.

COST

Money is always a great scapegoat. In inflations and depressions, war and peace, money is the problem, so it is little surprise that money is a key part to any argument related to restructuring American public schools. The cost factor is an administrative issue and the Jackson Municipal Separate School District has now allocated funds and created the administrative framework to make the increased transportation facet of quality education an integral part of the whole. Part of this smoothness is due, we feel, to programs such as ours and the change in top city and school administrators. Jackson, Miss. had the funds necessary to comply with the Federal court order and under a new superintendent of schools and relatively new mayor, the Jackson School Board proceeded to purchase the necessary additional 69 buses and expand services and administrative functions in the area of transportation so that court-ordered, mutually-agreed-upon objectives could be reached.

The proposed building plan which calls for two educational plazas will improve, even though expand the Jackson transportation system for public school students. The August 1971–January 1972 expenditures in the transportation department of Jackson's public schools was only $124,000 of the annual budget of $410,000. Even with this less than expected spending, that same department of transportation will have an annual budget of approximately $500,000 for the 1972–1973 academic year.

We would be misleading if we said all this was done with a positive attitude, for actions can be changed more quickly than emotions. You see, Jackson never said transportation would bankrupt the system; former Jackson school officials and their legal counsel simply did not wish to abolish the two school systems that were providing deficient education for both segments of the community while helping maintain two distinct subcommunities.

In fact, when the court, the court-appointed biracial committee, the attorneys for the plaintiff and the attorneys for the school board worked out an attendance plan and transportation schedule that was acceptable for all, former Gov. John Bell Williams sought to prevent the success he could foresee, by ordering the State to withhold payment of revenues to the Jackson school system. The Jackson Municipal Separate School District won, of course, but set a precedent by going into court against the State for the first time on this issue and defeating the State's government and prevailing philosophy.

We are sure that there are superintendents across the country who will now say that Jackson, Miss., was just in better financial shape than they. We ask those superintendents and critics living in areas that have maintained dual systems, "How were the allocations made all those years of 'regular' schools and 'their' schools?"

Experience in school desegregation cases has shown us that the cost factor is one of the first defenses raised when grown men and women decide to not have their school system provide quality education in an environment of full civil liberties that support human dignity. The continuance of stumbling-block tactics by school officials must be recognized by all citizens of this country as nothing more than the continuance of obsolete social and educational theory.

Community impact is the next major area where critics direct their arguments against transportation of students when that transportation will create a more totally integrated educational setting. Many of these critics fail to realize, or acknowledge that the "community" is part of the problem. Many of these critics are so removed from the programs in public education that they could not comprehend the facts if they had them.

We all know that any community is easily aroused when it does not have the facts. The people of the United States who are aroused today against busing, not only do not see the problems of housing, deficient urban services, decaying neighborhoods, and rising crime/delinquency rates; they do not see how those things affect education and child development. It is this same public that is easily aroused today by tragic stories of children being bused 30 and 40 miles and spending hours on buses when they could be happily walking to neighborhood schools each day. These critics find it convenient to forget about the rural students of America and they also forget to look closely at those neighborhood streets that are supposedly designed to allow children to walk to school each day.

Yes, in Mississippi some school children do ride more than 40 miles roundtrip to school each day, but not because of any Federal court order. They are, as they always have been, black children in nonmunicipal school districts being bused past white schools. This ruse to avoid integration is not just a Mississippi ploy, and the Indian-American, Spanish-Americans, Mexican-Americans and Oriental American of the United States know we speak the truth.

We are sure there are some errors being made today in the transportation schedules of public school children, usually because those who draw and/or order the plans hope the plans will fail. However, Jackson, Miss., is making more progress than the smaller towns and rural areas. In fact, Jackson is making more progress than some much larger districts. There are now people in Jackson honestly trying to destroy the archaic, dual system of education operated for so long. Of the more than 30,000 students enrolled in Jackson public schools, 7,300 are transported in a quality education environment shared by their peers. Those elementary and secondary school students transported are on their buses an average of 40 minutes in the morning and again in the afternoon. The average distance from home to school attended is 7.2 miles.

Viewed from the factual position of this short riding period and minor distance factor, what about neighborhood schools? What about the misleading statement that people only live in certain neighborhoods because of convenient schools? Even in small communities across this Nation, daily car-pools faithfully run by mothers, take children to school each day. In dozen of subdivisions being built around elementary schools so realtors can have a selling point, there are no sidewalks being built. Those few children who do walk to school in America, frequently walk on rights-of-way, in ditches or in the roadway itself. It is usually only the inner-city areas that have plenty of walks and in those areas it is sometimes not safe to walk at any time of the day, regardless of the pedestrian's age.

In a recent PTA survey conducted in Jackson, Miss., it was significantly noted by parents of nonbused children that they objected to their children being assigned to attend schools "all the way across town" not because they would have to drive those children to school, but because they would have to drive so far, and I underscore so far. Those respondents repeatedly ask for car-pool assistance. No, we must point out that no one really thinks that the Nation's children actually walk to school each day.

Also, in the community impact area, the alarm is frequently sounded in regard to the child's safety. That may come as a surprise to this assemblage, but there are adult, supposedly educated, men and women in America who believe that the sole factor of skin color difference automatically puts their children's personal safety in jeopardy.

Many minority-group parents feel their children will be harmed when they are placed with the majority group in supposedly equal situations. These parents certainly have historical basis for their fears. With a far less factual basis for their fears, there are majority-group parents who feel that "strange" minority groups will bring havoc to any integration of social-racial groups.

Jackson, Miss., has shown us this is not true in either case. Even with a closer watch on student disturbances than before, the Jackson public schools point out—and this is in the classroom and on the bus—that there is no more than the usual child misbehavior or improper conduct than in their formally segregated or token integrated situations.

The city of Jackson has, for several years, had recently annexed students and some students in the immediate perimeter of city limits, transported into the city school system. The racial ratio of this activity was approximaely 70 percent white and 30 percent black of the 2,300 total involved. The school attendance plan under which the Jackson Municipal Separate School District now operates utilities transportation for some of those same city limit problems but has been expanded considerably for the express purpose of placing every public school student of Jackson in the best educational environment possible under present circumstances. The Jackson public schools now operate 124 buses for a total of about 7,000 students. The racial ratio, still with no violence, is now about 60 percent black and 40 percent white.

There are two last points that must be addressed in this testimony. One is the question related to why the Community Coalition for Public Schools is opposing the proposed moratorium if the already achieved busing in Jackson is working. The other question relates to how an ESAP agency from Jackson, Miss., a minor metropolitan area of the Deep South, can come before a body of the Congress of the United States and tell a success story tied to integration. How can we present this same testimony as support to any plaintiffs or public school districts and systems of the Nation who are trying to set aside one element of segregation that deprives people of basic rights?

First, let us explain why the Community Coalition for Public Schools thinks it necessary to give this probusing testimony. Proponents of the moratorium may wish to quickly point out to us that the proposed legislation would not terminate the busing now being implemented.

We are aware of that. We are also aware that administrative policy in the Jackson public schools could change. If attorneys are forced back into the court to seek Federal court assistance in getting the public schools to continue and expand transportation policies, such relief would not be possible under the terms of H.R. 13916.

Our agency knows, as does the Department of Health, Education, and Welfare that Jackson, Miss. enjoys a good measure of success in the field of integration in educaion that has mandatory busing. Our agency is concerned about the countless districts and school systems where, to date, little or no progress has been made in the troublesome and frustrating task of eradicating dual educational systems. Our agency is aware that there are plaintiffs in the country less fortunate than those of Jackson who were able to secure legal counsel that would fight the long years it took to reach the degree of progress enjoyed today. Those less fortunate plaintiffs, under the provisions of H.R. 13916 can make no progress if the problem gets down to a situation where mandatory transportation of students across neighborhood lines is the only feasible solution that can be projected.

What we are telling you today is that the transportation of public school students across neighborhood lines in Jackson, Miss. is proving to be a successful way of eliminating inferior, dual school systems. We are telling you that despite critics' claims, there is no violence on buses, no oppressively transported students, no shocked child psyches. We are telling you that boards of education can meet the financial objections they wish to meet. We are telling you that it is a clamor of uninformed voters and vote-seekers that are dismayed at the success of busing, and we are telling you that public school students—yes, even older public school students—can be buoyed by new learning experiences and environments if attitudes and descriptions are kept positive.

We are not concerned with the facts that other communities do not have mandatory transportation. However, we are concerned about Congress eliminating that possible remedy before it can be tried elsewhere or even expanded, if necessary, in our city. Again and again, we emphasize the fact that we are concerned about, and desire, the total elimination of dual public school systems. We know that total socioeconomic integration is a necessary means to that end.

How can we appear here before you? Because, if mandatory transportation across neighborhood lines to achieve improved education can work in Jackson, Miss., it can conceivably work anywhere.

Jackson, Miss. is a Deep South, State Capital city of 190,000 people. Black people and white people are well-settled into the traditions of that region. Racism exists in both communities and the world has watched through the years as hate has manifested itself in the murder of Medgar Evers, the Jackson State College killings and the Republic of New Africa farce that left one Jackson policeman dead and several RNA members in jail.

It was in this community environment that lawyers have worked tirelessly to end segregation in public schools. When other remedies failed, mandatory transportation was sought as a means to create that long-sought-after better school system.

Perhaps it was more a dollars-and-cents turn-around by the Chamber of Commerce and not the moral issue that caused them to suddenly publicly back the new elementary school attendance plan. A newly-integrated school board and new legal counsel worked with a court-appointed bi-racial committee and with attorneys for the plaintiffs to work out the better way.

Right now, things are working well because attitudes and intentions are positive. If parents and agencies such as Emergency School Assistance cease to be concerned and old philosophies start coming up again, plaintiffs will fight again.

In the light of the Jackson success and handling of problems we have discussed today, the President of the United States and his Moratorium Act supporters obviously must have been ill-advised. The leadership of this country cannot propose the elimination of a remedy solely because it is unpopular. Catering to the critics while pledging more money to the oppressed is just a repeat of old segregation tactics.

Gentlemen, aside from the possible damaging constitutional effects this proposed legislation might have, H.R. 13916 will severely retard our society's advancements in human relations.

This bill being considered is not so much a moratorium on transportation as it is a moratorium on continuing efforts to establish a multi-ethnic, constitutionally-preserved society that was the very reason for this country's founding.

Thank you.

Chairman Celler. Are there any questions?

Mr. Zelenko. Mr. Hemingway, is the pupil busing now underway in Jackson being implemented pursuant to a court order?

Mr. Hemingway. Yes, it is. It was entered June 4, 1971.

Mr. Zelenko. Is it being implemented in stages? Will additional busing be required in the future?

Mr. Hemingway. It is being implemented in stages. The difficult thing about it is they don't know right now how many additional students will need to be transported and exactly how they will be transported and across what lines. They have announced a portion of the secondary school attendance plan for next year, but it is not complete at this time.

Mr. Zelenko. In other words, in Jackson, Miss., it is expected that secondary school students not now being transported will be transported in the 1972–73 school year?

Mr. Hemingway. It will be necessary to transport some.

Mr. Zelenko. I suppose that will include some who are not now being transported?

Mr. Hemingway. That is right.

Mr. Zelenko. If a subsequent order were fought, or objections were raised, and if the school board hesitated—and you made references to administrative difficulties you may face—if the school board hesitated to implement the next stage of your desegregation process, do you believe that the moratorium bill, if enacted, would adversely affect the achievement of school desegregation?

Mr. HEMINGWAY. I think I know my school board well enough to know if it passes, they will certainly take that to be support for resisting additional transportation.

Mr. ZELENKO. If the moratorium passes.

Mr. HEMINGWAY. Yes; whether or not in fact, they are entitled to do that is one thing. That is the whole problem we have. It is not so much a question of what is right or correct, but it is what school boards have known they could attempt in delay tactics.

Mr. ZELENKO. Mr. Chairman, the question was asked because the subcommittee is uncertain which cases and which school districts would be affected if the moratorium were passed by the Congress. This particular case involves desegregation in stages. There is another stage in the process which will occur before the September 1972 school year. There is some question as to how that second stage would be affected by the moratorium.

With the permission of the Chair, we would like to get some answers from the Department of Justice on that.

Chairman CELLER. The point is well taken and you might communicate with the Department of Justice.

Mr. MCCLORY. I have no questions, but I would like to make this comment. I would not want the witness to feel that the sole reason for people coming before this committee suggesting some remedy with regard to the subject of busing was that they felt they were taking a popular position or that the President was acting simply because inaction would be unpopular.

There are some definite hardships which have fallen on school boards, on parents, and on schoolchildren. There are instances of genuine doubt about the manner and extent of busing required by a court order. The Supreme Court has recognized that there are valid limits on busing. I think there is a need for some remedy. This is not solely a popularity issue. At least I do not regard it as such before this committee.

Chairman CELLER. We thank you very much for your testimony.

Our next witness is Mr. Samuel C. Sheats, member of the Pasadena School Board.

STATEMENT OF SAMUEL C. SHEATS, MEMBER, PASADENA SCHOOL BOARD, PASADENA, CALIF.

Mr. SHEATS. Mr. Chairman, and members of the committee, since I conveyed to you the statement I proposed to make this morning, I have made an additional statement which is a summary of that statement.

Chairman CELLER. We will put your first statement in the record. (The statement follows:)

STATEMENT OF SAMUEL C. SHEATS

Mr. Chairman, members of Subcommittee No. 5 of the House Committee on the Judiciary: My name is Samuel C. Sheats. I reside at 3556 Canyon Crest Road, Altadena, California. I have asked for an opportunity to appear before this esteemed subcommittee because I am deeply concerned about and troubled by House Joint Resolution 620 and the related proposal that the United States Constitution be amended, to mandate "neighborhood schools," and H.R. 13916 and related legislation, requiring a one year moratorium on new and additional transportation and assignment of public school pupils.

It is an awesome privilege to appear before you and possibly, in some small way, affect your resolution of an issue which is so profoundly consequential that it may well crucially affect the lives of all future generations of school children.

I respectfully request and fervently hope that this subcommittee will not favorably report out the proposed amendment and legislation. There are three basic reasons for my making this request. First, as a lawyer, it is difficult for me to understand how these proposals can possibly square with the Fourteenth Amendment. On the contrary, they seem to fly into the teeth of the Fourteenth Amendment, whose thrust for over 100 years has been in the direction of racial equality. And the fact that the proposed amendment, in particular, is couched in innocuous language does not for me, and many other lawyers, allay our fear that its intended effect is to render impotent significant portions of the Fourteenth Amendment. Indeed, it is axiomatic that statutes or constitutional provisions valid on their face may be fatally defective when their actual intent and purpose are exposed.

Viewing the proposed amendment and legislation in the context of the long and arduous struggle for equality which has been waged by blacks and whites alike since the earliest days of slavery, and particularly during the 18 years since *Brown* v. *Board of Education of Topeka*, would seem to virtually compel the conclusion that these proposals are anti-egalitarian and, in fact, anti-black.

Why the sudden interest in "neighborhood schools" and bussing? Isn't the "neighborhood school," except to a limited degree, largely a myth, or if not, an anachronism? Even in public school systems, junior and senior high schools rarely are neighborhood schools, but serve a broad area, and clearly private and parochial schools are not "neighborhood schools," generally located only incidentally with respect to geography.

Moreover, if schools are characteristically "neighborhood" ones, why is so much bussing *required* to enable so many students to attend? This brings me to a second point I would like to suggest.

Isn't bussing really a phoney issue? If people object to bussing, why have they tolerated so many school busses for so many school busses for so many years in so many communities? I am sure this subcommittee has superior access to statistics on bussing than I have, but for purposes of discussion, may I cite a few?

Since I am from California, let me start at home. In the 1967–68 school year, according to the California Highway Patrol which licenses school busses, there were 10,993 busses in this state alone. They transported 873,235 public school pupils at a cost of $63,890,000, not including capital outlay. In the 1968–69 school year the number of pupils transported in California increased to 910,000, in 11,495 busses and other vehicles. This is consistent, by the way, with the national trend, where the cost of bussing, the number of children bussed and the number of vehicles used have increased *every year* since statistics were kept by the National Commission on Safety Education of the National Association, upon which I am relying for these figures.

It is interesting to note that in the 1954–55 school year, which, of course, is the year of *Brown*, 9½ million public pupils in the United States were transported in 154,000 vehicles (rounded off), at a cost, not including capital outlay, of $329 million. By 1968, the number of pupils transported had grown to 17,271,718, in 230,102 vehicles, at a cost of $822,595,699. Between 1968 and 1969 school years the number of pupils transported increased by 1,196,000 to 18,467,944, the number of busses by 7,500 to 238,102, and the cost $78 million to $901,353,107.

This is, I submit, gentlemen, the context in which the proposed constitutional amendment and legislation should properly be viewed.

Incidentally, we in California have experienced a constitutional amendment analogous to the one this subcommittee is considering.

In 1964, the people of California, by a constitutional initiative (Proposition 14), purported, by a vote of 4,526,460 for and 2,395,747 against, to place into the California Constitution Article 1, Section 26, which provided in part:

"Neither the State nor any subdivision or agency thereof shall deny, limit, or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses."

In *Mulkey* v. *Reitman*, 64 C2d 529; 50 Cal. Rptr. 881, 413 P2d 825, the California Supreme Court struck this amendment down. It held, *inter alia*, that the federal constitution forbade that amendment's effective nullification of California statutes previously enacted to prohibit racial discrimination in the sale, rental or use of housing, rights protected under the Fourteenth Amendment.

In concluding the constitutional initiative amendment did have that effect, the Court noted:

"A state enactment cannot be construed for purposes of constitutional analysis without concern for its immediate objective, . . . and its ultimate effect (citations omitted). To determine the validity of the enactment in this respect it must be viewed in light of its historical context and the conditions existing prior to its enactment." (*ibid*, 533–534).

To the objection that California citizens were only exercising their legal right to vote, the court answered:

"We cannot realistically conclude that, because the final act of discrimination is undertaken by private party motivated only by personal economic or social considerations, we must close our eyes and ears to the events which purport to make the final act legally possible. Here the state has affirmatively acted to change its existing laws from a situation wherein the discrimination practiced was legally restricted to one wherein it is encouraged, within the meaning of the cited decisions. . . . When the electorate assumes to exercise the law-making function, then the electorate is as much a state agency as any of its elected officials. It is thus apparent that, while state action may take many forms, the test is not the novelty of the form but rather the ultimate result which is achieved through the aid of state processes. And if discrimination is thus accomplished, the nature of proscribed state action must not be limited by the ingenuity of those who would seek to conceal it by subtleties and claims of neutrality." (*ibid*, 542).

But even if one assumes, *arguendo*, the proposals this subcommittee is considering are not constitutionally infirm, they are, I respectfully urge, a constitutional and legislative overkill. This brings me to my third point.

How can persons charged with the responsibility of providing equal educational opportunity, without regard to race or color, be expected to discharge that responsibility in the face of such flat prohibitions?

The Pasadena Unified School District of which I happen to be a trustee (Board member), although I am appearing here as an individual citizen, is a case in point. If the Pasadena School Board has been unable to make pupil assignments *with regard to race*, and had been unable to provide bus transportation, it is clear that the Pasadena School system would not have been able to move from segregation to desegregation and integration as it has done. Because of the relevance of Pasadena's experience to the national educational scene, permit me to briefly describe some aspects of that experience.

The Pasadena Unified School District is a metropolitan school district in which approximately 178,000 people reside. It is comprised of the city of Pasadena, where some 112,000 live, of the unincorporated area of Altadena (Los Angeles County) where about 43,500 live, and other unincorporated areas, as well as the city of Sierra Madre.

As of October 8, 1972, the District's average daily attendance was 27,547, of which 50.3% were anglo-caucasian, 35.5% were black, 10.3% were Spanish surname, 2.9% were Chinese, Japanese, and Korean, 0.2% (47) was American Indian, and 2.9% (237) were other non-white minorities.

On that date, the School District maintained 37 schools, none of which contained a majority of any student minority, except in one instance of an elementary school, which because of demographic changes, was 51.9% black and 41.1% Anglo-caucasian.

The racial and ethnic constituency of schools in the Pasadena School District was radically different from what it had been two years earlier. In October, 1969, when 58.3% of the 30,622 enrolled were Anglo-caucasian, 30% were black and 11.7% were other minorities, 24 of Pasadena's 29 elementary schools were severely racially imbalanced. Fourteen of them were more than 70% white, 13 of which were more than 80% white, and 8 of which were more than 90% white. On the other hand, 8 were more than 50% black, of which 7 were more than 60% black, 5 were more than 80% black and 2 were more than 90% black.

Indeed, in October, 1969, 19.5% of *all* black/elementary school children attended a single Pasadena elementary school.

This is how Pasadena's dramatic shift to the 1972 integrated constituency came about.

Although in 1963 in *Jackson v. Pasadena City School Dist.*, 59 C2d 876; 31 Cal. Rptr. 606, 382 P2d 878, the California Supreme Court had imposed upon the District an affirmative duty to integrate, the Pasadena School Board did little or nothing to discharge that duty until 1970. On 1–22–70, and by supplemental orders 3–12–70, the United States District Court at Los Angeles, found in

Spangler v. Pasadena City Board of Education, 311 F. Supp. 501, that there existed in the Pasadena Unified School District racial imbalance or segregation of students and faculties at all levels, that the Board was aware of these facts, and that the Board had used a neighborhood school policy and a policy "against forced crosstown bussing," which the Board, under the facts of the case, could have well recognized resulted in increased racial imbalance.

The court therefore ordered the Pasadena School District to prepare a plan for reducing personnel discrimination and segregation, so that for the 1970 school year, there would be *no* school in the District which would have a majority of any minority students.

Rather than merely hewing to the letter of the District Court's mandate, the majority of the Board as then constituted, and the Superintendent, embraced the spirit of that mandate. They caused to be formulated and vigorously embarked upon the implementation of what has come to be called the "Pasadena Plan" for integration. Pupil reassignment and the extensive use of bussing are central ingredients of the Plan. Under it, schools were reorganized into primary (K–3), elementary (4–6); junior high schools were changed from grades 7–9 to 7 and 8, and high schools from 10–12 to 9–12.

Under the Plan children are bussed to all schools. About 14,000 children are bussed daily in about 88 busses, over about 625 bus routes servicing about 2,000 bus stops. And the system works! It works because children, bus drivers, teachers, administrators, parents and organizations, such as the list attached as Exhibit "A," have supported it and made it work.

In this connection, I have been explicitly authorized by Mr. Albert C. Lowe, President of the Pasadena School Board, Mrs. LuVerne La Motte, its Vice-President, and Mrs. Ann Hight, Board Member, to express to you their wholehearted support of the Pasadena Plan of integration.

By expressing our unreserved support for the Pasadena Plan, none of us intends to suggest that the Plan is perfect—what in life is? We are mindful of the need to continually monitor the effects of the Pasadena Plan of integration, and to provide supportive services necessary to maximize opportunities which integration merely initiates.

This is a far cry, however, from the position taken by some that bussing is unacceptable because it, among other things, precipitates and accelerates so-called "white flight."

In any event, avoidance of "white flight" is not a constitutional imperative: avoidance of segregation of school children is. It follows, therefore, that if a conflict arises between avoidance of segregation and institution of integration on the one hand and preventing "white flight" on the other, it is the former which must take precedence.

This is because of the incalculable harm done by segregation to the hearts and minds of school children, especially minority school children, as recognized by *Brown*, and which imposes an affirmative duty upon school boards to eradicate.

Finally, isn't it just a little curious that in the most mobile society the world has ever known, a society of more than 90,000,000 motor vehicles, one in which billions of dollars are annually spent on streets and highways, where people think nothing of living in one community and working and recreating in others, they would be opposed to children receiving a superior educational opportunity through the use of transportation?

The answer which is strongly suggested to me, and which I suggest to you, is that most people are not, in reality, opposed to bussing; they are opposed to integration. Such people realize—as history has so clearly taught—that in this complex, urban segregated society in which most of us live, bussing is the only practicable way to integrate the public schools. More importantly, they know that if our own public schools are integrated—truly integrated—then housing and jobs will become integrated. It is clear to them as it is to the rest of us that if children grow up together in school they will respect each other, and once they do this it will be impossible for them to practice the narrow and restrictive policies which so severely affect our present American society.

For these reasons, therefore, I ask you to reject the proposed constitutional amendment and legislation. I also ask you to reject the argument that neighborhood schools are more important than equality of opportunity or that bussing is unacceptable because it destroys neighborhood schools and inconveniences school children and their parents. Even if this were true, these are small prices to pay for the entire future of our children, and for their very survival.

Again, thank you for the opportunity of appearing before you.

EXHIBIT A

PASADENA UNIFIED SCHOOL DISTRICT, OFFICE OF THE SUPERINTENDENT OF SCHOOLS, NOVEMBER 7, 1970

ORGANIZATIONS THAT HAVE EXPRESSED SUPPORT FOR THE BOARD'S STAND ON INTEGRATION

Altadena Neighbors
Alta-Pasa Human Relations Committee
American Association of University Women
California School Employees Association
California Teachers Association, So. Div.
Caltech Y.M.C.A.
Citizens Urban Renewal Advisory Committee
Church Women, United Executive Board
Community Planning Council Board of Directors
Council of the Pasadena Area Lutheran Parish Pastors, Lay Delegates from Christ the Shepherd Lutheran Church, Altadena Messiah Lutheran Church, Trinity Church of Pasadena
Ecumenical Council of the Pasadena Area Churches
Foothill Family Service
Foothill YMCA
Foothill Free Clinic
Fuller Theological Seminary (signed by 20 faculty members)
Human Relations Committee, City of Pasadena
Japanese-American Citizens League
NAACP
Orange Grove Friends
  Members and Attenders
  Resolution signed by 36 citizens
Pasadena Chamber of Commerce Board of Directors
Pasadena Area, United Methodist Council of Ministries
Pasadena Association of Career Teachers
Pasadena Chapter, American Federation of Teachers
Pasadena Congregation Reorganized Church of Jesus Christ of Latter Day Saints
Pasadena—Foothill Urban League
Pasadena Urban Coalition
Pasadena YWCA
Session of Pasadena Presbyterian Church
St. Mark's Episcopal Church Members of the Clergy and Vestry
Project Head Start
Associated Student Body, Blair High School
Associated Student Body, Muir High School
All Student Union of Muir High School
Associated Student Body Cabinet and Representative Council of Pasadena High School
California Institute of Technology
Pasadena Citizens-Staff Advisory Committee for Compensatory Education
Pasadena Education Association
PTA—Eliot Junior High School PTA Board
PTA—Muir High School
PTA—Linda Vista Elementary School
PTA—Washington Junior High School PTA Board
Students in Support of Integrated Education
The Sequoyah School
Westridge School
Altadena Family Service
Pacific Oaks College
Council of Messiah Lutheran Church
League of Women Voters of Pasadena
PRIDE Advisory Board
Throop Memorial Church, Unitarian Universalist
California Republican League of Pasadena
Roosevelt Democratic Club of Pasadena
Altadena Democratic Club
Volunteer Bureau of Pasadena: Executive Director, Assistant Director, and majority of the Board of Directors

Mr. SHEATS. I would like to epitomize the first summary by the second summary because I appreciate the sometimes arduous nature of the subcommittee's function and would not want to add to it.

I will proceed closely to the summary. I have copies, Mr. Chairman, of the summary.

May I say simply, in addition to what I have indicated in the summary, that I regard it to be an awesome privilege to appear before you this morning all the way from sometimes sunny California, because I am aware that those of us who are appearing here today may possibly in some small way affect your resolution of an issue which we believe is so profoundly consequential that it may well crucially affect the lives of all future generations of schoolchildren.

Hazarding the risk of being reticent rather than verbose, permit me to read the summary.

Basically, there are three reasons I am requesting this subcommittee not to favorably report House Joint Resolution 620, proposing that the Constitution be amended to mandate "neighborhood schools," and H.R. 13916, proposing a 1-year moratorium on new and additional student transportation.

First, these proposals appear to fly into the teeth of the 14th amendment, whose thrust for over 100 years has been in the direction of racial equality. Viewing these proposals in that context, which is how statutes and constitutional provisions valid on their face must be viewed to determine their ultimate validity, would virtually compel the conclusion these proposals are antiegalitarian, antiblack, and unconstitutional, under *Brown* v. *Board of Education of Topeka*.

Isn't the neighborhood school largely a myth, or, if not, an anachronism? Even in public school systems, junior and senior high schools are rarely "neighborhood" schools; clearly private and parochial schools are not.

Second, isn't busing a phony issue? If it isn't, why have so many people tolerated so much of it for so long in so many communities?

According to the National Educational Association, the number of children bused, the number of buses used to do so, and the cost of doing it have increased every year since *Brown*. In 1954–55, about 9.5 million public school pupils in the United States were transported in 154,000 vehicles, at a cost, not including capital outlay, of $329 million. By 1968, the number of pupils transported had grown to 17,271,718, in 230,102 vehicles, at a cost of $822,595,699. By 1969 transported pupils increased by 1,196,000 to 18,467,944, the number of buses by 7,500 to 238,102, and the cost $78 million to $901,353,107.

Parenthetically, I recognize that you have superior access to statistics than I have, but for purposes of discussion I think it is meaningful to mention that.

This is, you submit, the context in which the proposals should be viewed.

California, my residence, has experienced a constitutional amendment analogous to the one this subcommittee is considering.

In 1964, the people of California, by a constitutional amendment initiative (Proposition 14) purported, by a vote of 4,526,460 for and 2,395,747 against, to place into the California Constitution article L, subsection 26, which provided in part:

> Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.

In *Mulkey* v. *Reitman*, 64 C2d 529; 50 Cal. Rptr. 881, 413 P2d 825, the California Supreme Court struck the amendment down, on the ground that the Federal Constitution forbade that the amendment's effective nullification of California statutes previously enacted to prohibit racial discrimination in the sale, rental or use of housing, rights protected under the Fourteenth Amendment. The Court determined that "effective nullification" resulted by viewing the amendment in light of its historical context.

Thirdly, how can persons charged with the responsibility of providing equal educational opportunity to all children be expected to discharge that responsibility in the face of the flat prohibitions proposed in the resolutions being considered by this subcommittee?

As a board member of the Pasadena Unified School District, though appearing here today as a private citizen, I do not believe such responsibility can be discharged under the proposal, if the Pasadena School Board in 1970 had not been able to make pupil assignment with regard to race, and had it not been able to provide bus transportation, it is clear that the Pasadena School District would not have been able to move from segregation to desegregation and integration as it has done.

The Pasadena School District, in which about 173,000 people reside is a metropolitan school distict comprised of the cities of Pasadena and Sierra Madre, and Altadena and a few other unincorporated county (Los Angeles) areas.

In October, 1969, when 58.3 percent of the 30,622 students enrolled were Anglo-caucasion, 30 percent were black and 11.7 percent were other minorities, 24 of Pasadena's 29 elementary schools were severely racially imbalanced. Fourteen of them were more than 70 percent white, with 13 of these more than 80 percent white and eight of these were more than 90 percent white. On the other hand, eight were more than 50 percent black, of which seven were more than 60 percent black, five were more than 80 percent black and two were more than 90 percent black.

On October 8, 1972, however, when the District's average daily attendance was 27,547, 50.3 percent of which was Anglo-Caucasian, 33.5 percent of which was black, 10.3 percent of which was Spanish surname. 2.9 percent of which were Chinese, Japanese, and Korean, 0.2 percent of which was American Indian and 2.9 percent of which were other nonwhite minorities, none of Pasadena's 37 schools contained a majority of any student minority, except in the instance of one elementary school which was 51.9 percent black and 41.1 percent Anglo-Caucasian.

Parenthetically, that was due to demographic changes.

This dramatic shift to an integrated school constituency came about in the first instance because of court orders. The Pasadena School Board had paid little or no attention to its affirmative duty to integrate imposed upon it by the California Supreme Court in 1963 in *Jackson* v. *Pasadena City School District*, 59C2d 876; 31 Cal. Rptr. 606, 382 P2d 878. When that duty was reiterated to it in 1970, by the

District Court at Los Angeles in *Spangler* v. *Pasadena City Board of Education*, 311 F. Supp. 501, however, and the court ordered that there should be no Pasadena school with a majority of any minority student in the 1970 school year, a majority of the board, and the superintendent, embraced the spirit of that mandate. They caused to be formulated and vigorously embarked upon the implementation of what has come to be called the Pasadena Plan for Integration.

Under the plan, elementary and secondary schools were reorganized, and children were bused to all schools. Today, in fact, Pasadena is busing about 14,000 children, in about 88 buses, over about 625 bus routes, servicing about 2,000 bus stops. And the system works! It works because children, bus drivers, teachers, administrators, parents, organizations, such as attached to my statement, and a majority of the Pasadena School Board are committed to making it work.

We are not saying the Pasadena Plan is perfect—what in life is? We are mindful of the need to continue to monitor the plan, and to provide supportive services necessary to maximize opportunities for learning which integration merely initiates.

This is a far cry, however, from the position taken by some that busing is unacceptable because it, among other things, precipitates and accelerates so-called "white flight." In any event, avoidance of white flight is not a constitutional imperative, as avoidance of segregation of schoolchildren is. Segregation must be avoided, because of the incalculable harm it does to the hearts and minds of schoolchildren, especially minority children. Thus, school boards have an affirmative duty to eradicate the effects of segregation.

Finally, isn't it curious that in the most mobile society the world has ever known, one which has more than 90 million motor vehicles, one in which billions of dollars are annually spent on streets and highways, one in which people think nothing of living in one community and working or recreationing in another, people would be opposed to children receiving a superior educational opportunity through the use of transportation?

The answer which is strongly suggested to me, and which I suggest to you, is that most people are not, in reality, opposed to busing; they are opposed to integration. Such people realize—as history has so clearly taught—that in this complex, urban-segregated society in which most of us live, busing is the only practicable way to integrate the public schools. More importantly, they know that if our own public schools are integrated—truly integrated—then housing and jobs will become integrated. It is clear to them as it is to the rest of us that if children grow up together in school they will respect each other, and once they do this it will be impossible for them to practice the narrow and restrictive policies which so severely affect our present American society.

For these reasons, therefore, gentlemen, I ask you to reject the proposed constitutional amendment and legislation. I also ask you to reject the argument that neighborhood schools are more important than equality of opportunity or that busing is unacceptable because it destroys neighborhood schools and inconveniences schoolchildren and their parents. Even if this were true, these are small prices to pay for the entire future of our children, and for their very survival.

Again, thank you for the opportunity of appearing before you.

Chairman CELLER. Thank you very much.

The next witness is Mr. Charles Morgan, Jr., director of the Southern Regional Office of the American Civil Liberties Union.

STATEMENT OF CHARLES MORGAN, JR., DIRECTOR, SOUTHERN REGIONAL OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. MORGAN. Mr. Chairman, I offer my statement for the record and will briefly summarize it and mention a few items that are not in it and then be available for any questions you may have.

(The statement follows:)

STATEMENT OF CHARLES MORGAN, JR., DIRECTOR OF THE SOUTHERN REGIONAL OFFICE OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. Chairman and Members of the Committee: For the last eight years I have directed the activity of the southern regional office of the American Civil Liberties Union. In that capacity I have been extensively engaged in the litigation of civil rights and liberties cases throughout the South. From 1955 to 1963 I practiced law privately in Birmingham, Alabama. During the latter four of those years I also tried civil rights and liberties cases. I am a graduate of the public schools of Birmingham and the undergraduate and law schools of the University of Alabama.

Prior to the *Brown* decision and while a student I favored the abolition of racial segregation. In the continuing debate on that deeply southern-campus I was not alone in my views. But a pre-*Brown* position became increasingly difficult during ensuing years when our public leaders seriously proposed "Southern Manifestos," "Massive Resistance," "Freedom-of-Choice," "Pupil Placement," and "Interposition."

The white southern moderates phrase "not now" became "never" and a generation of white and black children grew to adulthood hearing racial diatribe from their leaders while viewing photographs of assaults on Negro school children, arrested and beaten Negroes, burning freedom buses and bombed churches.

This year blacks who entered the first grade in the year of *Brown* are entering their senior year in law school. And today the Congress is considering whether or not to limit school desegregation efforts.

I am familiar with the Constitutional and legal problems you face. But my prime area of concern is based upon my understanding of the racial issue. That understanding is necessarily based on Southern experience. As an appendix to this statement we are submitting a legal memorandum setting forth our view of the law as it exists today. That law seems clear but as Congressman McCulloch recently said: "a spokesman for the Administration [is] asking the Congress to prostitute the courts by obligating them to suspend the equal protection clause. . . ."

Eighteen years ago under the Eisenhower-Nixon Administration there was a different story.

Then the Supreme Court approached the school desegregation cases with deep concern for its judicial authority. It particularly feared that the judiciary might be an inappropriate instrument for implementation of so massive a social change.

On June 8, 1953, it set reargument in *Brown* and directed the parties to answer certain questions which included:

"2. If neither the Congress in submitting nor the States in ratifying the Fourteenth Amendment understood that compliance with it would require the immediate abolition of segregation in public schools, was it nevertheless the understanding of the framers of the Amendment:

"(a) that future Congresses might, in the exercise of their power under section 5 of the Amendment, abolish such segregation, or

"(b) that it would be within the judicial power, in light of future conditions, to construe the Amendment as abolishing such segregation of its own force?

"3. On the assumption that the answers to questions 2(a) and (b) do not dispose of the issue, is it within the judicial power, in construing the Amendment, to abolish segregation in public schools?[1]

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[1] *Brown* v. *Board of Education*, 345 U.S. 972 (1953).

The Court expressly invited then Attorney General Brownell to take part in oral argument and file a brief in response to these questions.

The Government's 188 page brief found the evidence that the states, in passing the fourteenth amendment, had considered school racial equality, inconclusive. But the Eisenhower-Nixon Administration was certain in its position that the Court had the power to interpret the fourteenth amendment to cover school desegregation. Indeed, that Administration felt that only the Court—not Congress and not the Executive—could do so. The Government's brief is discussed by Anthony Lewis in Portrait of a Decade (1964).

The demand of the Fourteenth Amendment was for "equal protection of the laws." There was no talisman in the history of the amendment that defined those words for all times. The separate-but-equal doctrine had itself been a fresh interpretation, a departure in 1896 from the spirit of earlier decisions. It was in the great tradition of the Constitution, the Government said, to read the words now in light of conditions now. A provision such as the equal-protection clause expresses "broad principles of government, the essence of which is their vitality and adaptability to the progressive changes and needs of the nation."

Nor did the Government's brief see anything in the suggestion that Congress rather than the Court should deal with the issue. The Supreme Court had applied the Fourteenth Amendment in hundreds of cases without reference to Congress—in the racial field most recently in the graduate-school cases. What was posed now was "a question not of legislative policy but of constitutional power—and it is a question which under our system of government must ultimately be determined by this Court." Id., pp. 26–27.

Thus, some of us have come full circle in 18 years. The issue has that capacity, a personality of its own capable of turning the minds of rational and essentially good men. As the late Ralph McGill put it:

"Some of those who have made this decision—to put aside all else for political success, have been, and are, good, decent men who have had many bitter hours of loneliness and guilt."[1]

Brought to its current position by the politics of race, by the inexorable demands of its Southern Strategy, the Administration is now locked in a political struggle it cannot win. By elevating the very issue astride which George C. Wallace stands it effects not merely a spoiler's role in Democratic Primary elections. It also nurtures the instrument of its own destruction; for neither the racial issue nor Wallace can be turned off like tap water.

To conceive as their strategy does that Wallace is to simply disappear in July, that he will not be a candidate for the Presidency or Vice Presidency on one ticket or another or at least a Thurmond-like supporter of a Democratic Southern Strategy in November is to reject reason. A George C. Wallace alive and well and not running is beyond the comprehension of history. He is *the* Sammy Glick of American politics. Is asked why he runs he might reply "because it is there". And strange as it seems to many, he simply wants to be President of the United States.

If these proposals are designed to thwart Wallace's race issue they cannot succeed. They cannot defuse or deflect the issue. They simply do not go far enough to satisfy the segregationist. And as most of us know, it simply is not possible to outflank Wallace on the race question. Thus the elevation of the issue is not merely dangerous to blacks. It is potentially disastrous to the Nixon Administration.

Whether politically disastrous or not, two effects of enactment of these proposals will be the stiffening of opposition to desegregation and a simultaneous weakening of the resolve of courts to effect the mandates of the thirteenth, fourteenth and fifteenth amendments.

An effect they will not have is to diminish the desegregation "burden" borne by the white working class. The elimination of busing will not prevent the use of pairing and other desegregation techniques. Buses will continue to transport white and black children to the consolidated schools of the rural South. In southern urban areas those who reside nearest each other—the white and black working class—will be desegregated. Only the white upper middle class children will be sheltered from desegregation and further locked into a brahman-caste school system which will continue their uneducation in unreal seclusion from the very real world they will soon face.

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[1] Atlanta Constitution, Oct. 30, 1968, p. 10, col. 3.

Additionally, as a southerner, many of the presumed "values" of the neighborhood school seem unreal to me. The South is not a land of cultural pluralism. The South may be a microcosm of the country and it does have internal variances, but its characteristics are not those of New York or Chicago or Los Angeles or San Francisco. There is and has been no large southern population of Catholics, Jews, Italians, Irishmen, Puerto Ricans, or voluntary black immigrants. The South is an area of simple racial dualism.

The South had slavery by law. The South had segregation, *apartheid*, by law. This is why the South has been treated differently by the Supreme Court. The South is different. That is why it should be treated differently. That is why the northern "solution"—if that be what neighborhood-school *de facto* segregation is—will not work in the South, nor if uniformly applied across the land result in much other than the ultimate disfranchisement at best and dispatch at worst of the nation's black population.

The Administration seems to place some reliance on the premise that these in schools seek a sense of group identity—social, economic, or cultural. This premise is, of course, a product of northern big city Americana and white minority ethnic group thinking. Reliance on "cultural pluralism" as Stokely Carmichael did in proposing Black Power and citing Jewish Power and Irish Power as a model is a common failure of many of those who deal with the South on the basis of non-southern experience. They forget that in the South there was no melting pot and there is little pluralism of any kind be it ethnic or religious. Racial problems are as different from those as is the Negro's heritage of illiteracy different from the Jewish immigrants' literate, if foreign language, heritage. There can be little parallel between the urban experience of white ethnic Americans and the experience of American blacks. Although Hitler required armbands to identify the Jews, blacks have a sure knowledge that their armbands are worn on their faces.

Another difficulty I have is the President's apparent reliance upon the statements of blacks who are opposed to busing. This is a white and new paternalism which seems to implicitly assume that blacks somehow because of skin color have good sense. As white southern housewives relied on their maids as authorities, the New Paternalists rely only upon militant blacks. The New Paternalism refuses to grant blacks an equal right with whites to be damned fools and to be told they are damned fools.

The New Paternalist calls for the upgrading of slums and slum schools as though that goal were somehow shown to be attainable—either by our history or our present inclination. The "cost" of upgrading slum schools is incalculable. White taxpayers will not pay that cost.

The simple lesson of history culminating in *Brown v. Board of Education*—is that in this country racially separate schools simply cannot be equal. To put this in more common terms:

"White folks ain't going to pay for schools where white children don't go".

"Kids learn more from kids than they do from teachers"; and

"White folks have the money and the government and the police and the troops and there is no way for black folks to get the money for all-black schools from white folks".

Nothing supports the assumption of *Brown v. Board of Education*—that slum schools cannot be equalized—other than the reasoning and evidence of pre-*Brown v. Board of Education* teacher pay, graduate and law school and undergraduate school decision including *Sweatt v. Painter* (the Texas Law School case) and more obviously the millions of uneducated black men and women in the North's urban ghettoes, two-thirds of whom were born *and reared* below the Mason and Dixon Line.

The tragedy of those proposals is that their respectability is more damaging to the prestige of law as opposed to The Order and to the judiciary than the collected speeches of George Corley Wallace including those in which he referred to federal judges as "dirty, carpet-baggin, scallywaggin', integratin', bald-faced, race 'mixin' liars".

Our most effective voices have been stilled by assassins' bullets.

We are in a minority not merely in the South but in the nation.

Friends from the more easy and glamorous days of risk—a day or a week or a month or a march in the South—left us long ago and now, partly in frustration at their own inability to effect change, partly in rebellion against the system, a system rejected by too many and in large measure never tried, have become advocates of old solutions.

The enemy is no longer the racism of the state house. The opponent is now those who occupy the White House and in tragic-comedy enter a field of politics in which they too are destined to lose if simply because they lack the heart for hatred required to effect a successful southern strategy. To white southern segregationists they will soon seem but "an effete corps of impudent snobs".

But most of us, white and black alike, who joined in the 1950s and 1960s will stick it out.

We know that men have warred for thousands of years over questions of religion. And we know that race, unlike religion, can be seen.

We know that separation means defeat. We have seen those separated from our society.

We know that the old have been moved from the county poorhouse to the urban nursing home or the central State hospital; the alcoholic failures to their Bowery, or off the streets to the city jails; the mentally ill to asylums now known as mental hospitals, lawbreakers to jails and prisons, nonconformist juveniles to reform schools, Indians to reservations, Japanese Americans to detention camps, and Negroes to urban ghettos. In each instance, we term the confinement that which it is not, we offer minimum service, get their offensive person out of sight, given a dole that salves our conscience, and binds the outcast to the benefit.

But we shall not surrender merely because there is a new President on the block, an old idea in town, a new slavery in the wings, a new generation of despair.

We will win not because of rationality—for what was there rational in a young Negro minister's hopeless boycott of a bus company; what was rational in students ordering a cup of coffee in a five-and-dime store; what chance was there in the streets of Birmingham; what rationality was there in those raised clubs at Selma's Edmund Pettus Bridge.

We will win simply because we must.

Mr. MORGAN. I have been rather grieved by some of the testimony here this morning. One of the phrases was that the courts somehow had become super school boards. Of course, the school boards themselves, and the law of the States at least as far as the Southern States are concerned, is what made these courts super school boards.

My experience as an attorney in school cases is more limited than that of some. But I was in the original schoolhouse door case in which Governor Wallace made his stand, and the Mobile case which was a companion case of *Swann*. In Mobile, we entered on a peripheral matter. After the 13th time that case had been appealed, the Fifth Circuit Court of Appeals referred to it as an Homeric odyssey.

I am intrigued by the fact, as I point out in the testimony, that the Eisenhower-Nixon administration took a position on this position as to whether Congress or the courts had authority in the field, and the Eisenhower-Nixon administration under Attorney General Brownell took the position that the courts, not the Congress, had the authority to desegregate under the 14th amendment, and that was in 1953. That is in the Government's amicus curiae brief filed then. I suggest we refer back to it for appropriate positions.

In listening and studying a bit of the testimony that has been given before the committee, I have become intrigued by the concept of the neighborhood school, not peripherally but centrally. It is impossible for the reasoning of H.R. 13916 to be correct because it is a non sequitur. It says the neighborhood is an appropriate basis for determining public school assignments, but that conflicts with its "guarantee" of equal educational opportunities.

I come from an area of racial dualism, but I know if there is value in cultural pluralism, then somebody ought to be able to partake of somebody else's culture. The whole neighborhood school concept keeps folks in one neighborhood, one class, one group, and they never even encounter another culture. If there is any value to cultural or ethnic pluralism, other than pizzas and matzoths, it seems to me we ought to let our children partake of that value.

I am also intrigued by these proposals which are popularly and politically stated to the people to be proposals for the working class. George Wallace moved our two political parties to the position which he has held all along. That position seems to be: "Working-class folks, you are not going to have to bus your children."

But, you see, the burden of desegregation has been placed by one-way busing on the people who reside in the Negro slum areas we call ghettos, a term that may be too modern as far as black relationships are concerned. If we have no busing, the only children who the Congress will have "protected" are the upper middle-class white children who reside in the suburbs of the large cities. The rural children of the South will be bused because that is the only way they have to get to their consolidated schools. They will thank heaven that they have that bus to get there with.

In the middle-size Southern cities, who lives next to the Negroes? Not the rich folk. It is not where I lived in the early stages of my life. It is the working-class whites who live close to black folks, and what will you have? You will have educational parks, you will have pairing, but whatever you have it will mean working-class white folks and black folks are the ones who will be integrated, but not the kids out in the fine middle-class suburbs. I hope that these are not who the Congress represents to exclusivity.

I am always intrigued by what I would refer to and have referred to as the new paternalism. The new paternalism says because a black person says it, it must be true. If a kid is young enough, radical enough, then it must be true. The new paternalism says we have a bunch of black folks who do not want to run around with white folks—so it must be true. President Nixon relied on those folks in his March 20 address.

I am a white man, and I am not ashamed of it. I had no control over it as black folks have no control over their race. There is no redeeming virtue in race, nothing to be proud of. But as a white man from the South, I know that: White folks "ain't" going to put their money in any school system or anything else that their children don't go to. They never have and they never will. Whatever else we talk about in this Congress or in the courts or on the hustings, that is the central theme of race relations in the United States, and probably it would be the central theme in Africa. Black folks probably wouldn't either. It happens that here the white folks have the money, the government, and they have the power.

The question is: Are we willing to share that with the blacks?

A response comes back from the North, from northern big cities, and that response is ethnic pluralism, cultural pluralism, the value of the ethnic group, preservation of the community school. The response back to that is that you cannot compare racial dualism with ethnic and cultural pluralism. Hitler had to put armbands on Jews to know who they were. Black folks wear armbands on their faces.

But there are answers to be applied, it seems to me.

We must simply stick with what we have always been before—some of us. If you are in the South and you are white, they say, when did you change? I never changed. The world changed around me a bit, and I got uncomfortable. I can't remember a day when I started thinking about racial segregation when I did not think it was wrong.

I started out as a Christian. The whole Christian theme was that separation of man from man or man from God was wrong. I thought that all the way through school.

I had a law practice in the State of Alabama, and eventually I left there in a hurry one day. I went back South a year later, and I have been handling scores of cases in the voting field and in the administration of justice and the desegregation of juries since then.

I can assure you of one thing: The white southerner is a politician of note. I admire him, and I admire his current spokesman, George Wallace. Governor Wallace has successfully moved with a southern strategy. There is nothing wrong with a southern strategy. The Democrats have had one for over a hundred years, and now the Republicans are being condemned for having a southern strategy. But there is great difficulty for those who get involved with a southern strategy who do not understand what they are dealing with. White southern politicians have grown up surrounded by the problem of race, which is irrational at best and which will test the best of minds.

There is absolutely no way for this legislation if adopted to satisfy the southern segregationists politically—and I do think that the reason for this legislation is political, and I see nothing wrong with that. That is what politics is all about. What the Supreme Court is all about, and the Constitution, is to tell you that you are wrong. But I know, as a plain old matter of political strategy, the southern strategy that deals with race, deals with an issue that will burn the hands of the man who touches it, unless he is willing to outflank the farthest man in the field, and the farthest man in that field is Governor Wallace.

No. 2, he is running for the presidency. People want to know what he "really wants." He just grew up thinking a boy could be President. There are no deals. I believe that. People say this administration has a deal with Wallace. I don't believe that. He wants to be the President. He may be the Sammy Glick of American politics, but he is going to run.

The issue has been elevated in these committee hearings, this issue is elevated in the Congress and in Democratic primary elections across the country. I thought it was rather strange the other day when HEW cut off money in the Ferndale School District in the State of Michigan before the Michigan primaries. That had been pending for 4 years. This issue and that man can't be turned off like tapwater. And it has the capacity to consume the people who play with it.

I would suggest the very best way to handle this issue is to remember: Unless you are willing to go as far as the Gulf of Mexico, you can't outflank the man who uses it. There is no way this legislation will satisfy the white southern segregationist—no way in the world. The best thing to do is face the question firmly in the faith that the American people know way down deep what is right and wrong. Governor Askew did it in a very brief campaign. He made some progress. In all those years I had grown up in the South and have been in the South, in all those years, not one white Southern politician—mark that—not one Southern leader did what Reuben Askew did. In 1954 came the decision. In 1955 came the all-deliberate-speed decision. The rationale behind that decision had to be the cream of Southern leadership will rise to meet the challenge.

Well, it didn't. It curdled. It never rose. We never turned on a television set and heard anything but racial diatribe. If my son still lived in Birmingham, he would not have heard much but racial diatribe until now. If he had entered school in 1954—it happens to be the year my son was born—he would today be ready to graduate from law school. As it is, he is only graduating from high school. It is an integrated public school, the kind of school I believe in.

All I can say to you, gentlemen, is for heaven's sake, don't let the wind and passions and tides of hatred—and this is all of a politician who has built his life on hate—turn your heads for a moment, for I am sure most of you will agree with me that there are matters and issues in this country far more important than a little man running for President of the United States.

Chairman CELLER. Are there any questions?

Thank you very much, Mr. Morgan.

(Subsequently, the American Civil Liberties Union submitted the following memorandum:)

LEGAL MEMORANDUM ON THE STUDENT TRANSPORTATION MORATORIUM ACT OF 1972 AND THE EQUAL EDUCATIONAL OPPORTUNITIES ACT OF 1972

I. SUMMARY

The Student Transportation Moratorium Act of 1972 and the Equal Educational Opportunities Act of 1972 are, individually and as joint legislation, unconstitutional.

The bills are in direct conflict with the school desegregation cases over the past 18 years interpreting the equal protection clause of the Fourteenth Amendment of the United States Constitution. These decisions impose on government the affirmative obligation to eliminate all vestiges of state-imposed segregation—now.

The Supreme Court has invalidated state laws which ban busing, holding that they hamper vindication of constitutional rights. The federal government, like the states, cannot frustrate the constitutional mandate of the Fourteenth Amendment.

These bills will prevent enforcement of the Fourteenth Amendment and, contrary to the argument put forth by their proponents, cannot therefore be justified as "appropriate legislation" under Section 5 thereof.

II. THE STUDENT TRANSPORTATION MORATORIUM ACT OF 1972 AND THE EQUAL EDUCATIONAL OPPORTUNITIES ACT OF 1972 ARE IN DIRECT CONFLICT WITH SCHOOL DESEGREGATION CASES DECIDED BY THE SUPREME COURT OF THE UNITED STATES

A. Swann, its companions and the fourteenth amendment

A year ago the Supreme Court of the United States decided *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971) and its companion cases.[1] The Court granted certiorari in order to "review important issues as to the duties of school authorities and the scope of federal courts under this Court's mandates to eliminate racially separate public schools established and maintained by state action." *Swann, supra*, 402 U.S. at 5.

The two bills seriously affect the "scope of federal courts" in the area of dismantling the dual school system. Consequently, the *Swann* decision must be carefully examined with regard to what the Fourteenth Amendment says the federal courts can and cannot do in the area of school desegregation.[2]

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[1] *Davis* v. *Board of School Commissioners of Mobile County*, 402 U.S. 33 (1971); *McDaniel* v. *Barresi*, 402 U.S. 39 (1971); *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971).

[2] "These cases present us with the problem of defining in more precise terms than heretofore the scope of the duty of school authorities and district courts in implementing *Brown* I and the mandate to eliminate dual systems and established unitary systems at once." *Swann, supra*, 402 U.S. at 6.

In *Swann*, the Court reaffirmed, in no uncertain terms, its strict adherence to the Fourteenth Amendment commitment to abolish the dual school system. "Nearly 17 years ago this Court held in explicit terms, that state-imposed segregation by race in public schools denies equal protection of the laws.[3] At no time has the court deviated in the slightest degree from that holding or its constitutional underpinnings." *Swann, supra*, 402 U.S. at 11.

The Court then went on to state the present objective. "The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck down by *Brown* I as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measures of *Brown* II. That was the basis for the holding in *Green*[4] that school authorities are clearly charged with the *affirmative duty to take whatever steps might be necessary* to convert to a unitary system in which racial discrimination would be eliminated root and branch'." 391 U.S. at 437–8. *Swann, supra*, 402 U.S. at 15.

With regard to the role of the federal courts in effectuating the above objective, the Court stated: "If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is *broad*, for *breadth* and *flexibility* are inherent in equitable remedies.[5] *Swann, supra*, 402 U.S. at 15. (emphasis added)

The Court clearly held that "a district court has broad power to fashion a remedy that will assure a unitary school system." *Swann, supra*, 402 U.S. at 16.

The two bills, however, negate the language of *Swann*. The bills encroach upon and dilute the inherent power of a federal court to fashion an equitable remedy to terminate the dual school system. The bills, in effect, legislatively overrule the Supreme Court holding.

The two bills are directed at school transportation systems. The Student Transportation Moratorium Act of 1972 would stay federal court orders that require busing students. The Equal Educational Opportunities Act of 1972 would, in certain cases, prohibit the use of busing as a tool to dismantle the dual school system, reopen federal court orders already implementing a school desegregation plan which employs busing, and finally limit the time period in which a busing plan could be used.

The Supreme Court, in interpreting the equal protection clause of the Fourteenth Amendment in the context of school desegregation cases, has spoken to the issue of student transportation.

"Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room school house to the consolidated school . . .

"The importance of bus transportation as a normal and accepted tool of educational policy is readily discernible in this and the companion case."[6] *Swann, supra*, 402 U.S. at 29.

The Court in *Swann, supra*, and *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971), upheld the district courts' orders allowing for busing as within the federal courts' powers to provide equitable relief. Additionally, the Court held that busing decrees were within the capacity of the school authority. It concluded in *Swann* by maintaining:

". . . we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. *Desegregation plans cannot be limited to the walk-in school.*" *Swann, supra*, 402 U.S. at 30. (emphasis added)

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[3] "In the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal. Therefore we hold that the plaintiffs and others similarly situated * * * are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment." *Brown* v. *Board of Education*, 347 U.S. 483, 495 (1954).

[4] *Green* v. *County School Board*, 318 U.S. 430 (1968).

[5] "The essence of equity jurisdiction has been the power of Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. *Hecht Co.* v. *Bowles*, 321 U.S. 321., 329–330 (1944); cited in *Brown II, supra*, 349 U.S. at 300." *Swann, supra*, 402 U.S. at 15.

[6] "During 1967–68, for example, the Mobile board used 207 buses to transport 22,094 students daily for an average round trip of 31 miles. During 1966–67, 7,116 students in the metropolitan area were bussed daily. In Charlotte-Mecklenburg, the system as a whole, without regard to desegregation plans, planned to bus approximately 23,000 students this year, for an average daily round trip of 15 miles. . . ." *Swann, supra*, 402 U.S. at 29, n. 11.

However, if the two bills were adopted school desegregation plans would be precisely limited to the walk-in school system.

The Equal Educational Opportunities Act of 1972 in Section 2(a)(2) states "Congress declares it to be the policy of the United States that the neighborhood is an appropriate basis for determining public school assignments." Likewise, in Title II, Section 201 (e) the bill states: "No State shall deny equal educational opportunity to an individual on account of his race, color or national origin by the assignment by an educational agency of a student to a school, other than the one closest to his place of residence within the school district in which he resides, . . ."

The above provisions directly contradict what the federal judiciary has been mandating since *Brown* I in 1954. The Supreme Court summed it up when it stated:

"All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems." *Swann, supra*, 402 U.S. at 28.

B. The Moratorium—"All Deliberate Delay"

The Student Transportation Moratorium Act of 1972 proposes to impose a moratorium on new and additional student transportation. Section 3 proposes to stay the implementation of any busing order of a United States Court until July 1, 1973, or until Congress enacts legislation as contemplated by Section 2(a)(4).

The bill is unconstitutional because it is contrary to the meaning of the equal protection clause of the Fourteenth Amendment as interpreted by the Supreme Court of the United States.

In 1955, the Court in fashioning its "all deliberate speed" remedy acknowledged "the courts may find that additional time is necessary to carry out the ruling in an effective manner." *Brown* v. *Board of Education of Topeka, Kansas*, 349 U.S. 294, 300 (1955). However, the "all deliberate speed" approach (allowing for delay where necessary) came to an end in 1964.

In *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218 (1964), it was argued that the district court should have abstained to give the state courts an opportunity to rule on the possible violation of the state constitution. After finding that the Supreme Court of Appeals of Virginia had already ruled on the issues, the Court found the abstention argument improper on other grounds.

"[W]e hold that the issues here imperatively call for decision now. The case has been delayed since 1951 by resistance at the state and county level, by legislation, and by lawsuits. The original plaintiffs have doubtless all passed high school age. There has been entirely too much deliberation and not enough speed in enforcing the constitutional rights which we held in *Brown* v. *Board of Education, supra*, had been denied Prince Edward County Negro children" . . . *Griffin, supra*, 377 U.S. at 229.

The Court, proceeding to the merits, and finding a denial of constitutional rights, stated "the relief needs to be quick and effective." *Griffin, supra*, 377 U.S. at 232. The Court held that there existed judicial power to require defendants to exercise their power to levy taxes to assure that adequate funds were provided to maintain a desegregated school system. It held that the district court could consider an order to compel the state authorities to assist the county school system.

Mr. Justice Black, writing for the Court, concluded by stating: "The time for more 'deliberate speed' has run out, and that phrase can no longer jusify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in other parts of Virginia." *Griffin, supra*, 377 U.S. at 234.

In 1965, the Court in *Bradley* v. *School Board, City of Richmond*, 382 U.S. 103 (1965) stated: ". . . these suits have been pending for several years; and more than a decade has passed since we directed desegregation of public school facilities 'with all deliberate speed.' *Brown* v. *Board of Education*, 349 U.S. 294, 301. Delays in desegregating school systems are no longer tolerable. *Goss* v. *Board* *of Education*, 373 U.S. 683, *Calhoun* v. *Latimer*, 377 U.S. 263, 264–5. See *Watson* v. *City of Memphis*, 373 U.S. 526."

Again in 1968, the Court in *Green* v. *County School Board of New Kent County, Virginia*, *supra*, 391 U.S. at 439 held: "The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*."

In 1969, the Court in *Alexaander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), was presented with a school desegregation plan from Mississippi. The Court's consideration of the case took exactly 20 days. The petition for certiorari was granted on October 9, 1969, the case was argued October 23, 1969, and decided October 29, 1969. The Court stated:

"The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing 'all deliberate speed' for desegregation is no longer constitutionally permissible. *Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools*." (emphasis added)

Alexander was remanded to the United States Court of Appeals for the Fifth Circuit. There, in the style of *Singleton* v. *Jackson Municipal Separate School District*,[7] 419 F.2d 1211, 1216 (5th Cir. 1969), the Fifth Circuit stated: "The tenor of the decision in *Alexander* v. *Holmes County* is to shift the burden from the standpoint of time for converting to unitary school systems. The shift is from a status of litigation to one of unitary operation pending litigation. The new modus operandi is to require immediate operation as unitary systems. Suggested modifications to unitary plans are not to delay implementation. Hearings on requested changes in unitary operating plans may be in order but no delay in conversation may ensue because of the need for modification or hearing."

The Fifth Circuit on December 1, 1969, adopted a two-step plan. By no later than February 1, 1970, all steps necessary to convert to a unitary system except the merger of the student bodies were to have been taken. The student body merger was to be accomplished no later than the beginning of the fall term, 1970.

Even that time-table for the desegregation plan was too long, in the view of the Supreme Court. On January 14, 1970, in a per curiam opinion, *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), the Court stated: "Insofar as the Court of Appeals authorized deferral of student desegregation beyond February 1, 1970, that Court misconstrued our holding in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19."

The Court reversed the Court of Appeals and the cases were once again remanded for further proceedings consistent with the Court's opinion.

Chief Justice Burger, writing for the entire Court, said in *Swann*: "[t]hese cases present us with the problem of defining in more precise terms than heretofore the scope of the duty of school authorities and district courts in implementing *Brown* I and the mandate to eliminate dual systems and establish unitary systems *at once*." *Swann*, *supra*, 402 U.S. at 6 (emphasis added)

The Court is firm: delay in dismantling the dual school system will not be tolerated or permitted.

Contrast the federal Court decisions starting with *Green* through *Alexander* and *Swann* with the proposed Student Transportation Moratorium Act of 1972. The purpose of the bill is to "impose a moratorium on new and additional student transportation." Where a federal court declared that busing was to be employed as a tool, a means to a constitutionally required end—the dismantling of the dual school system—if this bill were enacted, the order would be stayed. The stay would be, in effect, another delay in implementing the Fourteenth Amendment mandate of *Brown* and others in violation of the Supreme Court's clear and repeated rulings against such delay.

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[7] The Fifth Circuit, in its per curiam decision, had the following to say concerning the Supreme Court's decision in *Alexander*: "It sent the doctrine of deliberate speed to its final resting place." *Singleton*, *supra*, 419 F. 2d at 1216.

The Supreme Court has spoken on numerous occasions since the *Griffin* decision in 1964 with regard to delay in school desegregation. It has interpreted on numerous occasions what the equal protection clause of the Fourteenth Amendment dictates. It dictates implementation of "all available techniques," "whatever action may be necessary" to create a unitary school system without any further delay. It does not dictate or entertain a moratorium for possibly fifteen months on a technique which is in many cases essential to the dismantling of those dual school systems.

III. THE FEDERAL GOVERNMENT, LIKE THE STATES, CANNOT FRUSTRATE THE CONSTITUTIONAL MANDATE OF THE FOURTEENTH AMENDMENT

The proposed Student Transportation Moratorium Act should be considered in light of the Supreme Court's decision in *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43 (1971).[8] In that case, plaintiffs had attacked the constitutionality of a state statute which read: "No student shall be assigned or compelled to attend any school on account of race, creed, color or national origin, or for the purpose of creating a balance or ratio of race, religion or national origins. Involuntary busing of students in contravention of this article is prohibited." . . . *North Carolina State Board of Education*, *supra*, 402 U.S. at 44, n .1.

The Supreme Court concluded that "an absolute prohibition against transportation of students assigned on the basis of race, 'or for the purpose of creating a balance or ratio,' will . . . hamper the ability of local authorities to effectively remedy constitutional violations." *North Carolina State Board of Education*, *supra*, 402 U.S. at 44.

The Court was persuaded by two facts in declaring the prohibition on busing unconstitutional: (1) "bus transportation has long been an integral part of all public educational systems," and (2) "it is unlikely that a truly effective remedy could be devised without it." *North Carolina State Board of Education*, *supra*, 402 U.S. at 44.

The principle is well-established that: "if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishment of a dual system, it must fall: *state policy must give way when it operates to hinder vindication of federal constitutional guarantees*." *North Carolina State Board of Education*, *supra*, 402 U.S. at 44. (emphasis added)

See, in this respect, *Goss* v. *Board of Education of City of Knoxville, Tennessee*, 444 F. 2d 632, 637 (6th Cir. 1971) ("any state statute or constitutional provision that forbids the transportation of school children by bus or otherwise to accomplish a better racial balancing of school population will be denied enforcement"); *Clark* v. *Board of Directors of Little Rock School District*, 328 F. Supp. 1205, 1212 (E.D. Ark. 1971) (a state legislature cannot thwart a school district in carrying out its constitutional duty to provide a unitary school system), *modified*, 449 F. 2d 493 (8th Cir. 1971); and *Taylor* v. *Coahoma County School District*, 330 F. Supp. 174, 176, 183 (N.D. Miss. 1970) (the remedial power of the federal courts under the Fourteenth Amendment is not limited by state law, and no state law or custom may be imposed to frustrate the constitutional mandate to get rid of a dual school system), *aff'd*, 444 F. 2d 221 (5th Cir. 1971).

A legislative policy of the federal government cannot frustrate the constitutional mandate that segregated school systems be abolished any more than a state legislative policy can frustrate that mandate. In *Bolling* v. *Sharpe*, 347 U.S. 495 (1954), the Supreme Court of the United States expressly recognized this principle.

"In view of our decision [*Brown* v. *Board of Education*, 347 U.S. 483 (1954)] that the Constitution prohibits the states from maintaining racially segregated public schools, *it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government*. *Id.*, at 500 citing *Hurd* v. *Hodge*, 334 U.S. 24 (1948). (emphasis added). *Cf.*, *Richardson* v. *Belcher*, 92 S.Ct. 254, 257 (1971).

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[8] *See also*, *Lee* v. *Nyquist*, 318 F. Supp. 710 (W.D.N.Y. 1970) (three-judge court), *aff'd*, 402 U.S. 935 (1971).

If it is impermissible for a state to forbid the implementation of the remedial measure which is often the only effective means of affirmatively eliminating racial discrimination in the public schools, it is likewise impermissible for the federal government to absolutely forbid the use of that remedy.

IV. THE STUDENT TRANSPORTATION MORATORIUM ACT OF 1972 AND EQUAL EDUCATIONAL OPPORTUNITY ACT OF 1972 WILL PREVENT ENFORCEMENT OF THE FOURTEENTH AMENDMENT AND CANNOT THEREFORE BE JUSTIFIED AS "APPROPRIATE LEGISLATION" UNDER SECTION 5 THEREOF

The proponents of the two bills rely on Section 5 of the Fourteenth Amendment, as their constitutional authority for these bills.[9] In a White House text issued March 17, 1972, the President said, " . . . I propose that Congress now accept the responsibility and use the authority given to it under the Fourteenth Amendment . . ." However, analysis of the origin and scope of Section 5 reveals that the White House was erroneous in its assumption that Section 5 is a constitutional basis for the proposed bills.

In 1966, voters of New York City sought a declaratory judgment and injunction restraining compliance with the Voting Rights Act of 1965. The Supreme Court, in *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966), held that the section of the Voting Rights Act which provided that no person who had succesfully completed the sixth grade in an American school in which the predominant language was other than English should be disqualified from voting under any literacy test (prohibiting the enforcement of New York election laws)[10] was a proper exercise of powers granted to Congress in Section 5 of the Fourteenth Amendment.

In the *Katzenbach* opinion, the Court discussed the origin and scope of Section 5. "By including Section 5 the draftsmen sought to grant to Congress, by a specific provision applicable to the Fourteenth Amendment, the same broad powers expressed in the Necessary and Proper Clause, Art. I, § 8, cl. 18. The classic formulation of the reach of those powers was established by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat." 316, 421, 4 L.Ed. 579: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional." *Katzenbach*, *supra*, 384 U.S. at 650.

Accord, *Ex parte Com. of Virginia*, 100 U.S. 313, 345–6 (1880). "Whatever legislation is appropriate, that is adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

Thus, the question presented is whether the proposed bills are "appropriate legislation" to enforce the equal protection clause of the Fourteenth Amendment.

The Administration has contended that Congress has the power under Section 5 to dilute as well as expand the protection of rights guaranteed by the Fourteenth Amendment. The Court specifically spoke to this point in *Katzenbach*: ". . . § 5 does not grant Congress power to exercise discretion in the other direction and to enact 'statutes so as in effect to dilute equal protection and due process decisions of this Court.' We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment: *§ 5 grants Congress no power to restrict, abrogate, or dilute these guarantees*. *Katzenbach*, *supra*, 384 U.S. at 651, n. 10." (emphasis added)

The reason why this must be so is inherent in the very purpose of the Fourteenth Amendment itself. It was not adopted to facilitate the restriction of peoples' rights, but to expand and extend constitutional safeguards to reach and protect those who had previously been unprotected. It would be anomalous indeed to permit Congress to restrict the very rights the Fourteenth Amendment was designated to guarantee. No theory of judicial deference to the legislative branch calls for authorizing Congress to restrict or dilute constitutional rights as determined by the Supreme Court.

The bills put forth by the Administration would "restrict, abrogate" and "dilute" the guarantees of the Fourteenth Amendment as interpreted in the numerous school desegregation decisions of the Supreme Court over the past eighteen years. (See generally, discussions in Part II, pp. 2–12)

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[9] Section 5 of the Fourteenth Amendment provides: "The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

[10] New York law required the ability to read and write English as a condition of voting.

If the bills were enacted, a federal court when trying to dismantle the dual school system, would find itself sharply restricted in fashioning a remedy. Busing as a possibility would be out. Other approaches, such as school pairings and zoning, very often depend on the availability of busing. Thus, a federal court could find itself in the unavoidable position of having to enter a less than effective desegregation plan. The result would be a "watered down" version of the Fourteenth Amendment, thereby denying citizens the equal protection of the law which that Amendment theoretically guarantees them.

V. CONCLUSION

This country is committed to a position that dual schools are a denial of equal educational opportunity. Against the background of this commitment, these bills, which virtually eliminate one of the most important tools for achieving desegregation, signal a sharp reversal. There is no support for this reversal in the Constitution which indeed affirmatively prohibits it. For these reasons, the American Civil Liberties Union urges defeat of both of these bills.

Our next and last witness of the day is Mr. C. H. Scott of Little Rock, Ark.

STATEMENT OF C. H. SCOTT, LITTLE ROCK, ARK.

Mr. SCOTT. Mr. Chairman and members of the committee, it was my pleasure while Congressman Sumner was chairman of this committee to direct the discharge of the committee on the Municipal Bankruptcy Act. Mr. Garner at that time was Speaker of the House, and there were a lot of small life insurance companies in Texas which had a lot of special improvement bonds, and they got him to be against the discharge of this. We got 218 members to discharge this committee. It passed and then the Supreme Court held it unconstitutional, so we had to re-pass it.

So, I have had a little experience in securing signatures on discharge petitions.

First, I am against forced integration of any kind.

Second, I have contributed as much as any black man in this room, and I have been in this room by my own money on behalf of the black people. I was on the State Board of Education in Arkansas. We lived under a starved economy in the South. You talk about discrimination. There is only one group ever discriminated against more and that was the unwillingness on the part of the people throughout the United States and especially the South to permit public accommodation to the black people which cut their pride and dignity more than anything else that has happened to people in this country.

On the other hand, the man-made freight rate structure created by the eastern establishment built a Berlin wall in a sense economically, dividing the South from the North where we had to live on one cotton economy. We had no money for schools as far as that goes. We were kind of like a big family of six or eight children where there was not enough money to go around for all of us.

The South directed its schools. They were shortsighted; they were cruel in the fact that they would not equally divide the taxes we collected from a poor economy equally with the black children, so the black children did not have the dollar per capita. So, they had a poor school system, poor school buildings, underpaid teachers, and so did the whites, but we had it much better than the blacks.

My own thought is if we had had equal school facilities and spent the same money per capita on the black children, I think in 1954 when the Supreme Court handed down that decision. I doubt if we would have had equal school facilities and each child getting the same amount of good schools. I doubt if Justice Warren and his colleagues on the bench would have handed that down if they had known that this could have taken place with a well-balanced school system for blacks and whites.

I want to give you three or four highlights from my statement.

In the first State I organized the Southern Freight Rates Association. I made 22 State capitals—this was way back—to try to get some relief from the Interstate Commerce Commission which controlled the freight rate structure that absolutely strangled us to death, and we lived on a starved economy. We are 90-percent agricultural. As a result, we just did not have money. During the cotton-growing season of June, July, and August, I would leave that State and go up to the East or out West to the mining sector. So, we had nothing to have a good balanced school system for anyone, but when we had to divide, we were not fair. We did not give the black children the same as our children.

I believe in this proposed constitutional amendment. I am going to contribute what tiny bit I can in helping to secure the 218 members on the discharge committee.

I do not believe in what the President is trying to do. I think he is delaying it. I think it confuses more than ever. I would rather see it go on as it is rather than, instead, what I think maybe has confused it more and nobody knows exactly what will happen.

Here is what I said about the 18th amendment. I happened to have been a delegate to the Houston Democratic Convention in 1928 which was a long time ago. I was a protestant and dry but I was an out-and-out Al Smith fan who was a catholic and wet. I did for him what I could. The Democratic platform did not contain the repeal of the 18th amendment. But when he accepted the nomination, he said he would propose an amendment. He lost the election not because of that but Mr. Roosevelt came along in 1933 and in less than 12 months, 46 of the 48 States we had at that time passed the constitutional amendment.

Two or three years ago if I told this committee that to have a constitutional amendment for young people to vote, we would not have given it any thought, but because of the war, because of different things like that, people softened up and, today, it is a constitutional amendment that young people can vote. I think this will happen.

Let me get on to a phase here that might surprise you, coming from a southerner.

The Public Accommodations Act has done more for the dignity and pride of the black race than any other known legislation in America. The proclamation of President Lincoln which gave the members of the black race freedom from actual physical and mental slavery was a new and tortuous path for the black race to travel in seeking full participation in all phases of our economic growth. This favorable action gave the blacks the opportunity to become aggressive in seeking better public accommodations, schools, jobs and a broader base of participation in all facets of our expanding economy.

It is inconceivable and unbelievable that it has been only 8 years since the Public Accommodations Act was put into effect, wherein men and women of the black race could freely enter public places for accommodations, such as restaurants, hotels and motels, public washrooms, et cetera and which opened many other doors that had been closed to the minority races. These privileges were long overdue. The public and political leaders are the ones who should have taken the initiative in making public accommodations available to men and women of every segment of our society decades ago.

This harsh and deep-rooted policy of discrimination was practiced to a great degree throughout the United States until the passage of this act in 1964. However, the practice of denying public accommodations to the black race prevailed to a greater degree in the South. Persons born in the South and known as Southerners were and are proud of their respective States, regardless of the known weaknesses; yet, many had a feeling of guilt over the indifference of the majority of people in both the North and South prior to passage of the Accommodations Act.

Thirty to sixty years ago, travelers used trains primarily for business, recreational, and various other purposes and many of them were not blind to the unfair treatment accorded the black race who were passengers on the trains. On their way to the dining car, they passed through coaches where there were only black people and they were disturbed when they sensed these black persons did not have the privilege of going to the diner to eat. Some of those black men and women had as good an education, as good character, and as deep a love for their children as white parents. This degrading practice cut deep into the pride and dignity of all of the black race. Simply, it was a harsh situation, but the passage of this great act in 1964 has removed that shameful roadblock throughout the United States.

There were varied roadblocks in different instances in the pathway of the black race in acquiring good schools, administration, research, and other facilities, such as music, art, science, and stadiums for all sports, as well as jobs in every field of the economy. Those unfavorable conditions are rapidly being corrected. The favorable improvements in these areas from 1960 to 1970 for the black race were greater than those for the white race. The future is promising; real progress is already being made. Patience and dedication to the good of all will bring the goals we seek of rapid improvement in jobs and an increased annual income for both black and white by 1980–90.

Chairman CELLER. I am going to ask you to be rather brief because we are to go to the House very shortly. Your full mimeographed statement will be reproduced in the hearing record and your printed booklet of 37 pages, single-spaced, will be accepted for the subcommittee file. The outline of the printed booklet, however, which appears opposite the inside cover also will be printed in the hearing record.

Mr. SCOTT. May I read a few more paragraphs. I have given about 3 years on this on a nonprofessional basis just on my own, trying to find out something about these conditions.

I think if a man will take this and read it, it is long and disjointed and perhaps too dismantling, but there are some good facts to chew up and digest. I am presenting this on the assumption if I can contribute to the might, it would be fine and, if not, no harm is being done from any angle.

Many of the educated and successful members of the black race, who suffered indignities before the passage of the Public Accommodations Act, and the young militants, have allowed their hearts and souls to become scarred by hate against the white race. However, it simply is not true that a deep-seated, inflammatory hate prevails in the minds and hearts of the majority of the white race against the black race.

Many examples can be given where fine relationships are constantly at work between the races. Members of the white race, despite ugly and despicable labels, such as whitey, pig, white devil, racist, and other uncomplimentary names used by several of the key black leaders, continue to be generous and outgoing in their financial support for all forms of sports, especially football, baseball, and basketball, where members of the black race are heavily represented; this favorable picture will increase percentagewise. The same spirit prevails in their support of the entertainment world, the private enterprise system, and in the heavy employment of the black race by the Federal Government, with its more than 400,000 employees—a ratio of 19 percent versus 12 percent of our population, as well as all other areas in which black members are involved.

Messrs. Roy Wilkins, Clarence Mitchell, the Reverends Ralph Abernathy and Leon Sullivan and other leaders are not clamoring to cut back this ratio on a numerical basis in order to give a greater percentage of employment to members of the white race, as they practice in securing forced integration to obtain racial balance numerically by busing for the black race.

This whole thing has been caused by harsh freight rate structure made way back then, a starved economy where we had no money to live on ourselves.

I am one of eight children, seven of us still living. We all went to school. We had a fairly good education from a Little Rock, Ark., standpoint. I have three daughters to finish out here at the National Cathedral, and so forth, so I am very much interested in schools. I am very much interested in the black race. I sent two checks 2 years ago to two men who were black who were running for the House and Senate in Arkansas. I think we should have several of them elected. We have 100 Representatives and 35 Senators. We do not have a black member in either house. I know it is harsh and it is not right, so my action has been in favor of the black race.

If I could have just got a little deeper into this thing here, I would like to do it, but I didn't have the time. The other witnesses took quite a bit of time and I wanted a few minutes to raise some points that are said in this document.

Chairman Celler. I take it you are in favor of the constitutional amendment; is that correct?

Mr. Scott. That is correct, and I am against freedom-of-choice schools.

Chairman Celler. Are you in favor or opposed to the moratorium?

Mr. Scott. I am against it 100 percent.

Chairman Celler. Can you give us your reasons for being opposed to the moratorium?

Mr. SCOTT. Yes, I think it is confusing. I think it is lending hope to people if they have a chance to get the benefit from it.

The President said it would take too long for a constitutional amendment, 12 to 18 months, which would be a real short period, before it could pass. I think it a disservice to the school districts, the manner in which it is projected and the roadblock that I think is in the way.

As far as the Little Rock area is concerned, as far as Hot Springs, as far as Denver, Houston, Dallas or those persons, or Roanoke, Va., or what have you, it does not help those schools at all. They will continue what the Court told them to do.

Anyway, I will just leave this. I am sorry we did not have more time. I heard two witnesses take an hour-and-a-half and nonprofessionally I gave on my time the thing I have been trying to do.

Chairman CELLER. Are there any questions?

Thank you very much, Mr. Scott. We appreciate your coming. Your material will be printed at this point in the record.

(The material referred to follows:)

NATIONAL ASSOCIATION OF NEIGHBORHOOD SCHOOLS, INC., DENVER, COLO.
DENVER, COLO.

My name is C. H. Scott with offices in Denver, Colorado and Washington, D.C. I was born and reared in Arkansas and submit the attached Statement pertaining to the Proposed Constitutional Amendment by Congressman Lent of New York, H.J. Res. 620. I am defending the inability of parents of the West and, particularly of the South, in their failure to have had a well-balanced school system for black children and other minorities. I am not alibiing the failure of the white race to share more liberally with the black race the limited amount of taxes collected from an extremely weak and starved economy in the South at that time, which was created by an unconscionable high freight-rate structure. Due to this condition, the black race did not have per capita investment per child spent in their education comparable to that of the white children which created a harsh and undemocratic system. Of necessity, I must dwell on the reasons and facts for a poor agricultural economy in the South prior to 25 years ago.

I served on the Arkansas State Board of Education during that troubled period and gained enough experience and knowledge to know that the children of the South, both black and white, had to have equal school facilities and that all must enjoy 9-months' school with well-paid teachers.

I developed an extensive Proposed Federal School Building Program in 1941 for the entire school system based on the assumption that teachers' salaries would be paid from state taxes. I secured the approval of the Executive Committee of the National Education Association at that time to concentrate my efforts in my home state, Arkansas, on a Test Project to see if I could raise ample finances from Arkansas School Teachers, both black and white, to begin a nationwide campaign to encourage the Members of Congress to appropriate ample money for construction of administrative, science, stadiums, and other related school facilities throughout America on a long-term loan repayment basis similar to loans made by the RFC to the REA and other businesses.

In 1941, I placed the names of 4,000 black teachers, 9,000 white teachers and 2,000 public school officials, or a total of 15,000 Arkansans in the educational field, on our mailing list at the National Education Legislative Agency in the National Press Building, Washington, D.C., in the development of a grass root campaign to raise $75,000 needed for this initial test. This effort disturbed the officials of the NEA and they, then, decided to make the same approach, which precluded me from continuing my work. I was successful in collecting $27,500 in cash and pledges during a three-months period from the Arkansas Teachers and deposited the money in a local bank. After I decided to discontinue my efforts, Miss Willie Lawson, Secretary of the State Teachers Assn., agreed to return this money to the teachers. My endeavor in their behalf cost me better than $11,000 of my own money and 6-months in time, without any compensation. I did not regret my investment.

I was intensely interested in helping to develop this constructive, fair and equitable building program in order to give black children and their parents and other minorities school buildings, facilities and well-paid teachers comparable with those of the white children. I am confident that, if that early proposed legislation had actually passed and if there had been a Government agency with enforcement powers such as the Interstate Commerce Commission, National Labor Relations Board, Federal Bureau of Investigation or a similar group composed of 11 to 13 members representing each and every segment of our society and, especially, those from the Black Race, Spanish-Americans and other minorities and women appointees, and emphasizing the importance of our public school system and guaranteeing the same investment per capita for all children, regardless of race, that Justice Warren and other Members of the Supreme Court would not have rendered their decision as they did in 1954, forcing desegregation.

I am also of the opinion that these 9 Members of the Supreme Court came to a conclusion that drastic action had to be taken in order to jar the parents of white children out of their apathy and indifference to the harshness and inequities existing in opportunities for black children and other minorities.

It is my belief that, if Chief Justice Warren and other Members of the Supreme Court could have anticipated the failure of the majority of the white parents and a percentage of the black parents in the execution of their decision, then, they would have allowed more flexibility in their decision to the extent of approving a plan making it possible for the Black and other minorities to control and manage their schools in heavy concentrated areas. I sincerely believe that we would be ten years advanced in the education of all children and that all school plants would be equal with opportunities the same and the intense and ugly feeling existing today in America would be partially eliminated.

I hope the Members of this Committee will permit me to fully explain the small per capita income of the South and West because of an agricultural economy which prevented their regions from having ample money to develop an extensive and well-balanced school system for all children of all races. This is the crux of the many vexing and explosive problems existing today, which has created an intolerable and unenforceable school program throughout America.

In 1942, I secured the appointment of Dr. T. W. Coggs, President of the Black Arkansas Baptist College, to be Director of the Arkansas Boys Training School on the assumption that he knew more of the characteristics and mannerisms of the black children sent to this Boys Training School than any white person and would be more effective and create more interest than a member of the opposite race. He gained the respect of the citizens of this State, both black and white. There should have been many more black men and women appointed through the years to our State Government. Our failure to permit the black race to participate in our local and state government was undemocratic and harsh and both blacks and whites have been penalized for such policy.

Two years ago, without any solicitation for financial or moral support, I sent small contributions to Mr. Sam Sparks (R), a black Candidate for the State Senate in Pulaski County, who is presently running again; and to Mr. T. E. Patterson (D), a black candidate for State Representative. I knew then and know now we are making a grave mistake in our failure to elect representatives of the Black Race to our State Legislature. We have 100 Representatives and 35 Senators and do not have a Black Representative in either the House or Senate.

I recently called 4 avowed black candidates for the Senate and House and told them they could count on a small contribution from me. I would like to see a minimum of 5 representatives and 2 senators elected statewide. It would be healthy for a good relationship and eliminate some tension and ugliness.

I have contacted leading educators of both the black and white races in Houston, Dallas, Denver and Mr. Eddy Anderson, Coach of Grambling College and Mr. Carroll, Principal of Carroll High School in Monroe, Louisiana; the Treasurer of Howard University; Dr. Davis, President of AM&N College; as well as interested parties in Detroit and Miss Irene McCabe of Pontiac, Michigan; Mrs. Mary Louise Hicks of Boston, Massachusetts; Mrs. George DeHaven of Dallas, Texas; Mrs. Wade of Mobile, Alabama; and Mrs. Ouida Gray of Brandon, Florida and President of Bishop College in Dallas, Texas to discuss these many explosive problems. This effort has been on a non-professional basis. I have drawn no salary and have expended a substantial amount of money during the past 36-months.

The following letter indicates the goodwill and interest I have displayed toward members of the Black Race. I have been alert and active during the past 40-years in the betterment of the minority races. I developed many friendships among them in my professional and political contacts.

October 18, 1971.

Mr. Richard "Dick" Butler,
Chairman of the Board, Commercial National Bank,
2nd and Main Streets,
Little Rock, Ark.

Mr. Dear Dick: The enclosed copy of letter to Miss Arlene Gillam, 500 W. 24th, North Little Rock, Arkansas 72214, is self-explanatory. I made an observation about her personality and the splendid service she rendered to all customers who transacted their business with her about four months' ago. You stated that you and others had already made up your mind that she deserved extra recognition for the splendid job she was doing as a Teller. I recently noticed that she had been transferred to, possibly, the most important Teller Window in the Bank. I am confident she is daily making friends. She recently told me she devoted some of her holiday period in soliciting new accounts.

There is now and will continue to be employment for members of the black race if they are prepared and have good character and are willing to work. Those characteristics, of course, are requirements in any employee, regardless of race. She is daily building some good dividends for the employment of other members of her race.

I wanted to, simply, let you know how depositors and clients of your bank observe favorably the job being done by different employees.

Your friend,

(S) Cliff Scott.

I have tried to project this Statement with restraint and goodwill toward all individuals and groups involved in this most sensitive crisis in our entire school history. It is not my intention to impugn the motives of any individual, minister, black leader, or the Government for their participation in the struggle to better the economic, educational or social status of the Black or minority races.

I only ask that men and women, who differ from my philosophy and convictions pertaining to the ambitious and far-reaching objectives in consummating a nationwide equal school system for our children, dollarwise per capital and regardless of race, study and consider the merits of this definite and positive approach which, if executed, will actually eliminate a substantial percentage of the explosive and ugly conditions in our school system.

(S) C. H. Scott,
Executive Director.

COMPELLING AND SENSITIVE SUBJECTS AS PROJECTED IN THIS STATEMENT

1. PROHIBITION—THE VOLSTEAD ACT—18TH AMENDMENT (Repealed in 1933).

2. THE PUBLIC ACCOMMODATIONS ACT OF 1964 has accomplished more for the dignity and pride of the black race than any other Civil Rights Legislation.

3. The black race enjoyed a greater percentage increase of income and employment from 1960 to 1970 than the white race.

4. Projection of an enormous building program for black colleges and universities—$30,000,000,000 to $50,000,000,000, or more, during the next 15 to 25-years.

5. Governors and public officials should stimulate interest and support the election of black representatives to State Legislatures and other public offices.

6. A PROPOSED CONSTITUTIONAL AMENDMENT to place our school system back into the hands of duly elected School Directors, stressing and emphasizing the importance of neighborhood schools.

7. Our generous and sympathetic Government appropriated $69,000,000,000 for different forms of relief during 1969, 1970, 1971 and 1972. The blacks and other minorities will participate to a greater degree than the whites in this unbelievable generosity of the American people.

8. Huge annual appropriations by Congress help to lessen the values of all forms of one's investment—life insurance, savings and loan stock, municipal, state and federal and other stocks and bonds.

9. Unconscionable and harsh freight rate structure passed by Congress about 83 years ago and placed under the control of the Interstate Commerce Commission created a starved economy for the Southern and Western States.

10. Willie Mays, Hank Aaron, Ernie Banks, Bob Gibson, Jackie Robinson, Jenkins and Stargell and many stars of football, baseball and basketball entertained millions of fans by their skill and competitive spirit; their conduct and their success have accomplished much in breaking down barriers between the black and white races.

11. I have tried to project this Statement with restraint and goodwill toward all individuals and groups involved in this most sensitive and explosive crisis in our entire school history. It is not my intention to impugn the motives of any individual, minister, educator, black leader or the Government for their participation in the struggle to better the economic, educational or social status of the black or minority races.

Chairman CELLER. This terminates the hearings for this morning. The Chair wishes to state that a letter has been received from Birmingham, Michigan, enclosing a petition signed by 1,500 persons in opposition to a constitutional amendment to proscribe pupil transportation. This communication together with the signatures attached thereto will be retained in the committee's files.

Without objection, there will be inserted in the record at this point the following communications:

Statement by the board of leaders of the New York Society for Ethical Culture entitled, "Controversy Over Busing."

Senate Joint Resolution No. 7, General Assembly, Commonwealth of Virginia, memorializing the Congress to propose an amendment to the Constitution of the United States relevant to neighborhood schools.

Statement of James A. Gavin, legislative director of the National Federation of Independent Business.

Statement of the National Council of Jewish Women, Rochester section.

CONTROVERSY OVER BUSING—A STATEMENT BY THE BOARD OF LEADERS OF THE NEW YORK SOCIETY FOR ETHICAL CULTURE

The intrusion of President Nixon as a partisan in the current attack on the busing of children presents grave problems for the nation. It is a threat to the hope of a more democratic quality education for our children. It is a setback to the movement for civil rights and better race relations. It means increased separatism by black and white, and the increasing division of the nation. It means a weakening of Constitutional authority and the Bill of Rights for all and the principle of equal protection of the laws.

The commitment to equal protection and equal opportunity for all was given decent and honest expression in the U.S. Supreme Court decision of May 1954: "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The patterns of housing segregation throughout most of the nation and especially in the Northern States make for segregated schools. White children and black children grow up without the benefits of knowing each other, without the shared experiences which are possible in racially balanced schools.

The arguments of the evils of busing sound hollow indeed when we acknowledge that hundreds of thousands of children ride miles to school every day in public buses and trains, in school buses and private buses and car pools and private cars. This is unavoidable in rural districts and wherever there are consolidated school districts. It is inevitable in urban areas where children have to attend special schools, schools for children that are handicapped or have special problems, children who are tutored and interested in specialized areas in the arts, sciences, industrial training, children who attended parochial or private schools. But, in addition, there is a strange silence about the hundreds of thousands of children who are bused out of their neighborhoods and districts every day for the purposes of segregation. To all this there has never been objection. The busing issue is raised only where it is used to achieve racial balance.

The real educational issue is quality education for all. And to a degree that quality requires academic standards and processes which nourish the curiosity and further the incentives and motivations to learn and grow on the part of the young. The proper mixture of the children of diverse backgrounds can be a vital factor in the dynamic process of education. The mutual stimulation and challenge of differences are a positive factor. They make for a realistic initiation into the nature of the adult world of human relations. They are a necessity in education for democracy and for international justice and peace.

White racism has led to black separatism. Neither is good for the future of this nation. The issue of busing matters not just to minority groups or the poor. It is an issue which brings us all face-to-face with the question of the nation's future. There is no escape. Either we bring about greater unity and cooperation between the people who make up this nation or we shall be torn into factions and fractions, black and white, rich and poor. And with this a division and conflict and weakening and wasting of our strengths and the erosion and destruction of our most precious heritage and reason for being. We have always had a problem of interpreting and living by the Constitution and the basic principles of freedom and equality for all. Do we today believe in rights for all? Do we mean to abide by our court decisions whether we like them or not and will we sustain them even against our own prejudiced and vested interests? The Constitution and the laws and the courts and the hope of a better life for all our people is at stake.

Our children are our future citizens. They will eventually have to work out the problem of the American nation as a civilization and the nation's survival as a member of a family of nations in a peaceful global community. The domestic and international problems which the children and youth of this generation will have to face will require every bit of talent and intelligence and team work of which they are capable. It will require the trust and unity and cooperative efforts of all of them regardless of their differences of color and ethnic origin, creed and class. A nation divided and torn by fear and hate and violence cannot survive in competition with the other nations and rising peoples of newborn nations. The natural resources and productive power of America will not be enough to assure survival. The quality of relationships within the nation will determine whether this nation is able to survive. It will determine whether this nation is fit to survive.

Whatever his personal views, Mr. Nixon as President has violated basic democratic principles in defying the Supreme Court on the question of busing children to school. His action stands in stark contrast to the position of President Eisenhower on the issue of the courts and school desegregation.

COMMONWEALTH OF VIRGINIA GENERAL ASSEMBLY

SENATE JOINT RESOLUTION NO. 7 MEMORIALIZING THE CONGRESS TO PROPOSE AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Patrons: Messrs. F. T. Gray and Parkerson.

Resolved by the Senate, the House of Delegates concurring, That the Congress of the United States is hereby memorialized to adopt and offer to the states for ratification or rejection the following amendments to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several states within seven years after the date of final passage of this Joint Resolution;

"Article ————

"Section 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school."

"Section 2. Congress shall have the power to enforce this article by appropriate legislation."

And be it further resolved That the Clerk of the Senate is hereby instructed to send copies of this Joint Resolution to the members of the Virginia delegation in the Congress of the United States, to the Clerk of the House of Representatives of the Congress, and the Clerk of the Senate of the Congress, and to the Governors of the several states of the United States.

Agreed to by the Senate February 15, 1972.

LOUISE O'C. LUCAS,
Clerk of the Senate.

Agreed to by the House of Delegates March 8, 1972.

GEORGE R. RICH,
Clerk of the House of Delegates.

Statement of James A. Gavin, Legislative Director of National Federation of Independent Business

Mr. Chairman, distinguished members of this Committee. My name is James A. Gavin, Legislative Director of the National Federation of Independent Business. On behalf of our more than 305,000 member firms across the United States, I want to thank you for this opportunity to present our testimony on busing before you today.

The National Federation of Independent Business is the largest organization of its kind in the world. We represent the views of the small, independent businessman. These views are current, and are based upon our regular, systematic pollings of all member firms on important issues pending before the Congress. This, the Federation has done continually since its inception back in 1943.

In February of this year, we polled our member firms on the question of busing. Specifically, we polled the question regarding a proposed Constitutional Amendment prohibiting compulsory assignment or busing of children to schools on the basis of race, creed, color or national origin. Our members reacted by giving us the largest return of completed ballots ever received in the 29-year history of our organization.

The results showed: 86% For a Constitutional Amendment, 9% Against, and 5% No Opinion. With such a large return, and with such a wide disparity in the results, there can be no doubt where the small, independent businessman of America stands on the question of forced busing. An in-depth study of the returns indicate the results show little geographical variation.

Although polling only the Constitutional Amendment approach, we interpret the tremendous response we received as evidence that people want relief—through the quickest, most practical approach available—from the consequences of forced busing.

Some typical unsolicited comments from the respondents show that National range involved. I would, just briefly, like to call to your attention a few of these: "Forced anything is unAmerican."—a Minnesota plastics manufacturer; "Busing children to an inferior school does not improve the school or the teacher."—a California businessman; "I am in favor of non-forced integration."—a Texas building supplier; "Forced busing can never work. All it can do is aggravate and separate communities and neighbors."—No state or occupation given.

Mr. Chairman, the question of forced busing is one of the most emotional issues to confront 20th Century Americans. All throughout the width and breadth of our land, people are upset and dismayed over busing, as unelected theoreticians not only blunt and thwart the intent of the Law of the Land, but in so doing use innocent school children as one would use pawns in a game of chess.

Literally countless times every school day across America, children are uprooted from neighborhood schools and bused 5, 10, 15, 20 miles, and in many cases even further, to an unfamiliar school in unfamiliar surroundings *only* to achieve some egalitarian theory of racial balance.

I have mentioned thwarting the law. It does not take the proverbial Philadelphia lawyer to recognize that the 1964 Civil Rights Act expressly forbids assignment to pupils to schools on account of race. Going even further back to the 1954 Supreme Court decision in the *Brown v. Topeka* case, the high court held that assignment of pupils to schools strictly because of their particular race was un-Constitutional. This decision made no mention of forced racial quotas.

Today, however, we have made a complete cycle back to 1954. The busing of children solely on the basis of race is as wrong today as it was in the past. And today, the courts—despite the 1964 Law of the Land enacted by the Congress—hold that race must be a factor in the forced assignment of children to public schools.

Busing tramples upon the very principle the 1954 *Brown* case sought to establish. White children are shipped here, black children are shipped there, in the Carolinas red children are shipped somewhere else, while on the West Coast yellow children are shipped elsewhere. All this is done to obtain what the theoreticians call "racial balance."

Let me emphasize again that all this is being done with complete disregard for the wishes of the majority of parents of *all* races. And, regrettably, this is being done *because* of the color of a child's skin. What could be more unAmerican? Is not justice color blind?

The most recent Gallup poll on busing reveals that 76 per cent of the public oppose busing. Some 47 per cent—or a majority of those blacks expressing their views on the subject—were opposed to it.

Among the reasons given by those opposed were: (1) Children should go to school where they live; busing is unfair to them and to their parents. (2) Busing is an unneeded and undesired expense; the money could be better spent improving the quality of education for both races. (3) The time spent on long bus trips is enervating to the child, as well as a waste of time.

Of those 18 per cent who favored forced busing, their chief reasons were: (1) Busing will upgrade the quality of education for blacks. (2) It will improve race relations in the Nation. The remaining six per cent had no opinion.

Proponents of forced busing are worlds apart from the view adopted by the recent grass roots Black National Political Convention meeting in Gary, Indiana. The Convention, according to a report in the WASHINGTON POST of March 13, 1972, "Condemned busing to achieve school desegregation as 'rascist, suicidal methods' that are based on the 'false notion that black children are unable to learn unless they are in the same setting as white children'."

The newspaper report states that the Convention stand was taken "by a loud, overwhelming voice vote" of the delegates.

William Raspberry, in his column in the same newspaper on January 20, 1972, wrote:

"Virtually no one wants busing on the level it would take to integrate the schools in most metropolitan areas.

"I, for one ,would be willing to take one step backward, to honest desegregation. That is, let us move forthrightly against any attempt at official discrimination. But at the same time, let us end the humiliation of chasing after rich white children. And it is humiliating. For one thing it says to black children that there is something inherently wrong with them, something that can be cured only by the presence of white children. Some of us don't believe that. Some of us believe that given adequate resources, financial and otherwise, black children can learn, no matter what color their seatmates happen to be."

For informational purposes, William Raspberry is a respected black journalist in Washington news circles.

Busing, we believe, has yet to disclose what tangible value can be gained for the children involved. Instead, only negative results surface in the issue. Quality education no longer exists. Forced busing has caused just plain, everyday Americans, in addition to parents and grandparents, to become more and more alarmed over the issue.

Unless—and until—a remedy is found, these millions upon millions of our citizens will, without doubt, reflect their frustration and consternation at the polls come Election Day.

This volatile and emotional issue, we believe, can only be effectively defused by a Constitutional Amendment. The weak argument advanced by some that the Constitutional Amendment approach would take too long is folly. Consider the rapidity with which the latest Constitutional Amendment granting to 18-year-olds the right to vote in state elections was adopted.

However, should his Committee decide not to report a measure calling for a Constitutional Amendment on busing, perhaps it will publicly encourage the various states to hold referendums on busing, thereby allowing rank and file Americans to express publicly their feelings on this issue.

Perhaps if this course is pursued, the various states will, through their legislatures, petition for a Constitutional Convention on the forced busing issue. Maybe even such a Convention would not then be necessary, for certainly it would be obvious to all in the Congress exactly how the American people feel regarding busing of school children.

Federation members strongly favor the Constitutional Amendment approach. An Amendment would provide a sane, uniform law that would be applicable all over the United States equally *without* regard to race.

We urge that such legislation be favorably reported as soon as possible.

Thank you.

STATEMENT OF THE NATIONAL COUNCIL OF JEWISH WOMEN, ROCHESTER SECTION

The city of Rochester, New York, school district services approximately 45,000 children with 28,000 at the elementary level and 17,000 at the secondary level. 37.5% of these children are classified as members of minority groups.

According to the *Annual Statistical Report of the City of Rochester, 1970–71*, the City School District had 45 elementary schools of which 6 were 95% or more minority populated and 5 were between 65–95%. Conversely, 7 elementary schools had less than 10% minority enrollment and 11 were under 20%. It should also be noted that these inner-city schools contain larger per capita population than the outer-city schools. Eleven of these schools were racially imbalanced according to the New York State Board of Regents definition of racial imbalance as a school containing more than 50% minority enrollment.

By Grade 12, because of school drop-outs, the percentage of minority school enrollment had dropped to 20% from 45% at Grade 7. Out of 9 high schools, 2 had more than 50% minority enrollment.

Under voluntary pupils transfers due to two-way open enrollment and suburban-urban transfer programs, 2262 children were involved in 1970–71, leaving the bulk of the 45,000 school population unaffected.

In 1971–72, the then elected School Board voted a school reorganization and desegregation plan to be implemented in stages and to eventually affect the entire school district. The educational validity of separate junior and senior high schools impelled the decision to have total reorganization at that level. No new construction of facilities was necessary. Despite some minor disruptions at the inception of the plan, time has shown a tremendous lessening of tensions and violence.

Two areas of the City, using contiguous schools within each area, achieved elementary grade reorganization without busing in 1970–71 (Kindergarten-3, 4–6). The effectiveness of this experiment led to further reorganization of a larger elementary school area using cross-busing for non-contiguous schools. Reports by professional staff and involved parents reflect the success of this program.

In the fall of 1971, a change in the method of selection and election of school board members led to a so-called non-partisan board with responsibility to no political party and the rescission of the total reorganization plan. The action is now awaiting federal court review as to its legality.

Before we had an opportunity to evaluate and assimilate the effects of reorganization, fear and emotions swept into office five candidates who ran on the single issue of anti-busing. This election took place in November, 1971, following by only two months the beginning of school reorganization in September, 1971. In place of a well-balanced, educationally sound program, the new Board is offering a "freedom of choice" plan. As previously stated, at the height of open enrollment, only 2000 students were involved. Past experience has shown that due to logistics and building size limitations, open enrollment is a dead end and presents no viable alternatives.

Should the Courts uphold the decision to rescind reorganization, the reorganized schools will return to their former status: i.e. k–6, 7–12. In their haste to prevent busing, this school board will have sacrificed valuable school programs. The recombining of junior and senior high school students into the same buildings is in direct violation of recommendations made by a recent Blue Ribbon Committee on reduction of friction and unrest in our secondary schools.

Rochester's reorganiaztion plans were formulated because the Supreme Court of the United States established in 1954 that integration of public schools was required and guaranteed by the Fourteenth Amendment to the Constitution. Busing was a necessary tool in Rochester, as elsewhere, to protect school children from deliberate efforts to segregate them by race and to secure quality education for all. In the final analysis, the choice is not "to bus or not to bus" but to give children the opportunities to learn how to live among a wide variety of people with whom they will spend their lives.

The National Council of Jewish Women believes that we must not risk the undermining of the spirit of the Constitution and of returning to the kind of segregation and misunderstanding that led the Courts to use busing as a last resort method to achieve desegregation.

Chairman CELLER. I also insert at this point communications from "Let Your Voice Be Heard," Norfolk, Va.:

1. "To Whom It May Concern" from Mrs. Nancy E. Grisham and Richard E. Grisham, February 29, 1972.

2. "To Whom It May Concern" from Mrs. Mary Ann Sweeney, February 29, 1972.
3. "To Whom It May Concern" from Mrs. Robert E. (Helen S.) Ornoff, February 28, 1972.
4. Statement by Mrs. John Ruth.
5. Statement from Mr. and Mrs. Clarence Doyle.
6. Letter from Kathryn Ogg, president, "Let Your Voice Be Heard," to Chairman Emanuel Celler.
7. Letter from Mrs. Wilburn P. Davis, February 29, 1972.

NORFOLK, VA., *February 29, 1972.*

To whom it may concern:

Although my children are not old enough to attend school, as an American citizen and a mother, I feel an obligation to voice my objection to forced mass bussing of school children to achieve an artificial racial balance.

We bought our home located where it is for several reasons. It is within walking distance of a shopping center and a church of our faith. However, the main concern was an elementary and a junior high school within walking distance. We are also within walking distance (4 blocks and 10 blocks) from two other elementary schools, but do not live within their district. Now, instead of walking approximately 4 blocks to school, our children will be required, by court order, to ride a bus 12 miles—into downtown Norfolk—while in grades 1, 2, and 3. Our 6, 7 and 8 year old children's days run 9 to 10 hours in duration from getting up until they return home—and then there is supper, homework, etc. During winter months, they arrive home after dark. Many have long walks home from the bus stop—AFTER DARK.

I cannot, as a mother, send a six year old child into downtown Norfolk, knowing if she misses the bus, she will have a two hour trip home. She cannot read the names of the buses she will have to catch. If she becomes ill, I have no way to go after her and cannot afford a taxi. She will have to stay at school all day—even if she is sick. I feel the courts are overstepping their limits by coming into my home and telling me what to do with my children. I would like to see us return to government by legislation instead of judicial decree.

My best friend's father was murdered November 4, 1971, just a short distance from where I am expected to quietly send my children to school—an area where drug traffic and crime are heavy. This took place directly on the route she would have to take if she missed the bus. This man was well known in the community, having had his business there 20 some years. If he is not safe, how can a child alone be safe?

My children are mine, not the Supreme Court's and I resent and highly object to being under mandate of the Federal Government to send them across town. Hopefully, this amendment will be released to the floor for a vote, thus giving me my right for Mr. Whitehurst to vote for my family.

Sincerely,

MRS. NANCY E. GRISHAM.

NORFOLK, VA., *February 29, 1972.*

To whom it may concern:

As an American citizen, the father of my children, and the provider of my home, I feel it is my duty to voice to you my opposition to the Supreme Court's mandate to bus children miles from home for the sole purpose of racial balance.

Six years ago I purchased my home in area that is very convenient to a church of the faith of my family, an elementary school and a junior high school. All are within walking distance. At the time I bought my home my wife and I had no children. We bought the home with the idea that our children would attend these neighborhood schools. We are now blessed with two lovely girls, but we find that they will not be permitted to attend these schools.

I am not opposed to equal rights for Negroes. I feel this should have happened long ago. I sincerely believe that most of the Negroes feel as I do about children being bused around the city like cattle going from one pen to another.

Busing creates not only a financial hardship upon the parent, but more important, it caused an emotional disturbance with the children because in many cases they are separated from their brothers and sisters and friends. No thought has been given to the safety and welfare of the children. Common sense tells you that you would not place a small child on a bus and permit him to travel unescorted. Crime and accident rates are soaring higher and higher each year. I will go into more detail later in this letter.

This is supposedly a "free country" in which the rights and opportunities of all men are considered equal. Many thousands of emigrants come to our country every year for this reason. What gives the Supreme Court the privilege to dictate to me where I must send my children to school? I realize there are many emergencies which may arise in our schools which could cause a temporary change in school schedules—fire, floods, epidemics, shortage of teachers, etc., but I do not think that the Supreme Court should be permitted to disrupt a nation by shifting children around the schools as if they were furniture (or cattle for that matter). With the Negroes now having equal housing opportunities, the racial balance in the schools will take care of itself—maybe a little slower than the NAACP would like, but at least very few of the disadvantaged stated in my previous paragraphs would arise.

The paragraphs to follow pertain to the circumstances we have been confronted with in Norfolk and the surrounding Tidewater area.

In my first paragraph I used the word mandate and to me this is exactly what the Supreme Court has done. It is true that the Supreme Court has not had any verbal or written communications with me, nor have they approached me and given me a direct order to bus my children to school. We have, however, been informed by the 4th Circuit Court that we will bus our children, against our will and at our own expense. The Supreme Court could care less how far our children travel to school or what mode of travel is used to get them there, just so long as the NAACP is satisfied that the schools are acceptably integrated. I quote from the Virginia Pilot newspaper of August 1, 1971, "The alternative to defying the court order is jail." To me this appears to be a mandate. Although the Supreme Court did not tell us to bus, the Supreme Court is responsible for all actions of the junior courts (meaning the 4th Circuit Court).

Last year 232 teachers resigned in Richmond, Virginia. This year, more are resigning. A private school in Norfolk advertised in the newspaper for four teachers. The school received 75 applications from certified teachers that had left the public school system. In our Norfolk schools last year, slow classes were done away with. This year the accelerated classes are ceasing to be. Our slow students and our gifted ones are lost . . . the reason . . . the NAACP says this is discrimination.

Busing has done away with Girl and Boy Scouts and extra after school activities for elementary age children. The buses will leave school immediately after classes dismiss and so must the children. Night activities are out of the question for children of these grades because late arrival home, eating supper and doing homework leaves very little time for other activities before going to bed.

Although the Virginia Transit Company is going out of business soon, I would like to tell you a few things about their buses and the service we received from them. The buses that the VTC uses for transporting school children do not meet the regular standards required for a school bus. There are no flashing lights and the only markings that labels it as a school bus is a small sign on the rear saying, "CAUTION—SCHOOL CHILDREN." These same buses are used for everyday transportation . . . 365 days a year. This caution sign can be seen at any time during that period (in other words, the signs are not removable). The city officials have said publically that in order to avoid traffic jams, it is not necessary to stop for school buses that are loading or unloading children. Since when is time and smooth traffic more important than the lives of our children?

Dr. Stolee, who drew up the desegregation plan for Norfolk, was brought here from Miami, Florida, by the NAACP. He testified on the witness stand that he had no background in school planning. When asked if he had ever seen our schools or visited in our communities, he said no. The plan was drawn up by the use of city maps and charts. Knowing this, the court approved the plan. My question is this, would you or I ask Dr. Stolee to draw up blue prints for a new home that you or I might move into. The answer is definitely no. Then why was his plan accepted by the court? Are not children more important than the blue prints for a home or anything else that you can picture this man doing that he is not qualified to do.

In the 1970-71 school year, 16,000 children were to be bused in Norfolk. As of December 1971 we had lost 7,500 students from our school system.

I know of many Navy wives who have taken their children and gone back home. There are many Navy families requesting orders away from the Norfolk area. There is much talk of white flight. People are selling their homes and leaving Norfolk.

Many children who are being bused come from low income families . . . black and white alike. The Negro children being sent to my area are coming from a ghetto are where children average 4 to 6 in number per family. Some of them will spend $50.00 per month for bus tickets. How can they meet these expenses and continue to properly feed and clothe their children? If they are hungry and cold, how can they possibly learn? Is this not doing more harm than staying in the schools closer to home?

There is a government provided Navy housing that is busing all 12 grades. Many of these are large families. Most of the military families moving into the Norfolk area are unaware of the busing situation. They are finding it difficult to meet the added expense of buying bus tickets. This particular Navy housing is almost within shouting distance of an elementary school and approximately one mile from a junior high school.

I feel that these buses are unsafe for children to use as a means to get to and from school. I say this because of the many incidents that have occurred. There have been fights, thefts, girls molested, and many other smaller crimes committed. Most of the time the drivers fail to prevent them from happening. In the Larchmont area, an eight year old girl was molested on a bus and nothing was done to stop it. The girls in that area must now wear slacks to school. I personally know parents who have called the school board to report injuries and have been told to keep it quiet. Do not publicize it. We do not want our school problems made public. I do think the time has come to make it public. Most of our first, second, and third graders will be riding buses. I do think the men who make the laws should consider their safety as well as their civil rights.

Dr. Levin, a prominent Norfolk dentist, was involved in an automobile accident with a pedestrian in a high crime residential area of Norfolk. While attempting to render assistance to the injured girl, he was attacked by a group of teenagers. After the incident occurred, Norfolk Police Chief Staylor issued a statement indicating that these were high crime areas. The public should stay out of them at night completely and should go in them only when absolutely necessary during daylight hours. This particular area happened to be a Negro area.

I said earlier in this letter that I am not opposed to equal rights for Negroes and this is very true. But, as a father, how can I permit my children to be in areas like these . . . no matter what color occupies them?

I have enclosed some articles that may be of interest to you.* You will note that Norview and Tucker have now been paired. Norview is a totally integrated residential area. My wife graduated from Norview High School in 1964 and it was integrated then. Two-hundred of the students being bused to Tucker are Negro. The parents of these children worked long and hard to move their families out of the ghetto areas of the city. Now look what is happening to them. Does this make any sense to you? Why replace black with black? Who is deprived of a quality education?

The Civil Rights Movement began because Negro parents wanted their children to attend the school closer to home—not to be bused past other schools to reach the school they attend. In balancing the schools, the courts have stripped each and every child of the **RIGHT** that the Negroes originally wanted.

I feel the children will bear the greatest burden caused by busing. Although I did not attend school under a court ordered busing plan, my childhood was similar to what these children will experience. At the age of 18, I had moved approximately 28 times and attended 11 schools. Due to the difference in ages of my older brothers and sisters, I attended school alone. I wish to see that these do not happen to my children.

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*The articles referred to are retained in the committee's files.

Before closing this letter, I feel that I must say something about the responses that I have received in answer to the letters that I have written. Since July of 1971 I have written approximately 300 letters to various Senators and Representatives. To date I have received approximately 40 replies. In all of my letters I have basically asked the question of how will busing profit me and my family, and is he in favor of busing. I have never received an answer to the first part of the above sentence. To the second part, I received such answers as "THANK YOU FOR WRITING", "I'LL TAKE IT INTO CONSIDERATION," and other statements that put them on the "fence". I have been told that because I am not from his (the person I've written to) district/state and not a voter from his district/state, he would forward my mail to my congressman. The decision that a congressman makes on this busing issue will not only affect the voters in his district/state but all the children and parents in America. WHEN I WRITE TO THEM CONCERNING BUSING, I EXPECT THEM TO ANSWER MY QUESTIONS BECAUSE IT IS THEIR DUTY TO ANSWER THEM. IF I WANT TO WRITE TO MY REPRESENTATIVES AND SENATORS, I KNOW THEIR NAMES AND ADDRESSES. Is there any way of getting this corrected?

I have always considered myself as a law abiding citizen, but, I will not permit the Federal Government to come into my home and control my children. My children were given to me and my wife by someone far superior to the Federal Government (and that includes the Supreme Court). God chose me to be the father of my children. He entrusted me with the responsibilities of providing food, clothing, shelter, love, education, religious instructions, etc. NO ONE is going to deprive me of these pleasures.

RICHARD E. GRISHAM.

NORFOLK, VA., *February 29, 1972.*

To whom it may concern regarding massive busing in Norfolk, Va.:

For 10 years, Norfolk, Va., has been in court regarding integration. In that 10 years (due to constant court orders and changes) our school system has been virtually destroyed. 7,500 pupils left the Norfolk school system and with them 7,000 P.T.A. members who volunteered many hours to work in the schools.

Seven and eight years ago, children in the school my children attended were top readers with a few exceptions. Now, in the same school, workers are begging for Mothers to volunteer for reading programs, since the children can't read. I find this appalling with all the funds being poured into the schools and the teaching level just going down. I feel it's time to call a halt until we can upgrade the education of our children.

My son has an I.Q. in the top 10% and should be working well in school, however, he finds no motivation. For 2 years of Jr. High School he was in a class of 75 for history without a classroom (the class met in the auditorium)—not much incentive to excell there. He was in band for 4 years and last year (due to court order and graduation to High School) the band lost a large number of experienced players. This left 4 year band members playing down to 2 year levels—not much incentive to continue when you're practically thrown back two years. This boy's interest in school fell until I was really alarmed. The school counselor and a private Psychiatrist agreed he could not cope with the year to year changes for three years of High School. At their suggestion and much concern on my part, I put him in a private school. His grades are all up—math excelling. He is making 95 to 100 usually on Algebra and Geometry and was making "D's" in Algebra in public school.

There is no tuition grant and no Champus funds available to me for this expense for three years, although the Dr. said I had no alternative. I am a Navy widow with one son in college and I certainly don't need a total of $3,000 bill for three years of high school while I am taxed to support public schools.

What alternative do I have? Should I just sit and see the boy stop school or fall apart with nerves?

If I could vote "NO" today, I would vote "No" to any federal funds for public education, until we get back to the business of *teaching!*

MARY ANN SWEENEY.

1881 BROOKWOOD ROAD,
Norfolk, Va., February 28, 1972.

To Whom It May Concern:

On October 8, 1971, my son Jeff, aged 14 was assaulted by three boys from a distant neighborhood as he left the school building.

I was waiting for him in the driveway of the school and when he came to my car his face was bleeding and swollen; he told me he could not remember what had happened. I took him to the doctor immediately. He was treated at DePaul Hospital and kept there under observation overnight. At 8 p.m. on the night of the eighth he told me that he thought a classmate had asked him if he could help him.

From 2 p.m. until 8 p.m. I did not know just what had happened to my child. I called his classmate and he told me that the three large boys had approached my child by the bicycle rack at school and had asked for a dime. When Jeff told them he did not have it they hit him and ran.

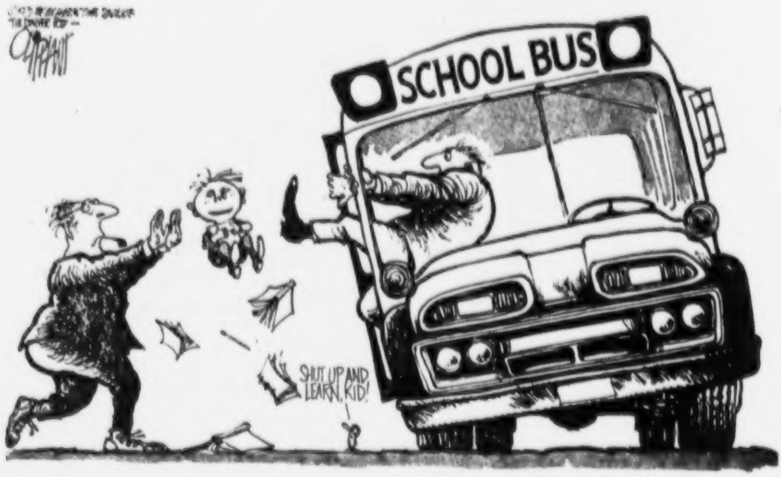
This is the second time that such an incident has happened in my family a year ago my oldest son was threatened because he refused to give a boy a dollar which had been returned to him in gym class for his lock. This occurred at Norview High School. Jeff, my younger son is a student at Azalea Gardens Junior High School.

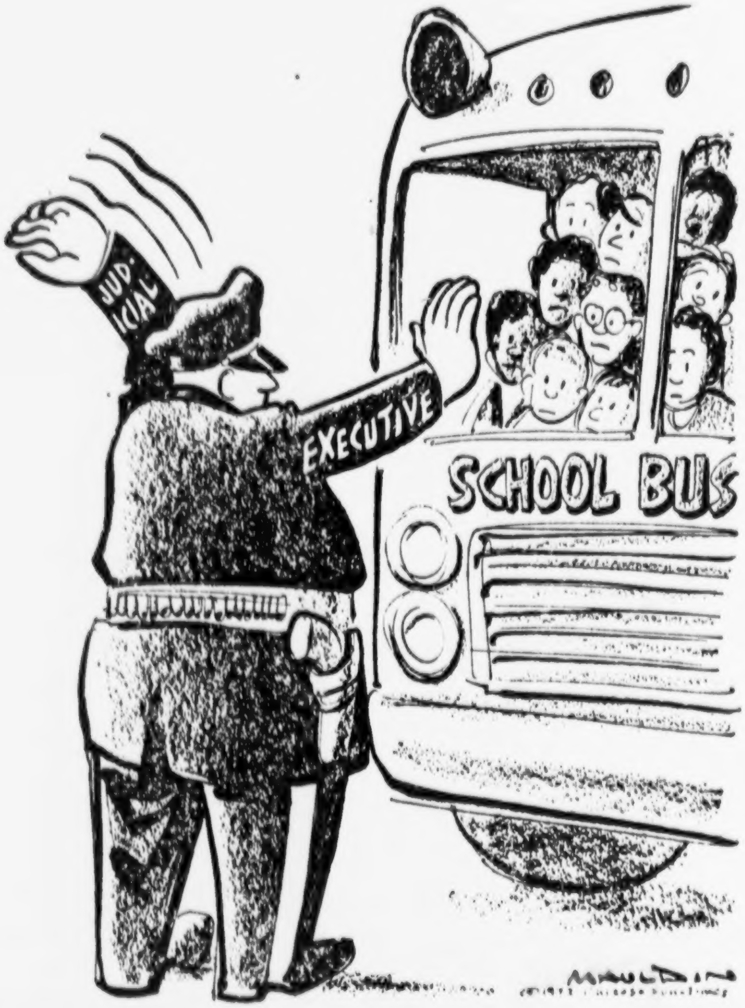
In closing let me add that several of my friends' children have been assaulted and molested since the courts ruling on busing has brought children of different neighborhoods and environments on our society. It is sincere hope and desire that this letter will remedy this unsuccessful means of desegregation.

Very truly yours,

MRS. ROBERT E. ORNOFF.

Into the Bus, Off the Bus, Into the Bus, Off the Bus—Man, What an Education!





I think the above cartoons best explain the busing of students in this country. The schools don't want the student and neither do the courts. Luckily we have parents that do and are concerned about the welfare of their children. The government is tossing them around as if they were balls in a basket; as if the government is afraid the parents don't know how to get their children educated. The leaders of this country sure don't.

I've talked to many parents, black and white, neither of them likes to have their children bused. Where is it getting our children??????? No where but a bus ride every day. The things that well adjusted students have to cope with every day is terrible. The insults, assaults, beatings and plain harassment that the children put up with is atrocious. My children are becoming nervous wrecks because they have had these thing happen to them. These are the future leaders of our country you are dealing with.

No parent enjoys sending his child across town by bus to attend school. Yet our Governors, Congressmen, Representatives and Senators send their children to private schools. Everyone cannot afford this.

I suggest you attend the schools for a day, talk to the parents, lend a listening ear. I believe the people of this nation know what is best for their children.

Please release the LENT AMENDMENT!!!!!! A great many Americans will be ever grateful.

A white student cannot even walk through the halls of the school without having a group of white students walk with him for fear of being assaulted by a black student. The white student cannot even go to the bathroom without the fear of being assaulted by a black student while he is in there. This is no way for a school to be. The students are living in a constant fear throughout their day in school. My children are starting to crack under the stress and strain of this daily procedure; could you take the strain they are in contact with every day?

My son was accused of hitting a black student on the head during a fight in a *classroom*. He was no where around when this blame was put on him. It was over a few words that was written on the wall in the boys' bathroom. "Nigger go home where you came from." Who wrote this? Black or white? No one knows for sure. It could have very well been written by a Black student so that they could have reason to retaliate and have something to cause fights for, which there were some and the police and youth bureau were called into the school. Consequently, he has stated he doesn't want to attend school now. But I make sure he goes to school every day with an upset stomach. Should a student be put under such a stress and strain just to attain and get an education? I myself am under a terrific strain wondering what is going to happen to him in school each and every day. My child attends Ruffner. See attached article.

Something has to be done about the busing in this nation. The only way it will be resolved will to be a Constitutional Amendment. We cannot let the courts rule our schools. This is how the Communists started taking over in Hungary. I do not believe, as you can see by reading articles in the newspaper if you do at all, that this is what the people want.

SO PLEASE RELEASE THE LENT AMENDMENT SO THAT IT CAN BECOME LAW.

A citizen who is greatly concerned for her children's future and others as well.

A concerned parent of "LET YOUR VOICE BE HEARD."

Mrs. JOHN REITH.

[Feb. 12, 1972]

TWO SCHOOLS CALL POLICE FOR FIGHTS

Police were called to schools in Norfolk and Chesapeake Thursday and Friday to investigate trouble between black and white students.

At Ruffner Junior High in Norfolk, Principal Earl S. Braxton said the trouble began Thursday when black students found offensive signs in two rest rooms.

The blacks began to push white students around, Braxton said, and a rumor circulated that blacks were going to "work over" white girls Friday.

Braxton called the police, who questioned a number of students. Youth Bureau Capt. D. M. Blair said Friday that the questioning was continuing.

Braxton said that approximately 50 students stayed out of school Friday as a result of the unpleasantness and the rumor, and that "perhaps a dozen, some of them opportunists," left school early.

"We do not expect a reoccurrence of this Monday. I told them today there will be no suspensions, only expulsions, for troublemakers of any color," Braxton said.

In Chesapeake, at Deep Creek High School, a fight started between blacks and whites Friday as classes began for the day. Police were called in but no arrests were made.

School officials linked the trouble with outsiders who roamed the halls of the building Thursday creating a disturbance.

NORFOLK, VA.

This morning February 29, 1972, our 10 year old son Richard Alan Doyle was standing at the bus stop on Shore Drive at the entrance of the Del Mar Trailer Park. He was waiting for the bus to take him to Liberty Park School, which is quite a distance from here, but we were forced to send him there, when this busing law was passed. While he was standing there waiting, three other Virginia Transit Buses passed by carrying children to the Lake Taylor schools. When the last of these three buses passed by, one of the persons on the bus leaned out the window and threw an object (which we assume was a rock), at our son and hit him on the right side of the forehead about 2 inches above his eye. He came home crying with blood running down the side of his face. After we cleaned him up and dressed the cut on his head, we telephoned the police and an officer came out and made out an accident report.

We then phoned the bus company and told them about it. We were informed by them that there was nothing that could be done, that they had no way of knowing which bus it might have been.

We then called the principal of the Liberty Park School and told them about what had happened. We requested that they make whatever arrangements were necessary to transfer Richard from the Liberty Park School to the Little Creek Elementary School which is the school in this area where Richard was enrolled when we first moved to this area, and where he attended until this stupid unconstitutional busing law was passed. We were told that we had to speak to Mr. Williams at the pupil personnel office, and get an OK from him for the transfer. Mr. Williams told us we had to call Dr. Ray at the school board office who told us there was nothing he could do because he was under a court order in placing the children where they had been placed in the schools.

We informed each place we called and each person we spoke to that we have no intention of allowing our son to catch another bus or even returning to school until this transfer to Little Creek School is approved and he is allowed to return to our own neighborhood school, and we intend to stick by this decision we have made.

CLARENCE DOYLE.
EVELYN DOYLE.

NORFOLK, VA.

EMANUEL CELLER,
Chairman, Judiciary Committee.

DEAR MR. CELLER: Enclosed are statements from individuals in Norfolk, Va. "Let Your Voice Be Heard" is a group of housewives who believe in letting our Congressmen know how we feel on issues.

Our problems are being solved by judicial decree rather than legislative action. We believe the American System calls for action by Congress. Then it is up to the people to react to the actions.

The story of Norfolk, Virginia in the busing crisis is well documented in official records and public statements.

In the three years of busing we have lost 7000 of our public school population. At present families are planning their future stay in Norfolk according to the prospects of their children's school assignments.

We pray for your support for the amendment to the Constitution so that our schools can be organized with education as their primary objective rather than racial balance.

Thank you.

KATHRYN OGG,
President, "Let Your Voice Be Heard".

NORFOLK, VA., *February 29, 1972.*

DEAR SIRS: I am against busing because I resent our nation's leaders, Senators, Congressmen, and Judges, using my child, and my neighbor's child, for their own political end. When I see these men sending their own children and grandchildren to schools where their race is in the minority (Washington, D.C. public schools would do), only then will I believe they are sincere.

I feel we are being used by the Federal, State and City Governments who impose very heavy tax burdens on us which we meekly pay. The only thing we ask in return is to be able to send our children to the school nearest our home, if we want to.

Doesn't the middle class taxpayer have any civil rights?? If I could use what we pay in taxes for private school I could very easily send my children to the best private school in our area. *Think about that*!! I know I do.

MRS. WILBURN P. DAVIS.

Chairman CELLER. I also insert at this point a letter from Mrs. Evelyn Brandt, legislative chairman, Pasadena Branch, American Association of University Women, April 13, 1972.

A letter from Hon. Lester Maddox, Lieutenant Governor, State of Georgia, dated April 6, 1972.

A letter to Members of Congress from Paul Jennings, president, International Union of Electrical, Radio, and Machine Workers, enclosing statement entitled, "IUE and the School Busing Issue."

A statement of Manuel Munoz, cochairman, Lincoln Park National Action Group, Chapter No. 124, Detroit, Mich.

A letter from Daniel O'Rourke, executive director, Human Rights Commission, Worcester, Mass., dated April 19, 1972, to Chairman Emanuel Celler.

Finally, a letter from Charles J. Jeffrey, Jr., editor, Oklahoma Eagle, Tulsa, Okla., dated March 16, 1972, to Chairman Celler.

AMERICAN ASSOCIATION OF UNIVERSITY WOMEN,
PASADENA BRANCH,
La Canada, Cetif., April 13, 1972.

Hon. EMANUEL CELLER,
Chairman, Subcommittee No. 5, Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: Pasadena Branch, American Association of University Women voted April 8 to support the stand of the Association Legislative Program Committee that "AAUW opposes all measures (legislative or constitutional amendment) designed to prevent the use of busing as one of several ways to achieve integrated schools".

We repeat that "AAUW has a long-standing commitment to quality education for all, to equal educational opportunity, to a unified society, and to the positive advancement of the rights of the individual under the U.S. Constitution".

Pasadena is the scene of a court-ordered school busing plan. The busing was controversial, as it took some children away from their neighborhood for half of their elementary school years. Emotional racial issues were also involved. Some parents moved from the district or enrolled their children in private schools. But a recall of school board members who supported the integration plan was defeated only one month after the plan had begun to operate. And now, near the end of the second integrated school year, there are parents and school officials who feel that gains have been made.

Sincerely,

MRS. EVELYN BRANDT,
Legislative Chairman.

OFFICE OF LIEUTENANT GOVERNOR,
Atlanta, Ga., April 6, 1972.

Hon. EMANUEL CELLER,
Member of Congress,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: It is my sincere hope that after studying President Nixon's proposed legislation on busing, you will vote to defeat this double-standard and unconstitutional legislation unless and until it is amended to assure all Americans "freedom of choice" and freedom from forced busing, rather than merely giving these constitutional rights by law to some Americans.

The President's proposed legislation is cruel, criminal and unconstitutional. For over three years, the President has allowed the Department of H.E.W. and the Department of Justice, and through their relentless efforts, the federal courts, to deny more "freedom of choice", and to bring about more busing of children and destruction of neighborhood schools than during all the previous glorious history of this great nation.

President Nixon's proposal would, by law, continue the chaos, strife, and disorder in education and the loss of freedom to millions which have resulted from the federal tyranny which has placed a federal police state over much of public education. For all others, he is asking that they not be given the fate of the helpless and innocent victims already subjected to this tyranny by our national government.

One thing we can all agree on is that the U.S. Constitution prohibits any law which would treat one group of citizens different from any other groups of citizens. Yet, what the President proposes and wants passed into law would continue to force criminal and illegal busing upon some citizens while making illegal "more" busing of others who are not already victims.

Whether a Congressman is for or against forced busing, every Congressman knows that any law setting up double standards for the treatment of citizens of this country would be in violation of the U.S. Constitution. Therefore, I urge you again to vote against the President's proposal until it is amended and made constitutional by providing "freedom of choice" and freedom from forced busing to all Americans.

Further, the President's proposal to help in the area of education by spending $2.5 billion for bricks and mortar in urban areas is not, in itself, the answer. $2.5 billion in bricks and mortar will do no more to right the criminal wrongs and defeat the destructive forces in public education than will $7.5 billion to buy us a cowardly peace in Vietnam by election day, or will billions of dollars to restore law and order in this country.

The idea that we can solve our school problems, our crime and drug problems and even our moral problems with dollars alone, is nothing more or less than foolish and wrong.

The only real solution to righting many of the wrongs in public education is to remove the federal police state from over public education and return the children, their teachers and education to the control of the children's parents and the local boards of education.

I trust that you will make every effort to see that every citizen is given equal protection under the Constitution. The proposal by President Nixon for public education is a denial of equal protection under the law.

Very sincerely,

LESTER MADDOX,
Lieutenant Governor.

INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS,
Washington, D.C., April 13, 1972.

To Members of Congress:

As President of IUE and as a citizen, I oppose any Constitutional amendment to prohibit school busing. I oppose the President's two anti-busing proposals. I support all measures and expenditures to achieve equality and integration in the schools and in society. Where busing is needed for those objectives, I support busing.

A more detailed statement on the issue is enclosed. Your consideration of these views is requested. Your opposition to pending legislative proposals, including the constitutional amendment, against school busing is urged.

Sincerely,

PAUL JENNINGS, *President.*

IUE AND THE SCHOOL BUSING ISSUE

By its Constitution, Convention resolutions and membership actions, IUE has a firm commitment to full citizenship for all.

Our Constitution states "that the preservation of our freedom and the advancement of our economic well being require that our democratic institutions and our civil rights and liberties be preserved, strengthened and extended . . ."

In 1954, the year the Supreme Court outlawed school segregation, the IUE Convention pointed out: "We will never be able to protect and improve our standards as workers unless we eliminate those artificial barriers that divide us."

Both because of its basic commitment and because a divided society can only hurt working people, IUE through the years has supported full implementation of the 1954 decision and opposed such anti-civil rights tactics as "massive resistance" and "freedom of choice."

We have also fought for equality and integration in other areas of American life, and we have recognized that the achievement of these ends—even within our Union—is not easy. IUE's 1969 Social Action Conference on "The Impact of the Civil Rights Revolution on the White Union Member" was an attempt to deal candidly with negative as well as positive feelings on racial matters.

This year, the fight for equality and integration has moved to a new level throughout the nation. The effort to achieve equal educational opportunity through integration has been clouded by the questions of whether and to what degree school busing shall be permitted.

Because busing is generally unpopular compared to alternative ways of getting children to school, it has served as a rally point for opponents of busing and for opponents of integration. In response to their outcries, President Nixon has offered a program he describes as an answer to the question: "How can we end segregation in a way that does not result in more busing?" The program consists of:

(1) An Equal Educational Opportunities Act that would "require" equal educational opportunity—as is already required by the Constitution—while imposing severe limits on busing to achieve it. This proposal also would shift around $1.3 billion in funds to give more money to ghetto schools. Taken in toto, the measure would move the nation backward toward Jim Crow. It would revive the "separate but equal" concept of the outlawed and discredited Plessy-Ferguson decision.

(2) A Student Transportation Moratorium Act to provide a temporary—and unconstitutional—ban on new busing orders that would expire either when the above law was passed or on July 1, 1973, whichever came first.

The President also has tacitly endorsed the idea of a constitutional amendment to ban busing. He has said the amendment idea "deserves a thorough consideration by the Congress." The only thing he has said against an amendment is that "it takes too long." His proposals would buy time for such an amendment.

Mr. Nixon, an advocate of law and order, is resorting to lawlessness for political expediency. To be sure, he has not proposed to prevent busing already in operation. On his instructions, however, the Justice Department is seeking to delay pending busing orders, and the President would ban future orders even though these, like all such steps, are in response to suits brought by parents whose children have been denied their constitutional rights.

Governor Bob Scott of North Carolina said, "I think the President is exercising poor leadership . . .

That is an understatement.

By failing to assert leadership, the President has helped make busing a major controversy.

In March 1970, he issued a statement pledging to abide by Supreme Court rulings on school desegregation and promising a $1.5 billion proposal to Congress "for improving education in racially-impacted areas, North and South, and for assisting school districts in meeting special problems incident to court-ordered desegregation." When he submitted his bill, it was in a form that permitted the use of these funds for busing. In the years since, while the bill has twice been passed in differing versions (busing and anti-busing) by the Senate and House, Mr. Nixon has steadily moved to an anti-busing position. It has seemed popular to do so. On March 17, with the issue really heated up, the President sent his latest proposals to Congress. These proposals are more anti-integration and anti-busing than anything passed by either house or anything he has proposed before.

The shame is that the President could have asserted the leadership to keep the nation firmly on the path to equality and integration. It might have involved political risk, but so too did civil rights actions of his three predecessors, including the lukewarm Eisenhower.

With no leadership from the White House, with the ebbing of courage among some liberals in Congress, it is vital that word come from the grass roots. Congress must hear from IUE members that as citizens and as trade unionists we consider equality and integration primary and do not want the nation diverted from those goals on less vital grounds.

There are several points especially worth making.

The courts generally have not imposed busing where it is not necessary to fulfill the Constitution. The Supreme Court has set reasonable guidelines which prohibit busing where other solutions are available. If lower courts do not follow those guidelines, the right of appeal is open.

Busing is working where there is recognition of the need for it and where it is put into effect with leadership and good will.

Senator Walter Mondale sums up the reality of busing today: "Twenty million elementary and secondary schoolchildren are bused. They rode 256,000 yellow buses 2.2 billion miles last year. The annual cost of busing last year was $2.5 billion. And 40% of our schoolchildren—65% when those riding public transportation are included—ride to school every day for reasons that have nothing at all to do with school desegregation."

No one offered a Constitutional amendment or special legislation in all the years that black children were bused *to maintain segregated schools*. No one now proposes to ban all busing, only busing that will integrate the schools!

School segregation results in large part from segregated housing patterns. Isn't it time our nation attacked that situation? Subsidies for the purchase of homes in integrated neighborhoods are a possible answer. Vigorous enforcement of laws on the books requiring integration as a condition of receiving federal funds for housing construction is another. Perhaps we should have a congressional study of why Americans live where they do, and what will induce them to pick housing in cross section neighborhoods more frequently.

There are integrated urban neighborhoods today in which housing is less expensive, convenience is greater, schools are comparable, services are just as good and crime is no worse than in all-white suburbs. In these neighborhoods, there is little busing or prospect of busing. Yet few white families choose to live in them. Something positive needs to be done.

We have a mixed society. If it is a separatist society, it will be unequal, as it has been for 100 years . . . as South Africa's is.

IUE as a union has a commitment. That commitment is to equality and integration.

Letters to Congress are needed.

The best persuasion is example. Before asking IUE brothers and sisters to write such a letter, let each officer and social action committee member who receives this write his two U.S. Senators and his Congressman. Then ask another member to write and to ask a third person to write. And so on.

I will start by sending this message to each member of Congress: "As President of IUE and as a citizen, I oppose the President's two busing proposals. I support all measures and expenditures to achieve equality and integration in the schools and in society. Where busing is needed for those objectives, I support busing."

I commend to all IUEers these words of the Reverend Jesse Jackson:

"This country today needs jobs or income. That's what it needs. It needs health care. It needs medicine. It needs peace and nonracism. Jim Crow is not a substitute . . . The issue ain't no more to save the Democrats, the issue is not to save the Republicans, but the democracy and the republic are at stake and unless someone rise with the power to reconcile black and white, young and old, he is not qualified to save a nation. The issue in 1972 is not to save your party, not even your pride, but to save the Union."

PAUL JENNINGS.

STATEMENT OF MANUEL MUNOZ, COCHAIRMAN, LINCOLN PARK NATIONAL ACTION GROUP, CHAPTER NO. 124

Amendment Nine to the Constitution of the United States clearly states: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people."

Apparently our courts and congress are illiterate. Or perhaps in their desire to garner the minority vote, they are blind to the Constitution they are sworn to uphold.

This sounds like an extremist or a hysteric as others like myself have been called by the news media and even the president. So be it. If I am an extremist for loving my children, if I am a hysteric for fighting for these beloved gifts of Almighty God and for daring to stand up to those who would dare deprive these innocents of their freedoms, then I wear the words "extremist" and "hysteric" with pride.

Today our courts, congress and governmental offices are run by people who are determined to force their wills upon the citizenry of this great country. Every time we stand up for our rights we are labeled racists. Let me give you an example of the real racism that we face today. In the city of Detroit, Michigan new modern schools are being built in black neighborhoods for our "oppressed" citizens. Right now a new school is being built at the location of South Fort and Visger in Detroit. Yet a few miles away in a white neighborhood white children are being sent to a fire trap that should have been demolished years ago. Judge Stephen Roth ordered the Detroit School Board to halt construction of a new, safer building because it would discriminate against blacks. This despite the fact that property for the school had already been purchased and demolition of buildings had begun. While we are called racist these children are in danger every moment they spend in that building.

We are being bombarded by the fact that so many of our senators and congressmen prefer the legislative route to prohibit forced bussing. This sounds great on the surface. The only problem is that the National Association For The Advancement of Colored People has already declared that legislation to this effect is unconstitutional. I cannot recall one time in the last 18 years that the NAACP has been overturned. I can't even remember one of my representatives having the guts to tell them to go to heck.

Many of our congressmen and senators tell us they are against forced bussing but they have given us no concrete evidence of this. Their words are exactly that. Just empty words. They oppose bussing but they do not offer even legislation. They oppose H.J.R. 620 but do not tell us what would be better. They oppose forced bussing but send us mimeographed copies of articles opposed to a constitutional amendment. They even have the nerve to send us the following: I quote:

"Students of either a minority or majority group could very easily contend that they were assigned to a certain school because of their race, and demand to be transferred. Such claims, justified or not would cause bedlam and endless legal battles."

All I have to say to this is bull. I think my Congressman took a fast look at my last name and now thinks he is talking to some dummy. I am not a Chicano to whom the Liberals cater only for their vote. I am a Mexican-American and am especially proud to be an American.

Now the reasons I did not contact the Judiciary Committee to present a statement was the fact that we of the Lincoln Park National Action Group must work for a living. We do not have the financial support that anti-goverament forces in this country do. We were also represented at the hearing by a delegation of our state legislators, especially Joyce Symons of Allen Park whom I thought very ably presented the views of the people not only from this area, but the state of Michigan.

I am not anti-black. As I have stated repeatedly, I uphold the right of every person to equal housing, equal education and equal job opportunities. I will not modify this statement with any "ands", "ifs" or "buts". As long as a person is willing to conform to the standards of the community in which he resides there should be no restrictions on who is allowed into that community.

I *am* opposed to politicians and political appointees who feel they owe nothing to the people who pay their way. Politicians whose song is "DO AS I SAY AND NOT WHAT I DO". The Kennedys and Harts back forced busing. But do their children attend public schools? Not on your life. Their children are never even seen in our communities.

What about these others who cry out that *our* children should be bussed? Why, these people live in Birmingham and Grosse Pointe and are well able to make sure their offspring do not mix with the common elements. Let those who are screaming about Brotherhood prove their sincerity by busing their children. Better yet, let them move back into the cities from which they have fled.

H.J. Res. 620 states: "No public school student shall because of his race, creed, or color, be assigned to or required to attend a particular school."

Now I feel the language in this amendment is clear and concise. The only objection the liberal has been able to give to this amendment is "We shouldn't tamper with the constitution." Now, our congress wasted no time "tampering" with the constitution when they gave the 18 year olds the right to vote. Especially since they felt it would benefit certain political elements in this country. The Senate just recently passed an amendment to give to the women of this country "equal rights," which was demanded only by a small noisy minority.

I am deeply opposed to the necessity of a constitutional amendment to protect my children and my rights and duties as a father, but since my representatives have failed to accept their responsibilities I must respectfully insist that H.J. Res. 620 be ratified now.

MANUEL MUNOZ, *Cochairman.*

CITY OF WORCESTER, MASS.,
OFFICE OF THE CITY MANAGER,
April 19, 1972.

Representative EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: At the recommendation of the Advisory Human Rights Committee the Human Rights Commission of the City of Worcester at its April 10, 1972 meeting unanimously voted to go on record as being opposed to anti-busing legislation and supporting equal opportunity for quality education for every American child.

The Human Rights Commission is aware that busing is only a short-run corrective, but it is also aware that sometimes it is the only alternative within the financial means of some communities to insure equal quality education for all students.

Since the courts have ruled that separate but equal education is *not* equal and since busing has been used for many years in transporting great numbers of American children for educational purposes, we would like to go on record as being opposed to any anti-busing legislation. We feel that school districts should be free to use all the tools available to insure equal opportunity in education.

If there are any other actions we as a Commission could take in this matter, would you please advise us of them.

Sincerely,

DANIEL O'ROURKE,
Executive Director,
Human Rights Commission.

THE OKLAHOMA EAGLE,
Tulsa, Okla., March 16, 1972.

Representative EMANUEL CELLER,
House of Representative,
Washington, D.C.

DEAR SIR: Just four years before this nation's 200th birthday, and just 18 years removal from the nation's official recognition of the evils of racial separation, the nation has come to the crossroads in its commitment to racial justice.

America must now either become committed to full and total integration or face a rising and increasingly embittered clamor for complete black isolation from America, which will parallel the south's demand for the right to secede from the Union.

Nor can the seriousness of this possibility and its possible resulting disastrous consequences be discounted simply because blacks in America number only 13% of its population.

The inflamed passions of people in general and blacks in particular over inequities real and imaginary should caution you against actions which might tend to convey the idea that American systems of justice are no longer operative in their behalf.

And sir, a vote by you to pass an anti-busing amendment would tend to arm those who are already disaffected with America and who have dedicated themselves to spreading this disaffection among their fellows.

I therefore urge you in the name of justice and fair play to turn back this tide of reaction.

Sincerely,

CHARLES J. JEFFREY, Jr.,
Editor, Oklahoma Eagle.

Chairman CELLER. The subcommittee is now adjourned until 10 o'clock tomorrow morning.

(The subcommittee adjourned at 12:20 p.m., to reconvene at 10 a.m., Thursday, April 27, 1972.)

SCHOOL BUSING

THURSDAY, APRIL 27, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m. in room 2141 Rayburn House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Brooks, Hungate, McCulloch, Poff, Hutchinson, and McClory.

Staff present: Benjamin L. Zelenko, general counsel, Franklin G. Polk, associate counsel, and Herbert E. Hoffman, counsel.

Chairman Celler. The committee will come to order.

The House meets at 11 o'clock this morning so I hope the five witnesses that we have will be as brief as possible under the circumstances.

Our first witness this morning is Dr. Irvin W. Batdorf, Professor of New Testament Literature, United Theological Seminary, Dayton, Ohio.

Professor, we are glad to have you testify.

Mr. McCulloch. Mr. Chairman, with your permission, I should like to say that with the appearance of Professor Batdorf, our State is well represented and we are glad to have the professor with us this morning.

STATEMENT OF DR. IRVIN W. BATDORF, PROFESSOR OF NEW TESTAMENT LITERATURE, UNITED THEOLOGICAL SEMINARY, DAYTON, OHIO

Mr. Batdorf. Thank you, sir, for your position on H.R. 13916, the bill that is being set forth here.

This position has been duly noted in the Dayton Press and we are appreciative of that fact.

I carry here in my brief case an editorial from Friday, April 14, of the Dayton Daily News which ends by saying "Representative McCulloch showed political courage in calling the administration out in its underhandedness," and I thank you very much.

I should introduce myself as the chairman of a committee that was appointed by the Dayton Board of Education to investigate racial and economic isolation in Dayton public schools. Our committee was known as the Committee of 75. It operated between September 1 and December 1, 1971.

I would like to leave with the committee the report that came out as a result of our committee's investigation during that 3-month period.

Chairman CELLER. We will accept the report for the files of the committee.

Mr. BATDORF. Very good.

I also submit in addition to that report a statement from our superintendent of schools, Wayne Carle, with reference to compensatory education, and also a few newspaper clippings indicating the fact that the NAACP has now filed a suit to desegregate the schools, as you probably know.

Chairman CELLER. That also will be accepted for the files.

Mr. BATDORF. Very good.

I also come as the father of two teenage girls who are in one of the high schools that is most definitely, of all of the high schools in Dayton, Ohio, desegregated. And I come in the midst of a great polarization of our citizenry due to the fact that the report of our committee was accepted by the Dayton Board of Education, the plans for desegregation were set and then with the coming of a new school board those plans were rescinded and the turmoil that has resulted has richocheted, of course, hither and yon and I come in the midst of that turmoil in order to make this report.

There are five major subheadings to my report and I would like to summarize them by saying that three of them, the second, the third and the fifth, set forth three basic principles within which I operate and as well the members of the committee and those of us who have continued since that time to fight for the majority report that the committee made, also operate.

I would like simply to mention those three principles in order to focus our common position more clearly.

First of all, we believe that quality education cannot occur except from the integration of our student population. We believe that, as a base for quality education, one must have the integration of the school population for two reasons that I have set forth here.

First, because that alone will provide for humanization, the treatment of the individual potential of each individual student and, secondly, integration of student bodies will alone provide for socialization, namely, the ability of blacks and whites, privileged and underprivileged, to work together.

This is not the only thing that we recognize that goes along with quality education but we feel that this is the only base from which, depending upon what money you want to expend, quality education can be really managed.

Second, we believe that, and that is point three in my report, we believe that the attempt to call a moratorium on busing and couple that with the pouring of funds into so-called "poor or disadvantaged schools" is a return to the separate but equal doctrine that was rejected by the Supreme Court in 1954. We see in this concept five basic errors. I call your attention to these errors on pages 5 and 6 of my testimony.

Desegregated compensatory education does nothing to teach children good citizenship. Secondly, it is far more expensive than integrated education even when the cost of busing is taken into consideration.

Three, in spite of this being much disputed elsewhere, we have found in our Dayton schools that compensatory education, with all of the money since God knows when that we have poured into our title I schools, the schools that come under that category, compensatory education has not secured in our city the academic excellence that we want.

I think that perhaps the fourth point is a very important one. The cruelest tragedy of compensatory education is that it dehumanizes the very children that it intends to help.

I caught in the New York Times yesterday the action of the House of Representatives in New York State that tried to declare or has declared that they want a moratorium on busing for a year; and one black Assemblyman from Buffalo commented upon that saying "You do not want us in your schools and you do not want to come to our schools and you do not want to give us control of our schools."

I think we had better recognize very clearly the deep dehumanization that particularly black people feel when this kind of program is set up to treat them in the way in which this particular quotation signifies.

Then, fifth, compensatory education, by that I mean compensatory segregated education, treats symptoms rather than root causes.

I think this is the whole point about the bill requiring or asking for a moratorium on busing. Busing is a symptom we feel rather than a cause.

It is as though we said the body politic has a cold, whereas we know that deep down underneath, the deep prejudice that divides us is in reality a cancer that needs to be brought out in to the open and cleared up before we can have a united, healthy body politic. The real cause of this cancer is the prejudice that lies in our hearts. To think otherwise is to be deceived. It is to compound the malady by faulty diagnosis.

So that to call attention to busing as over against the prejudice that underlies, is like saying the body politic has a cold, rather than the cancer that is really there.

And then to make matters worse, to say let us carry on a moratorium on busing is as though a doctor were to say: "I know you have cancer, but let us walk away from it for a year."

A cold might be cured by walking away from it for a year but cancer certainly cannot be.

We must get down to the deep, underlying causes of the difficulties that are polarizing us at the present time, and this moratorium on busing simply will not do.

Then, subheading 5 I think needs to be dealt with, the whole concept of freedom of choice and the neighborhood school. That will not stand up legally. Legally, a superintendent of schools can send people wherever he pleases.

The whole idea of the neighborhood school is in actual practice denied by the very people who propose it. We take our cars and go to shopping centers for our groceries and clothing and for entertainment. We do this for our churches and so on. So to say contrariwise we should send our children only to the neighborhood school defined in the narrow sense in which it is usually defined is to run counter to the basic patterns by which family life in America is carried on.

Moreover, those who do this in many cases, at least so it has been in Dayton, have disregarded the responsibilities they have to the community which cannot be discharged by holding themselves away and their children away in what they call rather small neighborhoods.

I would like to say then by way of conclusion, dealing with subheading 1 and subheading 4, that as it looks to us and the people that I am representing in the city of Dayton, we have just two alternatives there.

On the one hand, we may face the terrible division that now occurs in our city; 75 percent of our students now go to schools that are 90 percent or more racially isolated.

If you look at the few tables that I have set down here at the back, the black students enrollment, you will find that we estimate in 1950 that the percentage of black students in our schools was 18.6.

And just 21 years later the percentage of black students in our schools is 42.7.

That will be to you some indication, together with the figure that 75 percent of our students are in schools that are 90 percent or more racially isolated, that would be to you some indication of the tremendous polarization that is taking place by the flight of white people to the suburbs and the leaving of central city to the blacks.

This is our basic problem.

Mr. **Zelenko**. Is there busing now going on in Dayton?

Mr. **Batdorf**. Not for the purposes of establishing racial balance, no. In the State of Ohio, 42 percent of the students are bused. But at the moment we do not have, I do not think we have, any busing at all to eliminate racial isolation, not in that context.

Mr. **McCulloch**. You have had busing in the great Miami Valley since about 1920 to try to bring about quality in education, have you not?

Mr. **Batdorf**. Yes. We have had it in the larger context there. Yes, we have. I was talking about the Dayton school system, itself.

Chairman **Celler**. May I ask a question?

I think you said that 92 percent of the black students in Dayton are in schools which are 80 percent black, is that your statement?

Mr. **Batdorf**. No. My statement is that 75 percent of all the students in the Dayton school system are in schools that are 90 percent or more racially isolated. That would include both whites and blacks.

Mr. **Zelenko**. Mr. Chairman, the figures from the Department of HEW would show that in Dayton, 90 percent of the black students are in schools which are more than 80-percent black.

Mr. **Batdorf**. Yes, that might well be true about black students, themselves, yes. If you go down that listing, for example, and pick up the percentage in various and sundry schools, you will find that McNary is 100-percent black, Miami Chapel is 100-percent black, and Residence Park is 99-percent black. Dunbar high, for example, which is one of the prime examples of segregation for which the school board was responsible was declared an all-black school in effect back in 1920 and that was continued when Dunbar was rebuilt in 1960. You will find here that the figure for 1971–72 is that that school is 100-percent black.

That is the kind of figures that would reflect the percentage that you are talking about there.

Chairman **Celler**. What is Dayton doing, if anything, to mitigate that situation?

Mr. **Batdorf**. Well, 3 years ago Superintendent Carle came in fresh and began to move in the direction of desegregation. We moved far enough so that this fall the teaching staffs of our schools were desegregated. We did that according to a 70–30 ratio. It was simply agreed upon to do that kind of thing. Then the school board that had been responsible for the committee of which I was chairman, as a result of the recommendations of our committee, on December 8 passed three resolutions, the first of them calling for desegregation of the student population, the second calling for everybody from the city to support such desegregation, and the third calling upon both the State and also the metropolitan schools and school boards in the territory surrounding Dayton to work toward a metropolitan desegregation.

But on January 3, a new school board took office in which the balance had been shifted by the November elections and they rescinded those three resolutions.

Now, we wanted to avoid that kind of thing. We wanted to avoid an NAACP suit. Our committee wanted very much by its deliberations to keep the initiative in the hands of the citizenry to move ahead with student desegregation but the school board that was elected would not let us do that and now in the material which I have submitted to you along with the committee of 75 report, you will see there as reported in the Dayton papers that NAACP had filed a suit to cause desegregation or to bring that about.

Chairman CELLER. But if we pass this Moratorium bill, that would be stayed.

Mr. BATDORF. Yes, I guess that is right, yes. It would. We had on the books ready to present to the new board on January 3, a desegregation plan that had been drawn up by Dr. Foster of Miami University in Florida, which would have moved in the direction of busing some 22,000 out of our fifty or more thousand students and we were not able to do so. I refer here to the kind of busing that we would need to do in order to deal with the very sharply-segregated pattern both of our total population and also of our school population.

Mr. MCCULLOCH. I should like to ask this question. Is the segregation which you have found and studied in Montgomery County and particularly in Dayton de facto or de jure segregation?

Mr. BATDORF. So far as Dunbar High and Roosevelt High School are concerned, they were supported, as all black schools, by the Dayton Board of Education. That I think would fall in the de jure category, even though I am not expert on these terms. But I think those two schools, together with the policy supporting them, would be the most obvious example of de jure segregation.

Now de facto segregation, of course, has followed or has accompanied this with the white flight to the suburbs.

Mr. MCCULLOCH. Thank you.

Mr. BATDORF. So that it seems to us that we have just these two alternatives. The one is to allow things to get worse and worse and worse and worse following the outlines of the predictions made by the Koerner report to keep black and white people apart and not provide opportunities for people to get together and work out their deep prejudices. The second alternative is what we would like to see happen, to accept the obvious risks of desegregation and make some attempt at integration.

This is the kind of thing that we would very much like to do, to deal with the basic cancer that afflicts us, difficult as that may be.

I would like to say also that I am not simply representing myself here, that I represent not only myself but also a great and goodly group of people who are willing to stand firm, who want to bring the deep prejudices that divide us out in the open and try to deal with them all the way across the board, as they involve students, teachers, administrators, citizens, paraprofessionals, and nonprofessional personnel. We want to go into all of that kind of inservice training that will bring us together again and make a healthy base for some kind of quality education.

I am not only representing those people but I call your attention to the fact that we have been supported in efforts of this kind by the two newspapers and while I have appended to my testimony some little indication of that, I have further newspaper clippings here which I would like to also enter upon the record.

Chairman CELLER. They will be accepted for the files of the subcommittee.

Mr. BATDORF. Very good.

Chairman CELLER. We will put your entire statement in the record.

Mr. BATDORF. I would like to have my entire statement in the record, sir, yes.

(The statement referred to follows:)

STATEMENT OF DR. IRVIN W. BATDORF, PROFESSOR OF NEW TESTAMENT, UNITED THEOLOGICAL SEMINARY, DAYTON, OHIO

PUPIL PLACEMENT AND TRANSPORTATION

Chairman Celler, members of the House Judiciary Committee:

As you consider pupil placement and transportation, I make bold to bring before you some relevant aspects of the public school situation in Dayton, Ohio.

In September of 1971 the Dayton Board of Education appointed a Citizens' Advisory Committee to study racial and economic isolation in our school system and to suggest means of dealing with it. I was chairman of that committee and speak to you today in that capacity.

After three months of study and the testing of public opinion, from September to December 1971, we found ourselves and the community sharply divided. Our final report—a copy of which is in your hands by courtesy of our Dayton representative, the Honorable Charles W. Whalen Jr.—contained both majority consensus and minority challenge. The majority of our 75 members felt that in order to offer quality education on an equal basis to all our school children we should integrate students as we had teachers but now on a metropolitan basis. We also recognize that some measure of busing would be required to deal effectively with the sharply segregated pattern of Dayton housing, now accentuated beyond measure by white flight to the suburbs. At the moment within the city limits 75% of Dayton's pupils attend schools that are 90% or more racially isolated.

Our majority report was acted upon favorably by the School Board that had created our committee and our Superintendent, Dr. Wayne Carle, was ordered to prepare a plan for the desegregation of our system by September 1972. This course of action, initiated on December 8, 1971, was suddenly overturned by the newly constituted Board of Education that had assumed office on January 3, 1972 as a result of the November elections. Needless to say, there was a consequent increase in public furor and that furor continues still, fanned into flame by the national concern over busing.

The purpose of my present report to you is to say as loudly and as clearly as I can that *in spite of such furor* many of us in Dayton refuse to be swept off our feet. We hope that in the midst of election year pressures you will not forget the following realities as we see them.

I. The major issue before us is not busing but the increasing bitterness and frustration caused by segregated housing and education. We are caught in a vicious cycle created over the years by public apathy and now accentuated by white flight to the suburbs. The rise of Dayton's black school population in the last 20 years from 18.6% (as estimated for 1950) to 42.7% in 1971 is only one indication of what is happening to us. We are fulfilling the prophecy of the Kerner report, as we rapidly become two unequal and opposing camps, white and black, rich and poor, advantaged and disadvantaged. At the same time neither a change in housing patterns nor in job opportunities will operate soon enough to ease these divisions. Public education, requiring the expenditure of public monies according to the equal opportunity guaranteed by the 14th amendment, remains our best hope in breaking this cycle. This, not busing, is the basic issue.

II. While everyone wants *quality education*, we believe that such education is *impossible apart from pupil integration*. We believe this for two solid reasons that all too often get buried in political rhetoric.

1. The aim of the best curricula these days is humanization. Public school education itself is in a state of flux at the moment precisely because it has given so little attention in the past to human concerns. But educators now (such as Coles, Kohn, Silberman and Illich) feel quite universally that reading, writing and arithmetic are not enough, nor even the attainment of marketable skills. The goal now is to increase each student's human potential for living, by individualized attention to personal needs. But such nurture of human values, such emphasis on education for life is impossible when black and white, rich and poor are deliberately separated from each other as though the inborn dignity of some deserved to be recognized and the inborn dignity of others could be ignored at will. By modern standards segregation takes the quality factor out of education because it denies the common humanity of all children.

2. Quality education means not only humanization but *socialization*. As has been true for a long time now in America quality education means above all else preparation for citizenship in a multi-racial, multi-ethnic society. It would seem obvious that such training cannot be had when education follows segregated patterns, gives greater advantages to the rich than to the poor, separates minorities from each other, keeps white children ignorant of the black experience, and reinforces in all ghettoized children, whether white or black, that feeling of inferiority so destructive of human dignity and so inimical to learning of any sort

The case for integrated education as an instrument of social policy in a democratic society is so obvious that we often forget how crucial it is. It would seem to be a matter of simple common sense—A) That democracy depends for its survival on the wisdom of its citizens. B) That public education in a democracy, if it is to perform the unique function peculiar to it there, must train its students to assume the risks and responsibilities of citizenship. C) That segregated education cannot perform this function since it does nothing to bridge the gap between rich and poor, black and white, majority and minority. D) That segregated education, since it actually fosters such divisions, cannot be put forward as though it were capable of delivering "quality" results in a democratic society. Those, therefore, who propose any form of segregated education as a means of promoting the equality of opportunity guaranteed by the 14th amendment, deceive both themselves and us. As the Supreme Court said in 1954 "separate" is simply not "equal" and never *can* be.

III. The most recent movement to reestablish the "separate but equal" doctrine in a Northern setting is best known as "*compensatory*" *education*, a proposal we all recognize as the one so recently and vehemently espoused by Mr. Nixon. It is an effort to improve the quality of inferior schools by massive spending on facilities and personnel, while keeping children of different ethnic and racial groups locked into their own neighborhoods. In essence compensatory education uses money as a buffer to provide a way of escape for those who fear association with fellow-Americans of different racial, economic or ethnic background. As such, compensatory education *never has nor ever will* accomplish the task proper to public education in a democracy.

We see in this concept five basic errors. 1) It does nothing to teach children good citizenship. 2) It is far more expensive than integrated education, even when the cost of busing is taken into consideration. In Dayton alone all attempts to upgrade disadvantaged schools in a segregated situation during the present school year will require the expenditure of $1,120 per pupil in excess of normal costs. President Nixon's recent proposal of two and one half billion dollars to extend equal educational opportunity to inferior schools is but a drop in the bucket when spent as he requests. 3) It does not actually improve academic excellence, except perhaps in isolated examples and only then when applied in massive doses. Academic excellence depends basically on the positive expectations aroused in students and the corresponding expectation on the part of teachers that student efforts to learn will indeed be successful. But when students carry with them a deep sense of inferiority and their teachers see no possibility of their learning much of anything, as is so often true in ghetto settings, poor performance almost always results. 4) The cruelest tragedy of compensatory education is that it dehumanizes the very children it intends to help. With brazen arrogance the privileged say in effect to the ghettoized poor, white or black, "We don't want to send our children to your neighborhood and we certainly don't want your children sent to our neighborhood. Take this money instead." Children so addressed understand quite well that they are considered inferior and their performance remains correspondingly poor. Children whose basic dignity has been so assaulted are in no position to learn anything, least of all how to value themselves as human beings or as potential citizens of the greatest democracy on earth. 5) Compensatory education treats symptoms rather than root causes. This is perhaps the most glaring weakness in Mr. Nixon's most recent proposal. In effect it legitimizes the ghetto. Instead of attacking those conditions that create ghettoized living, compensatory education takes them for granted as inevitable. This it does by making it impossible for ghetto children to travel outside the ghetto at the most impressionable years of their lives. For this in effect is what the prohibition of busing means in all too many cases. This is what it means when the government gives money to those schools it designates as "inferior" on condition that the children stay there, indeed in order to keep them there. While pretending to heal the divisions among us and to move toward the integration of minorities into the main stream of American life compensatory education actually freezes the very conditions that keep us apart. It digs the ditches of alienation that much deeper. What an irony that such an alternative should have been chosen for implementation by the very President who vowed at his inauguration that he would "bring us together"!

IV. Because we believe in quality education and because we know that quality education, however expensive, cannot be purchased with money alone—as the proponents of "compensatory" education seem to believe—we feel quite strongly that our duty as citizens is to prepare our community for pupil integration. In this effort we want to avoid putting our heads in the sand. We know that the risks of integration are enormous. At the same time we want to say with all the vigor at our command that we believe these risks can be minimized and the obstacles they present can be overcome. What is required plainly and simply is commitment to justice and the implementation of that commitment through strong leadership. This is the chief factor dividing us from the anti-busing faction now so vocal in Dayton. They plainly do not believe that integration can be accomplished in a city as racially divided as Dayton because they are not willing to accept the risks involved. Meanwhile, they hear the cries only of those who profit from segregation and are deaf to the cries of those who are being exploited by it. Paralyzed by fear the best they can do is to defend the *status quo*.

We know that such fears are not easily dissipated. We know that when hitherto separated minority groups are brought into the main stream of community life some disruptions ar bound to occur. We know that such changes, whether effected through busing or otherwise, often result in a lowering of academic standards and a rise in the level of violence. But we believe that it is possible under proper leadership to deal constructively with all these problems. We are encouraged by the Coleman report and the findings of Senator Mondale's committee that—unless unusual circumstances obtain—integration does no harm to the academically advantaged and does great good for the academically disadvantaged.

V. Nothing is accomplished by appealing to "freedom of choice" and the neighborhood school. All public education is compulsory whether accomplished by the use of busing or not. We learned long ago in America that public education cannot be left to the discretion or whim of individual persons. Just as none of us is free to poison the public water supply so none of us is free to poison the atmosphere in which public education takes place. Those who try to exercise their so-called freedom of choice by using their affluence to escape responsible participation in community life must not be allowed to deny equal educational opportunities to our minorities nor our poor.

Believe me when I say that I do not speak for myself alone. Many sober-minded citizens in Dayton and its environs—far beyond our original committee of 75—have begun to realize what damage segregation has done to the fabric of our common life. They are beginning to rally their forces to prepare Dayton and its suburbs for a better day. I am proud to report not simply that Catholics, Protestants and Jews have joined hands in this endeavor but also that the Catholic school system as a whole has quite recently begun fresh attempts to integrate its own facilities. If I am not mistaken you will have a separate report on that score from Father C. A. Poynter, Superintendent of Dayton's Catholic Schools. Ponder also—if you will—the enclosed clippings from both major newspapers in Dayton, indicating that they are behind us 100%

Meanwhile, we all hope that you will stand fast against the current anti-busing furor and give some solid national leadership to those of us from both political parties who wish to speak for reason in a time of crisis, and who believe that the continuation of our democratic institutions depends on just such efforts in just such a time as this.

BLACK ENROLLMENT, BY SCHOOLS, DAYTON PUBLIC SCHOOLS

School	Total enrollment				Percentage			
	1963-64	1969-70	1970-71	1971-72	1963-64	1959-70	1970-71	1971-72
Jane Addams	600	[1] 668	[1] 598	578	41.6	78.7	80.3	81.7
Allen	574	668	632	629	.6	.1	.2	.6
Belle Haven	1,180	1,091	1,056	994	0	5.7	6.8	10.3
Belmont Elementary	794	635	602	542	0	0	0	0
Brown	1,177	1,130	1,075	1,067	.5	.8	1.0	1.0
Carlson	244	626	590	574	95.9	99.7	99.8	99.5
Cleveland	1,180	1,335	1,248	1,246	0	.1	.3	.3
Cornell Heights	890	894	955	784	0	59.1	69.6	72.3
Drexel	700	[1] 679	[1] 693	601	3.5	4.3	5.2	6.5
Eastmont	950	792	685	607	0	0	0	0
Edison	800	[1] 532	[1] 513	[1] 645	80.0	98.3	98.8	99.7
Emerson	1,000	[1] 992	[1] 939	[1] 816	0	13.6	11.8	5.6
Fairport	780	877	847	841	0	4.6	9.7	39.7
Fairview Elementary	667	811	808	741	1.0	3.7	4.3	7.4
Fort McKinley	510	473	448	451	0	2.5	9.6	1.6
Franklin	691	862	[1] 854	632	0	0	0	0
Gardendale	176	[1] 282	[1] 506	[1] 553	7.9	43.3	71.9	72.3
Gettysburg	630	632	593	598	0	6.6	9.4	14.5
Grant	917	699	653	649	0	.9	.6	.6
Grace A. Greene	715	[1] 555	[1] 551	[1] 579	89.5	97.5	96.7	96.5
Hawthorne	316	263	[1] 285	[1] 329	0	0	0	30.1
Hickorydale	565	487	488	432	0	10.3	8.2	15.5
Highview	807	[1] 812	718	[1] 710	82.0	98.2	98.1	97.9
Huffman	834	[1] 1,022	[1] 1,007	[1] 899	.9	3.4	3.2	.1
Irving	1,035	[1] 749	[1] 700	[1] 780	96.6	100.0	99.7	99.5
Jackson Primary	537	[1] 707	[1] 617	[1] 677	96.2	99.2	99.4	99.1
Jackson Elementary	1,147	785	778	726	98.5	99.5	99.5	99.4
Jefferson Primary		661	628	719		72.0	83.3	88.0
Jefferson Elementary	1,284	841	806	860	1.2	80.3	73.2	91.3
Kemp	725	631	612	568	0	0	0	7.2
Lewton	600	543	507	471	0	0	.2	.4
Lincoln	1,145	1,019	977	966	0	.2	.3	1.0
Longfellow	850	991	[1] 935	838	5.8	50.2	53.9	60.7
Loos	785	719	697	631	1.9	85.0	9.5	6.0
MacFarlene	1,229	[1] 1,222	[1] 1,149	921	99.6	99.9	99.8	99.5
Horace Mann	435	355	333	284	0	7.0	11.1	.7
McGuffey	925	[1] 858	[1] 904	[1] 850	0	18.9	4.2	32.0
McNary		498	[1] 456	[1] 423		98.8	100.0	100.0
Meadowdale Elementary	930	671	587	522	0	12.8	7.7	8.2
Miami Chapel	793	722	687	[1] 481	99.6	99.6	99.7	100.0
Patterson Elementary	650	603	[1] 621	[1] 619	0	0	0	.3
Residence PK. Primary		383	464	449		99.5	98.9	99.8
Residence PK. Elementary	1,112	746	764	702	80.0	99.2	99.7	99.7
Ruskin	1,171	[1] 927	[1] 870	[1] 834	0	4.3	3.7	.1
Shiloh	490	645	619	550	2.4	6.0	7.4	.9
Shoun Mill	318	336	294	207	.9	13.4	13.9	1.4
Louise Troy	781	[1] 724	[1] 691	592	99.8	99.7	99.9	99.7
Valerie		483	450	342		17.4	20.0	13.5
Van Cleve	770	780	[1] 813	[1] 760	.9	1.7	2.1	14.9
Washington	650	[1] 703	[1] 681	[1] 634	23.0	16.6	16.4	14.5
Weaver	1,260	[1] 1,118	[1] 1,027	[1] 1,001	98.8	100.0	99.9	99.7
Webster	531	537	486	493	.1	.6	.4	.4
Westwood	1,900	[1] 1,467	[1] 1,409	[1] 1,318	94.7	99.5	99.6	99.5
Whittier	925	[1] 801	[1] 688	748	95.6	99.3	99.0	99.5
Wogaman	1,100	[1] 1,034	[1] 985	[1] 988	100.0	100.0	99.5	99.8
Orville Wright	750	758	719	963	0	.8	.4	6.7
Gorman	102	108	104	101	15.6	17.6	16.3	11.9
Kennedy	144	181	[1] 169	153	13.8	11.0	12.4	15.7
Belmont High School	1,768	2,003	1,966	2,039	0	.5	1.2	2.7
Dunbar	1,180	1,471	1,333	1,369	92.7	99.4	99.8	100.0
Fairview High School	1,252	1,396	1,353	1,426	.9	9.3	12.7	19.1
Kiser	740	744	727	731	2.7	5.4	4.8	6.4
Meadowdale High School	1,154	1,750	1,783	1,828	0	1.4	2.9	5.2
Patterson Co-op	1,020	1,659	1,756	1,764	1.8	22.2	29.8	31.0
Roosevelt	1,850	1,703	1,727	1,691	94.5	99.8	100.0	99.9
Roth	1,120	1,291	1,143	1,191	53.5	94.8	97.8	96.5
Stivers	1,150	1,074	1,224	1,247	2.6	3.9	10.8	12.3
Colonel White	1,668	1,741	1,693	1,727	1.1	28.9	42.1	45.9
Wilbur Wright	1,334	1,332	1,319	1,350	3.3	4.2	4.7	5.5

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[1] Includes preschool in building.

DAYTON CITY SCHOOLS

BLACK STUDENT ENROLLMENT

Year:	Percentage
1950	[1] 18.6
1960	[1] 27.5
1963	31.1
1966	([2])
1967	37.4
1968	37.7
1969	39.3
1970	40.6
1971	42.7
1973	[1] 46.0
1975	[1] 49.3
1977	[1] 52.6
1979	[1] 55.9
1981	[1] 59.2

[1] Estimated.
[2] Data unavailable.

[From the Dayton Daily News, Sunday, Mar. 19, 1972]

NIXON REVIVES DOCTRINE OF "SEPARATE BUT EQUAL"

President Nixon has asked Congress to adopt the discredited separate-but-equal doctrine and to elevate it from a regional eccentricity to national policy. In the process, he is urging Congress to join him in a dangerous confrontation among the executive, legislative and judicial branches, potentially the most serious constitutional crisis this nation has suffered in modern times and one it certainly doesn't need.

Mr. Nixon's proposals are morally craven and scientifically perverse.

While swearing he remains committed to school integration, the President wants Congress to legislate against additional busing. Mr. Nixon and the anti-busing hysterics to whom he is pandering know that busing is the only practical means to school integration currently. Mr. Nixon did not offer an alternative—and, in fact, has opposed programs to encourage residential integration, the only real (and even then far off) method.

If Congress accepts the President's proposals, as it seems likely to, it will march up to a battle with the judiciary. Mere legislation can't relieve the courts of their higher duty to the Constitution. Jurists who consider segregation unconstitutional must continue to rule so.

The crunch then will come to Mr. Nixon. Having proclaimed and even worked to legislate against busing, will the President enforce court rulings that countermand his policy? Or will he, as President Andrew Jackson did when the Supreme court proved contrary, abuse the Constitution by refusing to act?

That apparent irresolution is typical of the contortions that were the sole constant in the President's antibusing message.

The President—well, say he misstated the facts when he held that busing has proved to be "a very bad" way to school integration. On the contrary, while most of us have heard overwhelmingly of the few places where busing has been traumatic, busing has worked well most places. It is a "very bad way" to the degrees that Mr. Nixon and others in power permit incomprehension and overaction to make it untenable.

Mr. Nixon's proffered sop—to blacks in cash, to whites as a balm for their consciences—is to waste some $2.5 billion in schools attended by the children of poor families in order to achieve "quality" education for all.

That has been proved not to work. Many communities have tried it.

The results have been uniformly disappointing. The plain fact is this: the mere change to school integration has improved the educational performances of more pupils, and improved them more substantially and lastingly, than have the much more costly attempts at compensatory education.

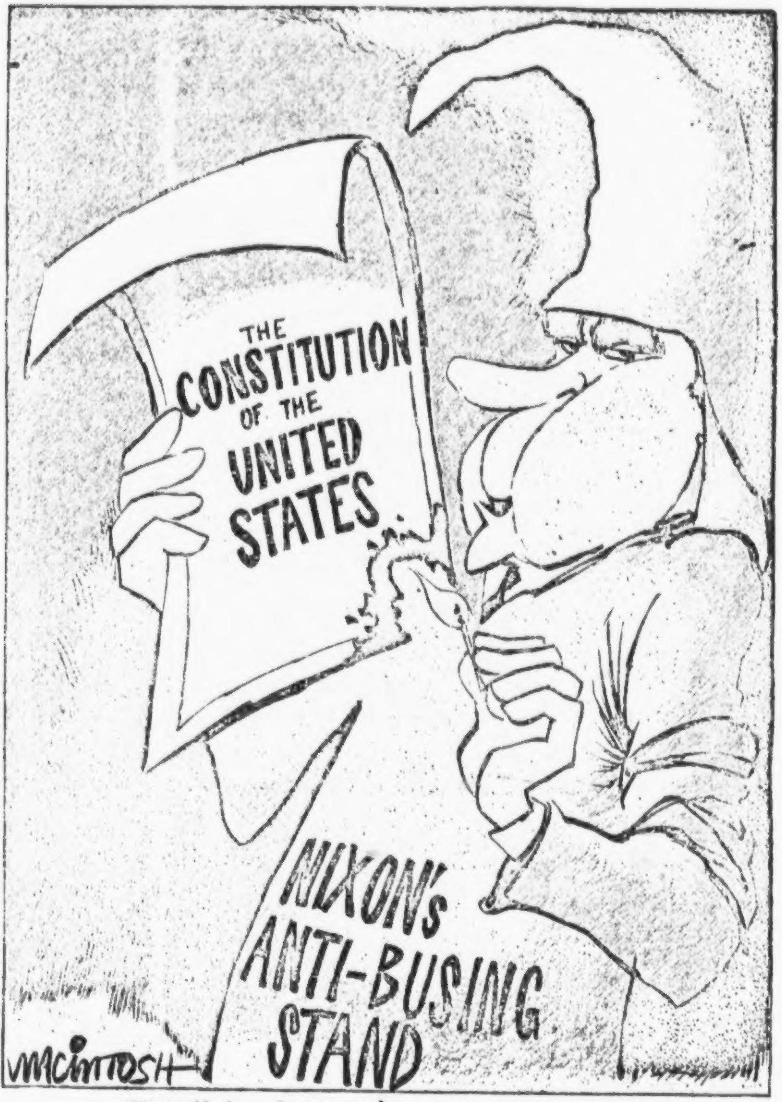
Mr. Nixon has declined the role of leadership in the nation's complex, urgent challenge of achieving racial justice. He has accepted the role of chief follower and has predicated it on a misappreciation of "democracy."

His basic point is that busing is wrong because most Americans think it is wrong, but the option of majority rule in this country always has stopped short of majority tyranny, short of the lynch-mob psychology in which, too, the majority claims its privilege.

Mr. Nixon is saying that the basic rights of blacks exist at the convenience of whites, because whites outnumber blacks. I imagine the reaction if he were to say, as by the same logic he could, that the basic religious freedom of Catholics is subject to the majority rule of Protestants!

The President is moving us—or more accurately, helping us move ourselves—into precisely the entrenched, segregated society that the Kerner commission feared and warned against as the most serious internal peril facing the United States

[From the Journal Herald, Mar. 18, 1972]


THE CONSTITUTION OF THE UNITED STATES
NIXON's ANTI-BUSING STAND
MCINTOSH

'This'll be faster than an amendment'

Mr. McCulloch. The newspapers to which you referred are known as the James M. Cox newspapers or as assets of the James M. Cox Trust. James M. Cox was a longtime, very able Democratic Governor of the State of Ohio. I am a Republican, by the way, so I try to bury my prejudices.

Mr. Batdorf. Very good. I think one of the things that that represents for us is leadership in the community. We find that when the large body of people are thrown into such turmoil by the particular things that have happened in our midst, what we need are real leaders who will take stands and work for the causes that need to be worked for.

In this particular case we are trying to provide that kind of leadership among the citizenry and we are very happy to have the support of the newspapers at this particular point.

Mr. Poff. Mr. Chairman.

Chairman Celler. Yes.

Mr. Poff. I would not want to substitute my own summary for your testimony, so to the extent that I err, please correct me. I gather the summary of your testimony would be that the schools of Dayton are segregated, that some of the segregation may be de jure and some de facto, and that the segregation problem will not yield to any solutions which do not involve substantial busing.

Mr. Batdorf. Yes, that is right.

Mr. Poff. Is that a fair summary?

Mr. Batdorf. Yes. That was the feeling of our committee and when Dr. Foster came in to draw up plans pursuant to the resolutions passed by the board that supported our committee, he felt that 22,000 of the 55,000 or so students in Dayton proper would need to be bused somewhere. I might add at this point, it may not be too important for you, but I might add at this point that the longest distance that would be required to accomplish that kind of busing under the Foster plan would be some 6 or 7 miles and in terms of minutes, something like 20 to 30 minutes, depending upon traffic. So it is the kind of problem that we think can be handled. If we can gather the citizenry together and get them to clear out their prejudices and lift up these great questions to establish some kind of healthy immunity, our problems are the kind of problems that we could deal with if we really put our minds to it.

Mr. Poff. Do I correctly understand, too, that the core of the subject matter in the lawsuit is the definition of the type of segregation involved?

Mr. Batdorf. Yes. I have given you all of my copies of that newspaper report from the NAACP suit. It has got a great number of individual questions in it which would have to be looked at very carefully but that is certainly one of them.

Mr. Poff. Thank you.

Chairman Celler. Any other questions?

Thank you very much, sir.

Mr. Batdorf. I thank you.

Chairman Celler. We appreciate your coming and giving us valuable testimony.

Our next witness is Mrs. James M. Minor, Jr., legislative chairman, Virginia Federation of Women's Clubs.

Mr. Poff. Mr. Chairman.

Chairman Celler. Yes.

Mr. Poff. As a Virginia member of the subcommittee, may I be recognized to extend a formal welcome to a distinguished Virginian and a spokesman for a very vital organization in our State, the Virginia Federation of Women's Clubs, an organization which I believe is about 20,000 to 25,000 strong, represented in every geographical quadrant of the State and in nearly every local community, and an organization which has involved itself historically in the cause of education and one which has made a major contribution to education legislation in the General Assembly in Richmond. I want to add my own personal commendation of the organization and the spokesman it has chosen. Mrs. Minor is the chairman of the legislative committee.

STATEMENT OF MRS. JAMES M. MINOR, JR., ON BEHALF OF THE VIRGINIA FEDERATION OF WOMEN'S CLUBS

Mrs. Minor. Thank you, sir.

Mr. Chairman, distinguished members of the committee, I would like to say that I am one of the few women that did not walk to Washington today but after I drove around in your traffic up here, I think it was best that I should have walked.

I do now, as Mr. Poff told you, represent the Virginia Federation of Women's Clubs which does have in its membership 24,000 women. I would also like to tell you that we are not connected directly or indirectly with any school group, PTA, busing group, antibusing group, or what-have-you. We function solely on our own and with our own objectives, one of which and perhaps the most important of which has always been public education.

Summers back, we were one of the first groups and probably the largest one that fostered the idea in Virginia of public kindergartens because we felt that it was unfair and unreasonable that children whose parents could not afford private kindergartens were starting in school substantially behind those who had attended private kindergartens.

We are still working on this. We have not accomplished it all over the State but we are working very hard to achieve it. We have also worked very hard to revise the constitution, which was done last year, a part of this revision providing for compulsory school attendance because we felt that it was not fair that some children were being denied education because of the prejudice, ignorance or whatever the weaknesses their parents might have felt toward their education.

However, I do appear here today in support of amending the Constitution to prevent and prohibit forced assignment of children solely because of their race, their color, their creed, and I have three reasons for doing so. I have previously filed my statement and I will be brief and talk in summary.

My first reason is this: The Virginia Federation has found in its work with public schools that those schools which function best are schools where there is some reasonable—and I use the word "reasonable"—proximity between the home and school.

I do not suggest for one moment that I think every child is going to be able to go to school down the street, around the corner or even five blocks away. I do suggest that when there is no suitable reasonable proximity, there is a breakdown in communication, children do not have the social contact that they should have with children of other races or of other backgrounds because we have virtually eliminated all extracurricular activities because of the busing situation.

Parents are not as involved in the school. They feel alienated and uninvolved. Children are not able to use the school as much as they should because they must be transported to it at all times.

So there is this breakdown in total communication between the school and the home.

The thing that is interesting to us and has been a concern to us is that in our health studies we have seen that in health care, custodial care, and institutional care there seems to be a great movement to bring people near their homes for treatment, near their homes for custody, near their homes for care, and at this time we are now sending our children away from home to be educated.

And so the proximity point is my first point. And that brings me to the second point and the second point is this: When the parents develop this alien attitude and I promise you, gentlemen—and I know that you know this is true—they have developed it, they retaliate in a way that they would not use if any other thing were involved besides their children.

People can be coerced, and bullied, and badgered, and persuaded, and led, and dragged, but when it comes to their children, they become an entirely different type of person.

And so, what is happening to us in Virginia and more specifically in Richmond, as I am sure you know, is that we are witnessing a denial of the public schools and that, of course, is the real concern of this federation I represent.

People by the hundreds are taking their children out of the public school system and then what is happening and what is left is that the public schools are just beginning to get poorer and poorer.

Now, when people take their children out, they are entering them many times in private schools which are very poor, too.

However, they theorize that at least they are having some say in their education, that they at least are responsible for their children, and the public schools are left to flounder. So we are having financial problems, school bond issues are being voted down because we have this strong feeling among parents, "I am not going to support the public school and my child is going to another school and I am not going to vote for the bond issue because I don't care."

This is unreasonable, and I admit that it is, but it is what they are doing. They are closing their pocketbooks and they are closing their vote to the public school, and we have to have the public schools.

You know that, and I know that. Then I come to my third point.

This is the one that concerns me the most. I have an awful feeling that everybody has forgotten the children. We have listened to some social theories and social science and scientists talk about these magic numbers, quality education—it takes so many of this color and so many of that color, you put them together and you have a perfect classroom.

Not so long ago I sat in on a budget hearing at a school meeting where they were determining how to set up the busing plan and how to set up the budget and the conversation went something like this:

"All right, now, we need 100 more blacks and we need 100 more whites," and then they took out the map and they looked around on the map and they said, "Well, now here we can get 25 blacks over here and 30 whites over here."

If I had not known, I would have thought they were discussing cattle, not children at all. And I thought to myself, we have spent more time in this room, and I believe in Virginia trying to decide how to finance the buses than we have spent in distributing the books, picking the teachers, and deciding on the curriculum.

I do not believe that Virginia is this big an exception. I think this is happening a lot of places.

Now, summarily, let me say this, I have not mentioned quality education this morning because I do not know what quality education is and I am not sure anybody does.

Mr. McCulloch. Mr. Chairman, I would like to give these few words of help if it be help.

I believe it involves at least reading, writing, arithmetic—basics which so many of our children have not been getting for a long time. [Applause.]

Chairman Celler. We will have no demonstrations by those in the audience, please.

Mrs. Minor. I am so glad you said this. I had a teacher friend tell me she spends a third of the day being a sociologist, and a third of the day being a psychiatrist, and the other third being a policeman.

But I think, to have quality education, you have to have three things: You must have a teacher who cares; you must have parents who care and are involved in some way, and you must have atmosphere of good will.

I thank you for allowing me to testify. Even if you do not share my beliefs, I am sure that you are going to do the best job you can to remedy the problems that we have.

Thank you, Mr. Celler.

Chairman Celler. Thank you, indeed.

We are obliged to you for your statement.

(Mrs. Minor's complete statement follows:)

Statement of Mrs. James M. Minor, Jr., on Behalf of the Virginia Federation of Women's Clubs

Mr. Chairman, distinguished members of the House Judiciary Committee, I am Mrs. James M. Minor, Jr., of the Virginia Federation of Women's Club. Ours is the largest woman's organization in the Commonwealth of Virginia, and is composed of 24 thousand women.

The Federation has absolutely no connection with nor affiliation with any school or school organization, teachers' group, or special interest group of any kind. Our purpose is and always has been to promote a common interest and genuine concern in education, philanthropy, public welfare, moral values, and civics and the fine arts. It is because of our involvement with *public education* that we are here today. We strongly urge this Congress to amend the Constitution of the U.S. to prohibit forced assignment of children to schools because of race, creed, or color.

We have, since 1907, supported public education in every conceivable way in Virginia. We believe deeply in the public school system and in the right of every child to be well educated in the public schools. We have supported countless education bills both in the Virginia General Assembly and in the Congress. The Federation was one of the earliest motivating forces promoting the establishment of public school kindergartens in Virginia. We believe that all children must be educated—and well educated.

However, if massive busing (solely for the benefit of playing some magic numbers game) continues, we shall all be witnesses at the demise of the public schools.

I wish to make three points—and three alone—here today. The first is quite simple. We believe that quality education is enhanced by parental and student involvement in school activities. We further believe that some *reasonable* proximity of home and school encourages this involvement. With massive busing, children are far removed from their schools; they are not close enough to use the playgrounds; they cannot enjoy the *needed* social involvement that comes with association in extra-curricular events; parents feel "removed" from the school and are reluctant to become active and informed; there is no school loyalty or for that matter healthy school spirit. Into attitudes that are filled with distrust and misconception, come opinions and feelings of fear and apprehension. And so what happens? I'll tell you what happens, because we are witnessing it daily in Richmond. More and more parents are abandoning the public schools. Many of them are providing private education for their children. Some of this private education is good, and some is *very poor*. But the point is, that parents will *not* be bullied and coerced when the subject is their children. And this brings me to my second point.

What is happening to our public system. More and more school bond issues are failing; funds are being voted down by citizens, because they refuse to pay for private schools and public ones simultaneously. We may say, "So what? They made that choice!" But they did *not*. Most citizens want their children in the public schools, but they refuse to have them bused to eternity and back and have no voice in their education. And so they are retaliating in the only way they know. They are closing their pocketbooks and their votes to the public schools.

You may say that the Federal Government or the State Government may take up the financial slack; however, we all know that ultimately *that* avenue of resources will reach a limit beyond which it cannot go.

My third point is this. What in the world has happened to all of our concern for the *children* involved. We have allowed the social scientists and theorists of all kinds mesmerize us with very imaginative numbers game. They tell us that it takes so many white faces and so many black faces to make the perfect educational harmony. I had occasion to sit in on a planning session about busing and the budget in one area, and had I not known otherwise, I would have been sure they were discussing chattel. "Let's see", someone would say, "We need 500 more blacks. Let's reach over to *this* area. Then we'll find 100 whites some place." These are children, for goodness sakes. Doesn't anyone in this world care *where* and *how* we reach to use them. We have spent more hours in Virginia this year deciding how to finance buses than we have spent in deciding on books, teachers and facilities.

We all know about the injustice of the past. I, for one, do not deny it for one tiny second. But I refuse to see how we can stamp out *years* of prior injustices by adopting graver ones now.

I hear a good deal about "quality education". That is what we all want. But I submit to you that "quality education" is an elusive thing. It can't be forced with busing, or ratios, or injunctions. Quality education comes when teachers *care*, when parents are involved and when good will is present.

I ask you today as earnestly as I know how, to seek quality education in these terms; put a stop to busing for the sake of busing.

Chairman CELLER. Our next witness is Mrs. Frank W. Wylie, president, Michigan Civil Rights Commission, accompanied by Mrs. Rita Scott.

STATEMENT OF MRS. FRANK W. WYLIE, PRESIDENT, MICHIGAN CIVIL RIGHTS COMMISSION, ACCOMPANIED BY MRS. RITA SCOTT, DIRECTOR OF EDUCATION PROGRAMS

Mrs. WYLIE. Mr. Celler and members of the subcommittee, I am Martha Wylie, president of the Michigan Civil Rights Commission, and with me this morning is Mrs. Rita Scott, who is director of the education programs for the commission.

This is the program which most directly deals with the school districts in the State of Michigan in their various endeavors to provide equality of educational opportunity for Michigan's children.

We are pleased to have this opportunity to appear before you this morning to describe the commission experiences and concerns in Michigan.

The Michigan Civil Rights Commission is a major department of State government created by the people of Michigan in the new State constitution which took effect in January, 1964.

Mr. Hutchinson was a member of that constitutional convention. The commission is charged with the responsibility to protect the enjoyment of the civil rights guaranteed by law and by the constitution and to secure the equal protection of such rights without discrimination because of religion, race, color, or national origin. It is the only constitutionally created civil rights enforcement agency in the Nation.

The commission urges this subcommittee and Congress to reject House Joint Resolution 620 and House bill 13916.

The Michigan Civil Rights Commission is painfully aware that events and officials in Michigan have influenced Members of this Congress to consider legislation that would turn back the clock—reestablish the *Plessy* v. *Ferguson* doctrine of "separate but equal" in education, and impede the implementation of titles IV and VI of the Civil Rights Act of 1964.

On February 22, 1972, the Michigan Commission responded to the proposition of constitutional amendments, as embodied in House Joint Resolution 620, and communicated its concern to State and Federal officials. Let me share with you the substance of our unanimous position statement:

> The Michigan Civil Rights Commission calls upon the President, the Congress and public officials at all levels to join together to resist the current effort to amend the United States Constitution in a way which would have the effect of nullifying the United States Supreme Court's decision of 1954 outlawing racial segregation in our public schools.
>
> The momentum building toward an amendment prohibiting busing to end segregation could well bring us to a constitutional and moral crisis the likes of which we have not seen since the Civil War.
>
> It took more than a half century since 1896 to overturn the 'separate but equal doctrine' . . . It appears that it has taken less than 20 years from *Brown vs. Board of Education* for the clamor to begin to deny Fourteenth Amendment rights . . . Those who urge amendment, we believe, fail to comprehend fully the awesome significance of action which would amend the Bill of Rights for the first time in our history.
>
> This Commission's Constitutional mandate compels it to speak to those in critical power and to every citizen of Michigan. Racial antipathy is the reality of this nation's history and what is wanting is a new understanding of how present inequities have developed and should be cured. To assume sectional differences between North and South impedes final resolution of the conflict between belief and practice. To amend the Constitution or to legislate to restrict the means of achieving equity leads the country away from its stated goals.
>
> The young people in Pontiac who are actively seeking to convince their elders that they *can* make it work, are symbolic of the commitment to the sense of justice which was the original source of our Constitutional strength. Adults have a moral duty to note and to emulate these young people. Public officials have a constitutional duty to do so.
>
> As a civil-rights enforcement agency, the Commission points out the contradictions of stating our complex racial dilemma only in terms of 'forced integration

> of the suburbs' when speaking of open housing: or 'forced busing of school children' when speaking of education.
>
> So interrelated are the system of housing, employment and education discrimination that our courts now find there is no longer a distinction between de jure and de facto segregation.
>
> To oppose busing as one of the methods of contributing to the achievement of equality in education for all children—to advocate the passage of a constitutional amendment sanctifying the "neighborhood school" when so often neighborhoods have been kept white by design, is to sanction the notion that we are incapable of bringing reality up to the level of belief.

While the Michigan Civil Rights Commission spoke to the critical and debilitating impact of a Federal constitutional amendment on public education policy and practice in Michigan, President Nixon on March 17, 1972, proposed a legislative strategy which would have the immediate effect of restricting any additional transportation of students now and in the foreseeable future. Enactment of this legislation would severely restrict minority youth access to desegregated schools and would only retain the status quo in terms of existing inequality of educational facilities and services.

Such action only serves to prolong the divisive debate on busing. It precludes our attention to correction of educational circumstances which are in violation of constitutional principles in Michigan and across this Nation.

Let me now describe the situation in Michigan. First: In 1963 the people of Michigan reaffirmed their commitment to a system of free and equal public education as a new State constitution was adopted

The fundamental importance of education to all members of a free, culturally diverse society has been a basic tenet of this Nation and Michigan.

Under provisions of Michigan law, residents are required to support public education: and under penalty of State law, every young person between the ages of 6 and 16 is required to attend a State-approved program of education.

Second: In April of 1966, the Michigan Civil Rights Commission and the State board of education adopted a joint policy statement on equality of educational opportunity, attached, which set forth the findings of *Brown I*, supported the provisions of the Civil Rights Act of 1964, and described the legal and educational responsibility of school officials to prevent and/or correct segregation.

Third: Some voluntary affirmative actions resulting in the elimination of racially identifiable schools have been taking place in a few small Michigan communities—Ann Arbor, Baldwin, Cassopolis, and Covert.

Fourth: In our middle cities, however—particularly in urban centers providing instructional programs for a student population of from 15,000 to 40,000 and in Detroit, voluntary actions to desegregate even at the secondary grade level have been challenged by residents who resist change.

This has been our early experience, for example, in such cities as Lansing and Flint, and our recent experience in Kalamazoo. I am pleased to report that the State court of appeals has used the State's joint policy statement of 1966 in affirming that school officials have the authority and the mandated responsibility to assign students to facilities, and to consider race along with other factors in such decisions.

Fifth: Seven Michigan districts—Ecorse, Ferndale, Flint, Pontiac, River Rouge, Saginaw, Westwood—have been the subject of Federal HEW review on their compliance status. One of these, Ferndale, was found in a state of noncompliance. A directive to terminate funds to Ferndale was ordered only last week.

Sixth: Five local districts have been charged with discrimination and denying equal protection of the laws in action before the U.S. district court. These several cases are at different stages.

Under the district court orders of Kalamazoo and Pontiac, school officials were required to implement a student-staff desegregation plan effective September 7, 1971.

The Pontiac appeal to the U.S. Supreme Court was denied; final orders are awaited in the Detroit desegregation case; appeals are pending in litigation involving Kalamazoo and Benton Harbor; and court hearings on the complaint against the Grand Rapids schools will begin within a month in Federal district court.

The immediate and continuing public response to court desegregation rulings has focused on the busing of students as a means to eliminate segregation. The Federal courts, which have provided some relief for America's minorities since 1954, are facing severe criticism by the public and by elected officials. Even those who agree with the courts' findings, now proclaim their total opposition to any remedy which would involve the transportation of students or the dissolution of the neighborhood school—often in terms of their "right" to a neighborhood school.

In his decision on the case *Bradley* v. *Milliken*, Judge Stephen J. Roth describes the reality—that black youth have been illegally confined to segregated, inferior schools. He found the Detroit and State school officials, the State and local, State and Federal housing officials guilty in that they acted to create and maintain racially segregated schools. Young Ronald Bradley, his family, and thousands of black families in the Detroit district took comfort as the court described its legal responsibility and intention to seek appropriate remedies.

There was hope that, at last, that practices which were constitutionally and educationally offensive would be corrected, that the Constitution meant what it said, and that public officials, sworn to uphold the Constitution, would do just that.

Hope and belief in justice, and the enforcement of civil rights, is at this moment dim. I can assure you that this describes the feelings of minority residents within our State. The disillusionment in the legal system and in the commitment of public officials is almost total at all levels of the minority community in Michigan—and, I might add, among a large segment of the white community.

I give you as an example, a group of black citizens, parents, and ministers who came yesterday to Washington in opposition to the proposed legislation. I wonder how many people know they came as opposed to those who know that Mrs. McCabe is arriving today from Pontiac.

The court decisions and orders involving Michigan school districts have implications for all other local districts where similar circumstances prevail.

In the school year 1970–71, public school enrollment in Michigan totaled 2,157,273 and included 13.4 percent black and 1.3 percent

Spanish-surnamed pupils. Nearly three-quarters of all black pupils and 29 percent of all Spanish-surnamed pupils attend schools in the Detroit metropolitan area: Wayne, Oakland, and Macomb Counties. The remaining nonwhite pupils, except for 7 percent of the State's American Indian student population, attend schools in southern Michigan. I refer you to our exhibit B-1 attached. [See p. 1386.]

In our core cities—approximately 27 school districts—racial segregation, particularly in the elementary grades, is the rule rather than the exception. Complaints to the MCRC of unlawful discrimination are increasing. Among the complaints brought to us by members of the black, brown, and red communities are allegations regarding extremely poor school-pupil academic performance; unequal treatment, conditions, and benefits; grossly deficient curriculum content; and racial segregation and isolation—exhibits B-2 and C, both attached. [See p. 1387.]

All of these urban school districts have qualified for and receive funds under the Elementary and Secondary Education Act. Compensatory education funds have had little impact upon minority student progress through school.

In many Michigan districts, minority group members are convinced that desegregation is the basic component of any plan to assure equal and quality education. There are school administrators and boards of education who support this concept. In Jackson and in Lansing, Mich., school officials and the community are in the process of identifying feasible options for desegregation. Despite some vocal opposition, these districts are proceeding and expect to decide upon a time schedule and plan this school year. The plans will call for the transportation of more students than are currently bused in the districts.

The House Joint Resolutions 620 proposal, if ratified, would render the implementation of such plans absolutely impossible.

Chairman Celler. May I ask at this point, what would be the psychological effect on what you have just indicated if we passed the moratorium bill?

Mrs. Wylie. I think it would be very dangerous because I think many of the districts in Michigan are beginning to realize the inequities and beginning to realize they must take positive steps. They are seeing in the areas where it has already taken place, such as Kalamazoo and Pontiac, that it is working well.

Contrary to what you have heard, it is working extremely well. There are fewer incidents and more parent involvement and a much better feeling among the children than existed before.

I think it would be very damaging to turn back a process of positive thought and action which has occurred and is beginning to occur in many Michigan districts.

The enactment of the legislative proposal, H.R. 13916, invites opponents of these plans to intervene through the courts and thereby bar implementation.

Thus, even when the professional judgment of those who have direct responsibility for the operation of local schools, calls for student desegregation, they are likely to be restained by the action this Congress contemplates.

In addition, the enactment of the proposed H.R. 13916 would require the districts of Kalamazoo and Pontiac to cease transportation of students ordered by the court in 1971. These districts have, with earnest effort and good faith, complied with Federal court orders. Desegregation has been achieved districtwide and is working well. The reorganization to achieve the previous status of schools as of December 31, 1970, would place an intolerable burden on these districts.

We, in Michigan, viewed our legal responsibility and opportunity to provide equal educational opportunity with some clarity and enthusiasm prior to November 4, 1971, to date Congress acted with dispatch to propose several antibusing amendments to pending legislation.

Educational leaders in this State understood the meaning of "affirmative duty" as described by Chief Justice Burger in *Swann* v. *Charlotte-Mecklenburg*. There was a real prospect that the victims of discrimination in education would no longer be required to initiate court action at their own expense.

We are faced now with the prospect that such litigation will provide little, if any, realistic remedy.

This is indeed a critical moment in this Nation's history. At a moment when leadership and encouragement from Federal and State officials should facilitate local desegregation efforts, and could exert the calm example of upholding the constitutional guarantees, we are met with equivocation and retreat. For the Congress of the United States to act affirmatively on the proposed measures would be to record the greatest failure of this Nation.

The Michigan Civil Rights Commission urges you to reject House Joint Resolution 620 and H.R. 13916 and similar measures.

We thank you for the opportunity to appear before you this morning.

Chairman CELLER. Do you wish to place in the record your exhibits A, B, and C?

Mrs. WYLIE. Yes, sir.

Chairman CELLER. Without objection, these will be placed in the record.

(The exhibits referred to follow:)

EXHIBIT A

JOINT STATEMENT—MICHIGAN STATE BOARD OF EDUCATION AND MICHIGAN CIVIL RIGHTS COMMISSION

In the field of public education Michigan's Constitution and laws guarantee every citizen the right to equal educational opportunities without discrimination because of race, religion, color or national origin. Two departments of state government share responsibility for upholding this guarantee. The State Board of Education has a constitutional charge to provide leadership and general supervision over all public education, while the Michigan Civil Rights Commission is charged with securing and protecting the civil right to education.

In addition to the declaration of public policy at the State level, the United States Supreme Court, in the case of Brown vs Board of Education, ruled:

"that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

The State Board of Education and the Michigan Civil Rights Commission hold that segregation of students in educational programs seriously interferes with the achievement of the equal opportunity guarantees of this State and that segregated schools fail to provide maximum opportunity for the full development of human resources in a democratic society.

The State Board of Education and the Civil Rights Commission jointly pledge themselves to the full use of their powers in working for the complete elimination of existing racial segregation and discrimination in Michigan's public schools. It shall be the declared policy of the State Board of Education that in programs administered, supervised, or controlled by the Department of Education, every effort shall be made to prevent and to eliminate segregation of children and staff on account of race or color.

While recognizing that racial imbalance in Michigan schools is closely related to residential segregation patterns, the Board of Education and Civil Rights Commission propose that creative efforts by individual school districts are essential and can do much to reduce or eliminate segregation. Local school boards must consider the factor of racial balance along with other educational considerations in making decisions about selection of new school sites, expansion of present facilities, reorganization of school attendance districts, and the transfer of pupils from overcrowded facilities. Each of these situations presents an opportunity for integration.

The Board of Education and the Civil Rights Commission emphasize also the importance of democratic personnel practices in achieving integration. This requires making affirmative efforts to attract members of minority groups. Staff integration is a necessary objective to be considered by administrators in recruiting, assigning and promoting personnel. Fair employment practices are not only required by law, they are educationally sound.

The Board of Education and the Civil Rights Commission further urge local school districts to select instructional materials which encourage respect for diversity of social experience through text and illustrations and reflect the contributions of minority group members to our history and culture. A number of criteria are enumerated in "Guidelines for the Selection of Human Relations Content in Textbooks," published by the Michigan Department of Education in 1965.

The Board of Education and the Civil Rights Commission believe that data must be collected to show the racial composition of student bodies and personnel in all public schools as a base line against which future progress can be measured. Both agencies will begin next month to assemble information on the present situation.

To implement these policies the State Board of Education has assigned staff to work cooperatively with the Civil Rights Commission and local school authorities for the purpose of achieving integration at all levels of school activity. The Michigan Civil Rights Commission also stands ready to assist local school boards in defining problem areas and moving affirmatively to achieve quality integrated education.

EXHIBIT B-1

STATE OF MICHIGAN PUBLIC SCHOOL CENSUS, 1970-71

	Number	Percent
Total	2,157,273	100.0
White	1,830,367	84.8
Black	290,018	13.4
Spanish-surname	27,801	1.3
American Indian	4,885	.2
Oriental	4,202	.2

Note: Public school environments: 80 percent of all Negro public school students attend predominantly Negro schools (over 50 percent); 46.4 percent of all white public school students attend all white schools.

EXHIBIT B 2

38—RACIALLY IMPACTED SCHOOL DISTRICTS, STATE OF MICHIGAN, RACIAL CENSUS SUMMARY 1970 71 (BY DISTRICT)

District	Indian		Black		Asian		Latin American		White		Total
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	
Albion	5	(0.1)	1,051	(29.2)	6	(0.2)	174	(4.8)	2,362	(65.6)	3,598
Ann Arbor	27	(.1)	1,810	(9.1)	261	(1.3)	167	(.8)	17,725	(88.7)	19,990
Battle Creek	24	(.2)	2,844	(27.1)	11	(.1)	78	(.7)	7,542	(71.8)	10,499
Bay City	21	(.1)	224	(1.3)	18	(.1)	743	(4.4)	15,714	(94.0)	16,720
Beecher	6	(.1)	2,221	(33.2)	7	(.1)	174	(2.6)	4,287	(64.0)	6,695
Benton Harbor	34	(.3)	6,138	(53.8)	4	([1])	38	(.3)	5,189	(45.5)	11,403
Buena Vista	0	([1])	1,511	(42.9)	0	([1])	269	(7.6)	1,743	(49.5)	3,523
Cassopolis	3	(.2)	577	(29.0)	0	([1])	7	(0.4)	1,405	(70.5)	1,992
Clintondale	7	(.1)	380	(7.5)	4	(.1)	39	(0.8)	4,643	(91.5)	5,073
Covert	0	([1])	579	(68.9)	0	([1])	0	([1])	261	(31.1)	840
Detroit	235	(.1)	181,567	(63.8)	666	(.2)	3,860	(1.4)	98,119	(34.5)	284,447
Dowagiac	33	(.8)	483	(11.6)	2	([1])	93	(2.2)	3,557	(85.4)	4,165
Ecorse	2	([1])	2,135	(50.8)	9	(.2)	237	(5.6)	1,817	(43.3)	4,200
Ferndale	10	(.1)	770	(9.5)	28	(.3)	34	(0.4)	7,297	(89.7)	8,139
Flint	27	(.1)	18,475	(40.5)	60	(.1)	625	(1.4)	26,472	(58.0)	45,659
Grand Rapids	137	(.4)	7,605	(22.0)	70	(.2)	857	(2.5)	25,865	(74.9)	34,534
Hamtramck	6	(.2)	816	(28.7)	3	(.1)	28	(1.0)	1,990	(70.0)	2,843
Highland Park	9	(.1)	6,556	(85.1)	23	(.3)	14	(.2)	1,106	(14.3)	7,708
Inkster	0	([1])	3,795	(88.0)	5	(.1)	2	([1])	509	(11.8)	4,311
Jackson	7	(.1)	2,016	(14.8)	19	(.1)	157	(1.2)	11,379	(83.8)	13,578
Kalamazoo	20	(.1)	2,947	(16.5)	58	(.3)	124	(0.7)	14,679	(82.3)	17,828
Lansing	89	(.3)	4,084	(12.5)	56	(.2)	1,972	(6.1)	26,358	(81.0)	32,559
Monroe	1	([1])	326	(3.5)	3	([1])	84	(0.9)	8,783	(95.5)	9,197
Mount Clemens	4	(.1)	1,418	(21.3)	17	(.3)	78	(1.2)	5,145	(77.2)	6,662
Muskegon	46	(.5)	2,289	(22.7)	23	(.2)	323	(3.2)	7,424	(73.5)	10,105
Muskegon Heights	9	(.2)	3,028	(74.6)	0	([1])	41	(1.0)	983	(24.2)	4,061
New Haven	1	(.1)	311	(17.7)	3	(.2)	49	(2.8)	1,394	(79.3)	1,758
Oak Park	0	([1])	558	(10.1)	13	(.2)	3	(0.1)	4,950	(89.6)	5,524
Pontiac	26	(.1)	7,977	(33.1)	42	(.2)	1,063	(4.4)	14,979	(62.2)	24,087
Port Huron	40	(.3)	870	(5.6)	14	(.1)	283	(1.8)	14,222	(92.2)	15,429
River Rouge	26	(.7)	1,588	(43.2)	8	(.2)	27	(0.7)	2,026	(55.1)	3,675
Romulus	25	(.4)	958	(16.5)	16	(.3)	21	(0.4)	4,781	(82.4)	5,801
Roseville	26	(.2)	205	(1.4)	37	(.3)	44	(0.3)	14,114	(97.8)	14,426
Saginaw	16	(.1)	7,632	(33.7)	26	(.1)	1,822	(8.0)	13,139	(58.0)	22,635
Taylor Twp	43	(.2)	301	(1.5)	38	(.2)	232	(1.1)	20,109	(97.0)	20,723
Westwood	5	(.1)	1,980	(39.9)	8	(.2)	25	(0.5)	2,943	(59.3)	4,961
Willow Run	0	([1])	907	(20.1)	4	(.1)	12	(0.3)	3,597	(79.6)	4,520
Ypsilanti	13	(.2)	1,662	(21.4)	19	(.2)	25	(0.3)	6,038	(77.8)	7,757
District total (column percent)	983	(20.1)	280,594	(96.7)	581	(37.6)	13,821	(49.7)	404,646	(22.1)	701,625
State total (row percent)	4,885	(.2)	290,069	(13.4)	4,202	(.2)	27,802	(1.3)	1,830,491	(84.8)	2,157,449

[1] Less than 0.1 percent.

EXHIBIT C

SOME MICHIGAN SCHOOL STATISTICS

District name	State equalized valuation per resident pupil (1969-70)	Total current operating expense per pupil (1969-70)	Percent minority students	7th grade base skills compose achievement (percentile)
Ann Arbor	$25,642	$1,004	11.1	9
Detroit	17,720	756	65.0	1
Flint	19,087	869	41.6	5
Grand Rapids	20,343	810	24.5	9
Jackson	17,579	925	16.2	25
Kalamazoo	22,139	894	19.0	51
Lansing	18,828	894	19.0	14
Muskegon	16,831	863	26.2	20
Muskegon Heights	11,334	679	75.8	1
Pontiac	21,033	857	38.0	5
Saginaw	18,744	757	41.9	4
Benton Harbor	13,323	714	54.4	1
St. Joseph	20,929	880	1.9	96
Ypsilanti	19,528	888	21.9	19
Beecher	11,686	693	36.0	3
Bloomfield Hills	23,845	965	1.1	98
Dearborn	41,231	1,056	1.3	87
East Lansing	22,584	1,025	8.0	97
Grosse Pointe	29,634	1,025	.3	97
Inkster	6,637	708	88.2	1
Livonia	16,758	792	.6	76
Oak Park	30,452	1,276	10.5	91
Warren Cons.	17,809	774	.8	83
Willow Run	14,521	754	20.2	4
Wyoming	14,281	699	1.8	46

Source: Local District Results Michigan Educational Assessment Program 1970-71 published by the Michigan Department of Education.

Mr. McCulloch. I should like to ask this question, Mr. Chairman.

During days of long ago in old England where the statutory or common law could not always give the relief that was necessary, there grew up a system of courts of equity. We adopted that system. Is it possible, in the minds of those who are without prejudice in this field, that H.R. 13916 be a temporary solution not repugnant to that which we so devoutly desire, equality in education? Should we declare that the matter needs further consideration and place a moratorium on equitable remedies?

Mrs. Wylie. My understanding of the law, although I am not an attorney, but I have learned quite a bit since I have been on the Commission since 1965, is that law of remedy requires that the remedy proceed while appeals and while discussion is continuing.

Mr. McCulloch. You mean H.R. 13916?

Mrs. Wylie. The moratorium, I believe, would be disastrous in the State.

Mr. McCulloch. Haven't we had a great growth of law in our system, both Federal and State, that allows us to suspend the implementation of orders until, free from passion and prejudice, we can reach a decision by which we can all be bound?

Mrs. Wylie. Certainly, what you say is true. But I think that this particular decision, in terms of a remedy which is available to educators to implement educational decisions, has been decided for a considerable period of time.

The passion has seemed to arise as it gets close to home particularly in Northern communities. I really believe that once Judge Roth has made his decision so that it is not in the realm of speculation but a fact, that the citizens of Michigan will get to work on how we can make it work.

I think one of the difficulties is that it is a cliffhanger that has been going on for a period of time. I think we need to have the matter decided and for us to move forward.

Mr. McCulloch. I feel in part the way you feel and I have tried to have no prejudices in these difficult fields, but all people do not feel as you and I. We have some people from other parts of the country who utterly reject that which we have been talking about here.

Mrs. Scott. If I may, Mr. Chairman, and Mr. McCulloch, I think we are quite aware that there are differences in beliefs and feelings and commitments, sectionally and statewide, even within the State of Michigan. There are those who would proceed voluntarily with a great deal of citizen and educator enthusiasm to desegregate.

There are those who wish not to. What we accomplish with a constitutional amendment would be to impose restrictions nationwide on all of these districts, even those who would choose to act.

Mr. McCulloch. Might I interrupt you there. My questions were not with respect to the constitutional amendment. They were with respect to the moratorium on busing for some 12 or 14 months.

Mrs. Scott. They would have great effect, of course, on Pontiac and Kalamazoo.

Mr. McCulloch. Let me say that whenever there is an adverse ruling by a court of justice which temporarily sets us back, many will think that we have been fatally harmed. But the long history of such defeats gives me hope that nevertheless we will prevail in the long run. Perhaps progress can be made by taking one step backward and two forward.

Chairman Celler. Mr. Zelenko.

Mr. Zelenko. It would help the committee if the Michigan Civil Rights Commission could give us its opinion at a subsequent time as to the impact of the moratorium bill on the pending appeals in Kalamazoo and Benton Harbor. The question has been raised as to whether or not the moratorium legislation would deprive circuit courts of appeal from modifying in any way lower court orders.

Chairman Celler. If there are no other questions, we thank you very much, Mrs. Wylie and Mrs. Scott.

Our next witness is Mr. Norman Goldfarb, Council on Human Relations, Inc., Buffalo, N.Y. He is accompanied by Mr. Frank Mesiah.

STATEMENT OF NORMAN GOLDFARB, ACCOMPANIED BY FRANK MESIAH, CITIZENS COUNCIL ON HUMAN RELATIONS, INC., BUFFALO, N.Y.

Mr. Goldfarb. Mr. Chairman, when we put forth our formal position in a paper to your committee, there were really two aspects to it and one of which addresses itself to a subject which we have not heard anything about today and, with your permission, we would like to proceed as follows, with Mr. Mesiah discussing an aspect of our position and I following with the rest of our presentation. We will not be any longer doing this jointly than we would singly but Mr. Mesiah happens to be our representative in this area and we would like him to testify.

Chairman Celler. That will be fine. However, we request that you make your statement as brief as possible because we anticipate a quorum call very shortly.

Mr. GOLDFARB. We will try, sir.

Mr. MESIAH. Chairman Celler, and members of the subcommittee, the 1954 Supreme Court decision stressed the inherent inferiority of separate education of children but unfortunately this was generally interpreted as meaning that separate education for black children was inferior.

From this developed a myth of the disadvantaged which has concluded that mostly black and poor children are disadvantaged. But research indicates that white children, living in isolation are also disadvantaged because they develop distorted perceptions of the world around them. We live in a multiracial, multiethnic, multireligious world and for a child to be reared with people only like himself produces a ghettoized white child.

Since attitudes, values, and forms of behavior are developed at an early age, it becomes impossible for the ghettoized white child to deal naturally or adequately in a world of diverse social and human relationships.

The neighborhood school as it was originally conceived, took in all children of the community and the community at that time involved everyone. Thus children of diverse backgrounds were able to interact with children different from themselves.

In modern-day America the concept of the neighborhood school is outmoded for educational excellence because our communities have expanded in a point whereby children attend schools with children like themselves. There is little opportunity for them to meet children outside of their neighborhood. The intent of the neighborhood school was to give all children an opportunity to interact with all children.

The present neighborhood school ghettoizes the child and gives him a warped perception of the world around him. One of the arguments in the *Brown* vs. *Board of Education* case was that for both the majority and minor's groups "Segregation imposes upon individuals a distorted sense of reality" and as indicated in research study "The Rightness of Whiteness":

> Whites whose minds and feelings have been produced in ghettoized ways of living are quite likely to experience blacks—outside of traditional roles—with a sense of resentment, a feeling of discord, a sense of dissonance, like a familiar pattern disarranged.
>
> These people are seriously handicapped in their ability to react to blacks as persons, to interact with naturalness and spontaneity without anxiety, fear or guilt. White children who develop in this way are robbed of opportunities for emotional and intellectual growth, are limited in basic development of the self so that they cannot accept darker-pigmented people.
>
> Such persons now are severely handicapped in a complex, interactive, multiethnic world, undergoing inter-group tension and conflict.
>
> Not only is the ghettoized white child handicapped in accepting and interacting with those different from himself, but he is seriously disadvantaged in recognizing and in dealing with some of the most basic issues in a real world.
>
> If children are to have attitudes and behavior different from the general culture, they will have to be reared in a subculture of equality. The home, itself, if it is strong and positive enough and with resources, can furnish such a subculture. However, the child's position is much more solid and secure if there are some peer groups, some adult groups and the school which reinforce the home in the behaviors and the folkways of equality. For them the child can enter into relationships with black children and adults much more naturally as a matter of course. Children reared in the folkways of the rightness of whiteness are condemned to move in the cherry orchard of a dying era, playing roles fast passing from the stage of history.

Children need to meet and interact with all children if this country is expected to constructively interact with the world. Our children must be taught to respect people for their differences. Our schools can provide the vehicle whereby this country can come together in harmony.

Chairman CELLER. Mr. Mesiah. I am going to ask you to epitomize your statement. We have another witness who has come all the way from San Francisco and it would be unfair if we could not hear him. I must insist that you epitomize your statement, not read it entirely.

Mr. MESIAH. What we are saying then is that white children who go to school with only white children from the same community are unable to deal effectively with people of different kinds of backgrounds as they become adults and in essence this is it. We ask that you do not tamper with the Constitution, that you allow the schools to assist the children to learn to interact with people who are different from themselves, rather than proceed with it. This is basically it. We ask the schools be allowed to serve as one of the vehicles that help people come together and deal with problems and deal with each other because we find a ghettoized child has no concept, he cannot deal with Chicanos, he cannot deal with blacks, he cannot deal with Mexican Americans and he, himself, becomes disadvantaged and develops a distorted concept of the world.

If we expect this country to serve in a leadership role, to expect children or adults from this country to deal with people from outside of this country and they have had no contact with people like them, it will be difficult.

Mr. GOLDFARB. Mr. Chairman, one of the things I wish to do today is to outline the story of Buffalo, N.Y., which, to me, epitomizes what is going on in the cities of the North insofar as this entire problem is concerned. I wish to say that neither a constitutional amendment nor the legislation proposed by the administration deals realistically with the problem that we have. If there is a constitutional amendment, it will give the bigots of our Nation the fruits of their labor because we have a segregated school system, because the bigots have arranged it that way both in the South and in the North. It will bring despair to those people all over our country who have tried for 18 years to find a solution to the problem of quality integrated education.

And we would like the Congress to recognize that the Federal district courts have addressed themselves to a specific set of facts in a specific community: Los Angeles, Pasadena, San Francisco, Denver, Detroit, Pontiac. Now, Buffalo, N.Y., is a city which illustrates how the moratorium and the Equal Educational Opportunity Act will not deal with this problem realistically where the courts have. Buffalo is a city in New York with a diminishing white population, a growing black population, and growing suburban population.

Most of our black citizens, the overwhelming majority, live in a so-called intercity. They are not there de facto or by accident. They are there because specific governmental policy put them there.

Going back to the 1940's, sir, the municipal housing authority back by the Federal Housing Authority, the Federal agency which supplied the money to build low-cost housing projects, put blacks in these housing projects in a certain section of the city. They stayed there. When Buffalo, in its model cities application in 1967, asked for the money to do something for the so-called inner city, it said—this is the city talking to Washington—"When we knocked down the houses during the 1950's for an urban renewal project, houses for blacks in the black neighborhood, we could not relocate the blacks all over the city. We put them illegally into single-family and two-family houses." So the city government kept the blacks there and promised that a fair housing law would be passed.

In 1968 the common council was asked to redeem that pledge for a fair housing law (even though New York State has one, it does not cover owner-occupied, two-family houses) and the city said that 90 percent of available rental housing is owner-occupied, two-family houses.

Our common council was asked to pass this ordinance, which was pledged if we got model cities money—in one single day that Common Council of the City of Buffalo not only repudiated the pledge of the fair housing law, which they disregarded and discarded, they also passed an unconstitutional amendment to an ordinance which precluded the board of education from building portable classrooms which were designed to go up alongside white schools so that more blacks could be bused into white peripheral schools. State courts later ruled that this amendment was unconstitutional.

Here is our common council telling the blacks not only where to live and stay there, but saying, you can't get out to go to the white schools, either.

The board of education, itself, in Buffalo has been guilty of many de jure acts of segregation, like the districting of a new junior high school in the most abnormal way in history so that only black students would go to that high school.

Thus the believers in the neighborhood school system arranged things so that white children only three blocks away from that school would not be assigned to it. The board of education has permitted white students to escape attending a neighborhood school in an all-white neighborhood with the consequence that 85 percent of the student body of this school in an all-white neighborhood is black.

It is an all-white neighborhood and they have permitted the whites to manufacture subterfuges and excuses to escape attending that school. In another high school which is all black and located in an area that has many whites in its district, school officials have permitted white students not to attend that school by teaching Polish in a school miles away and the whites are allowed to go to that other school for Polish.

They do not teach Polish in the school in their immediate neighborhood. This is another sophisticated method, another subterfuge, another deception. We call these de jure acts.

In December 1971 we sent to the State commissioner of education in New York a bill of particulars outlining the actions of our common council and school board in creating a de jure segregated school system and asking him to intrude in Buffalo again as he was supposed to do because there was a case before him 7 years old. Nothing has happened in Buffalo because the council has refused to give money for the middle schools needed in the board's desegregation program and the board of education will not act in other ways. Commissioner Nyquist wrote to the board of education and requested them to come up with a plan to desegregate the schools, that is, they were to come up with a plan by April 1, 1972, to desegregate the schools and the board of education completely rebuffed Nyquist.

They sent him a polite letter, saying we cannot do this at this time.

On the same day they sent him the letter they received and filed a plan which was put together by professional educators with interested and concerned citizens which could have been the basis for desegregating the Buffalo public schools.

Our common councilmen are around the neighborhoods of Buffalo, pandering to the bigots, passing resolution after resolution in the common council against busing, against Commissioner Nyquist, against anybody who wants to send black and white children to school together.

Now——

Chairman **Celler**. Why do you use the word "bigot" so often?

Mr. **Goldfarb**. Well——

Chairman **Celler**. There may be others who would disagree with you, they are not necessarily bigots. You mentioned before that those who were in favor of this constitutional amendment were bigots.

Mr. **Goldfarb**. I did not say that, sir. I said it will, as a consequence, give the bigots the fruits of their labor.

I did not say all people who are for the constitutional amendment or for the administration act or against the cross-busing are bigots. Not all are. What I am saying is that the consequence of these acts will be to give the bigots the fruits of their labor and in our city where the common council and the board of education have engaged in these de jure acts, housing, segregation of schools, and so forth, obviously a constitutional amendment will never let us cure this because there is nothing to indicate that in our city blacks are going to move out of their neighborhood and there is nothing to indicate in our city that anything but a court-compelled order would move the board of education and perhaps the council into acting properly.

Under the two bills, even if we got a court order, you could not desegregate the schools below the sixth grade and all educators will tell you that the place to start with integration and desegregation is at kindergarten level or before that and through the early years, not later on. And even after sixth grade, this legislation would so restrict the court in its remedy. It seems to me inconceivable that the Supreme Court is going to accept the fact that it is constitutional that the Congress can dictate the proper remedy to the Supreme Court.

So we say there is relief available for aggrieved communities where there have been court orders which are injurious to the health and welfare of the students.

Relief is in our judicial due process through the Supreme Court and, Mr. McCulloch, I would like to go back to a question you raised about staying until there is a court of equity and so forth.

No one has stayed the injury to our black citizens who, for a century, have had to undergo the indignities of the separate and dual school system.

Mr. **McCulloch**. Mr. Witness, I agree with that statement. But sometimes a reasonable and experienced citizen or public official regrettably finds himself in a position where he must temporarily cut his sails in a strong wind.

Mr. **Goldfarb**. Sir, if this moratorium is passed, it will stay, as I understand the legislation, any further court orders to bus until 1973 or until Congress passes the suggestions by the Administration as to what the Court should do short of busing. What do we do in a city like Buffalo where its governmental agencies have rejected educational parks? Where they have rejected middle schools supposed to be built in periphery neighborhoods so the distance for white and blacks will not be great?

Chairman CELLER. You would have to continue the status quo.

Mr. GOLDFARB. And, sir, that means in Buffalo a separate and unequal society for the blacks, a polarization of white and black and the prediction of the Kerner Commission comes true—two societies.

That is not what this Nation is all about. If you pass this constitutional amendment, if you pass these two bills of the administration, then you will widen the gap between our nationally professed values and our actual values and you will make a mockery out of the upcoming Bicentennial Celebration of this Nation that it is one nation, indivisible, with liberty and justice for all. We will have a nation divisible and possibly an Ulster.

Thank you very much.

Chairman CELLER. Thank you both.

(The full statement of Mr. Goldfarb follows:)

STATEMENT OF NORMAN GOLDFARB, CITIZENS COUNCIL ON HUMAN RELATIONS, INC.

Dear Chairman Celler and members of the committee, the 1954 Supreme Court decision stressed the inherent inferiority of separate education for children. Unfortunately, this was generally interpreted as meaning that a separate education for black children was inferior. From this developed myth of the disadvantaged, which has concluded that mostly blacks and poor children are disadvantaged. But research indicates that white children living in isolation are also disadvantaged, because they develop distorted perceptions of the world around them. We live in a multi-racial, multi-ethnic and multi-religious world and for a child to be reared with people only like himself produces a ghettoized white child. Since attitudes, values, and forms of behavior are developed at an early age, it becomes impossible for the ghettoized white child to deal naturally or adequately in a world of diverse social and human relationships.

The neighborhood school as it was originally conceived, took in all the children of the community and the community at that time involved everyone. Thus children of diverse backgrounds were able to interact with children different from themselves. In modern day America, the concept of the neighborhood school is outmoded for educational excellence because our communities have expanded to a point whereby children largely attend schools with children like themselves. There is little opportunity for them to meet children outside of their neighborhood. The intent of the neighborhood school was to give all children an opportunity to interact with all children. The present neighborhood school ghettoizes the child and gives him a warped perception of the world around him. One of the arguments in Brown vs. Board of Education was that for both majority and minority groups "segregation imposes upon individuals a distorted sense of social reality."

As indicated in the research study *The Rightness of Whiteness*, "whites whose minds and feelings have been produced in ghettoized ways of living are quite likely to experience blacks (outside of traditional roles) with a sense of resentment, a feeling of discord, a sense of dissonance, like a familiar pattern disarranged. These people are seriously handicapped in their ability to react to blacks as persons, to interact with naturalness and spontaneity without anxiety, fear or guilt. White children who develop in this way are robbed of opportunities for emotional and intellectual growth, are limited in basic development of the self so that they cannot accept darker pigmented people. Such persons are severly handicapped in a complex, interactive, multi-ethnic world, undergoing inter-group tension and conflict.

"Not only is the ghettoized white child handicapped in accepting and interacting with those different from himself, but he is seriously disadvantaged in recognizing and in dealing with some of the most basic issues in a real world."

"If children are to have attitudes and behavior different from the general culture they will have to be reared in a sub-culture of equality. The home itself, if it is strong and positive enough and with resources, can furnish such a sub-culture. However, the child's position is much more solid and secure if there are some peer groups, some adult groups and the *school* which reinforce the home in the behaviors and the folkways of equality. For them the child can enter into relationships with black children and adults much more naturally as a matter of course. Children reared in the folkways of the rightness of whiteness are condemned to move in the cherry orchard of a dying era, playing roles fast passing from the stage of history."

Children need to meet and interact with all children if this country is expected to constructively interact with the world. Our children must be taught to respect people for their differences. Our schools can provide the vehicle whereby this country can come together in harmony.

For this reason, we urge you not to tamper with the Constitution of the United States with respect to the busing of school children. We know that busing is not the prime issue because the majority of children, have for years, used the bus to get to school, and statistics prove that busing is the safest means of going to school. If we are to alleviate the social and moral tensions existing among and between the races, the educational system must be involved. If we prevent the schools from helping children learn to interact with all children, we are only hastening the prophesy of the Kerner report, which indicated that we are becoming two countries in one.

This does not mean that arbitrary requirements for racial balance must be imposed everywhere without regard for other educational values and for the safety and convenience of school children. It does not mean that busing must continue to be available as a means of achieving or preserving a reasonable racial balance when school and other governmental authorities utilize their official powers to maintain and intensify public school segregation. To deny the use of that device under such circumstances is to make a mockery of the 14th Amendment's command that the equal protection of the laws not be denied.

The experience of the City of Buffalo is a vivid example of those situations wherein governmental decisions have fostered school segregation to such an extent that only judicially compelled action which includes some required busing can produce any improvement. That experience is briefly, as follows:

In 1963 the Buffalo school system was shown to be the most severely segregated in New York State. (Civil Rights USA, Public Schools, Cities in the North and West, 1963, Buffalo: Staff Report to The United States Commission of Civil Rights, P. 10–11.) Thereafter, in 1964, a new and well equipped junior high school was to be opened, the expectation being that it would be so zoned as to reduce the amount of segregation. Instead the Board of Education set boundaries which made it a segregated school. In September of that year, a petition was filed with the New York State Commissioner of Education requesting relief from the segregated condition of the schools in accordance with a policy statement adopted by the New York State Board of Regents in January 1960, and a directive of the Commissioner of Education of New York later that year (Staff Report, supra, P. 9–10.)

In February, 1965, the Commissioner directed the Buffalo Board of Education to submit a plan for the progressive elimination of racial imbalance in the public schools. The plan, submitted by the Board in May, 1965 was unsatisfactory to the Commissioner.

In Sept. 1965, the Board of Education requested assistance from the Department of Education to make an in depth study of the school system including the problem of racial imbalance. A panel of citizens was appointed to monitor the study which, made by the Center for Urban Education. Out of this comes the so called 4–4–4 plan which the Board approved in principle in Sept. 1966.

In Nov. 1965, after the Commissioner set a deadline for a plan to implement the study's recommendations, the Board adopted a 16 point plan. The Board adopted two policies which became rules that resulted in dejure segregation.

1. Children in grades K–4 would continue in their neighborhood schools, thus perpetuating segregation. This policy was only slightly diluted, by the outbusing program since only black children in these grades are bused. These are only very few of them and there is room in white schools for only a small proportion of the black students in these grades.

2. White children would not be transported to black schools.

Thus the Board deliberately limited desegregation since there is a lack of space in white schools for all black students.

The 16 point plan also called for middle schools with integration beginning in grade level 5 and comprehensive integrated High Schools.

In Jan. 1967, a coordinator of Integration was appointed.

In the summer of 1967, because a further progress report was required, the Superintendent of Schools appointed an Advisory Council, asking its members to make suggestions as to how to desegregate the schools.

In October 1967, the Advisory Council made many suggestions in its final report to the Superintendent. They included, among others, Princeton Plan pairing, portable classrooms at white peripheral schools, cross-busing of students for the sake of equity, and maximization of desegregation.

In November 1967, the Superintendent ignored all of the Advisory Council's suggestions, but one, in his recommendations to the Board. Later the Advisory Council failed to persuade the Board of the inadequacy of the Superintendent's report and the Board submitted its report to the Commissioner. It outlined a long range plan to build middle schools, and was essentially a continued commitment to the policy announced in the 16 point plan.

In the Winter and Spring of 1968, the Commissioner agreed to the longrange plan, but asked the Board for interim steps to desegregate the schools, after members of the Advisory Council informed him of their portable classroom idea. The Board, in April, 1968 committed itself to build portable classrooms.

In July, 1968, the Common Council refused to fulfill a commtment made in the city's model cities application to Washington to create a fair housing law covering owner occupied two family housing, such housing not being covered by the State Law. This type of housing comprises the bulk of available rental housing in Buffalo. On the same day, the Common Council voted approval of an unconstitutional amendment to a city ordinance which had the effect of banning portable classrooms.

In late summer of 1968, the Common Council's action designed to ban portable classrooms was struck down by the State Supreme Court. The Common Council continued to refuse to pass bond issues for money for planning middle schools, and a struggle ensued before the money to finish the West Hertel Middle School was assured.

From the fall 1968 to present, more reports by the Board of Education to the Commissioner showed no substantive move to alter its policies. There were minor districting shifts to prevent tipping. An unconstitutional state law passed in 1969 designed to stop busing in large cities was struck down by the Courts in 1970. The Common Council refused money for middle schools. In February 1971, the Board ordered the coordinator of Integration to make a study of the possibilities, problems and implications of cross-busing. The report has just been made public.

A group of Buffalo parents are contemplating filing a law suit in the United States District Court for the Western District of New York as being the only available source of remedy. The foregoing brief summary demonstrates that without judicial intervention, constitutional requirements of equal protection will continue to be flaunted. It is equally clear that judicial relief cannot be meaningful unless some provision for busing is included.

Chairman **Celler**. Our last witness this morning is Mrs. Marjorie Lemlow, chairman, Mothers Support Neighborhood Schools Inc., San Francisco, Calif.

STATEMENT OF MRS. MARJORIE G. LEMLOW, CHAIRMAN, MOTHERS SUPPORT NEIGHBORHOOD SCHOOLS, INC., SAN FRANCISCO, CALIF.

Mrs. **Lemlow**. Thank you, Mr. Chairman and members of the subcommittee.

I wish to tell you what has happened to a so-called desegregated school system. San Francisco probably has the largest busing program in this Nation: 25,000 elementary children are currently being bused in this city. It has been a tragedy and I cannot stress too much the reasons for this statement.

I want it known for the record that I have come here on my own, paying my own expenses, because I feel that what faces this Nation is so crucial that, if there is a voice that can speak out, it should do so. I want to thank you for allowing me to appear.

I am chairman of Mothers Support Neighborhood Schools, Inc. I also represent Parents and Taxpayers, Inc., as well as thousands of individual citizens of San Francisco. We have had an ongoing fight over the issue of forced busing since 1961 and it was during that year that I became involved.

I consider myself a pro with 11, going on 12 years of experience on the issue of forced integration of the schools.

I feel certain I can speak safely for 78 percent of San Francisco voters who voted "No" in June of 1970 on proposition H which posed the following question: Shall the San Francisco Unified School District assign or move elementary schoolchildren to schools outside their immediate neighborhood without parental consent?

You will be interested to know that the vote was yes, 39,484; no, 132,007 votes. We are one of the few cities in this country that has had the policy vote on busing. In spite of the mandate from an overwhelming majority of San Francisco voters, our appointive 7-member board rammed through a major busing for racial balance program in September, 1970.

This program was known as Richmond Complex. It involved pairing of 12 elementary schools designating six schools as grades K through 3 and six schools as grades 4 through 6.

This complex required the busing of 6,000 students. The plan originally called for all kindergarten children to remain within the neighborhood school.

Mr. HUNGATE. What were the figures on the referendum in San Francisco?

Mrs. LEMLOW. This is posed so the yea vote would be the negative vote. The yea vote on that was 39,484 and the no vote was 132,007.

Mr. HUNGATE. What is the composition of the area in which the referendum was taken, as to white and nonwhite?

Mrs. LEMLOW. We are a quad-racial city. We have Spanish-speaking, Chinese, Oriental, and what they call "Other"—white, that is me, and the black.

Mr. HUNGATE. What are the percentages—the distribution is broken down by race, isn't it?

Mrs. LEMLOW. If you have a copy in the back, I am sure you got a copy of this, the ethnic census has been taken since 1940 and it is all broken down on the back, year by year, 1940, 1950, 1960, 1970. In 1970 of white we have a total of 511,000; none-white, 204,488; Negro population 96,000.

(The document referred to is as follows:)

SAN FRANCISCO RACIAL ETHNIC CENSUS, PER CENSUS BUREAU

	1970		1960	
	Number	Percent	Number	Percent
White	511,186	71.4	604,403	81.6
Nonwhite	204,488	28.6	135,913	18.4
Black	96,078	13.4	74,383	10.0
Chinese	58,696	8.2	36,445	4.9
Japanese	11,705	1.6	9,464	1.3
Filipino	24,694	3.5	12,327	1.7
American Indian	2,900	.4	1,068	.1
Other nonwhites	10,415	1.5	2,226	.3
Total	715,674		740,316	

POPULATION OF SAN FRANCISCO BY ETHNIC GROUPS U.S. CENSUS, APRIL 1ST OF EACH YEAR

Ethnic group	1970	1960	1950	1940
Total	715, 674	740, 316	775, 357	634, 536
White	511, 186	604, 403	693, 888	602, 701
Nonwhite	204, 488	135, 913	81, 469	31, 835
Negro	96, 078	74, 383	43, 502	4, 846
American Indian	2, 900	1, 068	331	224
Other nonwhite	105, 510	60, 462	37, 636	26, 765
Percent in each group:				
Total	100. 0	100. 0	100. 0	100. 0
White	71. 4	31. 6	49. 5	95. 0
Nonwhite	28. 6	18. 4	10. 5	5. 0
Negro	13. 4	10. 1	5. 6	. 8
American Indian	. 4	. 1		
Other nonwhite	14. 7	8. 2	4. 9	4. 2

The April 1, 1970 U.S. Census population for San Francisco was 715,674 a decrease of 24,642 or 3.3% from the 1960 figure of 740,316 and 50,683 or 7.7% from 1950. The only figures yet available for ethnic groups are listed above. The white population decreased to 511,186 in 1970, a loss of 93,217 persons or 15.4% since 1960. Nonwhites increased by 68,575 or 50.5%. Negroes increased by 21,695 or 29.2% while all other nonwhites increased by 46,880 or 76.2%.

Mr. HUNGATE. In 1970, you had a white population 71.4 percent, is that right? Nonwhites 28.6 percent?

Mrs. LEMLOW. Yes, that is correct.

Every major race in our city was against the forced busing including the blacks. We did a study precinct by precinct and found this to be overwhelming. The Chinese, the blacks and Spanish-speaking and the white. I could obtain those figures if you would like to have them and I will see that the committee gets them.

Mr. HUNGATE. The problem I have is that, if I have a constitutional right, it cannot be taken from me by a majority vote.

Mrs. LEMLOW. Well, that is how we feel.

Mr. HUNGATE. Thank you, you may proceed.

Mrs. LEMLOW. In this case in our city, in September 1971, our district began phase 1 of the largest and most massive movement of public schoolchildren in the country. A hastily-drawn program began assignment of 47,000 elementary students with 25,000 to be bused in an attempt to reach a racial balance in San Francisco elementary schools. Heartless computers separated children from home environment.

Children from one family were known to be assigned to as many as four or five different schools all over the city.

A phase-in program was to begin almost immediately for a racial quota within secondary schools. A board vote has delayed them temporarily in the racial balance program for junior high school with senior high program yet to be considered.

The elementary busing program was accomplished because San Francisco has had an appointive board of education for approximately 40 years with confirming yes or no vote on appointments by voters.

This was why, in spite of the proposition H, our board went ahead because of their political philosophy and put through a program that our city did not want to live with nor did we feel was necessary.

This system gave San Francisco a board of education with single political philosophy hinging on the whims of city hall. Citizens committees were chosen and stacked by the board so that the majority antibusing opinion was totally ignored.

We had countless expensive studies of the district done by fancy consulting agencies such as SRI which is Stanford Research Institute. We have had and continue to have these same studies plus new administrative positions for implementing racial balance and many outside consultants including $200-a-day psychologists.

San Francisco has had innumerable carpetbaggers coming and going since 1965. They have told us how to racially balance our school, how to psychologically adjust our children, our teachers, and community.

We even had Health, Education, and Welfare fund the district in the amount of $1,800,000 under ESAP, emergency school aid program, in order to gain acceptance of total racial balance of our school.

This program was nothing more than sensitivity programs aimed at changing values and along with it the direction of academic education.

This program concerned itself with attitudinal changes not with academic achievement and provided general acceptance of varying substitutes for academic ability.

All of this has happened in a cosmopolitan city renowned for tolerance, racial harmony, and where integration came nationally within its 49 square miles.

In San Francisco as in Washington, D.C., and other cities where local board and Federal courts had enforced similar racial quotas, there is accelerated exodus of middle-class families.

1970 census shows declining white population of 10.2 percent, whereas the nonwhite population increased 10.2 percent and if you will note, I have included ethnic census with this report.

Since the beginning of the massive busing program at the elementary level, September 1971, according to the State average daily attendance report of October 12, 1971, our unified school district has lost 6,650 elementary students, a loss of 14 percent.

Where have these children gone?

Our district is still searching for 5,967 students who left without transfers as only 562 students left with legitimate transfers.

As of October, 1971, 48 new private and parochial schools were established with a known enrollment of 3,918 students. Many of these freedom schools, as they are called——

Mr. POLK. Mrs. Lemlow, may I ask you if those 48 new schools are walk-in schools?

Mrs. LEMLOW. They are hidden schools. They are schools that parents have started as protest all over the city of San Francisco.

Many of them the locations are not even known, some of them have applied for the credientials through the State and they have been able to get them. They are not identified.

We have children in San Francisco who are not even attending schools because of this massive busing program. Really, gentleman, I wish I could tell you what is happening.

Mr. POLK. How many elementary schools are there?

Mrs. LEMLOW. Ninety-nine.

Mr. POLK. Then these 48 have to do double duty, don't they? The fewer the schools, the larger the attendance zone, and the larger the attendance zone, the greater the probability the schools are not walk-in schools.

Mrs. LEMLOW. No, because many of them are small schools of 10 children each in a private home. They are protest schools.

Mr. POLK. Thank you, Mrs. Lemlow.

Mrs. LEMLOW. That I wanted to make very clear. They are protest schools.

Mr. ZELENKO. Isn't there an appeal pending in the ninth circuit from the San Francisco lower court decision?

Mrs. LEMLOW. No, it was denied just last week. In fact I have a couple of letters which I would like to have introduced, too. We are now one of those who have been allowed in the *Denver* case to intervene and of course you know that has been put off until the fall.

Mr. ZELENKO. Well, would the moratorium bill that this subcommittee is considering give you or any of the parents in San Francisco any solace?

Mrs. LEMLOW. It will save our city.

Mr. ZELENKO. How will it affect the order that is already in effect in San Francisco?

Mrs. LEMLOW. As I mentioned earlier, we have a pending junior high school program of busing that the board has taken a temporary stay on, in a recent vote. If we had a moratorium, it would stop the junior high school busing.

Mr. ZELENKO. How would it do that? That transportation plan is not an order of the court, is it?

Mrs. LEMLOW. We feel that then, perhaps, we could get the judiciary to come in and study what happened in San Francisco and that would be the question.

Mr. ZELENKO. The moratorium bill stays the implementation of an order of the court——

Mrs. LEMLOW. We have 5 years to do that.

Mr. ZELENKO. Entered during the moratorium period. I gather this court in San Francisco has already entered its order.

Mrs. LEMLOW. No, he gave us 5 years. He ordered the elementary by September 1971.

Mr. ZELENKO. So that will not be affected by the moratorium bill.

Mrs. LEMLOW. But the junior high school could be, because we were given a 5-year grade period by the judge. We could stay that.

Mr. ZELENKO. In other words, you believe the moratorium bill would prevent busing for junior high schools in San Francisco?

Mrs. LEMLOW. Yes.

Mr. ZELENKO. The Department of Justice has not indicated that, Mrs. Lemlow.

Mrs. LEMLOW. That has been our problem, getting this before the court and that is why I am here, because it is crucial right now for our city.

Mr. HUNGATE. Pardon me a moment.

You would support, if I understand it, the neighborhood school concept?

Mrs. LEMLOW. Very much so.

Mr. Hungate. And would you think it ever justifiable to bus a student past one school to get to another school, or do you think there would never be circumstances where that would be justified?

Mrs. Lemlow. Only in some cases particularly at the high school level if a subject were not offered in a particular high school and that might be available in another. I am thinking now of Russian which is not a language taught in all of our high schools and if a child desired this for some reason, yes.

However, we favor open enrollment of all our high schools which is what we had a number of years ago.

Mr. Hungate. Is there any existing busing in the city, where a student goes past one school to another school, for a purpose other than to take a course unavailable in the nearest school?

Mrs. Lemlow. Of course, this is happening now through our forced busing program all over the city everywhere.

Mr. Hungate. Did it happen before?

Mrs. Lemlow. No, not unless it was for building utilization where we might have a school that had been bombed out or something, then they would do that.

This involvement by the parents so convinced them of the poor quality of public education that it will be difficult to get them to return to the public schools.

I am speaking of these 49 private freedom schools because once the parents got involved in these schools, they found out how little their children were learning in the public schools and how fast they could by helping in these private schools and getting their own teachers, develop the techniques for the child's learning and they cut out the nonessential.

In fact, these children now after about 6 months of this type of schooling are far advanced which has been a very interesting thing that has happened.

You take the Chinese in our city, the statement has been made that they will never put their children back in public schools until they find that the public schools are educating the children.

So this has been something that has come out in all of this fight.

In the 4-year period between September 1967 and October 1971, the student enrollment of grades K through 12 dropped 12,501 whereas the budget increased during the same period about $44 million.

San Francisco Board of Education spends in excess of $140 million from all sources per year. This provides approximately $1,750 per student per year, undoubtedly the biggest expenditure in the Nation.

Notwithstanding such an exorbitant expenditure per student, the achievement scores continue to decline. In a district where the budget and pupil expenditure has substantially increased each year, and achievement scores have declined the reported incidence of violence is steadily increasing.

Since the beginning of the massive busing program September 1971, more violence is prevalent in the elementary schools by far than in the secondary schools and is not lessening according to the school district's own reports.

Mr. Zelenko. Excuse me, Mrs. Lemlow, your statement shows that the population of San Francisco has decreased somewhat in the last 10 years.

Mrs. Lemlow. Yes.

Mr. Zelenko. Do you know what the decrease in school age population in San Francisco has been during that period?

Mrs. Lemlow. Yes. I have it here actually giving you that figure, the elementary, we were in 1967 a district of 93,000 kindergarten through 12 and the school district figures now give us 82,000 which is 10,000——

Mr. Zelenko. There was a decrease, was there not, in school age population before the district judge's order?

Mrs. Lemlow. Yes, it was a stayed thing from 1967. However, this is a 14-percent drop now in the elementary schools alone just in the 6 months.

Mr. McClory. Mr. Chairman, could I ask a question out of curiosity?

Chairman Celler. Yes.

Mr. McClory. What recognizable group of people has shown the greatest resistance to busing, the whites, the Spanish-speaking or Spanish-surnamed, the Asiatic or the blacks?

Mrs. Lemlow. The Chinese and the whites.

Mr. McClory. They resist the most?

Mrs. Lemlow. You see, the whole culture of the Chinese——

Mr. McClory. How about the Spanish-surnamed?

Mrs. Lemlow. Yes, they are opposed also.

Mr. McClory. They also like to congregate, don't they?

Mrs. Lemlow. We have bilingual programs and with the busing these children have been dispersed throughout the city and because of a lack of funds often the program does not go with the child and here you have so many children of immigrants from Mexico, Chinese immigrants coming in from Hong Kong, who are totally unable to communicate in English, so bilingual programs have been set up throughout the district.

Mr. McClory. Have you had any success in compensatory education in San Francisco with Head Start, Follow-Through and those types of programs?

Mrs. Lemlow. We originated one of the first programs in the district back in 1960 or 1961, one of the pilot programs in Comped and it was not nearly as successful as it was felt to be in the beginning. I think this has been the story of the whole Nation. We have not developed a technique yet for breaking through on my authorities, particularly culturally deprived in the areas of being able to teach them properly and I do not know what the solution is to that but I know we have got to find this.

Mr. McClory. Thank you.

Mrs. Lemlow. In order to guarantee the implementation of racial balance programs already proposed and begun in the district it was necessary that our Board of Education select a superintendent compatible with these goals.

Such a man was found in Dr. Thomas Sheehan, a reject from Rockford, Ill. As a point of interest, Dr. Sheehan was chosen after the district failed to obtain the services of Dr. James E. Allen, formerly U.S. Commissioner of Education.

San Francisco now has the task of ridding the district of Dr. Sheehan whose innovations have completely demoralized the administrative and teaching staff as well as the citizenry at large.

It is for this reason that I have been delegated to urge this committee to bring forth——

Mr. Hungate. Could you give some examples of the innovations, please?

Mrs. Lemlow. I do not really know where to start. For one thing, we have a pilot project in a high school called Balboa High School predominantly black school, that has six classrooms that are known as open classrooms. The place looks like a pad, big cushions, kids sit on the floor, they are allowed to smoke and often marihuana is present. These kids come and go as they please with oftentimes black militants in charge of the classes.

This is currently going on in our district. This was a well-taught educational program allowing the child supposed to proceed on his own academically, but let me assure you there is very little that is academic, that is going on in this program.

We also have Golden Gate Park, one of the most beautiful parks in the country, a very large park, and our programs going on in the district as far as academic learning, you can find at almost any given time if there is nice weather, class after class out, some of them all day in Golden Gate Park rather than the structured classroom, whereas the children cannot read, they cannot write, they cannot spell, and we have all of these innovative programs going on.

We have the Camp-out program. Week camp programs where children are taken away from San Francisco and often children from the Peninsula, brought up, middle class and an impacted area of children mixed together with counselors.

The problem has been the type of counsellors with the children and lack of supervision. In the meantime, learning has been going down. We are asking you to bring forth Joint Resolution 620 to the floor of the Congress and allow elected representatives to vote the voice of their constituents.

Honorable members of the committee, San Francisco, loved the world over for its cosmopolitan spirit and international goodwill, stands indicted as a city of de jure segregated schools.

How can this be? Judge Stanley A. Weigel, Federal District Judge, ruled in favor of NAACP suit filed against the district.

The suit alleged San Francisco was a city practicing de jure segregation in its schools. This we refute as no child in San Francisco was being refused admission to any public school because of his race, creed, color, or national origin.

Because of housing patterns San Francisco did have some schools predominantly of one of this quadriracial components—Chinese speaking, Chinese, black, and other white.

The judge's decision dealt only with black and white, completely disregarding the Spanish and Chinese communities which are an integral part of the whole.

The decision gave the district 6 weeks to produce a plan for racial balance which disregarded both the Chinese and Spanish school populations. As a result, in spite of the massive busing, many schools that were formerly balanced naturally, became more imbalanced and students now face total reassignment this September for the second time now.

They will face reassignment again. The irony of this entire decision lies in the fact that the NAACP filed an almost identical suit against the district in 1962. Our present mayor, Mayor Joseph Alioto was hired as consulting counsel to defend the district policies at that time. The failure of the plaintiffs to appear on the trial date required depositions which were given by the NAACP president and education chairman.

These depositions completely exonerated the district of all charges of deliberate segregation and stated there was no gerrymandering of boundaries or obligation to transport students from their neighborhood schools.

The suit was dismissed on December 2, 1964, and in 1967 the U.S. Commission on Civil Rights released a report entitled "Racial Isolation in the Public Schools." This report contained inaccuracies and distortions regarding the San Francisco public schools. At that time Mothers Support Neighborhood Schools, the group which I head, did a critical review of the report. It was mailed to President Lyndon B. Johnson, every U.S. Congressman, every U.S. Senator, every Governor, and to the major news media throughout the Nation. It was shocking for us to discover within Judge Weigel's decision the same report "Racial Isolation in the Public Schools" being used as a basis on which the finding of a de jure segregated school system was being established.

And I think if you gentlemen will look back into your records, you will find a copy of this report which we sent to you.

The same report, racial isolation, was the very report that Judge Weigel based his decision on in San Francisco and we were never allowed to present this as testimony into the Federal courts, which is shocking.

Mr. ZELENKO. Mr. Chairman, I offer for the record the Findings of Fact and Conclusions of Laws of Judge Weigel, in which he finds the San Francisco school district to be racially segregated and recites the findings on which he bases that conclusion.

Mr. CELLER. The document will be printed at this point in the record.

(The document referred to follows:)

(*Johnson* v. *San Francisco Unified School District* (U.S. District Court, N.D. of Calif.))

FINDINGS OF FACT AND CONCLUSIONS OF LAW FILED APRIL 28, 1971

[1] FINDINGS OF FACT AND CONCLUSIONS OF LAW. The Court, having considered the voluminous evidence presented by the parties, hereby finds:

1. That public elementary schools in the San Francisco Unified School District are racially segregated.

2. That while only 28.7% of all the children enrolled in the elementary schools are black, 80% of the black children are concentrated in twenty-seven schools out of a total of more than one hundred. The student bodies of these 27 schools range from 47.3% black to 96.8% black. In only two of them are black children even slightly in the minority and in only four are the student bodies less than 72% black. (Plaintiff's Exhibits 1 and 2.)

3. That acts and omissions of the San Francisco Board of Education are proximate causes of the racial segregation.

4. That such acts include:

(*a*) Construction of new schools and additions to old schools in a manner which perpetuated and exacorbated existing racial imblance. (Exhibit "B", Plaintiffs' Reply Brief in Support of Motion for Preliminary Injunction, July

27, 1970. Deposition of William L. Cobb, Ph. D., of July 14, 1970, pages 78–80; Deposition of Laurel E. Glass, Ph.D., of July 20, 1970, pages 22–59).

(*b*) Drawing attendance zones so that racial mixture has been minimized; modification and adjustment of attendance zones so that racial separation is maintained. (Deposition of Laurel E. Glass, Ph.D., *supra*, pages 19–28; Deposition of William L. Cobb, Ph.D., *supra*, pages 51–57; Plaintiff's Exhibits 1–8).

(*c*) Allocating a highly disproportionate number of inexperienced and less qualified teachers to schools with student bodies composed predominantly of black children. (Deposition of Laurel E. Glass, Ph.D., *supra*, pages 48–50; Affidavit of Maureen O'Sullivan, July 17, 1970.)

5. That such omissions include:

(*a*) Failure to accept suggestions offered by school officials regarding the placement of new schools so as to minimize segregation. (Deposition of William L. Cobb, Ph.D., *supra*, pages 78–96).

(*b*) Failure to adopt a policy of consulting with the Director of Human Relations of the School District as to the predictable racial composition of new schools. (Deposition of William L. Cobb, Ph.D. *supra*, page 70.)

(*c*) Prolonged failure to pursue a policy of hiring teachers and administrators of minority races. (Plaintiffs' Exhibit 14.)

(*d*) Failure to take steps to bring the racial balances in elementary schools within the guidelines set by the State Board of Education. (Plaintiffs' Exhibit 1; Plaintiff's Exhibit 21–B, page 25; Deposition of William L. Cobb, Ph.D., *supra*, pages 67–106).

(*e*) Failure to adopt sufficient measures to improve the education of children in predominantly black schools despite the Board's knowledge that education in these schools was inferior to that provided in predominantly white schools. (Deposition of Isadore Pivnick, of July 14, 1970, pages 14–19; Deposition of Laurel E. Glass, Ph.D., *supra*, page 16; Affidavit of Maureen O'Sullian, July 17, 1970).

(*f*) Failure to respond to recommendations regarding integration made at the Board's request by the Stanford Research Institute and by the Report of the Citizens' Advisory Committee to the Superintendent's Task Force Studying Educational Equality/Quality and Other Proposals. (Plaintiffs' Exhibits 26 and 32).

Having found these facts, the Court concludes that segregation which exists in San Francisco's public elementary schools results from state action and is unconstitutional under Brown v. Board of Education, 347 U.S. 483 (1954), as well as under later decisions of the Supreme Court of the United States. Because time is of the essence in vindicating the right of elementary school children in San Francisco to equal educational opportunity, the Court now enters only preliminary findings and conclusions in support of the order today made. The citations to the record by no means exhaust the substantiating evidence before the Court. More extensive findings of fact and conclusions of law will be filed as occasion may arise.

Mrs. LEMLOW. It was shocking for us to discover within Judge Weigel's decision the same report "Racial Isolation in the Public Schools" being used as the basis on which findings of de jure segregation in San Francisco public schools were being established.

Clearly within the same report was also a table showing San Francisco public schools to be among the most highly integrated of the Nation and integrated long before our massive busing program began.

Nathan Glaser writing for Commentary Magazine states a case against busing extremely well when he writes: "Something very peculiar has happened when the main impact on an argument changes from an effort to expand freedoms to an effort to restrict freedoms."

This very important article by Mr. Glaser should be read by every person in this country concerned with the education of young Americans.

I only have one copy but if you want it for the record—have you read it?

Chairman **Celler**. That is in the record already.

Mrs. **Lemlow**. It is excellent and it should be read.

Gentlemen, is it not time for control of our schools to be returned to the people through their elected representatives rather than to have the decisions in the hands of the NAACP and the Federal Court?

In San Francisco, we think it is. We respect President Nixon's statement on racial balance and his desire for Congress to declare a moratorium on assignment of students for racial balance.

In all fairness, however, we must ask how can there be an effective moratorium on busing with millions of children already riding buses involuntarily?

We again urge that this committee bring out House Resolution 620 to the floor of Congress to enable the democratic processes to function.

Only then can we get on with the job of educating all of America's children.

Let us pray.

Chairman **Celler**. Thank you very much, Mrs. Lemlow.

Mrs. **Lemlow**. Thank you.

Chairman **Celler**. The meeting will now adjourn and we will reassemble next Wednesday.

(Whereupon, at 11:55 a.m., the hearing adjourned to reconvene at 10 a.m. Wednesday, May 3, 1972.)

SCHOOL BUSING

WEDNESDAY, MAY 3, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10 a.m., in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Hungate, Mikva, McCulloch, Poff, Hutchinson, and McClory.

Staff present: Benjamin L. Zelenko, general counsel; Herbert E. Hoffman, counsel.

Chairman Celler. The meeting will be in order. Our first witness this morning is Dr. Thomas F. Pettigrew, professor of social psychology, Harvard University, who has participated as an expert witness in a number of school desegregation lawsuits.

I understand he assisted in the preparation of the so-called Coleman report, "Equal Educational Opportunity," and the 1967 study of the Commission on Civil Rights, "Racial Isolation in the Public Schools."

Most recently, he participated in the review of the Coleman report headed by Mosteller and Moynihan. He has published numerous books and articles on the impact of race on education.

With that fine reputation, Dr. Pettigrew, we welcome you this morning, and we are glad to hear your statement.

STATEMENT OF PROF. THOMAS F. PETTIGREW, HARVARD UNIVERSITY

Mr. Pettigrew. Thank you, sir. I appreciate this opportunity, Congressman Celler, to testify this morning before your subcommittee.

I wish to oppose, in the strongest possible terms, the proposed constitutional amendment regarding so-called neighborhood schools, the proposed bill, H.R. 13915, and H.R. 13916, to impose a moratorium on desegregation, transportation and all other legislative attempts to declare, virtually, null and void the 14th amendment as it applies to race and public education.

At previous sessions of these hearings, you have heard an array of hard facts about this issue—for example, that schoolbuses travel approximately 2 billion miles annually in America carrying over 40 percent of the Nation's schoolchildren without apparent harm; and that only a tiny fraction of this travel is for the integration of schools—indeed, some of it is still designed to perpetuate blatant racial segregation. I believe these and other facts completely undercut the assumptions and findings upon which this legislation is founded. And before I begin my principal testimony on the value of interracial schools themselves, I would like to add two further specific considerations.

First, the often-heard charge that busing is too dangerous to allow is, fortunately, counter to the facts. The Pennsylvania Human Relations Commission has recently found that in that State over a recent 5-year period children were over three times safer per mile riding than walking to school.

Second, the so-called neighborhood school appears to be less of an educational asset than a parental convenience. The great majority of American schoolchildren do not now attend institutions that can be reasonably described as "neighborhood schools." Nor do I know of any rigorous evidence whatsoever that supports the sweeping claims made for such schools since the advent of public school desegregation in 1954. I am aware that my friend, Dr. Nolan Estes, of Dallas, testified before you earlier that he had such evidence; but a check of what he had in mind impresses me as neither rigorous nor relevant. If a school must remain small to be "neighborhood-based," then like the corner grocery store of yesterday, it is probably an anachronism and highly inefficient. School and district consolidation throughout rural America over the past half-century provides overwhelming evidence that a substantial size must be attained to furnish first-class education.

Turning to the benefits of interracial education on which we do have evidence, I believe they can be classified under three rubrics: academic achievement, postschool success, and interracial attitudes and behavior. Let me consider each of these briefly.

(1) Academic achievement. We must, at the onset, draw a sharp distinction between truly integrated facilities and merely desegregated ones. A desegregated school refers only to its racial composition. It may be a fine school, a bad one, perhaps a facility so racked with conflict that it provides poor educational opportunities for both its white and black pupils. Desegregation, then, is the mere mix of bodies without reference to the quality of the interracial interaction. While it is a prerequisite for integration, it does not in itself guarantee equal educational opportunity.

By contrast, an integrated school refers to an interracial facility which boasts a climate of interracial acceptance. A vast body of social science research shows that interracial acceptance is most easily generated in any institution, educational or otherwise, when the two groups share equal status in the situation and work for common goals. In addition, competition for the goals should not occur between the groups; and the intergroup contact needs the support of authorities and law. Such integration-inducing conditions are far easier to achieve if tokenism is not involved, if faculty as well as students are substantially mixed, if socioeconomic diversity exists across racial lines, and if the interracial schooling is begun at the initial, elementary school level.

On the socioeconomic diversity point, I would like to remind the subcommittee that recent research strongly suggests that social class is an especially crucial factor. The findings of an array of different studies, including the Coleman Report on Equal Educational Opportunity—

but not just the Coleman report, a whole body of studies—demonstrate convincingly that schools with significant numbers of middle-class children have achievement benefits for less-advantaged children regardless of race. Put bluntly, children of all backgrounds tend to do better in schools with a predominantly middle-class milieu; and this trend is especially true in the later grades where the full force of peer-group influence is felt.

Repeated reviews of the research literature find that survey studies, such as the Coleman report and others, suggest that the average achievement of black American children is raised by interracial classrooms enough to close from one-fourth to one-half the average racial difference found in achievement scores. This improvement may seem minimal at first glance but it is not, for it represents for many the important difference between functional illiteracy and marketable skills. Some may wonder why integrated classrooms do not close the whole racial gap in achievement scores, but that is simply asking too much of the schools. No responsible spokesman ever said that was possible without major alterations in the black child's opportunities outside of school.

Not all studies will show these positive achievement effects, of course, for many interracial schools are merely desegregated—not integrated. There are also technical problems of student selection and research methods that vary across studies. Yet the bulk of the evidence available now points to a substantial increment in black achievement from attending interracial classrooms. And while more data are welcome on the subject, this mounting evidence stands in marked contrast to the dearth of data that support the assumed harm from busing and leaving the neighborhood, or that support the efficacy of segregated compensatory education.

(2) Postschool success. In our obsession with test scores, we often forget the most vital measure of education for both the pupil and society is postschool success. Here the benefits of integrated schooling are even more obvious. Consider where the 111 black high school graduates of last June who participated in Boston's suburban busing program (METCO) are now. Among the 95 located, 71 percent attend 4-year colleges and universities, 12 percent attend junior colleges, and 16 percent are doing advanced work in either preparatory schools, business schools, or career training programs—Boston Sunday Globe, March 26, 1972, page A-65. In other words, virtually all of them have gone on to advanced training from the interracial school program in Boston.

More controlled data are equally impressive. Robert Crain has shown that black American adults trained in interracial schools as children have better jobs and higher incomes than comparable blacks trained in segregated schools—"School Integration and Occupational Achievement of Negroes," American Journal of Sociology, January 1970, 75 pages, 593–606. These differences in income cannot be accounted for by educational and social background differences. Instead, they appear to be a result of blacks with integrated schooling later having more contact with white adults—an interesting phenomenon that leads us to discuss the third type of benefit of interracial schools; namely, racial attitudes and behavior.

(3) Racial attitudes and behavior. If interracial education is begun in the initial grades, numerous studies show that more positive racial attitudes and behavior result among both black and white children. Note in reverse that the considerable tension and conflict found in some desegregated schools in recent years tend to be at the high school level and among children who earlier experienced only segregated training. In other words, we train them for segregation in the lower grade, and throw them together in the high school, and should we be surprised that they have trouble getting along?

Attitudinal benefits of integration also emerge in an extensive study undertaken in 1966 by the U.S. Commission on Civil Rights as part of its broader investigation of racial isolation in the public schools (1967).

Representative samples of white and black adults in northern and western cities were interviewed. Black adults who themselves had attended integrated schools were found to have more positive racial attitudes and more often to send their children to interracial schools than comparable black adults who attended only segregated schools.

Similarly, white adults who experienced as children integrated schooling differ from comparable whites in their greater willingness to reside in an interracial neighborhood, to have their children attend interracial schools, and to have black friends. For both black and white adults, then, integrated education did, in fact, prepare its products for interracial living as adults.

Consequently, I would like to stress this morning that I believe that social research strongly indicates that integrated schools are one of the chief mechanisms our society has so far devised for the amelioration of racial prejudice.

It is sometimes patronizingly asserted that integrated schools are something to be accomplished for black children. But integrated education is, in my view as a social psychologist and race relations specialist, an essential for all children.

In these unsettling time of conflict, I believe it is not an exaggeration to maintain that integrated education is an essential for the future viability and harmony of our country.

SUMMARY AND CONCLUSIONS

In summing up, I would like to counter a number of misconceptions that have marked the debate on this subject. Consider the notion that elementary children should not, under any circumstances, be transported to school. In fact, school officials throughout the country who now bus such children by the hundreds of thousands, report that the younger children are the easiest to bus, the junior high children the most difficult.

Moreover, walking to school is most dangerous for young children. Finally, we have just noted that by far the greatest benefits of integrated education accrue to children, black and white, who begin their interracial experience in the earliest grades.

For Congress to pass legislation that would prohibit court-ordered transportation for integration in the first six grades constitutes, then, an unwarranted restriction that severely limits integration's advantages and makes it unlikely we can ever create truly integrated schools at the higher grades.

Consider, too, the simultaneous attack on busing and metropolitan approaches to integration by the administration, and the assumption that the desperately needed metropolitan approach necessarily entails far more busing.

The truth of the matter is that the two issues are separable, that if one is truly against excessive busing but desires maximal integration, he must, to be consistent, support such a metropolitan approach as advanced by the Richmond, Va., School Board and the NAACP legal defense fund.

By my calculations, a systems approach to the design of the busing routes and the school boundaries would mean less, or at least no more than at present, busing for Richmond and many other metropolitan areas.

This is true in part, because present central city and suburban boundaries often separate virtually all-black and all-white schools that are within walking distance of each other. To oppose both remedies, then, is simply to turn the clock back a generation to the discredited "separate-but-equal" doctrine—and I, for one, have no wish to relive the last generation's severe racial conflicts over again.

Busing, after all, is not an educational technique as such: it is only a means to an end. To regard it as a direct technique of public education is like saying that your occupation is "commuting."

Obviously, you commute in order to reach your job, and a long trip is compensated by employment you value. Consequently, the question is not "busing" per se, but whether the bus ride allows your child to receive a better education than he can receive at a nearer school.

In short, I agree with Prof. Kenneth Clark who long has argued that it's what's at the end of the busline that counts. Busing, then, is a fake issue: the real issue is the quality of our public schools.

I hope the Congress, then, will put its collective wisdom to bear on measures—such as special Federal funding for metropolitan cooperation in education—to improve schools to the point where parents will clamor to have their children bused to them.

As you well know, many hard-core segregationists have seized on busing and neighborhood schools as more respectable means than naked racism to fight racial integration. But not all of the antibusing citizens are segregationists; and I am convinced their fears would be eased if the Congress provided positive leadership at this point, and fashioned educational improvements that would guarantee quality education for their children.

On this note, may I close my statement by observing that these legislative proposals not only attempt "to change the rules" of American democracy on black Americans but on all Americans who want desperately to believe in our Constitution and the American dream of equality of opportunity.

As a race relations specialist and as a concerned citizen, I must honestly confess that I fear for the viability of our Nation if these or similar proposals are enacted.

Thank you again for this opportunity to appear before you.

Chairman CELLER. Professor Pettigrew, Joseph Alsop, in an article dated March 20, refers to a recent reanalysis of the Coleman report in which you were coauthor.

According to Mr. Alsop, this reanalysis shows that school desegregation has only trifling effects in improving the educational attainment of black ghetto children. I take it, you disagree with that. Would you care to comment?

Mr. PETTIGREW. Yes, and I am glad you brought up Mr. Alsop's column in the Washington Post of March 20. Mr. Alsop's column is simply false from start to finish. He quotes two of my colleagues, and they never said what he quotes them as saying.

They have both publicly denied having said it. He distorts the conclusion of the Mosteller and Moynihan book. He distorts my position, et cetera. It is an incredible column. "Harvard Swallows Hard," was the headline, meaning Harvard professors had changed their minds about busing.

Nothing could be further from the truth. The principal conclusion, as I read it, although I am only a coauthor of one of the chapters in the book, but as I read the principal conclusion of the reanalysis of the Coleman data and other data in the Mosteller and Moynihan volume, it is that the Coleman report and similar reports are correct in all of their major conclusions.

We found many errors, minor statistical errors and disagreements of interpretation, but none of these changes in any way altered the major conclusions of the report which I have been testifying to and which many other people, including Professor Coleman himself, have testified to.

Chairman CELLER. We have before us the so-called busing moratorium bill. Would you care to comment on that bill?

Mr. PETTIGREW. Yes, sir. I am not a lawyer, of course. I don't understand the moratorium bill. I don't understand how you can have a moratorium on constitutional rights, but I leave that to lawyers to figure out. But, from the social science point of view, particularly in my interest in public opinion, I can think of nothing worse or nothing better, I might say, for generating greater hostility, to generating resistance to further racial change in our country.

I have studied, over the past 20 years, the racial attitudes of white and black Americans, particularly white Americans, and, particularly, white southern Americans, of which I am one, and we find that the major factor that causes resistance in white public opinion is for the Federal Government and for State governments, in other words, people in high authority, to legitimate racism, to legitimate resistance to change.

When they do so, the opinion resistance changes greatly. In other words, that for change to be accepted by the public, the public does not so much have to desire the change, as it has to feel that it is inevitable.

As soon as there is important leadership, particularly, say, the President of the United States who suggests or legitimates that it is not inevitable, and it isn't even right, and we won't have it, that is when you get the ground swell of resistance such as we are seeing now.

There is nothing new about this. Since surveys came in, public opinion polls in the 1930's, I can demonstrate that resistance in waves over the years in the last 40 years in the United States have also been directly a result of some legitimation of resistance to change. Incidentally, race riots in northern cities did not lead to deteriorating racial attitudes of whites. It is the function of negative leadership that causes the trouble.

If we have a moratorium, I think that signals to whites this isn't the thing to do, this isn't close to the values of our country, and we will have a much more serious problem of creating racial change in the future.

Chairman CELLER. Mr. Hungate?

Mr. HUNGATE. Thank you, Mr. Chairman.

Dr. Pettigrew, how many children do you have, if I may ask?

Mr. PETTIGREW. I have one.

Mr. HUNGATE. Out of school or in school?

Mr. PETTIGREW. He is in school.

Mr. HUNGATE. Where is that?

Mr. PETTIGREW. He is in school in Cambridge, Mass., in a classroom with 30 percent black. I went to some trouble to make sure of that fact.

Mr. HUNGATE. You say, in your testimony, that a school must remain small to be neighborhood-based; unlike the corner grocery store of yesterday, it is highly inefficient. Do you recognize other objectives in public education besides efficiency?

Mr. PETTIGREW. Yes, and I think those objectives, too, are not well met by neighborhood schools.

Mr. HUNGATE. Is it correct that in some cities, such as in New York, they have sought to consolidate schools?

Mr. PETTIGREW. You mean decentralization of smaller districts?

Mr. HUNGATE. Yes; the smaller units.

Mr. PETTIGREW. That has not particularly affected the school boundaries of particular schools, but they did decentralize by districts. I might add, that metropolitanization, such as advocated by the Richmond, Va., School Board, does the same thing. There are three districts now.

Under the metropolitan plan put forward by the Richmond City School Board, there would be seven districts. They would be much more desegregated than what we have now, but in fact the subdistricts would be smaller than what we have.

Mr. HUNGATE. Then, you recognize in all cases an increase in size is not necessarily desirable.

Mr. PETTIGREW. It depends upon what size you are talking about, obviously. I think many of our school districts and schools are still far too small. We have 18,000 school districts in this country, and even the richest country on earth is not able to afford 18,000 first-class ones, and we don't.

Mr. HUNGATE. Referring to your statement, on page 2, you urge that we draw a sharp distinction between truly integrated facilities and desegregated ones. We have had testimony from other witnesses, who support what I take to be very much the same position that you take, but do not concede there is such a distinction. On the other hand, you would urge that there is a distinction between desegregating and integrating.

Mr. PETTIGREW. I agree. I believe that distinction is confused by people on all sides, and that it would help enormously if we kept it in mind.

Mr. HUNGATE. I apologize for leaving during your testimony because I was called away, but on page 2, you say that something better than tokenism should be involved; that faculties, as well as students, should be substantially mixed, and that the best situations would be where socioeconomic diversity exists across racial lines.

Is there any way we can reach that through what we are talking about?

Mr. PETTIGREW. Yes, sir; you cannot reach it through the neighborhood school approach, and no busing, of course, but what I am getting at there is if you have a school where all of the whites in the school are middle class, and all of the blacks are working class, there are some examples of it on Long Island, for instance, it is extremely difficult to integrate as opposed to desegregate that school because you have compounded race and class. So very quickly, given America, we define everything in race terms, and we rather deny things of class differences.

But in point of fact, much of what is called race conflict in schools is really class conflict. So, I want to make sure there are some black middle class, as well as white working class.

Mr. HUNGATE. Doesn't that perhaps require more of a black middle class than we may now have? May there not be a shortage of black middle class?

Mr. PETTIGREW. You are quite right, but fortunately, that is, I think, the biggest single gain for black America. Since 1940, by my calculations, only 5 percent of black American families were middle class in income and education terms in 1940; and today, in the same terms, I would say about 34 percent are.

So there has been an enormous increase. Of course, the black population has doubled in that time, too. So, the number of middle class families has gone up by better than six, about 14 times in absolute numbers since 1940.

That is, people who say there have been no civil rights progress of the last 30 years overlook some of these things and, certainly, one of them is the very rapid development of the black middle class. You are still right: that percentage is still only half the middle class percentage for whites.

Mr. HUNGATE. If we had a free hand at integration, we would still be short half of that socioeconomic middle class you are looking for.

Mr. PETTIGREW. If we had a free hand, we could make sure there was black middle class in the schools. That is all we would need, something to break up that correlation between race and class.

Mr. HUNGATE. You have a child in a racially integrated school?

Mr. PETTIGREW. And classroom.

Mr. HUNGATE. Is that child bused to school?

Mr. PETTIGREW. No, he isn't. I wish he were. I have to drive him. I would prefer busing, but it is not provided in Cambridge.

Mr. HUNGATE. Thank you very much for a very comprehensive statement.

Chairman CELLER. Mr. McCulloch.

Mr. MCCULLOCH. Dr. Pettigrew, I am glad you were able to come this morning, after we were forced to postpone a prior hearing date. I think you have made a forthright and incisive statement on one of the most difficult problems facing America.

I would like to tell this little personal story, if I may. I come from one of the foremost agricultural regions in America, and my district is only a few miles from the center of Dayton, Ohio. We began to transport students by buses in our public schools in Miami County in 1918 or 1919, and there we have not been presented the problems, Mr. Chairman, that I have heard described here by so many people who speak from fear and not from long experience and reason.

Racial segregation is one of the real problems of our time that we must solve, and I am glad you are here to guide us.

Mr. PETTIGREW. Thank you, sir.

Chairman CELLER. Mr. Poff.

Mr. POFF. No questions.

Chairman CELLER. Mr. Hutchinson.

Mr. HUTCHINSON. No questions.

Chairman CELLER. Mr. McClory.

Mr. MCCLORY. Thank you, Mr. Chairman. On page 2 of your statement, in referring to the findings in the Coleman report which are perfectly valid, you state that when minority children have an opportunity to attend a middle-class school, they gain academically. But, in connection with some of the busing proposals, the problems seem to arise when you send middle-class children by bus to schools that are inferior in educational quality and their educational opportunities are thereby decreased.

As a matter of fact, Dr. Coleman—as I recall in my conversation with him—admitted that there was not a corresponding drop, but nevertheless a significant one, in educational achievement of the middle-class child who was sent to the inner-city school.

Now, that seems to me to be the crux of this sensitive issue, this whole busing controversy. Do you have any suggestions as to how we can meet that?

Mr. PETTIGREW. Yes, I am glad you raised it, because I think it is a real issue. But, first, it is not quite, maybe, as critical as you might think, but one thing in the Coleman report is that it turns out schools are a lot more crucial for poor children than for middle-class children. Schools seem to make a difference hopefully—as an educator, and I make my living at it, but they don't make the difference we would like to see them make for middle-class students, of white and black, largely because they learn at home. And if their schools are not what they ought to be, they are not nearly so damaged as a poor kid who goes to a bad school because he either gets it in the school or he does not get it. So one of the major findings of the Coleman report was that schools were extremely important for disadvantaged.

But, there is still an issue of these poor schools in the inner city. Actually, I am against those poor schools in the inner city for everybody. I think if the busing issue brings out the fact that these schools have been providing ridiculously bad education for black children, and now whites get excited about it because their kids may actually go to these schools, that might be one positive thing to come out of this.

I don't think simple compensatory education, as suggested by the administration, can change those schools effectively. The President, several years ago, said compensatory education had failed. I agreed with him several years ago, as opposed to his statement now. They have failed.

I can't find evidence, except after initial improvement, and it drops away after a year. So, I would like to do away with a lot of those schools. This is what I meant when I referred to that; I would like to see the Congress put attention to whole new approaches to education and, particularly, metropolitan cooperation, not necessarily consolidation, and one of my favorite schemes would involve, it is not a panacea, but many cities would be helped by metropolitan educational parks much like college campuses, that would draw from both inner city and suburbs, and provide such a level of improved facilities in education that people will fight to have their kids bused there.

I don't blame a parent for objecting to have his child bused to a bad school. I would, too. But, that is the issue, the bad school, not the busing, and it seems to me we have made the case on the wrong part of the horse and cart.

Mr. McClory. Compensatory education program for bad schools are certainly going to enhance the quality of education. That is my experience in my community. The Follow-Through program has been tremendous, and it has enabled the disadvantaged child, over a period of 2 years, to come up almost to the level of the children in the other schools.

Mr. Pettigrew. I am glad to hear that, sir. Where are you from?

Mr. McCory. The schools of the Follow-Through program that I am talking about are in Waukegan, Ill.

Mr. Pettigrew. I would love to be able to testify differently.

Mr. McClory. There is a clamor for children—black and white—to get into that school. Yes, even the white students want to be bused to this predominantly black school because of the success of the program.

Mr. Pettigrew. I would like to look into it. In general, I think you are lucky. In general, they are not working very well, unless they go along with integration. There is data of compensatory——

Mr. McClory. These are all integrated above these first few grades.

Mr. Pettigrew. Yes.

Mr. McClory. I don't want to prolong my questioning. You have made a complete statement, and I know you bring a great fund of knowledge and talent to bear on this problem. I thank you, sir, very much.

Chairman Celler. Thank you very much, Dr. Pettigrew. You have made a very fine contribution.

Mr. Pettigrew. Thank you, sir.

Chairman Celler. We appreciate your coming.

The Chair wishes to announce to the members we have been ordered to appear in the rotunda of the Capitol to pay tribute to the memory of J. Edgar Hoover, and we are supposed to be there at 10:45.

We have still three witnesses who have come from long distances. One comes from Pasadena, Calif.; one from Richmond, Va.; and one from Greensboro, N.C. I don't think it would be fair to postpone their testimony beyond today, and I would make a suggestion that we recess and come back at 11:30. Is this agreeable, gentlemen? We will hear from the next witness at 11:30.

We will now recess until 11:30, and the following witnesses—Mr. Henry Marcheschi, Mr. Henry L. Marsh and Mr. J. R. (Joe) Brown—

might return here at 11:30. The committee will now be in recess until 11:30.

(Brief recess.)

Mr. HUNGATE (presiding). The committee will be in order. The next witness will be Mr. Henry Marcheschi, member, Pasadena Board of Education. We apologize to all of the witnesses for the delay.

STATEMENT OF HENRY MARCHESCHI, MEMBER, PASADENA BOARD OF EDUCATION

Mr. MARCHESCHI. Thank you for the opportunity to appear before you today. I would like to start my testimony with a quotation. On February 4, 1970, Senator Abraham Ribicoff, on the subject of forced busing, said:

> The time has come to quit kidding ourselves, to stop the illusions and stop all of the theories and raising of false hopes that are, in turn, dashed to the ground. I am sick of theories. I am sick of sociologists and educators. It is time to bring good common sense to the problem.

I am a member of the board of education of the Pasadena Unified School District. As you are aware, Pasadena is one of the few Northern cities whose school board implemented, in October 1970, a massive forced busing program after deciding by 3-to-2 vote not to appeal a Federal district court mandate.

Of interest is that the Pasadena decision was based on the failure of the school district to achieve racially balanced schools because, in the words of the court, it had "used a neighborhood school policy and a policy against forced crosstown busing." Pasadena had always maintained a unitary school system, and to the extent racially imbalanced schools existed, as indeed they did, they existed primarily as a result of housing patterns.

Three of my four children attend Pasadena public schools and have been or are being bused across the city to schools in predominantly black neighborhoods.

I have been and continue to be an avid student of the legal, moral, educational, and sociological dilemmas that face our Nation as we seek to guarantee equal educational opportunity to all children. My commitment has brought me together with people transcending markedly diverse political, philosophical, and ethnic spectrums—Republicans and Democrats, liberals and conservatives, whites and blacks. In the latter regard, I have been asked by two leaders of the Pasadena black community to bring to you today written statements outlining their views on the forced busing issue, and I respectfully provide these statements for the record.

As a result of the aforementioned firsthand experiences, study and involvement, I have reached a number of conclusions on forced busing.

I am convinced forced busing to achieve racial balance is paradoxically counterproductive and, in fact, a prime impediment to finding truly viable ways of achieving equal educational opportunity for all children. Indeed, forced busing falsely promises what it cannot possibly deliver.

Thus, it is a cruel hoax being perpetrated on minority parents by those who would achieve forced integration at any cost, irrespective of dire educational consequences and irrespective of the true desires of a significant number, if not the majority, of black and other minority parents.

I desire to share with you, today, some of my experiences and findings which have brought me to the aforementioned conclusions. I also desire to share with you some thoughts on what I respectfully urge should be the thrust of congressional action at this time.

First, let us take a look at the Pasadena experience. What can we learn?

I submit for the record as exhibit A a separate analysis refuting the U.S. Civil Rights Commission staff study on Pasadena recently presented to this committee. The staff study alleges a successful Pasadena integration program. The best that can be said about the study is that it is a shallow and inaccurate report and, as noted in a letter from the editor of the Pasadena Star-News included with the analysis, the study fails to properly reflect even the position of Pasadena (forced busing) plan advocates.

(Exhibit A referred to by the witness follows:)

EXHIBIT A

ANALYSIS OF U.S. COMMISSION ON CIVIL RIGHTS TESTIMONY REGARDING PASADENA UNIFIED SCHOOL DISTRICT FORCED BUSING PROGRAM

On March 1, 1972, the Reverend Theodore M. Hesburgh, Chairman of the U.S. Commission on Civil Rights, testified before Subcommittee No. 5 of the House Committee on the Judiciary against House Joint Resolution 620, a proposed Constitutional amendment to forbid school assignment of students on the basis of race.

A fundamental objective of Reverend Hesburgh's testimony was to convince the Subcommittee that "desegregation involving busing can work given half a chance." He supported his conclusion with staff studies deriving from an effort whereunder "the Commission early this year sent experienced members of its staff to five cities in which busing has been used extensively to desegregate schools." The school districts were Tampa-Hillsborough, Florida; Pontiac Michigan; Winston-Salem and Charlotte-Mecklenburg, North Carolina; and Pasadena, California. A copy of the staff survey covering each school district was included as part of Reverend Hesburgh's testimony and submitted for the record.

This paper analyzes the staff survey on the Pasadena Unified School District titled "Public School Desegregation in Pasadena, California."

The analysis indicates the Pasadena survey contains gross errors of fact and omission. In the words of the editor of the *Pasadena Star-News*, "The best that can be said of the Civil Rights Commission report on the Pasadena Plan is that it is shallow: so shallow, in fact, that it fails to properly reflect even the position of Pasadena [integration] plan advocates. [See letter at p. 1423.]

The following paragraphs are intended to cite examples of error in the Pasadena survey and thereby substantiate the conclusions reached above. No attempt has been made to cover all errors, and those cited are in the order which they appear in the survey and not necessarily in order of the relative seriousness of the error.

1. *(page 1, paragraph 2)*

The survey cites number of students and ethnic breakdown at initiation of forced busing plan but omits reference to precipitous drop of White students to the present time, approximating almost one out of every four since the start of forced busing.

2. *(page 2, paragraph 2)*

USCCR

"On one occasion, white elementary students whose school was closed from 1967 until 1969 were bused past three nearby majority Black schools, all of which had vacancies, to a distant all-white school."

Fact

The school to which the survey referred is Arroyo School which is located in Southwest Pasadena. The school was merged with Garfield School and in traversing the distance between Arroyo and Garfield schools, no predominantly Black schools would have been passed. Further, Garfield was not a "distant school" and not an "all white" school. In the year before the merger of the two schools, Garfield had a population of 343 students with a racial makeup of 90 Caucasians comprising 26.2%, 125 Blacks comprising 36.4%, and 128 Spanish surname and other minorities comprising 37.3% of the total school enrollment.

3. (page 2, paragraph 3)

USCCR

"Assignments to junior high school also had been made on the basis of race. For 20 or 25 years, students from one all-white area, Linda Vista, were transported to three all-white or majority white junior high schools to avoid assigning them to a majority black school, Washington Junior High, which was much closer to their neighborhood."

Fact

Up until 1961, La Canada, California, was a part of the Pasadena Unified School District and junior high students from Linda Vista area attended La Canada Junior High School, which in driving distance was closer than Washington Junior High. Because of the natural isolation of the Linda Vista area due to a deep arroyo, in 1961 the Linda Vista students were assigned to McKinley Junior High School which, in the opinion of the school board, was also closer in driving distance than Washington Junior High School.

4. (page 2, paragraph 3)

USCCR

"In 1969–70, 48 percent of Pasadena's junior high students attended Washington, composing a student body which was 88 percent black and 2 percent white."

Fact

In 1969–70, Washington's total enrollment was 1,184 students, only 17% of thee total junior high school enrollment, which was 7,102 students.

5. (page 3, paragraph 1)

USCCR

"The Pasadena school board made some attempt in the 1960s to achieve better racial balance in its three high schools, two of which were majority white. Changes in attendance zones during the same period, however, only increased racial imbalance in the schools."

Fact

In the year immediately prior to forced integration, the ethnic breakdowns of the three high schools were as follows: Blair—58% White, 24% Black; Muir—48% White, 37% Black; Pasadena High School—82% white, 12% Black. Conveniently omitted from the survey is the fact that during the 1960's, Black students from Muir were encouraged to voluntarily attend either Blair or Pasadena High School to reduce the percentage of Blacks at Muir, and the failure to achieve more balanced distribution was due to the totally voluntary desires of Black students, not school board action.

6. (*page 3, paragraph 3*)

USCCR

"The court ordered the Board to submit a plan by February 16, 1970, which would include measures to desegregate school faculties and staffs, provisions for the location and construction of facilities in such a way as to reduce segregation, and a system of pupil assignments that would result in no school having a majority of minority students by the 1970–71 school year."

Fact

The report conveniently omits the fact that the percentage of White students in the school district has dropped from majority of 58.3% the school year preceding the forced busing plan to a minority position of less than 50% at the time the survey was conducted, thus making adherence to the court mandate a practical impossibility.

7. *(page 5, paragraph 1)*

USCCR

"The four school areas are drawn so that they run from east to west. Hopefully, this will provide some sort of permanence to the balancing of racial and ethnic populations within the areas."

Fact

At the time the survey was conducted, the school district was already considering redistricting of school attendance areas because of the drastic shift in ethnic populations of certain areas since the advant of the forced busing program.

8. *(page 5, paragraph 2)*

USCCR

"Under the plan, no elementary school would have a White enrollment of more than 62 percent or less than 47 percent."

Fact

At the time the survey was conducted, not a single one of the school district's 27 elementary schools met this criteria! In October, 1971, prior to the survey, the white enrollment for *all* elementary schools was already only 44%, a far cry from the 47 to 62% implied by the report!

9. *(page 6, paragraph 1)*

USCCR

"It was predicted in the plan that the four junior high schools would have student bodies ranging between 53 and 60 percent white, 28 and 33 percent black, and 7 and 18 percent other minority."

Fact

At the time the survey report was written, the four junior high schools had student bodies which were 50% White and 37% Black, a considerable difference from the ethnic ratios implied by the report.

10. *(page 6, paragraph 1)*

The survey states that certain plans existed to racially and ethnically balance the high schools, including phasing out of Blair High School and creation of an educational park. No such plans existed at the time the report was written, having long before been determined unfeasible by the school board.

11. *(page 6, paragraph 3)*

USCCR

"Until 1968 the board had allowed free choice, permitting both black and white students to escape from minority schools."

Fact

The "freedom of choice" plan did *not* allow White students to escape from minority schools since transfer was possible only if the racial balance of the receiving school was improved!

12. *(page 8, paragraph 1)*

USCCR

"The ease with which desegregation was implemented in September, however, was in large part the result of school board and community organizations' efforts to explain and promote the plan."

Fact

The relative "ease" was primarily due to the responsible actions of busing opponents who chose to vent their differences at the ballot box rather than by demonstrations or physical harrassment.

13. *(page 9, paragraph 1)*

USCCR

"School officials, parents, and students interviewed by Commission staff said that they believed that the ease with which the plan was initially put into effect was the result of the widespread public support for the plan."

Fact

That there was and is no widespread public support for the plan is evidenced by (1) the precipitous White flight that has occurred since the plan's implementation; (2) an election to recall the three board members who supported the plan which, although not successful, lost by an extremely narrow margin; (3) that a school board member strongly against forced busing was subsequently elected to the school board with a 57% landslide majority; and (4) opposition to the Pasadena Plan by the community's only White and only Black newspaper.

14. (page 9, paragraph 1)

USCCR

"The plan even had the editorial support of the *Pasadena Star-News*, although the paper clearly was not completely behind the desegregation of the schools."

Fact

The position of the newspaper was exactly opposite to that alleged by the survey, as indicated by a letter to the editor of the *Pasadena Star-News* attached hereto.

15. (page 9, paragraph 2)

USCCR

"The busing required under the plan was, and remains the most controversial aspect of Pasadena's school desegregation efforts."

Fact

Opponents of the Pasadema forced busing plan have clearly and repeatedly made clear their objections are not to busing but to compulsory assignment of students to schools other than their neighborhood schools on the basis of race. This was repeatedly made clear to the U.S. Civil Rights Commission representatives who conducted the survey.

16. (page 10, paragraph 1)

USCCR

"The district received approximately $228,000 in Federal funds during the past two school years, which more than offsets the cost of busing."

Fact

The report conveniently omits that the Federal funds were Public Law 874 funds which were intended to be used for educational expenses rather than being used for forced busing expenses. Busing costs are over $1,000,000 per year.

17. (page 10, paragraph 4)

USCCR

"Most of those people whom Commission staff interviewed agreed that parental reaction to the Spangler decision and to the plan was much more vehement than the student reaction."

Fact

There is absolutely no objective basis on which to imply that student reaction would have been favorable had it not been for the objection of the parents.

18. (page 11, paragraph 1)

USCCR

"About 63 percent of the black community and 50 percent of the white community voted in the election held in October, 1970."

Fact

Not a single precinct of the Black community had anywhere near a 63 percent turnout, and the Black community as a whole turned out approximately 50 percent of its voters.

19. (page 11, paragraph 1)

USCCR

"Most of the adult hostility was from white residents in Pasadena. There was an attempt to recall the three school board members who had voted against appealing the District Court's order. . . . The incumbents won in a close election, with 52, 53 and 56 percent of the vote."

Fact

The incumbents did indeed win in a close election, but with 50.71, 51.2 and 51.8% of the vote!

20. (page 11, paragraph 3)

USCCR

"One 'danger' of desegregating public schools is that often it results in a white exodus ('white flight') from the school district. Pasadena seems to have escaped extensive white flight, although it is too soon to know whether or not the white population will remain stable."

Fact

Of all the errors of the survey report, this is the most blatant. The U.S. Civil Rights Commission staff member was provided statistics outlining in detail the precipitous White flight which has occurred in the Pasadena school district since the advent of busing. In short, the data revealed that one out of four White students have left the school district in the one and one-half years the forced busing program has been in effect. The data showed an even more ominous exodus at the elementary school level where schools have experienced up to 25% loss of White enrollment in the *single year* between the advent of forced busing and the beginning of the next school year.

21. (page 12, paragraph 1)

USCCR

"During the first year of desegregation, Pasadena's student population dropped by approximately 2,000."

Fact

The white drop was *2,212* students which comprised 12.4% of the prior year's total White students.

22. (page 12, paragraph 1)

USCCR

"The population had been declining by approximately 1,000 pupils annually for the past several years. This was due in part to layoffs in the aerospace industry, which forced families to move. A declining birthrate is another factor."

Fact

There is no objective basis on which to attribute the prior year's reduction to the factors cited. If any correlation exists, it is that of increasing White exodus prior to forced busing as the percentage of minority students in the school district increased and as the anticipation of a forced racial balance plan increased.

23. (page 12, paragraph 2)

USCCR

"It is interesting to note, however, that some of these students returned to the Pasadena system for the 1971–72 school year after seeing that integration was not as calamitous as they had feared. The rate of student population decline has slowed between the 1970–71 and the 1971–72 school years."

Fact

There is absolutely no objective basis on which to imply that White students are returning to the Pasadena school system. In fact, the rate of White decline was 11.5% the second year of forced busing, compared to 12.4% the first year. ***Since it had been hoped that the large majority of parents objecting*** to forced busing ***would have withdrawn their children the first year***, the continued high rate of White decline the second year is considered even by busing proponents most ominous. To even imply things are better because "the decline has slowed" is a gross misrepresentation.

24. (*page 12, paragraph 3*)

USCCR

"Many officials and teachers feel that most parents now accept integration."

Fact

The statement is in part true since the majority of parents never rejected "integration." It is also true, however, that most parents do not accept forced busing to achieve racial balance, as evidenced by the significant majority gained by an anti-busing board candidate in April, 1971, the last time the voters had a chance to express their will on the subject, and the continued exodus of White students.

25. (*page 13, paragraph 3*)

USCCR

"Teachers and administrators believe that it is too soon to know if educational achievement has improved. They have not noticed any decline, however."

Fact

State-mandated test scores have dropped substantially in the Pasadena school district for a considerable time, including the years following forced integration. While the decline in the last two years cannot be directly attributed to forced integration, to say there has been no decline is simply a misstatement of fact.

26. (*page 15, paragraph 2*)

USCCR

"The rate for all forms of incidents—personal fights, vandalism, etc.—is lower than it has been in six years."

Fact

The school district kept no records of incidents in the schools prior to forced integration and is therefore unable to make comparisons of incidents since forced integration with prior years. However, school officials and the Pasadena police agree that incidents, including crimes against persons and property, increased substantially during the first year of integration from prior years and have since generally subsided to a level approximately that of the school district as a whole before forced integration. However, certain schools which were relatively free of incidents prior to forced busing now experience a high incident rate, thereby giving rise to increased racial tensions and hostilities at these certain schools.

STAR-NEWS,
Pasadena, Calif., April 27, 1972.

Mr. HENRY MARCHESCHI,
President, American Telecommunications Corp.,
El Monte, Calif.

DEAR MR. MARCHESCHI: The best that can be said of the Civil Rights Commission report on the Pasadena plan is that it is shallow; so shallow, in fact, that it fails to properly reflect even the position of Pasadena plan advocates.

Its accuracy is extremely questionable at times. For example, it is inaccurate to say (as the report does on page 9), "The plan even had the editorial support of the Pasadena Star-News, although the paper clearly was not completely behind the desegregation of the schools."

In actuality, the opposite of that statement is true and I take great exception to the use of the word "even" in the context of the sentence.

The Star-News has consistently and forthrightly campaigned for the desegregation of schools, both locally and across the nation. At the same time, we believe in the neighborhood school concept and oppose massive busing. We opposed the Pasadena Plan because it involved massive busing and went far beyond Judge Real's federal court order.

We did editorialize against the recall of the school board (partially because we believed the election to be an improper use of the recall procedure), but in the same editorial begged the school board members subject to recall to relinquish their intransigence and work toward a modified Pasadena Plan—which was then and is now possible.

It would take an essay at least three times as long as the Civil Rights Commission report to point out the inadequacies and inaccuracies of that report. The sole purpose of this letter is to straighten out the record on the Star-News position. I would, however, be pleased to discuss the other errors in the report with you or anyone else at any time.

Sincerely,

CHARLES CHERNISS, *Editor.*

Mr. MARCHESCHI. But there are important lessons to be learned from Pasadena. It is indeed true the forced busing program—called the Pasadena plan—initially had significant community support and continues to have endorsement of the majority of school board members. Opposition was and continues to be responsible opposition. No buses were burned. No one barred school entrances. A move to recall probusing board members was defeated, albeit by the barest of majorities.

As was said on a recent CBS television documentary, if forced busing to achieve racial balance will work anywhere, it will work in Pasadena. I suggest the corollary of this statement also obtains. That is, if forced busing is not working in Pasadena, it is unlikely to work anywhere.

Is forced busing to achieve racial balance working in Pasadena? I submit it is a tragic failure, a cancer destroying our school system and our community. It implements an educational philosophy which ignores the legitimate special needs of minority children and thus hurts most those very children which it purports to help.

Of the dire consequences resulting from forced busing in Pasadena, most concerning is the precipitous white flight that has occurred since implementation of the Pasadena plan and in the immediately prior years during which time forced integration was being anticipated.

Table I outlines the extent and nature of this white flight.

(Table I referred to follows:)

TABLE I.—TOTAL ANGLO-CAUCASIAN ENROLLMENT, PASADENA UNIFIED SCHOOL DISTRICT

Year[1]	Total enrollment	Anglo-Caucasian enrollment	Anglos as percent of total	Yearly numerical change	Percent Anglo yearly change
1961	29,490	22,565	76.5		
1962	30,418	22,463	73.8	−102	−0.5
1963	30,850	22,073	71.6	−390	−1.7
1964	31,490	21,695	68.9	−378	−1.7
1965	31,864	21,488	67.4	−207	−1.0
1966	31,977	20,958	65.5	−530	−2.5
1967	31,780	20,049	63.1	−909	−4.3
1968	31,484	19,008	60.4	−1,041	−5.5
1969	30,622	17,859	58.3	−1,149	−6.0
1970[2]	29,123	15,647	53.7	−2,212	−12.4
1971	27,547	13,848	50.3	−1,799	−11.5
Present[3]	27,208	13,446	49.4		

[1] All enrollment figures are as of the 1st week in October of the year indicated.
[2] Forced busing plan initially implemented in September 1970.
[3] Enrollment data as of Feb. 25, 1972.

Mr. MARCHESCHI. Table I indicates that since the school year immediately prior to the start of forced busing to the present, the Pasadena school district has lost 4,413 of its white children, which is 24.7 percent or 1 out of every 4 white students that attended the school system before the advent of forced busing.

Whereas white children comprised 58.3 percent of the school district in 1969, they are now less than a majority, thereby making a hollow mockery of the district Federal court mandate handed down but 2 short years ago that "no school shall have a majority of a minority race."

The rate of white exodus is even more ominous at the elementary level as indicated by the following table.

(Table II referred to follows:)

TABLE II.—ELEMENTARY LEVEL (K-6) ANGLO-CAUCASIAN ENROLLMENT, PASADENA UNIFIED SCHOOL DISTRICT

Year	Total elementary enrollment	Anglo-Caucasian enrollment	Anglos as percent of total	Yearly numerical change	Percent Anglo yearly change
1969	16,294	8,857	54.4		
1970	15,208	7,594	49.9	−1,273	−14.4
1971	14,082	6,524	46.3	−1,070	−14.1
Present	14,124	6,425	45.5		

Mr. HUNGATE. Was there a white exodus prior to the busing orders?

Mr. MARCHESCHI. Yes, there was, and I will address myself to that in the next paragraph, sir.

Mr. HUNGATE. Thank you.

Mr. MARCHESCHI. Table II indicates that since the school year immediately prior to the start of forced busing to the present, the Pasadena school district has lost 2,442 of its elementary (K–6) children, or 27.5 percent of the white elementary children in the school system before forced busing. White elementary children now comprise only 45.5 percent of the district's elementary enrollment, down from 54.4 percent, after but a year and one-half of forced busing. It should be noted that, even if all other factors were stabilized, white enrollment in the school district would continue to drop if only because of the lower percentage of students now in elementary grades which will move year by year through the school system.

Further evidence of the gross ethnic instability now existing at the elementary level can be gained by examining the rate of white exodus in our K–6 schools in a single year, from October 1970, the first year of forced busing, to October 1971. Six of our elementary schools lost from 20 percent to 25.6 percent of their white children. Six more lost from 15.2 percent to 19.1 percent. Another six lost between 10 percent and 13 percent. Only five of the 27 elementary schools had white enrollment drops less than 8 percent. Again, these changes represent white enrollment drops only between the first and second years of forced busing.

While it is true that white flight was a serious problem in the Pasadena school district even before the advent of the Pasadena plan in October 1970, the specter of mandatory racial balance had already surfaced by 1967 and 1968 and undoubtedly was a major factor in the accelerating white flight those 2 years.

In any case, rather than ameliorating white exodus which already existed at the rate of 5 to 6 percent in 1968 and 1969, forced busing in essence threw kerosene on the fire of racial instability, effectively doubling the white flight in 1970 and 1971. To further verify that forced busing was the primary cause of white flight in Pasadena, a study was made comparing white enrollment drops in Pasadena and Inglewood, Calif.—the only other Los Angeles County school system implementing a forced busing program—with all school districts in Los Angeles County. The results of the study, titled "Court Mandated Integration and White Flight in Los Angeles County," are most enlightening and the study is respectfully submitted as exhibit B for the record.

Mr. HUNGATE. Without objection, your entire statement will be submitted for the record and exhibit B, also.

(Exhibit B referred to follows:)

Court Mandated Integration and White Flight in Los Angeles County[1]

Two Los Angeles County school districts, among 82 districts in the County, are currently engaged in programs of racial balance mandated by court order. These are the Pasadena and Inglewood Unified School Districts, which, having lost desegregation suits in the Federal courts that were not subsequently appealed, implemented district-wide desegregation in the Fall of 1970.

The purpose of this paper is to assess the effects of integration on the rate of loss of white enrollment in these districts. Three modes of analysis and comparison are employed. In conjunction, these enable us to distinguish the independent effects of the districts' programs of desegregation from those of confounding factors, both racial and non-racial in nature, such as the loss of white enrollment normally encountered in districts with substantial minority enrollments, and a countywide trend towards reduced white enrollments particularly at the elementary level. First, employing the year prior to integration as a baseline for comparison, we compute the percent decline in white enrollment over the two year period from October, 1969, to October, 1971, at the commencement of the second year of integration, comparing the rates of loss of white enrollment in Pasadena and Inglewood with those of all other districts in the County. We next proceed to compare the percent decline in white enrollment in each of these two districts with those districts in the County having similar percentages of minority students. Finaly, the rate of loss of white school population in each of these two districts since integration is compared with the rate of loss prior to integration.

Our findings are striking and may be easily summarized. With respect to percent decline of Anglo-Caucasian enrollment over the past two years, the Inglewood and Pasadena Districts rank second and fourth among more than 80 school districts in the County, having lost, respectively, 30.9% and 22.5% of their Anglo-Caucasian students in the first two years of integration. Of the 38 unified school districts, i.e., those comprised of both elementary and high schools, operating in the County during the baseline year of 1969–70, Inglewood and Pasadena, those two districts which subsequently undertook extensive programs of racial balance, experienced the greatest rates of loss of Anglo-Caucasian enrollment over the period of the past two years.

Among nine districts with a percentage of minority students similar to that of Pasadena's, the average percent decline in white enrollment over the past two years, weighted according to the number of whites initially enrolled, was 9.6%. The corresponding figure for 10 districts with minority enrollment percentage comparable to Inglewood's was 9.1%. Thus, the rate of decline of white enrollment in Pasadena since integration, 22.1% over a two year period, has been over twice the average for districts with a similar percentage of minority students. The rate of decline of white enrollment in Inglewood, 29.8% in the first two years of integration, has been over three times the average rate for districts with comparable minority enrollment percentages.

Rates of decline in white enrollment in these two districts have virtually doubled since the implementation of racial balance, relative to those of the years preceding desegregation. Percent declines in white enrollment in Pasadena in each of four successive years, relative to the white enrollment of the preceding year, were 4.9%, 6.0%, 11.6%, and 11.7% for 1968–69, 1969–70, 1970–71, 1971–72, respectively. The corresponding rates of loss for Inglewood in these years were 5.7%, 7.5%, 14.9% and 17.5%. The rate of white enrollment loss in each of these districts during the second year of integration was as high as that of the first year's.

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We conclude on the basis of the findings summarized in the two preceding paragraphs that, at a conservative estimate, rates of loss of white enrollment in the Inglewood and Pasadena Unified School Districts approximately doubled as a direct consequence of integration. Thus, approximately half the considerable enrollment decline of the past two years may be attributed directly to the operation of programs of racial balance within these districts.

As employed in this paper, the term "Anglo-Caucasian" refers to Caucasians who do not possess Spanish surnames. The category "white" consists overwhelmingly of Anglo-Caucasians, and includes in addition a smattering of Filipinos, Eskimos, Aleuts, Polynesians and those Asians not of Sinitic ancestry. Inclusion of these last groups in the category "white" was necessitated by the classification scheme employed in the computer printout constituting our primary source of racial census data for the baseline year 1969–70. The percent decline in white enrollment, or rate of loss of white enrollment, over a given period of time was computed by subtracting the number of whites enrolled at the end of this period from the number initially present, and then dividing the remainder by the latter number. Since the number of individuals in the category "white" who are not Anglo-Caucasians is exceedingly small in virtually all districts,[2] the rate of decline in a district's white enrollment serves as an excellent proxy for the rate of decline of its Anglo-Caucasian enrollment. Generally, the latter exceeds the former by amounts ranging from several tenths of a percent to one percent.

A district's minority enrollment, which is the complement of its white enrollment, encompasses four categories: Negroes, Spanish surname, American Indians, and Orientals. This last category consists of individuals of Sinitic ancestry: Chinese, Japanese, and Koreans. Negroes and those of Spanish surname comprise the overwhelming majority of minority student enrollment in virtually every district of the County. Alhambra,[3] which in 1969–70 had a minority enrollment of 34.2% and a combined Negro and Spanish surname enrollment of 25.8%, is somewhat exceptional in this respect.

The preponderance of data employed in this study was obtained from the Business Advisory Services Division of the Office of the Los Angeles County Superintendent of Schools. Computer printouts received by this office from the State Department of Education's Bureau of Intergroup Relations provided racial census data on all County districts for the years 1969–70 and 1970–71. Data from the last racial census in October of 1971 was obtained from forms submitted to this office by each district individually. Additional data on the Los Angeles, Pasadena, and Inglewod Unified School Districts was obtained by this writer from officials and publications of the districts themselves.

We now introduce our primary data tables, enabling us to compare rates of decline in white enrollment among more than 80 school districts in Los Angeles County over the period of the past two years. The enrollment figures in these tables are derived from racial and ethnic surveys conducted in October of each year. They include, in addition to K–12 enrollment, those students attending classes for the retarded and handicapped (E.M.R., T.M.R., E.H., P.H.), as well as those enrolled in preschool programs, if the districts operated them. Adult education enrollment, however, is not encompassed in these figures. A few districts which operated in the baseline year of 1969–70, but which were then absorbed into newly created unified school districts, do not appear in these tables.

Table I gives the percent decline in white enrollment for County school districts from October, 1969, to October, 1971.

Table II gives the percent decline in white enrollment from October, 1970, to October, 1971, for four districts which commenced operation in the Fall of 1970. Table III gives the percent decline in Anglo-Caucasian enrollment, over the same period of time as covered in Table I, for the Inglewood and Pasadena districts. Also included are two districts whose rates of decline in white enrollment over this two year period are sufficiently close to Pasadena's to raise the possibility that their ranking relative to Pasadena may differ for rates of white and Anglo-Caucasian enrollment decline.

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[2] In 1970–71, such individuals did not exceed 1.1% of the total student body in any jurisdiction, other than in the tiny Gorman and Wilsona Elementary Districts.

[3] The separate Alhambra elementary and high school districts report jointly on the same census form, and are thus treated in this paper as a single unified district, and referred to as such.

TABLE I.—PERCENT DECLINE IN WHITE ENROLLMENT IN THE SCHOOL DISTRICTS OF LOS ANGELES COUNTY FROM OCTOBER 1969 TO OCTOBER 1971

District	White enrollment, 1969–70		White, enrollment: 1971–72	Percent decline in white enrollment from 1969–70 to 1971–72
	Number	Percent		
ABC Unified	13,352	77.1	15,549	[1]16.5
Alhambra (elementary and high school districts combined)	11,665	65.8	10,455	10.4
Antelope Valley Union High	6,034	92.6	6,748	[1]11.8
Arcadia Unified	9,902	97.2	9,622	2.8
Azusa Unified	9,540	73.0	8,859	7.1
Baldwin Park Unified	8,473	64.6	7,967	6.0
Bassett Unified	4,655	54.2	3,901	16.2
Bellflower Unified	11,472	92.7	10,734	6.4
Beverly Hills Unified	5,192	95.9	5,237	[1].9
Bonita Unified	6,107	82.2	6,250	[1]2.3
Burbank Unified	14,016	91.3	12,772	8.9
Castaic Union Elementary	167	61.6	191	[1]14.4
Centinella Valley Union High	5,899	85.6	5,900	[1]0
Charter Oak Unified	8,545	94.4	8,521	.3
Claremont Unified	6,971	93.9	6,456	7.4
Covina-Valley Unified	16,121	91.8	14,768	8.4
Culver City Unified	5,936	85.3	5,475	7.8
Downey Unified	16,565	91.6	15,286	7.7
Duarte Unified	3,127	61.9	2,883	7.8
Eastside Union Elementary	700	92.6	697	.4
East Whittier City Elementary	9,806	87.5	8,254	15.9
El Monte Elementary	6,661	66.9	6,046	9.2
El Monte Union High	4,758	67.5	4,480	5.8
El Rancho Unified	5,217	35.3	4,222	19.1
El Segundo Unified	3,057	96.7	3,004	1.7
Garvey Elementary	3,131	46.2	2,403	23.3
Glendale Unified	23,455	91.7	21,660	7.7
Glendora Unified	7,768	83.6	8,611	[1]10.9
Gorman Elementary	42	85.7	40	4.8
Hawthorne Elementary	4,741	81.4	4,484	5.4
Hermosa Beach City Elementary	1,673	92.7	1,495	10.6
Hughes-Elizabeth Lakes Union Elementary	170	96.0	152	10.6
Inglewood Unified	9,549	69.5	6,699	29.8
Keppel Union Elementary	621	59.8	568	8.5
La Canada Unified	4,831	98.8	4,735	2.0
Lancaster Elementary	6,467	92.9	6,363	1.6
Las Virgenes Unified	4,470	97.8	5,699	[1]27.5
Lawndale Elementary	5,178	79.6	4,507	13.0
Lennox Elementary	2,208	76.4	2,026	8.2
Little Lake City Elementary	4,769	72.9	4,276	10.3
Long Beach Unified	58,764	84.2	54,760	6.8
Los Angeles Unified	342,057	52.2	309,404	9.5
Los Nietos Elementary	855	29.3	722	15.6
Lowell Joint Elementary	5,521	93.3	4,769	13.6
Lynwood Unified	6,606	80.0	5,867	11.2
Manhattan Beach City Elementary	4,787	95.6	4,468	6.7
Monrovia Unified	5,097	79.3	4,899	3.9
Montebello Unified	11,676	44.6	9,953	14.8
Mountain View Elementary	3,106	50.8	2,669	14.1
Newhall Elementary	1,854	92.7	1,988	[1]7.2
Norwalk-La Mirada City Unified	25,041	77.7	22,426	10.4
Palmdale Elementary	3,928	91.4	3,774	3.9
Palos Verdes Peninsula Unified	16,362	97.6	16,511	[1].9
Paramount Unified	8,855	82.4	7,376	16.7
Pasadena City Unified	18,072	59.0	14,085	22.1
Pomona Unified	14,806	64.7	13,278	10.3
Redondo Beach City Elementary	8,494	88.4	7,430	12.5
Rosemead Elementary	2,045	74.1	1,851	9.5
San Gabriel Elementary	3,122	75.8	2,819	9.7
San Marino Unified	3,458	98.1	3,396	1.8
Santa Monica Unified	10,203	78.7	9,956	2.4
Saugus Union Elementary	4,013	93.3	4,212	[1]5.0
Soledad-Agua Dulce Union Elementary	374	90.8	396	[1]5.9
South Bay Union High	6,668	94.8	6,430	3.6
South Pasadena Unified	3,498	89.9	3,429	1.0
South Whittier Elementary	3,293	71.7	2,756	16.3
Sulphur Springs Union Elementary	2,003	93.6	2,080	[1]3.3
Temple City Unified	4,489	94.8	4,473	.4
Torrance Unified	30,834	91.1	29,244	5.2
Valle Lindo Elementary	540	41.2	421	22.0
West Covina Unified	12,266	87.9	11,195	8.7
Westside Union Elementary	1,968	90.3	1,805	8.3
Whittier City Elementary	4,070	63.8	3,462	14.9
Whittier Union High	11,488	78.0	10,835	5.7
William S. Hart Union	5,192	93.1	6,091	[1]17.3
Wilsona Elementary	58	72.4	63	[1]8.6
Wiseburn Elementary	2,546	92.9	2,051	19.4

[1] Percent increase.

TABLE II.—PERCENT DECLINE IN WHITE ENROLLMENT FROM OCTOBER 1970 TO OCTOBER 1971, FOR 4 NEW UNIFIED SCHOOL DISTRICTS FIRST OPERATED IN 1970-71

District	White enrollment (1970-71)		White enrollment (1971-72)	Percent decline in enrollment from 1970-71 to 1971-72
	Number	Percent		
Compton Unified	2,102	(1)	1,301	38.1
Hacienda-La Puente Unified	20,553	(68.0)	20,572	[2] 0
Rowland Unified	10,494	(70.7)	9,955	5.1
Walnut Unified	4,240	(89.4)	4,420	[2] 4.2

[1] 5.2 percent of student body.
[2] Percent increase.

TABLE III.—PERCENT DECLINE IN ANGLO-CAUCASIAN ENROLLMENT FROM OCTOBER 1969 TO OCTOBER 1971 IN 4 SCHOOL DISTRICTS

District	Anglo-Caucasian enrollment (1969-70)	Anglo-Caucasian enrollment (1971-72)	Percent decline in Anglo-Caucasian enrollment from 1969-70 to 1971-72
Inglewood Unified	9,483	6,557	30.9
Pasadena Unified	17,859	13,848	22.5
Garvey Elementary	3,120	2,368	24.1
Valle Lindo Elementary	536	418	22.0

Examination of Tables I and II reveals the following four county school districts to have lost the greatest percentage of their white student enrollment in the past two years: (1) Compton Unified, 38.1%; (2) Inglewood Unified, 29.8%; (3) Garvey Elementary, 23.3%; (4) Pasadena Unified, 22.1%. Additionally, Table III indicates that Inglewood Unified, Garvey Elementary, and Pasadena Unified lost, respectively, 30.9%, 24.1%, and 22.0% of their Anglo-Caucasian enrollments during this period.

At the elementary level alone, data obtained from the Pasadena District's Research Report 292 shows that from October, 1969, to October, 1971, white enrollment declined from 9,003 to 6,632, and Anglo-Caucasian enrollment from 8,867 to 6,524. Thus, at the elementary school level, Pasadena lost 26.3% and 26.4% of its white and Anglo-Caucasian enrollments, respectively, exceeding the corresponding loss rates of the Garvey Elementary District. Minority enrollment in the latter district, which was a greater percentage of total student body than minority enrollment in Pasadena during the baseline year of 1969–70, consisted overwhelmingly of Spanish surname students.

Among the 42 unified school districts in the County only Compton Unified, formed just last year with proportionally the highest Negro and minority enrollments in the County, and a token white enrollment constituting 5.2% of the total student body, exceeded Inglewood and Pasadena in rate of loss of white enrollment. Thus, among the 38 unified school districts operating in the County during the baseline year 1969–70, Inglewood and Pasadena, the two which have since undertaken extensive programs of racial balance mandated by court order, have recorded the highest rates of decline in white enrollment over the period of the past two years. In itself, this finding creates an irresistible presumption that programs of racial balance greatly accelerated rates of loss of white enrollment within these districts.

In order to estimate numerically the increment in the rate of decline in white enrollment directly attributable to these programs of racial balance, one must distinguish the effects of these programs from those of confounding factors. One of these confounding factors is also a racial factor: the rate of white flight normally encountered in the presence of minority enrollments equivalent to certain specified percentages of total enrollment, even in the absence of racial balance. Contributing factors not related to the racial situation in a particular integrated district would be those manifested in county-wide trends, such as a general, county-wide decline in white enrollment at particular grade levels over a period of time, and those issuing from local circumstances, peculiar to the integrated district in question, or to it and surrounding districts.

In the case of Pasadena, there appears to be no set of local circumstances, apart from race-related factors, which would have caused Pasadena to lose a greater percentage of its white enrollment over the past two years than other districts in the County. Thus, comparison of Pasadena's rate of decline in white enrollment with those of districts having a similar percentage of minority students, in conjunction with a comparison of the rates of decline in Pasadena's white enrollment before and after integration, would enable us to obtain a fair estimate of the increment in rate of white enrollment loss attributable to racial balance.

In the case of Inglewood, two circumstances, non-racial and local in nature, are frequently cited as hypothetical sources of decline in white enrollment. Due to the heavy concentration of aerospace firms in the Inglewood area, any adverse effects of aerospace layoffs on school enrollments might have been experienced to a greater degree in the Inglewood area than elsewhere in the County. Further, portions of the Inglewood district lie in the flight pattern of the Los Angeles International Airport, and the advent of commercial jet aircraft over the past decade, with the concomitant intensification of noise levels, has rendered portions of Inglewood less desirable as residential areas.

The first of these objections is easily countered by noting that, of the other compact, independent school districts bordering the Los Angeles Airport, Centinella Valley Union High, El Segundo Unified, and Hawthorne Elementary lost, respectively, 0.0%, 1.7%, and 5.4% of their white enrollments over the past two years. White enrollment in the small Wiseburn Elementary District did decline a substantial 19.4%, but the condemnation and removal of a substantial number of homes adjoining the San Diego Freeway is sufficient to account for the excessive rate of loss relative to other districts. The decline of 495 in Wiseburn's white enrollment is not significantly greater than the decline of 458 in total enrollment over this period. We thus conclude that there is no excessive rate of decline in white enrollment, such as may be attributed to layoffs in local aerospace firms, apparent among districts in the Inglewood area, relative to districts elsewhere in the County.

Admittedly, none of the districts mentioned in the preceding paragraph lies in the flight pattern of the Los Angeles Airport. However, the small Lennox Elementary School District does, and as a buffer between the airport and affected portions of the Inglewood district, its residents experience inconvenience and discomfort to a greater degree than do those of Inglewood itself. Furthermore, as an elementary school district, its white enrollment is more likely to be substantially affected, than is the white enrollment of the Inglewood Unified School District, by a county-wide trend of greater declines in white enrollment at elementary than at secondary levels. Yet the Lennox district lost 8.2% of its white enrollment in two years, while the Inglewood district lost 29.8% of its white enrollment. Thus, the rate of decline in white enrollment in the Lennox District over the past two years was only somewhat in excess of one fourth the rate of decline in the Inglewood District, despite the fact that the white enrollment of the former district appeared more vulnerable to nonracial sources of decline, both county-wide and local, than that of the latter district. One may thus reasonably infer that, at a minimum, approximately three fourths of the 29.8% decline in Inglewood's white enrollment was white flight attributable to racial factors.

In support of the preceding statement, one notes that enrollment shifts within the Inglewood district over the past two years reflect a classic pattern of white flight. Although total district enrollment declined by only 788 during this period, white enrollment declined by 2,992, well over 3.5 times the decline in district enrollment. Negro enrollment, on the other hand, increased by 1,992, from 18.4% of total enrollment in 1969–70 to 34.9% in 1971–2.

It remains to distinguish the contribution of racial balance to the rate of decline in white enrollment from that of the other confounding racial factor: the presence of a substantial minority enrollment as a source of white flight in itself. To this end we first compare the rates of white enrollment loss in Inglewood and Pasadena with those of districts with similar percentages of minority students. Recalling that minority enrollment percentage is the complement of white enrollment percentage in Table I, there were found nine districts whose minority enrollment percentage differed from that of Pasadena's (41.0%) in the baseline year 1969-70 by less than seven percent, and ten districts with minority enrollment percentage differing from that of Inglewood's (30.5%) by less than five percent. Average percent declines in white enrollment over this two year period, both unweighted and weighted according to the size of initial white enrollment, were then computed for each of these two sets of districts, and particularly for the unified school districts among them.

The pertinent data appears in Tables IV and V. Unweighted averages over all the districts in each set were unduly affected by substantial percentage gains in white enrollment in the tiny Wilsona and Castaic Union Elementary School Districts, and thus likely to be underestimates of normal rates of loss of white enrollment in districts with comparable minority enrollment percentages. The unweighted and weighted averages for unified districts, and the weighted average for all districts, were thus thought to more accurately reflect the normal rates of loss, and were quite consistent among themselves. For Pasadena, the weighted average rate of white enrollment loss for a two year period over nine comparable districts was 9.6%; the weighted and unweighted averages over six comparable unified school districts were 9.6% and 10.0%, respectively. For Inglewood, the corresponding figures were 9.1%, 8.8% and 8.5%, respectively. Thus, Pasadena's percent decline in white enrollment over the past two years, 22.1%, was somewhat over twice the average for districts with comparable minority enrollment percentages, while the rate of decline in white enrollment for the Inglewood district, 29.8% over a two year period, was well over three times the computed average loss rates for comparable districts which had not undertaken racial balance. This indicates that, at the very least, half the decline in white enrollment over the past two years was attributable to court mandated programs of racial balance within these districts.

Our final comparison is that of rates of white enrollment loss in the Inglewood and Pasadena Unified School Districts prior and subsequent to the implementation of desegregation in the Fall of 1970. Table VI consists of racial census data for the Inglewood District from 1967-8 to 1971-2, data on the years 1967-8 and 1968-9 having been obtained directly from the Inglewood District. The percent declines in white and Anglo-Caucasian enrollments relative to those of the preceding years are given in the columns furthest to the right. Table VII provides the corresponding data for Pasadena, obtained from Research Report 292 published by the District.

From Table VI, it is easily seen that, while Inglewood's rate of white enrollment loss for 1969-70, 7.5%, was not significantly greater than that for 1968-9, 5.7%, a marked acceleration in rate of white enrollment loss occurred with the implementation of racial balance in 1970-1, the loss rate of 14.9% being almost double that of the preceding year's. In the second year of integration the rate of loss was still higher, 17.5%, being well over twice the rate for the year prior to desegregation.

Similarly, Table VII indicates that in 1969-70 Pasadena's rate of white enrollment loss increased only slightly to 6.0%, relative to the preceding year's 4.9% rate of loss. Coincident with the implementation of racial balance in 1970-1, the rate of loss nearly doubled to 11.6%, and remained in the second year of the program, at 11.7%, approximately twice what it had been in the year prior to desegregation. An identical pattern prevails for rates of decline in Anglo-Caucasian enrollment. This increased slightly in the year prior to integration to 6.0%, from the 5.5% rate of Anglo-Caucasian enrollment loss of the preceding year. With racial balance in the Fall of 1970, the rate slightly more than doubled to 12.4%, and remained in the second year of the program, at 11.5%, almost twice what it had been in the year prior to desegregation.

Thus, coincident with the implementation of court mandated integration in the Inglewood and Pasadena Unified School Districts, rates of loss of white enrollment approximately doubled. As was previously established, these accelerated rates of white enrollment loss were, for Pasadena and Inglewood, respectively, over twice and three times the average loss rates for districts with comparable percentages of minority enrollment over the same period. We therefore conclude that, at a conservative estimate, approximately half of the considerable decline in white enrollment in these districts over the past two years is directly attributable to their programs of racial balance.

TABLE IV.—PERCENT DECLINE IN WHITE ENROLLMENT FOR DISTRICTS WITH MINORITY ENROLLMENT PERCENTAGE SIMILAR TO PASADENA'S (41 PERCENT), WITH ASSOCIATED AVERAGES

District	White enrollment, 1969-70	Minority enrollment percentage in 1969-70	Percent decline in white enrollment from October 1969 to October 1971
Alhambra (elementary and high school districts combined)	11,665	34.2	10.4
Baldwin Park Unified	8,473	35.4	6.0
Bassett Unified	4,655	45.8	16.2
Duarte Unified	3,127	38.1	7.8
Los Angeles Unified	342,057	47.7	9.5
Pomona Unified	14,806	35.3	10.3
Castaic Union Elementary	167	38.4	[1]14.44
Keppel Union Elementary	621	40.2	8.5
Whittier City Elementary	4,070	36.2	14.9

[1] Percent increase.

Note: Average percent decline in white enrollment over all 9 districts, weighted according to district white enrollment for 1969-70: 9.6 percent. Weighted and unweighted average percent declines in white enrollment over 6 unified school districts: 9.6 percent (weighted); 10.0 percent (unweighted).

TABLE V.—PERCENT DECLINE IN WHITE ENROLLMENT FOR DISTRICTS WITH MINORITY ENROLLMENT PERCENTAGE SIMILAR TO INGLEWOOD'S (30.5 PERCENT), WITH ASSOCIATED AVERAGES

District	White enrollment, 1969-70	Minority enrollment percentage in 1969-70	Percent decline in white enrollment from October 1969 to October 1971
Alhambra (combined)	11,665	34.2	10.4
Azusa Unified	9,540	27.0	7.1
Baldwin Park Unified	8,473	35.4	6.0
Pomona Unified	14,806	35.3	10.3
El Monte Elementary	6,661	33.1	9.2
Little Lake City Elementary	4,769	27.1	10.3
Rosemead Elementary	2,045	25.9	9.5
South Whittier Elementary	3,293	28.3	16.3
Wilsona Elementary	58	27.6	[1]8.6
El Monte Union High	4,758	32.5	5.8

[1] Percent increase.

Note: Average percent decline in white enrollment over all 10 districts, weighted according to district white enrollment for 1969-70: 9.1 percent. Weighted and unweighted average percent declines in white enrollment over 4 unified school districts: 8.8 percent (weighted); 8.5 percent (unweighted).

TABLE VI.—ENROLLMENT DATA FOR THE INGLEWOOD UNIFIED SCHOOL DISTRICT: 1967-68–1971-72

	Negro	Spanish surname	Oriental	American Indian	Anglo-Caucasian	White	Total enrollment	Percent decline in white enrollment relative to preceding year's	Percent decline in Anglo-Caucasian enrollment relative to preceding year's
Year:									
1967-68	1, 382	1, 058	228	33		10, 956	13, 657		
Percent	10. 1	7. 8	1. 7	. 2		80. 2			
1968-69	1, 785	1, 191	259	51		10, 327	13, 613	5. 7	
Percent	15. 1	8. 7	1. 9	. 4		75. 9			
1969-70	2, 519	1, 339	254	61	9, 483	9, 549	13, 722	7. 5	
Percent	18. 4	9. 8	1. 9	. 4	69. 1	69. 5			
1970-71	3, 267	1, 431	275	54	8, 046	8, 122	13, 149	14. 9	15. 2
Percent	, 24. 8	10. 9	2. 1	. 4	61. 2	61. 8			
1971-72	4, 511	1, 347	312	65	6, 557	6, 699	12, 934	17. 5	18. 5
Percent	34. 9	10. 4	2. 4	. 5	50. 7	51. 8			

TABLE VII.—ENROLLMENT DATA FOR THE PASADENA UNIFIED SCHOOL DISTRICT: 1967-68–1971-72

	Negro	Spanish surname	Oriental	American Indian	Anglo-Caucasian	White	Total enrollment	Percent decline in white enrollment relative to preceding year's	Percent decline in Anglo-Caucasian enrollment relative to preceding year's
Year:									
1967-68	8, 420	2, 168	956	20	20, 049	20, 216	31, 780		
Percent	26. 5	6. 8	3. 0	. 1	63. 1	63. 6			
1968-69	8, 872	2, 422	935	28	19, 008	19, 227	31, 484	4. 9	5. 5
Percent	28. 2	7. 7	2. 9	. 1	60. 4	61. 1			
1969-70	9, 173	2, 521	824	32	17, 859	18, 072	30, 622	6. 0	6. 0
Percent	30. 0	8. 2	2. 7	. 1	58. 3	59. 0			
1970-71	9, 564	2, 666	849	73	15, 647	15, 971	29, 123	11. 6	12. 4
Percent	32. 8	9. 2	2. 9	. 3	, 53. 7	54. 8			
1971-72	9, 774	2, 840	801	47	13, 848	14, 085	27, 537	11. 7	11. 5
Percent	35. 5	10. 3	2. 9	. 2	50. 3	51. 1			

Mr. MARCHESCHI. Thus, we find in Pasadena a near exact emulation of other school districts who have previously implemented forced busing plans. We totter on the brink of tipping into a predominantly black school district unless major changes are near immediately effected in the forced busing plan. To add further fuel to the white-flight conflagration, the school district already finds it necessary to redistrict attendance zones of certain schools in order to maintain the illusive racial balance mandated by court order.

It is most specious to argue, as some have done before you, that the problem of white flight can be cast aside because, unlike racial balance, it does not have constitutional proportions. Indeed, I say to you that unless the Congress or the courts are ready to pass laws that force parents not to move from certain school districts, that force parents not to put their children into private schools, that force parents to move into certain school districts rather than others against their will, then I say to you that forced racial balance will not possibly endure by legal edict.

It, therefore, seems to me that past and current attempts to force racial balance are in fact unenforceable and, therefore, not viable solutions to either true integration or achieving equal eduactional opportunity.

I would like, at this point, to state unequivocally that I would be willing to cast aside the white-flight argument, indeed practically all other arguments, if an objective case could be made that forced racial balance will be a significant factor in bridging the untenable gap that exists between the educational achievement of white children and most minority children. In my judgment, however, such a case can no longer be made.

In this respect, I disagree strongly with the statements made here by Dr. Pettigrew this morning. Among recent authoritative works in this area are "On Equality of Educational Opportunity," edited by Frederick Mosteller and Daniel P. Moynihan, and "Education and Inequality: A Preliminary Report to the Carnegie Corporation of New York" (mimeo). The general tone of both works is exemplified by the concluding paragraph of the latter, to wit:

> We, therefore, conclude on a familiar note. Policy with respect to racial integration should be made on the basis of moral, legal, and political considerations, not on the basis of integration's alleged effect on the short term careers of either white or black students. Such effects are at best problematic, certainly modest and possibly non-existent.

Note the disillusionment of Senator Walter Mondale in an address before the American Educational Research Association in February 1971:

> I had hoped to find research to support or to conclusively oppose my belief that quality integrated education is the most promising approach. But I have found very little conclusive evidence. For every study, statistical or theoretical, that contains a proposed solution or recommendation, there is always another, equally well documented, challenging the assumptions or conclusions of the first. No one seems to agree with anyone else's approach. But more distressing, *no one seems to know what works.* [Emphasis added.]

Let us add to this the sorry history that there has yet to emerge a single district in the country where forced school integration—as opposed to natural integration—has produced credible evidence that increased educational achievement among minority children can be correlated with the racial composition of the classroom.

Indeed, in districts such as Evanston, Ill., Riverside, Calif., and Sacramento, Calif., where forced integration has been taking place for 3- to 5-year periods, the results have ranged from disappointing to dismal, and expectations that integration commenced at kindergarten would boost minority achievement levels simply have not materialized.

In Pasadena, the forced racial balance plan has created paradoxes which, in my opinion, are hurting rather than helping low achieving minority students. For example, in my daughter's fifth grade integrated classroom of 30 pupils, the teacher has had to divide the students into five reading groups. Reading abilities range from preprimer to the ninth grade level. An extreme case, perhaps, but the unmanageably wide range of learning abilities that now exist in a single classroom is recognized as a fundamental educational problem deriving from the forced integration plan. I ask who suffers most under such conditions?

How much attention will the underachiever receive? Will those performing at substantially lower levels in fact be motivated to achieve at higher levels because of "body-mixing" with whites or will they withdraw further into a world of "What's the use" because of the grossly unfair and cruel juxtaposition of their capabilities into direct competition with those of more advantaged children.

Mr. HUNGATE. Mr. Marcheschi, what should we do when we have students in the same school district and in the same grade with reading abilities varying from primer to ninth grade? How do we meet that problem?

Mr. MARCHESCHI. I think the first thing we can do is not to put these children together in the same classroom. As I will recite a bit later, educators have unfortunately not provided the answers in this area, and it is a frustrating thing to have to come before you and say there is no pat answer. But, based on my experience, and what I have read and investigated, we can conclude there are some things that are working better than others.

Certainly, massive compensatory education is a partial answer and I think there are other clues that I would like to get into later.

Mr. MIKVA. I would like to ask you, what are you using as a basis now for citing results for Evanston's districts? All of the studies made in the Evanston system indicate there have been substantial plusses.

Mr. MARCHESCHI. I am talking about the gains in academic achievement. I have a study on the Evanston program.

Mr. MIKVA. What study was it? Is this a separate study?

Mr. MARCHESCHI. It is an analysis of the study that is already in existence.

Mr. MIKVA. That study shows the black children writing two grade levels higher than before with no detriment to the white children. There is currently a waiting list to get into what had been an all-black school. There are some gripes, but overall, if you test it, you will find that most people consider it a reasonable success.

Mr. MARCHESCHI. In Pasadena now, no one makes the statement that we have yet had enough experience to either say that the integrated schools are either harming or hurting anybody.

Our grade scores are down perceptively for the last 2 years but they had been previously trending down. Therefore, no one can make the statement they are solely because of integration.

Mr. MIKVA. That is all the more reason I want to separate Evanston from Pasadena.

Mr. MARCHESCHI. Fine, but I would like to submit for the record the analysis of the report to which you refer which talks about the fact that whatever gains the Evanston children are showing cannot be directly correlated with the fact that they are in an integrated setting. The gains are perhaps due to other factors and resources which have been poured into that school. I think that is the distinction that has to be made.

Mr. MIKVA. Would you present the analysis?

Mr. MARCHESCHI. Yes.

Mr. HUNGATE. How much time would you need to submit it?

Mr. MARCHESCHI. I believe I have it at the office, and I will be back in the office Monday, and will get it off to you right away.

Mr. HUNGATE. Then, you may submit it within 10 days.

(Subsequently the following material was supplied:)

AMERICAN TELECOMMUNICATIONS CORP.,
May 26, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
Washington, D.C.

DEAR MR. CELLER: In accordance with the request of Congressman Mikva during my testimony before Subcommittee No. 5 on May 3, 1972, I am pleased to submit herewith for insertion into the record copies of analyses which have been made on the Evanston, Riverside and Sacramento school integration programs.**

As will be noted, the analyses support my claim that the results of such programs have "ranged from disappointing to dismal" and that racial balance in and of itself cannot be considered a viable means to improve the educational achievement of minority children.

With respect to the Evanston situation, which Mr. Mikva specifically questioned, the analysis shows that reported average achievement levels for both white and Negro students since desegregation are, on the vast majority of tests, slightly lower than they were at the outset. The analysis also raises questions as to the accuracy of newspaper accounts that have purported to the contrary.

The opportunity to submit this additional material for the record is appreciated, and please do not hesitate to let me know should you have any questions.

Sincerely,

H. MARCHESCHI.

AN INDEPENDENT ASSESSMENT OF "INTEGRATION IN EVANSTON, 1967–71: A LONGITUDINAL EVALUATION": A REPORT ON THE EDUCATIONAL CONSEQUENCES OF DESEGRATION IN DISTRICT 65 OF EVANSTON, ILL.

(By Harold Kurtz, Pasadena, Calif.; Copyright Harold Kurtz, 1972)

SUMMARY

A recent study of the first four years of integration in District 65 of Evanston, Illinois, conducted by the Educational Testing Service, describes slight achievement gains for Negro students, coupled with the maintenance of achievement levels for whites, in the District's elementary schools (grades k–5) since desegregation. In the District's middle schools (grades 6–8), already substantially integrated prior to formal desegregation, there were noted slight but consistent decrements in the achievement of Negro and white pupils.

**The materials relating to Riverside and Sacramento, Calif., school districts are retained in the Committee files.

A close examination of the data provided in the study confirms its findings concerning achievement trends in the District's middle schools. Such data does not support the study's findings of maintenance of achievement levels for whites and slight achievement increments for Negro students in the elementary schools. Rather, reported average achievement levels for both white and Negro students since desegregation are, on the vast majority of tests, slightly lower than they were at the outset.

Press accounts of the study have focused primarily on its findings of slight achievement gains for Negro students in the elementary schools. On the basis of the data presented in the study, these findings are erroneous.

"What happens when a top-quality, majority-white school system becomes desegregated?" This question is posed in "Integration in Evanston, 1967–71: A Longitudinal Evaluation", an assessment of the first four years of desegregation in the schools of District 65 of Evanston, Illinois, conducted jointly by the District 65 Board of Education and the Educational Testing Service, with the financial assistance of the Rockefeller Foundation. Jayjia Hsia of the Evanston Office of the Educational Testing Service (E.T.S.) is listed as the principal author.

District 65, consisting of 11,000 pupils attending 16 elementary schools (grades K–5 and 4 middle schools (grades 6–8), commenced a program of proportional racial balance in the Fall of 1967. Since the middle schools had been substantially integrated prior to this time, the impact of desegregation was experienced primarily at the elementary level, where a balanced distribution of pupils reflecting a district-wide Negro enrollment percentage of approximately 22% was achieved in virtually every classroom of every school (pp. 35, 19).

It should be noted that the desegregation of District 65 schools was not an involuntary measure, undertaken with undue haste in an atmosphere of reluctance and confusion. Rather, the period prior to desegregation was characterized by a developing commitment to full-scale racial balance and extensive preparations for its implementation, both within the school system and the community at large. The community itself, in this instance, provided an advantageous setting for a program of school integration that few others could match. A stable and affluent suburb of Chicago with a population of 80,000, approximately 16% of whom are Negroes, Evanston is an education-minded city which is home to one major university and four colleges. Its white population ranks considerably above the national average both in socio-economic status and educational attainment (p. 10). Although there are considerable disparities between its white and Negro populations with respect to these factors, Evanston's Negro population appears favored in comparison to the general Negro population, and even in comparison to U.S. residents as a whole (pp. 11, 12). Negro families are as likely to be homeowners as other families, and their median income in 1959 exceeded that of the U.S. population and was more than double that of the general Negro population (p. 11). Achievement ranking of Negro kindergarten and first grade pupils on the Caldwell Preschool Inventory, while low in relation to middle class norms, exceeded lower class norms by comfortable margins (p. 37).

The Negro enrollment percentage in District 65, about 22% at the commencement of desegregation, is sufficiently small to insure the majority-white character of racially balanced schools in the District. The schools themselves are characterized by the E.T.S. study as "having enjoyed a national reputation for excellence" (p. 11); per-pupil expenditures are in excess of $1000 per year (p. 11). The teachers of District 65 are, according to "national standards reported by Coleman et al. and NEA, . . . well-qualified and experienced" (p. 5). Both teaching and administrative staffs, which are "completely integrated at all levels," attended "a series of summer institutes" to prepare for desegregation (p. 5).

In summary, Evanston's District 65, in terms of both the character and quality of the schools and the degree of preparation for, and commitment to, desegregation, must be regarded as an integrationist showcase, precisely that type of District about which both proponents and opponents of integration are inclined to remark: "If it's going to work anywhere, it will work there."

The principal focus of concern of the E.T.S. study is the impact of desegregation on academic achievement. To assess this, Evanston pupils were given a variety of standardized tests from the E.T.S. repertoire. Kindergarten and first grade students took the Caldwell Preschool Inventory, which gave evidence of a considerable academic advantage for white students at the start of schooling (p. 37). Appropriate forms and subtests of the Cooperative Primary Tests (CPT) were employed in grades 1, 2, and 3, while students in grades 4–8 were administered appropriate forms and subtests of the STEP and SCAT series. With the possible exception of the Caldwell Preschool Inventory, all tests were administered in September, shortly after the start of the school year (pp. 28–9).

Precise, numerical test data reported in the study consisted primarily of group mean raw scores in the case of the CPT, and group mean converted scores for the STEP and SCAT series. Such data was provided for white and Negro cohorts at the following grade levels in the years specified:

Grade 1. CPT Listening: '67, '68, and '69 (Figure 17, p. 70).

Grade 3. CPT Listening, Reading, Mathematics, Word Analysis, and Writing Skills 1 & 2: '67, '68, and '69 (Figures 18 and 19, pp. 71–2).

Grades 4 and 8. SCAT Verbal, SCAT Quantitative, STEP Mathematics, Reading, Listening, Writing, Science, and Social Studies: '67, '68, '69, and '70 (Figures 20, 21, 22, 23, pp. 73–80).

Additionally, mean converted STEP Reading and Mathematics scores for white and Negro cohorts were reported at the fifth grade level in 1967 and 1968, at the sixth grade level in 1967, 1968, and 1969, and at the seventh grade level in 1967, 1968, 1969, and 1970 (Tables 8 and 9, pp. 49–50).

Both longitudinal and cross-sectional analyses of test data were employed to assess the impact of desegregation on academic achievement. In the longitudinal analysis, achievement growth rates over periods of 2 to 3 years, assessed both by comparison of pre- and post-test means and the regression of post-test on pretest scores, were compared for small groups of Negro students who experienced integration either by walking to their new schools, riding buses to their new schools, remaining in formerly majority-Negro but now desegregated neighborhood schools, or remaining in neighborhood schools which had been integrated to begin with.

This last group above was least affected by the desegregation program, yet exhibited, especially for the girls among them, the highest rates of achievement growth overall. An obvious explanation for this, that "naturally integrated" Negroes are scholastically select and characterized by rates of scholastic growth that those desegregated in programs of racial balance will generally not match, is not offered in the E.T.S. study. It is, however, noted that Negro students who experienced desegregation by riding buses to their new schools generally recorded higher rates of scholastic growth than those transferred students who walked to their new schools. Despite the fact that this finding is hypothesized to be a consequence of socioeconomic differences between the two groups and not regarded as having any educational significance (pp. 3, 40, 44), it is nevertheless singled out for mention in the brief abstract preceding the study, presumably to assure readers "that traveling to new schools by bus had no adverse effects upon the pupils." As we shall subsequently show, newspaper accounts have consistently reported this finding, while ignoring the determination that the highest rates of growth were recorded by students who were integrated prior to districtwide desegregation and continued to attend their neighborhood schools.

The principal method of assessing effects of desegregation and integrated schooling on academic achievement in District 65 was a series of cross-sectional analyses, termed grade cohort comparisons. Here, mean achievent levels for the totality of white students and totality of Negro students on a variety of tests administered at a particular grade level were recorded and compared over periods of 1 to 3 years, encompassing 2 to 4 Fall testing periods, commencing with the implementation of desegregation in September of 1967. Patterns of stability, advance, or decline of test scores in particular areas were noted, and some general assessments made concerning trends in the scholastic performance of white and Negro elementary and middle school pupils since desegregation. Although fluctuations in achievement levels could be attributed to differences in cohorts at a particular grade level from one year to the next, "a consistent trend among grade cohort score distributions could be interpreted as indication of significant changes due to environmental treatment effects which include, in the present case, integration". (pp. 31–2).

The E.T.S. study's principal findings concerning trends in scholastic performance since district-wide desegregation, derived from the grade cohort comparisons described above, may be summarized as follows. Alterations in achievement levels were generally very slight, with opposite trends discernible for middle schools and elementary schools. In the middle schools, already substantially integrated prior to 1967, sliht but consistent declines were noted in the achievement of Negro students in most areas, and in the performance of white students on the SCAT Quantitative and STEP Science tests. At the elementary level, the report claimed slight advances in achievement for Negro students in most areas, while the achievement of white students remained constant, with the exception of a slight improvement in mathematics.

The following quotations are illustrative of the findings noted above. Thus, with regard to the pattern of decline in the middle schools, it is stated, within an introductory section summarizing findings related to "post-integration academic performance" (pp. 2–4): "Very small decrements in SCAT Quantitative and STEP Science mean scores were noted among grade 7 and 8 white pupils. There was a steady decrement in SCAT and STEP scores of grade 7 and 8 black pupils in several subject areas." (p. 4) The analysis of "Grade 8 Cohorts" on page 39 commences: "Figures 22 and 23 display data summaries for black and white pupils in the middle schools in eight subtests. There appears to be a slight but consistent deterioration in test performance of black pupils in most subject areas. For white pupils, there was consistent lowering of SCAT Quantitative and STEP Science scores over the course of four years."

Statements indicative of a pattern of advance in Negro achievement and stability in white achievement at the elementary level appear first in that portion of the introductory section entitled "Post-integration academic performance" (pp. 2–4). Thus: "While there were small fluctuations from year to year, white pupils' performance remained essentially the same, while black pupils made slight gains in most subject areas." (P. 3)

In a later section entitled "Interpretation of Academic Test Data", the report states: "In grades 1, 3, and 4, which were subject to close scrutiny, black pupils appeared to have made some small gains, while white pupils remained essentially the same, except for improvement in mathematics". (p. 43) In a brief summary section which concludes that portion of the text of the E.T.S. study dealing with scholastic achievement, it is noted: "After desegregating all elementary schools, white pupils' performance in standardized achievement tests remained constant. Black pupils have made slightly greater gains in most subject areas". (p. 47)

On the basis of data on grade cohorts provided in the E.T.S. study itself, we substantially concur with findings of slight but consistent deterioration in test performance for white and Negro pupils in the District's middle schools. These findings have been generally ignored in the newspaper accounts we have seen, which have instead focused attention on what the report alleges to be slight gains in achievement for Negroes, coupled with the maintenance of test scores for whites, at the elementary level.

We take issue with the aforementioned characterization of post-integration scholastic performance at the elementary level, and shall proceed to demonstrate that there appears to be, with few exceptions, a general pattern of fractional to slight decline in the reported test scores of white and Negro elementary school pupils since desegregation. To this end, we employ 1967 grade cohort test data, obtained at the start of desegregation, as a baseline for comparisons with grade cohort data obtained in succeeding years, noting the number of instances in which tests scores obtained at particular grade levels in a given year were advanced, depressed, or unchanged relative to the corresponding baseline data. Charts I & II contain all the relevant grade cohort data appearing in the E.T.S. study, and may be employed to verify our findings. Tables 8 and 9 and Figures 17–23 of the E.T.S. study, included for purposes of reference and corroboration, are the sources of the data appearing in Charts I & II. The CPT scores reported are raw scores, while those reported for the STEP and SCAT tests are scale scores, referred to in the E.T.S. study as converted scores.

CHART I.—MEAN TEST SCORES FOR NEGRO GRADE COHORTS

	1967	1968	1969
Grade 1—Cooperative primary test (CPT) of listening	21.3	21.3	22.1

	1967	1968	1969
Grade 3—CPT tests of:			
Listening	28.5	29.9	29.0
Word analysis	39.2	41.0	38.8
Reading	22.6	23.2	22.1
Writing skills 1	13.2	13.5	12.6
Mathematics	25.8	26.9	27.0
Writing skills 2	17.0	18.1	16.4

	1967	1968	1969	1970
Grades 4 and 8:				
SCAT verbal:				
4	233.9	233.9	233.5	233.4
8	258.8	258.0	256.5	255.6
STEP mathematics:				
4	233.8	234.4	234.0	233.8
8	254.1	253.9	253.0	252.9
SCAT quantitative:				
4	240.6	241.6	241.1	242.6
8	264.5	263.1	261.7	260.9
STEP reading:				
4	236.5	235.6	235.4	235.4
8	264.0	262.3	260.7	260.8
STEP listening:				
4	248.5	249.9	247.8	249.0
8	271.8	271.4	268.6	269.2
STEP writing:				
4	235.1	235.1	234.4	234.1
8	261.9	259.2	257.9	258.3
STEP science:				
4	236.7	235.7	234.8	234.6
8	257.9	257.3	257.0	254.7
STEP social studies:				
4	235.0	233.9	233.6	233.9
8	255.4	254.6	252.8	253.2
Grades 5, 6, and 7:				
STEP reading:				
5	242.0	242.5		
6	250.8	249.3	249.1	
7	259.2	256.8	252.8	254.5
STEP mathematics:				
5	237.7	238.6		
6	243.0	240.5	240.6	
7	250.6	250.5	248.3	248.6

CHART II.—MEAN TEST SCORES FOR WHITE GRADE COHORTS

	1967	1968	1969
Grade 1—Cooperative primary test (CPT) of listening	28.8	29.5	29.4

	1967	1968	1969
Grade 3—CPT tests of:			
Listening	36.9	37.4	36.8
Word analysis	51.2	51.5	50.4
Reading	34.4	34.2	33.2
Writing skills 1	17.6	17.4	17.0
Mathematics	36.5	36.5	37.2
Writing skills 2	24.4	24.1	23.3

	1967	1968	1969	1970
Grades 4 and 8:				
SCAT verbal:				
4	246.0	246.5	245.3	246.3
8	277.2	276.6	275.9	276.8
SCAT quantitative:				
4	249.1	248.2	247.8	249.2
8	282.8	281.7	279.6	278.5
STEP mathematics:				
4	244.7	244.6	243.7	243.6
8	271.8	271.7	270.6	270.5
STEP reading:				
4	252.8	251.9	251.0	252.5
8	286.2	286.5	285.5	286.3
STEP listening:				
4	265.6	265.2	265.0	264.9
8	289.9	290.8	289.5	289.7
STEP writing:				
4	249.2	248.9	247.7	247.7
8	282.3	282.3	281.6	282.2
STEP science:				
4	252.7	252.0	250.8	249.6
8	275.0	274.9	274.4	273.5
STEP social studies:				
4	246.1	245.2	244.2	244.3
8	274.3	273.9	273.2	274.0
Grades 5, 6, and 7:				
STEP reading:				
5	262.0	260.9		
6	270.4	271.2	270.4	
7	280.7	278.6	277.3	277.8
STEP mathematics:				
5	253.0	252.4		
6	259.0	257.1	257.2	
7	266.7	265.9	265.0	263.9

Comparing the 1968 Negro grade cohort data at the elementary school level (grades 1–5) with the corresponding data for the baseline year of 1967, one notes that reported mean scores were unchanged on the one test given at the first grade level; advanced in 6 instances at the third grade level; advanced in 3 instances, depressed in 3 instances, and unchanged in 2 instances at the fourth grade level; and advanced in 2 instances at the fifth grade level. Thus, in the elementary schools in 1968, the average scores of Negro students may be seen to have increased on 11 subtests, declined on 3 subtests, and remained unchanged on 3 subtests relative to the preceding year's scores, establishing a pattern of gain for Negro elementary school pupils after one year of desegregation.

In the middle schools, mean scores for 1968 Negro cohorts, when compared to 1967 scores, declined in 2 instances at the 6th grade level; declined in 2 instances at the 7th grade level; and declined in 8 instances at the 8th grade level. With scores depressed in all 12 cases reported, an undeviating pattern of decline in the scholastic performance of Negro middle school pupils after one year of desegregation was manifested.

Viewing the available 1968 Negro grade cohort data over all grade levels, 1–8, one finds mean scores to have advanced in 11 cases, declined in 15 cases, and remained unchanged in 3 cases, relative to the scores of the baseline year 1967. Thus, for District 65 as a whole, one could not speak of either an advance or decline in Negro achievement after one year of desegregation.

Comparing the 1968 white grade cohort data at the elementary school level with the corresponding data for 1967, one notes that reported mean scores rose on the one test given in first grade: rose in 2 instances, declined in 3 instances, and remained unchanged in 1 istance at the 3rd grade level; rose in 1 instance and declined in 7 instances at the 4th grade level; and declined in 2 instances at the 5th grade level. Thus, in the elementary schools in 1968, the average scores of white students may be seen to have increased in 4 instances, declined in 12 instances, and remained unchanged in 1 instance relative to the preceding year's scores, establishing a pattern of decline for white elementary school pupils after one year of desegregation.

In the middle schools, mean scores for 1968 white grade cohorts, when compared to 1967 scores, rose in 1 instance and declined in 1 instance at the 6th grade level; declined in 2 instances at the 7th grade level; and advanced in 2 instances declined in 5 instances, and remained unchanged in 1 instance at the 8th grade level. With scores advanced on 3 subtests, depressed on 8 subtests, and unchanged on 1 subtest, a pattern of decline was evident for white middle school students after one year of desegregation.

Viewing the available 1968 white grade cohort data over all grade levels, 1–8, one finds mean scores to have advanced on 7 subtests, declined on 20 subtests, and remained unchanged on 2 subtests. Thus, for District 65 as a whole, a pattern of decline in the scholastic performance of white students was evident after one year of desegregation.

Comparing the 1969 Negro grade cohort data at the elementary school level with the corresponding data for the baseline year of 1967, one notes that reported mean scores advanced on the one test given at the first grade level; advanced in 2 instances and declined in 4 instances at the 3rd grade level; and advanced in 2 instances and declined in 6 instances at the 4th grade level. Thus, according to the data provided by the E.T.S. study for Negro scholastic performance at the elementary school level in 1969, the average scores of Negro students may be seen to have increased on 5 subtests and declined on 10 subtests relative to the baseline year of 1967, establishing a pattern of achievement decline for Negro elementary school pupils after two years of desegregation.

In the middle schools, mean scores for 1969 Negro grade cohorts, when compared to 1967 scores, declined in 2 instances at the 6th grade level; declined in 2 instances at the 7th grade level; and declined in 8 instances at the 8th grade level. With scores depressed in all 12 cases reported, an underlying pattern of decline in the scholastic performance of Negro middle school pupils after two years of desegregation was manifested.

Viewing the 1969 Negro grade cohort data over all grade levels for which such data was available, one finds mean scores to have advanced on 5 subtests and declined on 22 subtests relative to the baseline year of 1967, establishing a pattern of decline in the scholastic performance of Negro students in District 65 after two years of desegregation.

Comparing the 1969 white grade cohort data at the elementary school level with the corresponding data for the baseline year of 1967, one notes that reported mean scores advanced on the one test given at the first grade level; advanced in 1 instance and declined in 5 instances at the 3rd grade level; and declined in 8 instances at the 4th grade level. Thus, according to the data provided by the E.T.S. study for white scholastic performance at the elementary school level in 1969, the average scores of white students may be seen to have advanced on 2 subtests and declined on 13 subtests relative to the baseline year of 1967, establishing a pattern of decline in scholastic performance for white elementary school pupils after two years of desegregation.

In the middle schools, mean scores for 1969 white grade cohorts, when compared to 1967 scores, declined in 1 instance and remained unchanged in 1 instance at the 6th grade level; declined in 2 instances at the 7th grade level; and declined in 8 instances at the 8th grade level. With scores depressed on 11 subtests and unchanged on one relative to the baseline year of 1967, there was established a pattern of decline in the achievement of white middle school pupils after two years of desegregation.

Viewing the 1969 white grade cohort data over all grade levels for which such data was available, one finds mean scores to have advanced on 2 subtests, declined on 24, and remained unchanged on one relative to the baseline year of 1967, establishing a pattern of decline in the achievement of white students after two years of desegregation.

The E.T.S. study provided 1970 grade cohort data at grades 4, 7, and 8. Comparing the 1970 Negro grade cohort data available with the corresponding data for 1967, one notes that mean scores advanced in 2 instances, declined in 5 instances and remained unchanged in 1 instance at the 4th grade level; declined in 2 instances at the 7th grade level; and declined in 8 instances at the 8th grade level. Overall, reported Negro scores for 1970, relative to those for 1967, were advanced on 2 subtests, depressed on 15, and unchanged on one, indicative of a pattern of decline in the achievement of Negro students in District 65 after 3 years of desegregation.

Comparing the 1970 white grade cohort data available with the corresponding data for 1967, one notes that mean scores advanced in 2 instances and declined in 6 at the 4th grade level; declined in 2 instances at the 7th grade level; and advanced in 1 instance and declined in 7 instances at the 8th grade level. Overall, reported white scores for 1970, relative to those for 1967, were advanced on 3 subtests and depressed on 15, indicative of a pattern of decline in the achievement of white students in District 65 after 3 years of desegregation.

It should be noted that 1970 fourth grade cohorts consisted of students who were first graders at the commencement of desegregation and thus schooled entirely in integrated settings. Their reported achievement levels do not support the proposition that desegregation will boast minority achievement if undertaken at the start of schooling. Compared to the fourth graders of 1967, whose education up to this time had been conducted in racially imbalanced schools, mean scores for fourth grade Negro cohorts in 1970 were advanced in 2 instances, depressed in 5, and unchanged in 1. Mean scores for fourth grade white cohorts in 1970, relative to those of 1967, had advanced in 2 instances and declined in 6 instances.

On the basis of the preceding analyses of the grade cohort data provided in the E.T.S. study, it is apparent that, with the exception of Negro elementary school pupils after the first year of integration, average achievement levels since desegregation have been, on the vast majority of tests, lower for white and Negro students in both the elementary and middle schools of District 65 than they were at the outset. Statements in the E.T.S. study asserting stability of white achievement levels and slight advances in Negro achievement levels in most subject areas in District 65 elementary schools since desegregation, such as those cited on pages 8 and 9 of this paper, are not simply unsupported by the data presented in the study itself, but actually run counter to it.

As a postscript to what has thus far been an assessment of post-integration academic achievement, it should be noted that, according to passages of summary on pages 4 and 110 of the E.T.S. study, Negro students transferred from segregated to majority-white schools exhibited a decline in academic self concept. The only other changes in attitude-related indices which are reported here involved teacher perceptions: "there were," after desegregation, "more psychological referrals for black boys, and more written comments of mixed nature instead of favorable ones for black girls." (pp. 4, 110)

We have attached three press accounts of the E.T.S. study and its findings. That of the "Chicago Tribune" emphasizes the slightness of the gains recorded at the elementary level and is the only one to note declines in white achievement in the middle schools, while citing the E.T.S. study as maintaining that the integration program has had, overall, no effect on whites. The account in the "New York Times," while headlined to indicate that Negroes have made gains, reveals that the gains made were slight and that racial achievement disparities remained. It contains a reference to gains in reading for 3rd grade Negro students which is erroneous, being contrary to the data presented in the E.T.S. study. In terms of its general tone, it appears to portray the consequences of desegregation in Evanston more positively than does the article appearing in the "Chicago Tribune." The account appearing in the "San Francisco Sunday Examiner and Chronicle" is far more positive about the consequences of desegregation than either of the others. The only negative connotation is mention of the persistence of a wide achievement gap. The basis for such statements as "white 3rd graders scored 50.2 percent higher than blacks in reading", and "both white and black students' scores rose but the black pupils' scores rose more than the white pupils' scores, narrowing the gap," is not known to us.

All three press accounts portray a pattern of advance, however slight, in Negro achievement levels, coupled with the maintenance of achievement levels for white students, in District 65 elementary schools since desegregation. In each instance, reputed gains at the 3rd grade level in one or two tests are cited as indicative of a general pattern. The citations made by the "New York Times" and "San Francisco Sunday Examiner and Chronicle" are contrary to the data presented in E.T.S. study. All three articles reported that Negroes who were bused to their new schools achieved at greater rates than those who transferred by walking, a finding of dubious educational significance, while none reported the finding that the highest rates of growth were recorded by Negro students who were integrated prior to district-wide desegregation and continued to attend their neighborhood schools.

Mr. MARCHESCHI. Thank you. Let me cite another paradox. Prior to implementation of forced busing, ESEA-title I compensatory education funds, although limited, were at least concentrated in Pasadena schools attended by the large majority of children qualifying for such help. Now, children who would otherwise qualify are literally distributed all over the school system and they cannot all be reached.

The district is now considering the need to eliminate all ESEA-title I funding from fourth to sixth grades for the coming year in order to reach a greater portion of eligible children at the K–3 level.

In considering the course of future action, the Congress cannot ignore the strong and articulate black voices being raised against forced busing, as most recently exemplified by the sharply worded antibusing resolutions which came from the recent Gary, Ind., black political convention.

As previously mentioned, I bring with me today, statements from two black leaders of the Pasadena community which I submit for the record as exhibit C and exhibit D. The first is from Lawnie H. Taylor, president of Parents in Support of Concerned Students of the Pasadena Unified School District, an all black group that recently received a Government grant to establish a special education program for black children outside the public school system to foster black cultural awareness and self-pride. Mr. Taylor is also president of the Pasadena Eagle, the community's only black newspaper.

Mr. HUNGATE. Without objection, exhibits C and D will be accepted.

(Exhibits C and D follow:)

EXHIBIT C

PARENTS IN SUPPORT OF CONCERNED STUDENTS
OF THE PASADENA UNIFIED SCHOOL DISTRICT,
Pasadena, Calif., April 13, 1972.

U.S. HOUSE OF REPRESENTATIVES,
Judiciary Committee, Rayburn House Office Building, Washington, D.C.

GENTLEMEN: Recently, a CBS nationally telecast documentary on bussing interviewed parents and public school officials in Richmond, Virginia and two northern cities, one of which was Pasadena, California. As you know, since September 1970 Pasadena has operated with a desegregation plan designed to comply with a court order which forbids in any school that a student population of any single minority group shall constitute the majority. This means that the only ethnic group which is permitted to exist as a majority in Pasadena schools is that comprised of White children.

Pasadena has probably become the foremost example of bussing-to-achieve-racial-balance as the means toward equal educational opportunity for all children. Some insight into the success of this program was the purpose of the CBS documentary. However, although in Pasadena, CBS aired both pro-bussing and anti-bussing sentiments, the only views revealed from the Black community were those of bussing advocates. It should be noted that during the taping of the CBS telecast others in the Black community, who are critically opposed to the concept that Black children will obtain an equal opportunity by racial balancing, were also interviewed. I am one of those with whom the CBS commentator and crew spent an hour of set up and filming time. Not one word of my comments was used in the finished documentary. At least one other of anti-bussing sentiment and also a spokesman of Pasadena's Black community had the same experience.

Now, my purpose for recounting the CBS episode is not meant as a criticism of CBS alone but rather of a general attitude in this country which seems to assume that Black parents are in concerted support of ethnic balancing such as being practiced in Pasadena. Oddly enough, the opinions of Whites are sought more frequently than those of Blacks although the whole idea was concerned with the educational opportunity of Black and other minority group children. It was no surprise to me that the recent convention in Gary, Indiana expressed a sharply-worded anti-busing opinion. Blacks of various political persuasions and socio-economic groupings are showing increasing disfavor with ethnic balancing as the only approach to eradicating the disparity between the education of the average Black child and the average White child, a position some of us have held for some time.

Let me make this quite clear, we are opposed to the segregated school and everything it represents at least as it is practiced in the North. I make this distinction to allow for a few good schools in the South even though they have been segregated. On the other hand we support the concept of the predominately Black community school. There is a vast difference between a Black school resulting from segregation practices and a Black School by design. I shall return to this subject shortly.

For the moment allow me to discuss some background material. I wish to refer you to a description of an alternative community school concept designed for Black students and called the Black Cultural Center of Pasadena which I was pleased to have introduced into the HEARINGS before the SELECT COMMITTEE ON EQUAL EDUCATIONAL OPPORTUNITY of the UNITED STATES SENATE, 91st Congress, 2nd session on Equal Educational Opportunity, Part 6—Racial Imbalance in Urban Schools, Washington, D.C., September 15 and 22, 1970 (pages 3191-3209) Three of the five-member Pasadena school board have stated their support of this concept at a public meeting on November 23, 1971. Letters in support of request for funds to assist the development of the Black Cultural Center concept have been issued from the office of the City Manager.

Included in the document is a projection of ethnic enrollment in Pasadena which predicts a majority of minority group students by September 1972 as a conservative estimate of the effect of the busing plan. It has happened, as of March 7, 1972 the Los Angeles Times reported the cross-over to 50.3% minority in Pasadena schools.

Throughout the document an emphasis on the poor quality of education in Pasadena schools is described. This was later verified in an evaluation report of the Pasadena schools E.S.E.A., Title I program for low-achieving target area (minority) children dated July, 1971. The report was compiled from the data by a team of impartial members of the staff of Occidental College (Los Angeles) who summarized the results:

"Therefore, it is questionable whether there is any clear evidence that the compensatory education program, per se, was consistently superior to the standard programs utilized by the Pasadena School District."

That was July 1971 at the conclusion of the first year of busing to achieve racial balance. Now, on March 15, 1972 near the conclusion of the second year of busing, the Los Angeles Times reported that Pasadena pupils tested below U.S. and State academic levels.

As a further note on the quality level of education in Pasadena's public schools, I would like to relate a personal experience: My daughter is seven years old. Since 2½ years of age, she had attended a private school. In May 1971, she was given a Stanford Achievement Test on which she scored 3.6 in reading comprehension and 4.5 in mathematical computation. That means 3rd grade, 6th month and 4th grade, 5th month, respectively. She entered public school in September 1971, at a third grade level. After four months, I decided to have her tested again at a local private school. Her Stanford Achievement scores were then 3.9 reading comprehension, 2.4 mathematical computation, a gain of only 3 months in the former and a loss of 2 years in the latter! Incidentally, my daughter attends the very same elementary school that CBS used in its documentary as an example of the Pasadena Plan at work!

Busing, together with the present day theme of human dignity and confirmation of one's ethnic identity, in addition to administrators, teachers, and curriculums which have yet to respond to the modern day trends in social development all add up to one inevitable result. . . . Polarization, with its varying degrees of conflict, dissention, dissatisfaction, fear, and hate. This was predicted for Pasadena by the aforementioned document as well as my earlier statement which appeared in the March 9, 1970 issue of Time Magazine, months before busing began in Pasadena. The fact is, polarization is now a growing threat on Pasadena's secondary school campuses after nearly two years of busing as polarization has become a serious condition on Berkeley's secondary school campuses after nearly four years of busing.

With that background information, I wish to return to the subject which I deferred.

It is absolutely false to assume that a school which offers an educational opportunity for White children must automatically offer an equal opportunity for

Black children. This erroneous premise is a fundamental cause of the frustrated failures to achieve equal opportunity for all in our public schools today. Even more, it is tragic because there is a solution and, in principle, the solution is rather simple to understand. That is, it is simple whenever we are willing to come to grips with the realities of life and broaden our scope and perspective.

First, we must understand what we mean when we say 'integration' and to accomplish this we must with a kind of abandon release ourselves from our preconceived notions. Too many intellectuals and civil rights people have advocated assimilation in the name of integration. Many of us Blacks in this country (and the number is increasing rapidly) are really opposing assimilation as being detrimental as segregation to Black people. And, I might add, assimilation is detrimental to this nation because it inevitably breeds polarization. But, we do not oppose integration when a peer relationship is meant. However, peer relationship develops out of self-determination, self-help attitudes firmly grounded in group cultural identity. So, the following conditions is what I mean by broadening our scope and perspective:

I. Self-determination—peer relation—integration
II. Assimilation—polarization
III. Discrimination—segregation

For the most part we are in condition III. We think we are striving for condition I when actually we are moving head-long towards condition II.

It is just that simple. Now, with this set of definitions let us take a fresh look at our children and their education. Consider the following:

Too common is the belief that educational achievement is synonymous with skills achievement, i.e., reading, writing, mathematics, etc. It has been usually assumed that if a Black child learns to read, write, and cipher with the same degree of accomplishment as his White classmate, then the Black child has been afforded an equal educational opportunity. Notwithstanding the conditionality of the statement, it is also a fallacy. An equal educational opportunity must consist of the same two major educational components that is generally available to every White child, namely, (1) academic (skills) achievement and, (2) cultural development. Culture is a way of doing, and looking at things peculiar to a particular people. Without a culture there is no system of values and without a value system there is no identity, group character, self-pride and self-actualization, in short, there is none of the foundation and guide-lines from which motivation springs. For the Anglo child these ingredients have always been structured into the public schools, i.e., our schools are 'Anglo-oriented'. For the Black child who has no alternative but to attend Anglo-oriented schools, his opportunity for cultural development is essentially nil and he can be expected to grow up primarily as a non-achiever. Even when he succeeds in skills achievement, it is generally without the inner drive and confidence as an adult to strive to the same heights of accomplishment as his White counterpart.

The failure of our schools to provide minority group children with the essentials of cultural development is the reason why various ethnic and religious groups seek to provide their own education environment. Hence we have accepted for a long time in this nation the important role of cultural schools, parochial schools, etc.

Strangely, however, the people of this nation, including Blacks themselves, have been systematically conditioned to ignore any aspect of cultural integrity as it might apply to Black America. It has been tacitly assumed that African heritage has been lost to the Black American and that he would eventually assimilate into the culture of White America. I can assure you that it is false to assume that our African heritage is lost because it is not and it is foolhardy to strive for assimilation when integration is our goal. But foolhardy the schools are because they attempt to fit all children into the framework of the lifestyle or Anglo culture of the White child.

Now, the solution should be obvious to anyone and it is simple:

Our school systems must include alternative academic institutions designed to uniquely and particularly relate to the Black student and his community, for example, such as described by the Black Cultural Center of Pasadena concept. These academic alternatives would operate as part of the local educational agency, with participation primarily by Black students who choose to attend, either full-time or moving freely between the institution and other schools of the system as the needs require. Further, these alternative Black community schools, by whatever names they might be called, will have the potential of reaching beyond the student to the Black community which they would serve as a cultural symbol, helping to provide standards of responsibility, discipline, and achievement.

Finally, you will note that my comments have primarily dealt with educational opportunity and integration and what these really mean. Within this context, what about quality education? I leave with you the following addendum to our enlightened set of definitions:

Equal cultural/academic opportunity for all—quality education for all.

Thank you.

Very truly yours,

LAWNIE H. TAYLOR, *President.*

EXHIBIT D

INTEGRATION AS A MATTER OF PRIORITY—ECONOMICS, BUSING AND ETHNIC BALANCING

The issue of integration, bussing and ethnic balancing have been much discussed in the recent past. In many instances, this has been appropriate and timely. At this time, however, I feel that we must change our feet from the road of social action to the higher roads of finance and economic development.

I agree with the "Country Preacher," Jesse Jackson. The days of Civil Rights are not dead, but we have to learn a new language. Gone is the language of integrating lunch counters and integrating schools, and demonstrations. Here today, is the language of profit and loss, working capital ratios, debt leveraging, and balance sheets. This is the language of business—this is the language of America.

Let me first make one thing abundantly clear, bussing is not really objectionable. I would be willing for my children to go to the *moon*, if it was necessary for them to receive a quality education.

I am simply not convinced that ethnic balancing is the answer for quality education. I do not want to get hung up on the integration issue. Integration is not the issue. I have no argument with integration, it is something that will ultimately come. It will come through the free exercise of choice by people who desire to integrate their lives and efforts with others who desire the same. Integration, however, ranks very low in my order of priority.

To me, integration is intended as a means towards and end, it is not an end in and of itself. It has been felt that by assimilating Blacks into the majority society, Blacks would be able to enjoy the benefits of the majority society. Thus, we would gain the quality education that we need and through education we would be free.

But, somewhere along the way, this myth was blown apart. Somewhere along the way, the real goal got lost. Integration itself became the goal. With that, integration really became synonymous with assimilation. Blacks were expected to become as non-Black as possible. We were expected to push for entrance into white schools, white neighborhoods, white churches, white businesses, etc. Those who probed for the development of Black schools, Black churches and Black businesses, were looked upon as separatists, or racists or worst.

Let us then begin to look at the real issues. What are we Blacks really seeking? So, as not to get tagged with the label of "speaking for all Blacks", let me qualify my statements to say that I am speaking for some of us Blacks. It is up to you who deal in those kinds of things to determine how many. For another thing, has become abundantly clear. Just as integration is not the real goal, mere numbers is not the real measuring stick. What we need is quality rather than quantity. We need people who understand what it is all about and who are willing to pay the price to see that the job is done.

That job, as I see it, is to increase the capability of our people, to take advantage of the tremendous opportunities that we now have. We must create places for our Black youngsters to go in this economically oriented society. To do this, we ought to use the best vehicles that we have available to us.

When we look at Business statistics, our mission is obviously very formidable. Recent Department of Commerce statistics indicate that Blacks own only 4% of the businesses of this country. The gross sale of these Black owned businesses is even worse—somewhere around 1%.

This is an abominable situation when we realize that with $39 billion, Black Americans stand out as one of the groups with the highest disposable incomes in the Western Hemisphere. It cannot be overemphasized that Blacks in America now have a total disposable income that is about two-thirds the Gross National Product (GNP) of Italy, and larger than the GNP of many African and Latin American countries combined.

With this significant disposable income, then why do Blacks not control a greater portion of economic America? The explanation is simple. The Black community is subjected to a sentripetal force rather than a centrifugal force. That is to say that as to the Black communities the money is being thrown off and out, and is not being kept in. We need to develop a centrifugal force which would direct the money inward where it can spin around within the community rather than going out.

We need to create financial empires and viable financial institutions within the Black Community. We need to patronize our Black Businesses, make them healthy and enable them to grow. This will maximize assistances to the masses in the Black Community.

Let us use the Black retailer as an example. If he received just 25% of the Black retail dollar, he could buy in bulk and merchandise competitively. This would result in lower prices to Black consumers. In addition he could hire additional people. And, since he generally employs all or mostly all Blacks on his staff, this would mean more jobs and Blacks with higher rates of pay. This in turn would mean more money to be redirected back into the Black community.

With a greater demand for goods and services by the Black retailers, there would be a greater amount of business for producers of these goods and services. There would thus be leverage for more Blacks to enter the manufacturing field. I could go on and on, but by now you should have the picture clearly in your mind.

It seems to me then, that the best vehicles we have at hand for economic advancement of Black people are Black schools, Black churches, and Black businesses. As you may notice, integration is nowhere mentioned in my scheme of things; neither is separatism. I am merely looking at things the way they are, and trying to picture them as I would like them to be, in a relative order of priority.

My first desire for me, and for my people, is economic independence. With this economic independence, I believe I and other Blacks will gain that freedom of choice that we desire. This is the essence of self determination.

I am not preaching separation, I am looking at the actual state of things. I am looking at the tendency of myself and of most Blacks with whom I have a great degree of association. We are in the greatest instances married to Black spouses, attend Black churches, live in the Black community, for most instances, work for or own businesses which are basically Black supported.

In some instances, we may be forced into these situations. That I do not think is right. However, in most instances, I feel that given a freedom of choice, our tendency would still be to associate Black. But, we would also integrate. That is, we would maintain our own distinctive ethnics and cultural differences and relate to people of other ethnic and cultural groups as peers.

Integration, not assimilation, that is my message. Economic independence, that is my goal.

HENRY T. WILFONG, *Chairman.*

Mr. MARCHESCHI. I particularly invite the attention of the committee to Mr. Taylor's eloquent recital of what he considers to be the needs of black students as a "black" sees these needs. He also focuses directly on what is perhaps the basic fallacy of the forced integregation argument: that is, that a school which offers an educational opportunity for white children thereby automatically offers an equal educational opportunity for blacks.

The other statement I bring with me is from Henry T. Wilfong, chairman of the Afro-American Leadership Council of Pasadena. I also invite the attention of the committee to Mr. Wilfong's moving recital of what he considers to be the relationship of forced busing and racial balance to true integration.

I also report to the committee the results of a most significant poll conducted last month in the Los Angeles, Calif., School District which provides revealing insight into the wishes of certain minority parents on the subject of forced busing. In short, certain schools in predominantly minority areas of Los Angeles suffered extensive damage in last year's earthquake.

As a result, some of their buildings have been declared unsafe with resulting overcrowding in the remaining buildings. Since there are open classrooms in predominantly white schools in other areas of the city, the school board became subject to intensive pressure to involuntarily bus children from the earthquake-damaged minority schools to the predominantly white schools with open classrooms. Those proposing such a move hoped to achieve a measure of forced integration as well as solving the problem of overcrowding that would otherwise occur.

Rather than mandate such a forced busing program, the Los Angeles School Board decided to poll affected parents. The question was posed as follows:

PURPOSE OF POLL

The closing of a building at your child's school will result in an overcrowded situation next school year. As a result, you are being offered two options. You may voluntarily choose to have your child transported to another school where there is available classroom space, or choose to keep your child at your local school with the possibility of double sessions.

——— I want to have my child transported to another school.

——— I do not want to have my child transported to another school. school.

The results of the poll are summarized in table III. A copy of the Los Angeles School District report is submitted for the committee's files.

(Table III follows:)

TABLE III.—RESULTS OF VOLUNTARY BUSING PROGRAM POLL, LOS ANGELES SCHOOL SYSTEM

School name [2]	Ethnic composition (percent) [1]			Number polled	Number of returns	Voted yes	Voted no	Undetermined	Percent yes	Percent no
	White	Black	Spanish surname							
Elementary:										
Ascot [2]	0.5	[2] 97.2	2.1	405	330	147	180	3	[2] 36	[2] 55
Cahuenga	57.2	2.6	20.7	225	240	9	231	0	4	96
Chapman	64.9	.3	13.8	359	334	65	263	6	19	78
Figeuroa [2]	1.2	[2] 94.3	4.0	604	431	111	308	12	[2] 26	[2] 71
Fletcher [2]	35.2	.7	[2] 56.1	266	230	41	185	4	[2] 18	[2] 80
Gaffin [2]	2.4	....	[2] 93.1	265	216	9	195	12	[2] 4	[2] 90
Hooper [2]	.2	[2] 99.1	.6	742	595	150	430	15	[2] 25	[2] 72
Lankershim	69.6	1.3	27.1	273	194	46	145	3	24	75
Lockwood	24.0	19.1	30.6	312	279	13	266	0	5	95
Logan [2]	14.2	.9	[2] 73.1	523	362	25	333	4	[2] 7	[2] 92
Magnolia [2]	5.0	7.3	[2] 81.2	685	430	37	389	4	[2] 9	[2] 90
Main [2]	....	[2] 97.6	2.1	648	572	269	291	12	[2] 47	[2] 51
Normandie [2]	.5	[2] 96.3	1.8	833	636	222	398	16	[2] 35	[2] 63
Thirty-Sixth [2]	.2	[2] 97.3	1.7	575	270	87	177	6	[2] 32	[2] 66
Twenty-Fourth [2]	1.2	[2] 93.6	3.7	807	346	126	214	6	[2] 27	[2] 62
Junior High:										
Bancroft	82.0	5.5	7.5	913	863	23	836	4	3	97
Harts [2]	.5	[2] 98.4	1.1	1,686	903	455	431	17	[2] 50	[2] 48
King	38.4	3.4	37.1	1,351	1,111	52	1,040	19	5	94

[1] "Other" ethnic groups not indicated.

[2] Schools having majority of minority race.

What does the poll tell us? It tells us that in the schools polled an overwhelming percentage of minority parents do not want their children bused away from neighborhood schools, even when the alternative may be double sessions at their neighborhood school.

I do not contend this poll can necessarily be extrapolated throughout the country. I do contend, however, that a significant number of minority parents want no part of forced busing. To force these minority parents to bus their children against their will is every bit as much a violation of their rights as it was to deny their children access to certain schools solely because of their race.

I wish to heaven I could come before the committee with any reasonable assurance that I or anyone else have the answers to the cruel and frustrating dilemma faced by our Nation as we attempt to bring all races together in love and harmony and provide each of our children quality education. There are no pat answers. Here and there, there is a glimmer of hope.

Massive compensatory education, for example; community control of predominantly black schools where black needs are met as "blacks" rather than as whites see these needs; the progress, however slow, toward eradicating racism; a growing coalition of whites, blacks, and other minorities coming together to face the problems of equal opportunity in the light of educational and sociological reality rather than wishful thinking. All this and much more gives me great cause for hope.

What is needed more than all else is the freedom to try as many different approaches as we can think of, choosing from them those which show most promise. I, like Senator Ribicoff, am tired of the theories, of the false panaceas, of the lack of conclusivity and firm direction deriving from educators, sociologists, Congress, or the Courts.

Most of all, I am tired of the McCarthy-like tactics of those who would label any alternatives to forced racial balance as racist and antiblack, irrespective of the validity of the alternatives.

With respect to the legislation before you, I favor a moratorium on court-mandated forced busing and strongly support the position of the President as outlined in his message of March 17, 1972, to the Congress. However, while I am in sympathy with the objectives of the Equal Educational Opportunities Act as proposed by the President, I do not agree that action on a constitutional amendment should be delayed.

Likewise, while I am in sympathy with many of the provisions of Congressman Preyer's bill H.R. 13552, I believe amendment of the Constitution would be the more desired and more effective approach.

I do not support the constitutional amendment proposed by House Joint Resolution 620 as presently drafted because it might allow school boards to deny minority pupils the opportunity to attend predominantly white schools even if they voluntary desired to do so. I am unalterably opposed to forced segregation of public schools, and, in turn, opposed to any constitutional amendment that even remotely suggests a rollback to involuntary segregation.

I would propose instead, a constitutional amendment which would first of all reiterate clearly the guarantee that no public school student will be denied attendance at a particular school because of race, creed, color, or socioeconomic level. Second, the amendment would forbid assignment of any public school student to a particular school on the basis of race, creed, color, or socioeconomic level against his parent's will.

I am persuaded such an agreement would accomplish a number of key objectives that would bring together the hearts and minds of a large majority of Americans on this now divisive issue.

First, the amendment would clearly and forcibly reiterate the decision in *Brown* that State-imposed segregation is in violation of the 14th amendment. Although constitutional purists may find this trite, I believe that any amendment should clearly state to all people we are reinforcing rather than rolling back the guarantees of the Constitution when it comes to equal protection and equal educational opportunity. Second, the amendment would clearly establish that racial balance per se is not constitutionally required, and thus prevent the current dichotomy of legal opinion on this question.

Third, the amendment would permit, and in my judgment foster, voluntary integration of our schools. It would be impossible for white parents to have their children attend nonintegrated schools so long as minority parents decided to send their children to these schools.

Likewise, white parents would be free to send their children to schools in minority neighborhoods if they desired to do so. Fourth, the amendment would allow maximum freedom to school boards to develop viable alternatives to providing equal educational opportunity and true integration.

Since minority parents would be holding the power to send their children to schools in white communities at their total discretion and at the expense of the school district, this safeguard would guarantee white dominated school boards could no longer shrink from their responsibility of providing equal educational opportunity for all children. Fifth, because of its voluntary nature, the proposed amendment would enhance the only imperative to which I would assign as high a priority as I would assign to that of achieving equal educational opportunity—that imperative being the preservation of a free society.

In the words of Senator Ribicoff, it is indeed time to bring good commonsense to the problem, and it is my prayer that the Congress and the Nation will do so. Thank you.

Mr. HUNGATE. Thank you very much, Mr. Marcheschi, for a very comprehensive and helpful statement. Do I understand that you would distinguish between desegregation and integration?

Mr. MARCHESCHI. I believe that what we have accomplished in Pasadena, is essentially desegregation at this point. We have children of all races in the same school.

I think we are presently in a desegregated situation. With respect to integration, I think I have to divide the question into two parts. On one hand, we are talking about forced integration and here again, we are hung up on terminology, and, on the other hand, what I consider to be natural integration.

I think Mr. Taylor, in his statement, makes a perceptive definition of what he considers true integration to be, and that is the coming together of races as peers, rather than attempting to force integration by legislation.

I don't feel we are going to get there by legislation. I feel we can desegregate by legislation; that is, prevent people from being separated by law, but, on the other hand, it seems to me the woeful evidence is in on what is happening in school districts where courts mandate forced integration of schools.

Mr. HUNGATE. Thank you. That is helpful testimony because we have had testimony all over the lot. Some would not distinguish between de jure and de facto segregation, and some would not distinguish between integration and desegregation. You heard earlier this morning, the gentleman from Harvard, Dr. Pettigrew, who stresses the important difference and distinction between desegregation and integration.

As I understand it, you would oppose the constitutional amendment that is before the committee now?

Mr. MARCHESCHI. Yes, for the reasons cited.

Mr. HUNGATE. Yet you say you would favor a constitutional amendment. Do you have a form of an amendment that you would favor?

Mr. MARCHESCHI. Sir, not being a lawyer, much less a constitutional draftsman, I would hope I have stated the essence of the amendment in what I hope to be clear terms.

However, I would be happy to have someone else make an attempt at it if that would be helpful to the committee.

Mr. HUNGATE. We frequently find we agree on objectives, but when we start drafting, we disagree on what we have done, I am afraid.

Mr. MARCHESCHI. I think the essence of the amendment, sir, would be to state clearly, that segregated schools cannot be allowed—that State-mandated or State-imposed segregation cannot be permitted.

But, further, that no child could be assigned to a school on the basis of race and other factors that I have cited against the will of his parents.

Mr. HUNGATE. On page 14 of your statement, you say that you favor a moratorium on court-mandated busing and strongly support the position of the President as outlined in his Message to Congress. Then, you do support the legislation, I take it, introduced in two separate bills, one on the subject of improving educational opportunities, and the other which is before this committee relating to a moratorium on busing.

Mr. MARCHESCHI. Yes; I support that legislation, sir, but I have great concern about the Equal Educational Opportunities Act being a lasting solution.

I believe we can now see the great dichotomy of interpretations on this question through the country. We are going 50 directions at once, depending on where the court is located.

The constitutional requirement has been interpreted differently by various courts. In addition to the President's legislation, I very strongly favor a constitutional amendment which will make the question eminently clear.

Mr. HUNGATE. Pages 12 and 13 of your statement dealing with public opinion polls I think, will be a help to the committee. Of course, where constitutional rights are involved a majority vote cannot overturn them. But it is interesting when apparently the minority is being protected against something it doesn't want to be protected against. I think that is a helpful presentation that you bring. If the moratorium legislation should be passed, in your judgment, how would that improve things in Pasadena?

Mr. MARCHESCHI. I don't believe that it is going to do anything in Pasadena at this point. The moratorium will not apply to Pasadena as much as we have had forced busing for the last two years——

Mr. HUNGATE. As a matter of public policy, you believe there should be——

Mr. MARCHESCHI. I believe there should be a moratorium on forced busing either by constitutional amendment or by legislation.

Mr. HUNGATE. Thank you, sir, much. Any questions?

Mr. MCCULLOCH. I would like to ask the gentleman a question. How long have you lived in Pasadena?

Mr. MARCHESCHI. I have lived in Pasadena approximately 15 years.

Mr. MCCULLOCH. How long have you been interested in the school problems there?

Mr. MARCHESCHI. I have been interested in the school problems for approximately the last 3 years.

Mr. MCCULLOCH. Do you think there has been a reasonable solution to your school problems since you have been there?

Mr. MARCHESCHI. No; I don't think so.

Mr. MCCULLOCH. What have the people of Pasadena failed to do to improve the quality of the schools there?

Mr. MARCHESCHI. I can only judge the efficacy of our activity in Pasadena as a school board by the following criteria: First of all, the only tangible criteria I have to measure our educational progress are test scores and they are continuing to drop rather dramatically.

Mr. MCCULLOCH. Could I interrupt right there to ask you to what you attribute that drop?

Mr. MARCHESCHI. I attribute that drop certainly not to the lack of funds because we are spending more in Pasadena per student than about 85 percent of all of the other school districts in the State of California.

I think, basically, it is, in my humble opinion, a failure of our schools in Pasadena and schools everywhere to stress basic education on which the test scores, incidentally, are based in favor of greater emphasis on changing social attitudes and behavior.

We are not doing as much as we should do in reading, we are not doing as much as we should do in mathematics. Of course, the real failure, I feel, is that our customers are leaving us at a rather perspicuous rate and by customers, I am referring to children and parents. If you look at the table I submitted on page 4 of my testimony, you will see that the loss of students from Pasadena school districts has been very, very alarming.

Mr. MCCULLOCH. I regret that I was not here at the beginning of your testimony. I was unavoidably detained. Is the reason for that drop in the test scores in your school district set forth in your statement?

Mr. MARCHESCHI. No, sir; I did not address myself to the drop in the quality of education, and neither do I wish to imply, this morning, that there is any correlation that can now be proved between the integration program or forced busing program in Pasadena and our test scores.

I think it would be untruthful to say that. Conversely, as I said earlier in my statement, I wish to God I could develop any confidence that our integration program is going to raise those scores.

In fact, I see many signs in the opposite direction, simply because our teachers, as I have said, are faced with such a wide spectrum of learning ability in each classroom, that we cannot give any of the children the kind of attention they need.

Mr. McCulloch. To judge what you have been telling us, it would be helpful for me if you would give me a word about your background. Where were you born and reared?

Mr. Marcheschi. I was the child of immigrant parents, born in Chicago. I did not speak English until I went to grammar school. Therefore, I have a great dedication to the public school system because it has, more than all else, been responsible for whatever success I may have achieved at this point in time.

I came to California after serving in the Air Force in the mid-fifties. I have been there since. In addition to serving on the school board, I am president of a company called American Telecommunications Corp. At the risk of sounding presumptuous, I was recently named California Small Business Man of the Year by the Small Business Administration and now in contention for national honors.

Mr. McCulloch. We congratulate you, and hope you are a winner in that competition.

Mr. Marcheschi. Thank you, sir.

Mr. McCulloch. This is a very difficult problem that is facing the country. It has been facing us long before you were born and long before I was born. Many of us—and I don't mean you—do not have the courage to meet the question and do that which should be done.

Mr. Marcheschi. Yes, sir, I agree.

Mr. McCulloch. Just as Rome was not built in a day, this difficult problem will not be solved in a day. Although many talk about neighborhood schools and busing and all of that sort of thing, I have concluded, for what it may be worth, that there isn't too much against some of our conclusions.

We began to have busing of schoolchildren in Miami County, Ohio, in 1918 or 1919, and there is hardly a mother who has not had her children bused to school.

Mr. Marcheschi. I agree with you, fully.

Mr. McCulloch. Some have been whipping this busing issue up out of all proportion and intensifying racial hatred while forgetting that we are a country of many diverse people. One of the first things that we have to do in America that we have waited too long to do is to try to overcome those prejudices that grip us—a task with which we have found no fault just the day before yesterday.

But, I am very glad to have your statement. It is a contribution, and I am sorry that I missed the first part of it.

Mr. Marcheschi. Thank you, sir. I agree fully with you, that busing is a false issue. It is a straw man, set up and knocked down by those avoiding the real issue. We are not talking about busing. I agree people are bused every day. What we are talking about, Mr. McCulloch, is compulsory assignment of children to a school other than their neighborhood school. That is the problem in Pasadena and everywhere else.

My frustration is that I do not possibly see how the Congress can legislate, or the courts can mandate to make forced assignment for purpose of racial balance work when you have got people, number one, moving out of the school district, number two, putting their children in private schools, and number three, not moving in the district to begin with.

I have my children in an integrated school. I think it is a great lesson for them, and I am thankful for it. But, the fact is, others don't have my view. We have gone from a school district predominantly white to a school where the whites are in the minority in a space of a very short period of time. I don't know how you solve that problem, by legislation, or by mandate.

Mr. McCulloch. It is a problem that must be solved primarily in the hearts and minds of men and women, black and white. It is, indeed, a question of attitude. But I have no hope that separation of the races will provide the answer you and I are seeking.

Mr. Marcheschi. I agree.

Mr. McCulloch. Some of us are so prejudiced that we don't want to undertake that burden of opening our minds and hearts. Thank you.

Mr. Hungate. Mr. Mikva.

Mr. Mikva. Mr. Marcheschi, we have much in common. We both left our home town to go other ways. My home town is Milwaukee, and now I am from Chicago. Where did you go to school in Chicago?

Mr. Marcheschi. I went to Harrison Tech.

Mr. Mikva. That is located on the near southwest side, and it is predominantly all black.

Mr. Marcheschi. Yes, it is. Although my little Italian neighborhood is still predominantly white——

Mr. Mikva. The area where my children went to school in Hyde Park, was predominantly black, and South Shore, which I first represented in the legislature, was all white. Today it is 99 percent black. Did you ever have busing as a child? What I am suggesting is, what makes you think nonbusing is an answer to this problem?

Mr. Marcheschi. I am really not proposing nonbusing. What I am proposing, at least in the constitutional amendment as I have phrased it, is number one, to make it impossible for any child to be excluded from any school because of race, and number two, to provide each child with the right to attend other than his neighborhood school if he wishes to.

Under the amendment, as I have conceived it, it would be impossible for any white parent to isolate his child in all-white school. Essentially, we are talking about one-way busing the way I conceive the amendment, but I think it is terribly important to make it voluntary on the part of the minority parents.

We are looking at the probability, Mr. Mikva, that a significant number of minority parents don't want any part of busing. How do you rationalize forcing those parents to bus their kids?

Mr. Mikva. As I recall, all of the time I have been in Congress, I never supported a statute which said you must bus. The only two instances that I know in which busing comes up is one, a case like

Evanston where the local school board voluntarily votes for it (and under your amendment they would not be allowed to), or two, where a court orders pupil transportation with the aim of desegregating schools which have been found to be segregated.

If the question before the committee was "Should we pass a statute which required every school which had less than so many black persons to bus some of their students?"—all of your arguments would be very pertinent. But after you say there are no patterns and you point to the problem of white flight which is a desperately serious problem in every city, and you suggest that nonbusing, or a constitutional amendment which would prohibit busing, is going to solve this problem. I am not sure how it will solve it.

Mr. MARCHESCHI. Forgive me for not making myself clear. I said I was against the current amendment, but my amendment would permit busing so long as the parents of those children wanted those children bused.

Mr. MIKVA. Mr. Lent says his amendment assures voluntary busing, also.

Mr. MARCHESCHI. There is something which concerns me about his amendment, and that is that minority children could not be bused even if they wanted to be bused.

Mr. MIKVA. Because they could not be assigned on that basis.

Mr. MARCHESCHI. Under my proposed amendment, minority students could be bused.

Mr. MIKVA. What I am asking you is, we have terrible school problems in this country, serious problems; problems with the quality of education, problems with segregaton, problems of diminution of product in some schools, problems of balance between those getting an education and those that don't. You ask us to put something in the Constitution despite what you said at the beginning, that there are no pat answers.

Now, why do you think that putting something in the Constitution is going to be an answer to any of these problems? Which problems will it solve?

Mr. MARCHESCHI. My feeling that there are no pat answers is a very firm one. It seems to me that the present integrationist philosophy, that is, that racially balanced schools are going to be an answer, is the one that cannot be supported.

Mr. MIKVA. Who said that?

Mr. MARCHESCHI. Who said what?

Mr. MIKVA. That racially balanced schools are the answer?

Mr. MARCHESCHI. Mr. Pettigrew said it this morning.

Mr. MIKVA. I read his statement, and I didn't see that. Do you know a court that said it? Has the Supreme Court ever said that?

Mr. MARCHESCHI. I don't know. Are you suggesting those who favor forced busing to achieve racial balance are not saying that it is going to be the answer to raising the educational achievement levels of minority students?

Mr. MIKVA. Let me read you a quotation from *Swann* v. *Board of Education*, which is considered the Peck's bad boy of the Supreme Court decisions, and responsible for all of the problems of our schools. Chief Justice Burger said:

> If we were to read the holding of the district court to require as matter of substantive constitutional right any particular degree of racial balance or mixing, that approach would be disapproved, and we would be obliged to reverse. The

> constitutional command to desegregate schools, does not mean that every school in every community must also reflect the racial composition of the school system as a whole.

That is the most recent verdict of the U.S. Supreme Court. Lower court decisions are expected to conform to that decision. If some of them have abused that ruling, that will be reviewed by the courts because this concerns basic constitutional rights under the 14th amendment. I know of nothing to indicate that the Supreme Court or Chief Justice Burger has had a change in mind, and will hold any differently in the next case that comes up, if that rule is being violated.

But, it seems to me, when we propose a constitutional amendment, that we are suggesting that your amendment or Mr. Lent's amendment is somehow going to solve these other problems. Are such amendments going to solve the problem of the white flight either in Pasadena or in South Shore. My question is, "Why do you think it will?"

Mr. MARCHESCHI. I would like to answer that. First of all, as you have noted, the courts have abused or have gone far beyond, I think, what all of us would agree is the latest reading we have from the Supreme Court.

In Pasadena, as I pointed out in the initial part of my statement, we had a unitary school system. We didn't have a dual school system. The schools were, indeed, not balanced. We had schools which were totally white because they were in totally white neighborhoods.

In our case, the court came down, and gave us a mandate that no school shall have a majority of a minority race, which means a racially balanced formula, and it based its decision, at least in part, on the fact that the school board had maintained a neighborhood school policy.

Mr. MIKVA. Did the board appeal that decision?

Mr. MARCHESCHI. No, it did not.

Mr. MIKVA. Now, I am not entirely familiar with the Pasadena decision. I would have to look at the total mandate of the court. All I am saying is that it would not be the first time that a lower court has exceeded the ground rules and guidelines of the Supreme Court. But there are many other cases such as Evanston where the whole matter came to fruition without any court litigation. Obviously some of the momentum came from court orders that were issuing elsewhere. The question is does the decision in your district court justify a constitutional amendment?

Mr. MARCHESCHI. My concern, in answer to your question, is that so long as we are caught on the horns of the de jure-de facto distinction, and as I see the thrust of new cases starting to more and more put into de jure categories, even those which heretofore might have been de facto, on the basis of prior housing bias, and so on, I see the forced busing solution being applied more or less across the board. In this regard, I am also troubled about the monumental double standards for the North and South.

The No. 1 issue from an educational standpoint is to prevent putting the burden on the schools of the totality of this problem, but to address ourselves in the schools to what I consider their No. 1 challenge, and that is raising the woefully low educational achievement levels of minority children.

I see that as our prime objective and commitment, and I see the courts doing things which, at least in Pasadena, are putting us down a road which is the antithesis of what I think we have to do to solve the problem. In view of the fact that we have struggled with this problem for a long time, and things are as confused as ever on this issue, I feel that a constitutional amendment which would set a clear course from here on out, would be the healthiest thing that could happen.

Mr. MIKVA. This has puzzled me about all of the testimony that has come before us. People like you are clearly not bigots and not racists, you are concerned about the "gapitis" that I referred to. Do you think *Brown* created the problems of our schools?

Mr. MARCHESCHI. Certainly, I don't believe that.

Mr. MIKVA. Then is it wrong to suggest that trying to find some antithesis to *Brown* is irrelevant to solving the problems in the schools?

Mr. MARCHESCHI. Perhaps that is our problem, you and I. I don't consider the amendment I have proposed an antithesis to *Brown*. My interpretation of *Brown*—and again, I am not a lawyer, sir—is that *Brown* said that it is a denial of equal protection to have a State-mandated segregated school system. I do not interpret *Brown* to say there is a constitutional requirement that every school have racially balanced enrollment.

Mr. MIKVA. And no decision since *Brown* says that.

Mr. MARCHESCHI. Our Federal court in the *Pasadena* case said it.

Mr. MIKVA. I thank you for your testimony. I guess my wistfulness here is that if we would ever put the time, energy and effort into finding solutions to the real problems of our schools that have been put into trying to overturn *Brown* or trying to set aside *Brown* or trying to come up with some constitutional amendment that would limit *Brown*, I think we might solve some of the real problems of our schools. You have a very fertile mind, and you have spent a great deal of time on this problem. I wish you had come before us with some of the real answers to the problems. Thank you.

Mr. HUNGATE. Would it be a fair statement, Mr. Marcheschi, you don't conceive of overturning *Brown*, do you?

Mr. MARCHESCHI. No, sir; in fact, I am very concerned about reinforcing *Brown*.

Mr. HUNGATE. You have a statement that there are no pat answers. Are you concerned that in a situation in which you believe there is no simple solution established yet, or discovered that it might be an error to force people to follow one line of action?

Mr. MARCHESCHI. I think that is precisely my point.

Mr. HUNGATE. I would tend to disagree with my colleague about Mr. Pettigrew's statement. I may agree with Mr. Pettigrew, but I think he stated that integration is necessary to quality education. I think I read him that way. I don't know whether you have had a chance to read his statement.

Mr. MARCHESCHI. If you would read Mr. Pettigrew's chapter in the Moynihan-Mosteller work to which I referred, I think you would agree that his testimony here today directly contradicted what he wrote.

Mr. HUNGATE. That would never be criticized in a congressional hearing.

Mr. MARCHESCHI. Even if it is correct, Mr. Hungate, and you, Mr. Mikva, at very best, those who hold to that line of reasoning including Dr. Coleman himself, will readily admit that even under the most ideal conditions, the best they could hope for is something on the order of 16- to 20-percent amelioration or narrowing of the gap that presently exists between minority and white children and that is all they can possibly hope for.

I am saying that is not good enough. It seems to me to follow that false panacea just to get that kind of meager payout keeps us from finding the road that we have to find to narrow the gap entirely.

Mr. **Hungate.** I thank you for your testimony before yielding to my colleague from Illinois. You made it clear that you are not an attorney, but there was a great lawyer once who said "a page of experience is worth a pound of logic," and I think you have brought us valuable experience.

Mr. Mikva, will you take the chair?

Mr. **Mikva** (presiding). Mr. McClory.

Mr. **McClory.** I want, principally, to praise the testimony which you have given Mr. Marcheschi. Coming from Illinois myself, I appreciate the excellent background you had before you journeyed to Pasadena. I have a strong feeling that if we would listen more to those who are administering our schools at the school board level and less to some who are frequently far removed, we would find more ready answers to our problem.

I might recall that in response to the question that I posed to Dr. Pettigrew, he stated that he did not favor busing from good neighborhoods into a poor neighborhood or into a poor school. So what presents itself as a possible solution is one-way busing, as I think has been indicated here earlier. While you stated you are not a lawyer, it seems to me that you have endeavored, through the suggestion of a constitutional amendment which you have made, to outline a rational solution. I think that is what we should be trying to find.

We have heard a great deal of testimony to which you have referred. You have referred to the fact that a number of opponents of the constitutional amendment, the probusing witnesses, simply denominate every person who is against forced busing, as you call it, as bigoted or biased and make broad inflammatory charges like that. This is not helping us to find a solution to what is a genuine problem in which people of all races are involved.

I don't have any questions, but it seems to me you have gone into the subject quite thoroughly. Your testimony has been very helpful. I don't mean to say that Dr. Pettigrew's testimony has not been helpful, too. I think we have had several helpful suggestions on the issue, and I think we should give serious thought to the type of solution which you have outlined in your proposed constitutional amendment. Thank you.

Mr. **Mikva.** Thank you, Mr. Marcheschi, for your contribution.

The next witness will be Mr. Henry L. Marsh III, vice mayor, city of Richmond.

STATEMENT OF HENRY L. MARSH III, VICE MAYOR, CITY OF RICHMOND, VA., COOPERATING ATTORNEY, NAACP DEFENSE AND EDUCATION FUND

Mr. **Marsh.** Mr. Chairman and members of the subcommittee, ladies and gentlemen, I am grateful for the opportunity to appear before this subcommittee to testify concerning President Nixon's proposals and, also, the proposed constitutional amendment.

I might say, that I have been involved in virtually every desegregation case in the State of Virginia since 1961. During these cases, and there have been approximately 50 of them, we witnessed the desegregation of virtually every district in the State.

In some of the urban areas, litigation is still going on. In the Norfolk and Portsmouth area, the question is simply who is going to pay for the transportation. At this point, the other issues are resolved, and that question is in the Supreme Court.

Those boards take the position that the children should have to pay for getting to the schools. In the Newport News area, the question is, "Can the board continue to operate some schools that are disproportionately one race?" and, of course, you probably know about the Richmond situation. There, the question is whether or not the Federal court has the power to order desegregation even if it means children must cross political subdivision lines.

In view of the prior testimony, and the earlier testimony to the committee, I think it is helpful to point out that in none of these cases have there been problems like those discussed in the findings of the President's proposal, and it is also helpful to observe that in Virginia, desegregation is working, and working well in the majority of the situations.

The problems that we have had with it, have been problems involved in the dismissal of black administrators and black teachers and suspension of black pupils, but by and large, desegregation has been working. I might point out that, looking at it historically, desegregation has not been tried fully, so that those persons who say that desegregation has failed, I think, are not familiar with the historical facts.

I think it is important to look at the justification or proposed justification for the moratorium which is contained in the President's bill. I think in this context, we must look at the President's proposals in a historical context, because we are dealing with an ongoing situation, as Representative McCulloch has mentioned, which has been going on for hundreds of years, really.

Historically, America's response to the *Brown* decision has been very disappointing and frightening to many of us who are participating in the struggle going on. Neither the executive, judicial or legislative branches of Government faced up to the resistance of white Americans to the clear requirement of the Supreme Court for an end to racially segregated public education.

The executive branch criticized the decision informally, ignored it, and only enforced it when it had no choice, such as in Little Rock or in a case where its own authority was challenged. The legislative branch, although it had, I will submit, the duty to enforce the decision under section 5 of the Fourteenth Amendment, the legislative branch buried its head in the sand until 1964, and even then provided an inadequate machinery to protect the rights which had been declared by the Supreme Court.

Since 1964, the court or Congress has still failed to act in an adequate manner. Even the judicial branch tolerated the defiance of edicts which it had announced in 1954. Presumably, because of white opposition to desegregation, the doctrine of "all deliberate spread" was created, and permitted to exist until 1969. Thus, the immediate constitutional rights were forever lost, sacrificed on the altar of white opposition, and political expediency.

I would like to give one example of this. Freedom of choice was one of the many devices utilized by the southern states to resist desegregation. In 1963, I was present in the Supreme Court when the Atlanta case was argued, *Calhoun* v. *Latimer*.

The Supreme Court ducked that question about by saying that the board has indicated a couple of weeks ago, they are going to change their plan and, therefore, we don't have to rule on it. In 1965, I took a case to the Supreme Court, *Bradley* v. *City of Richmond*, challenging freedom of choice. The Court condemned faulty segregation but again ducked the question of freedom of choice.

In 1968, my partner and I took another case to the Supreme Court, *Green* v. *New Kent County*. This time, the Supreme Court outlawed freedom of choice, the very concept that it could have outlawed in 1963, except that 5 years had passed, and we submit that this is an example of the type of delay and type of evasion that we have had in implementing the *Brown* decision, and this was caused by white opposition of the decision.

And, I might add, that none of the powerful institutions in our nation was willing to overcome this failure of Government to meet this particular problem. Finally, after 18 years of struggle against overwhelming odds, the forces fighting to end racial segregation and racial discrimination have now seized the initiative, and we are beginning to achieve compliance with what the constitution required.

Again, white Americans who opposed this decision are now raising voices in opposition. It is at this critical point that the President decided to introduce his proposals, and it is at this point that we must look at the proposals——

Mr. MIKVA. Mr. Marsh, those bells were for a vote. We have got approximately 15 minutes before we are all going to have to respond to that call. We will place your entire statement in the record. We have one more witness after you, and I am hoping you can summarize your statement as quickly as possible, and without objection, we will place the entire statement in the record, and then leave a minute or two for questions.

(The statement referred to follows:)

STATEMENT OF HENRY L. MARSH, III, VICE-MAYOR, CITY OF RICHMOND, VA., CO-OPERATING ATTORNEY, NAACP DEFENSE & EDUCATION FUND

Mr. Chairman and Members of the Subcommittee: Thank you for the opportunity to appear before this subcommittee to testify concerning President Nixon's proposals to limit new or additional transportation of school children in desegregation cases and to comment briefly on the proposed constitutional amendment embodied in House Joint Resolution 620.

My testimony will primarily deal with the factual findings recited in the moratorium bill, the purpose of the bill and the possible effects of President's legislation on the struggle to provide equal opportunity in public education.

NO JUSTIFICATION EXISTS FOR A MORATORIUM

The President's proposals are startling! History will record that America's response to the *Brown* decision represented a disappointing and frightening challenge to the survival of our country. Neither the Executive, Legislative or Judicial branches of our government faced up to the resistance of white Americans to the clear requirement for an end to racially segregated public education.

For example, the Executive branch criticized the decision on some occasions; ignored it at times, enforced it only when it had no realistic choice and at all times failed to provide the moral leadership necessary to make real the promise of *Brown*.

The legislative branch literally buried its head in the sand until 1964 and even then provided an inadequate machinery to protect the rights which had been declared by the Supreme Court. Since 1964 the Congress has still failed to enact legislation adequate to insure equal educational opportunity to children without regard to race.

Even the Judicial branch tolerated the definance of the edict it had pronounced in 1954. Presumably because of white opposition to desegregation, the doctrine of "all deliberate speed" was created and permitted to exist until 1969. Thus, personal and immediate constitutional rights for millions of black and brown Americans were forever lost—sacrificed on the altar of white opposition and political expediency.

Moreover, none of powerful institutions in the private sector was willing or able to overcome the failure of government to deliver on its promise to end racial segregation in public education.

Finally, after eighteen years of struggle against overwhelming might, the forces fighting for an end to racial segregation and discrimination in education have seized the initiative and are beginning to achieve the implementation of the constitutional command. Again, those white Americans who oppose this decision have raised their voices in protest and are demanding that we abandon our objective and retain or return to racial segregation.

It is in this context that we must view the President's proposals.

The proposal—contained in H.R. 13916—that we limit busing is obviously a proposal that we limit desegregation. This is clear from the statements of those forces the President is attempting to placate that it is "forced busing" that is objectionable rather than busing, *per se*, and from the fact that no objection has previously been raised when busing has been utilized as a normal educational tool.

COMMENT ON FINDINGS AND PURPOSE

The bill recites in Sections 2 through 7 certain "findings" which purport to be the justification for Congress to join the President on the side of those who would continue resistance to desegregation in public education. These findings will be discussed in the following paragraphs.

The suggestion in Section 2 that in many cases increases in transportation have (1) caused substantial hardship to children (2) impinged on the educational process and (3) required increases in excess of that required for desegregation is simply not correct. In most cases, the transportation required for desegregation does not exceed that previously utilized by the district to maintain segregation or the standard used in other districts in the same State not involved in desegregation.

The Supreme Court has already fixed the obligation of local school boards to desegregate their schools. No additional standard is needed as section 3 suggests. Compliance with the present requirements is what is needed to achieve satisfaction of the constitutional command. Legislation designed to force such compliance is necessary to bring an end to the illegal discrimination.

Section 5 constitutes a blatant attack on the judicial arm of our government. It would substitute the judgment of the President and the Congress for that of the courts in interpreting the requirements of the 14th amendment. Contrary to the assertion in section 5, there is no substantial likelihood that many local school boards will be required by courts to violate the 14th amendment. Such an assertion must be considered in light of the reluctance which the courts have exhibited in the past to require school boards to even comply with the *Brown* decision. The real concern is that the courts might require more school districts to comply with the 14th amendment rather than continue to violate it. In the event of a possible mistake by a Federal district court, the corrective process of the appellate procedure is more than adequate to protect the interest of local school boards.

The major premise of section 6 is untrue. The funds required for additional transportation equipment constitute only a small percentage of the total school budgets. Moreover, the possibility that such facilities will not be needed for the indefinite future is extremely remote.

The arguments contained in Section 7—unnecessary administrative burden—and in Section 6—excessive expenditures—have been considered and rejected by the Courts. Now the President is seeking to have Congress overrule the Courts on a matter where the Courts have ultimate responsibility.

PURPOSE OF THE MORATORIUM BILL

Section 7(b) of the Act reads in part: "It is . . . the purpose of this Act to impose a moratorium on the implementation of Federal court orders that require local educational agencies to transport students . . ." It is evident from the above analysis that the purpose of this bill is (1) to prevent further implementation of the *Brown* decision, (2) to set the Congress in action waging war against the Courts and the Constitution of the United States, (3) to deploy the vast resources of the Executive branch of government as well as the moral leadership of the presidency against the effort to seek vindication of rights protected by the Equal Protection Clause of the Fourteenth Amendment and (4) to effect a rollback of the past gains made in the effort to end racial segregation in public education.

THE EQUAL EDUCATIONAL OPPORTUNITIES ACT

The Equal Educational Opportunities Act was designed to be a substitute for the racially desegregated commanded by the constitution. This act is an insult to the intelligence of all black Americans. We wonder what new information was made available to the President to cause him to change his mind about the merits of compensatory education. The experience of Title I and Headstart Programs convinces us that racially segregated compensatory education programs will not eliminate the inequity in our educational systems.

CONCLUSION

It is evident that the entire program of the President is an open attack on the federal judiciary by the Executive branch. This attack—coming at the most critical point in the struggle—is especially dangerous at this time when the credibility of the American system and those who defend and support it is being seriously questioned.

Many communities in our nation are adjusting to desegregation. The educational opportunities of millions of children have been improved because of it. Desegregation where it is being tried with the proper attitude and effort is working and working well. Obviously, many problems remain, but the maximum hope for educational excellence can only be realized if all aspects of racial segregation and discrimination have been eliminated from the dual school systems which are in our midst.

The proposed Constitutional Amendment which is simply an attempt to repeal a part of the fourteenth amendment to be put to death. Our courts have clearly stated that it is necessary to use race in order to disestablish the racially dual systems which have been deliberately created over a period of years. This amendment would mean that many of our school districts could never be desegregated.

We have come too far along the road from slavery and segregation to turn back. All Americans must be persuaded to overcome their racial bias and accept the fact that racial segregation is a dying phenomenon and that racial discrimination must be promptly eliminated from our midst.

This committee must say to the Congress, to the President and to the American people that racial prejudice, personal political ambition and political expediency must yield to the command of our Constitution for equality of treatment by government without regard to race or color. This committee must say that the independence of the judicial branch of our government must be maintained against the attacks inspired by racial hatred. This committee must say that black Americans who have patiently waited for the American system to deliver on its promise of justice, freedom and dignity have not waited in vain.

This committee must speak—before it is too late.

Respectfully submitted.

HENRY L. MARSH III.

Mr. MARSH. Basically, I think I can do that. In my statement, I deal with the particular findings of the President, and I say these findings are simply not true. In the cases in which we are involved, and cases over the country with which we are familiar, the problems suggested in his findings, simply do not exist. No courts are exceeding the requirements. The courts, themselves, are capable of correcting any occasional excess. So, really, what these proposals do, is to attack the courts, and to take away from the court the power to decide judicial questions, and give these powers to Congress.

The purpose of the moratorium bill, as we see it is to really prevent further implementation of the *Brown* decision to set the Congress in action, waging war against the courts and against the Constitution, and to pit the resources of the executive branch of the Government against the effort to seek vindication of constitutional rights, and to roll back the gains that we have achieved over the past few years.

The Equal Opportunity Educational Act is an insult to the intelligence of all Americans. We know what title I and Headstart showed; that these programs, in segregated context, do not work to satisfy the problems, and we resent these types of things as a booby prize for a substitute for desegregation.

The constitutional amendment is even more dangerous, and I understand, now, the President has decided to back it, if nothing else works. What this constitutional amendment will say, is that if you work faithfully within the rules for 18 years and, finally, we get the rules to work for you, if you are about to succeed, then the majority of people in the country are going to change the rules.

If you change the 14th amendment now to permit segregated education, you will say to black Americans "You can't gain any of the goals of your struggle, you can't win the goal for employment opportunity, you can't win anything," because as soon as you are about to approach success, the majority of white people in the country are going to say, "We can't let you do this, let's change the rule."

I think this would lead to the destruction of the country, and would say to those of us in political office, working in the system, "You can't win," and we will be very vulnerable to those in our communities who believe that the system cannot work anyway because our credibility would have been completely destroyed by this practice of changing rules in the middle of the game.

I would say to the group, finally, on the suggestion that blacks want segregation, I was at Gary, I was one of the founders of Gary, and Gary is not to be taken as a perfect consensus of black thought in this country. The black political elected officials, of which I am a national officer, for the most part were not present at Gary. Gary was a good beginning but it was not intended to be a referendum on black thought.

But, after this resolution passed, another resolution was passed that reflects the views I have. Many blacks are disillusioned and disappointed. What blacks are tired of, is the false promises and disillusionment and frustrating way in which integration has been accomplished, many times when it has been accomplished.

I am a little concerned about whites who are now concerned about black power and black rights. I suspect this is only a mask to justify their own segregated views, that this is what the blacks really want. I was taught to be wary of Greeks bearing gifts, and I am concerned about these whites concerned about what is good for blacks. I will be happy to answer any questions you might have.

Mr. MIKVA. I have only one question because we want to hear this last witness. If the moratorium bill were passed, I am asking, as a lawyer, what would you gather its impact would be on the *Richmond* case?

Mr. MARSH. I think if it were to pass, and be adjudged constitutional, I think it would probably prevent progress and ruin the *Richmond* case. Ultimately, the number of students being bused would increase from about 68,000 to 78,000, by about 10,000. Although the average busing time would be less because of the way the community is located. This particular bill would probably prevent that solution, in my mind.

Mr. MIKVA. Thank you. Mr. McCulloch.

Mr. MCCULLOCH. No questions.

Mr. MIKVA. Mr. McClory.

Mr. MCCLORY. No questions.

Mr. MIKVA. The Acting Attorney General told us that the moratorium bill would have no retroactive impact. Your suggestion is that it would impact the Richmond case.

Mr. MARSH. Yes, I think it is unfortunate that, if the moratorium bill is passed and upheld, it would certainly have an impact on the Federal judges. It would have an impact on the school administrators where there are no court cases saying we can't do this. It would have an impact on timing in the community, and I think it would set in motion forces that would be dangerous for the country.

Mr. MIKVA. Thank you, Mr. Marsh.

The last witness is Mr. J. R. (Joe) Brown, Sr., chairman, Americans Concerned About Today, Greensboro, N.C.

Mr. Brown, unfortunately, we have a short time, and we will put your statement in the records or, if you prefer, you may read it in full since it is a short statement.

STATEMENT OF J. R. (JOE) BROWN, SR., CHAIRMAN, AMERICANS CONCERNED ABOUT TODAY (ACT), GREENSBORO, N.C.

Mr. BROWN. Thank you, sir. I will be as brief as possible, and I appreciate the opportunity to come here today, and represent the children of the Greensboro City school district and, also, the many children in North Carolina, who are concerned with this forced busing.

We would like to bring out the fact that in Greensboro this year, under Federal court order, we have an increase in dropouts of 9 percent. We have students waiting until they become 16 years of age so they can drop out of school. This is the wrong approach to take.

We have parents not being able to get involved with parent-teachers associations because they have children in five different schools, and it is impossible. As a concerned parent, a taxpayer, and chairman of a concerned citizens group, student assignments which bring about massive forced busing are neither sensible nor educational.

It does not help race relations, but in fact, it hinders them by placing students in a strange school and environment. Forced busing is, in fact, wasting millions of dollars of tax money that could be more wisely spent on our education. It is not very educational for a small child to catch a bus as early as 7 o'clock in the morning and not get home from school in the afternoon until 4 or 5 o'clock.

I don't think this is very educational at all. This child is so worn out from riding the bus, that he cannot learn at school, and will be too tired to study at night. As I see it, no other method could be more fair than the old freedom-of-choice method with children being allowed to attend the school in their neighborhood or, if they choose, a school outside of their neighborhood.

After all, the big reason the family moves into certain neighborhoods is usually to attend that neighborhood school. I don't think that students have to go to schools in certain ratios to get a proper education. Saying this to me would be like saying Congress could not pass a law unless they had 70 to 30 white to black ratio in Congress.

As concerned citizens, we feel our educational system should be free from oppression by Federal courts. I don't think Federal courts should enter our school system at all. We feel schools should be run on local levels. We know of our problems locally.

HEW and Federal courts, I don't think understand our problems as well as we do locally. I think in a free nation, such as America, parents certainly should have the opportunity to send their children to the school of their choice which usually is the neighborhood school.

We would urge the House of Representatives to take positive action on these amendments to insure that the education of our children will again become the primary objective in our educational system. It is very obvious now that education is secondary with racial mixing being the main objective in school, and this isn't why we pay our tax dollars, to see a mix.

We want education of our children, high quality education. We just make a plea to save our public school system. I think a few more years, 2 or approximately 5 more years of Federal control of our schools, the lack of local control, could bring about a totally welfare school system. We make the plea, give us back our schools, and take action with a constitutional amendment which would prohibit assignment of any student on the basis of his color. That, briefly, is my statement. Thank you very much.

Mr. Mikva. Thank you. Without objection, we will place your statement in full in the record.

(The entire statement follows:)

Statement of Joe Brown, Chairman of ACT (Americans Concerned About Today), Greensboro, N.C.

It seems very obvious that the Federal Courts have gone beyond their authority by overriding the 1964 Civil Rights Act, Title IV. This act was passed as law by Congress with "Desegregation meaning the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance." The courts have in turn reversed your law or declared it null and void as far as the meaning of desegregation is concerned.

The courts also have, according to Senator Sam J. Ervin, violated the equal protection clause of the 14th amendment. This clause forbids a state acting through a public school board or any other state agency to treat differently persons similarly situated. In other words, this clause said to treat in like manner all persons in like circumstances. Therefore, if some children in a neighborhood are allowed to attend their neighborhood schools and others are bused across town the equal protection clause is violated.

That is what the law says about student assignments, but I would like to point out that as a concerned parent, a taxpayer, and the chairman of a concerned citizens group, student assignments which bring about massive forced busing is neither sensible nor educational. It does not help race relations; but in fact hinders them by placing students in a strange school and environment. Forced busing is in fact wasting millions of dollars of our tax money that could be spent more wisely on the education of our children. It's not very educational for a small child to have to catch the bus as early as 7:00 to 7:30 in the morning and not get home from school until 4:00 to 5:00 in the afternoon. This child is so worn out from riding the bus that he cannot learn at school and certainly will be too tired to study at night.

No other method could be more fair than the old freedom of choice method with children being allowed to attend school in the neighborhood. After all this is the big reason the family moves into a certain neighborhood to begin with. Since when did students have to go to school in certain color ratios to get a proper education? That would be like saying the Congress could not properly make laws unless they had a ratio of 70 to 30 white-black. How absurd.

As concerned citizens we feel our educational system should be free from oppression of the federal courts. We feel that our schools should be run on a local level. We know our problems locally. HEW and the federal courts do not know our problems and have only created more problems with their intervention in our school. In a free nation such as America parents certainly should have the opportunity to send their children to the school of their choice which is usually the neighborhood school. We urge the House of Representatives to take positive action on these amendments to ensure that the education of our children will again be the primary objective in our educational system. It's very obvious now that education is secondary with the ratio mixing being the main objective.

Save our public school system. Another 2 or 3 years of federal control of our schools could bring about a totally welfare school system. Give us back our schools.

Thank You!

Mr. MIKVA. Mr. McCulloch.

Mr. MCCULLOCH. I have no questions.

Mr. MIKVA. Thank you, Mr. Brown. This will close the hearing for today.

We will reconvene at 10 o'clock tomorrow morning.

(Whereupon, at 1:20 p.m. the hearing adjourned to reconvene at 10 a.m., May 4, 1972.)

SCHOOL BUSING

THURSDAY, MAY 4, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, the Honorable Jack Brooks (chairman) presiding.

Present: Congressmen Brooks, Hungate, Mikva, McCulloch, Poff, and McClory.

Staff present: Benjamin L. Zelenko, general counsel, Franklin G. Polk, associate counsel and Herbert E. Hoffman, counsel.

Chairman Brooks. Gentlemen, the meeting will come to order. Regrettably, our distinguished and beloved chairman cannot be present at this morning's hearing and he asked me to preside instead.

Former Associate Justice of the Supreme Court, Hon. Arthur J. Goldberg has served this country in a number of important capacities, as former Secretary of Labor and as Ambassador to the United Nations. He is widely recognized as an outstanding attorney and specialist in the field of labor relations. We want to welcome Justice Goldberg to these hearings.

STATEMENT OF HON. ARTHUR J. GOLDBERG

Justice Goldberg. Thank you very much, Mr. Chairman and distinguished members of the committee, I appear here today at the committee's invitation to testify concerning House Joint Resolution 620, providing for a constitutional amendment relating to the busing of public school students; the Student Transportation Moratorium Act, H.R. 13916, providing for a moratorium on busing: and the Equal Educational Opportunities Act of 1972, H.R. 13915, containing permanent antibusing provisions.

In this testimony, with the committee's leave, I shall first address myself to H.R. 13916 and 13915. I shall then make some comments about the joint resolution, House Joint Resolution 620, providing for a constitutional amendment.

I am of the considered view that enactment of the administration's proposed Student Transportation Moratorium Act, H.R. 13916, would be an unconstitutional interference with the judicial power vested by article III in the Federal courts. I am similarly of the view that the busing provisions in the Equal Educational Opportunities Act, H.R. 13915, suffer the same constitutional infirmity. Further, in my opinion, the administration's proposals, viewed in their entirety, tilt toward the restoration of the discredited and overruled "separate but equal" doctrine of *Plessy* v. *Ferguson*, 163 U.S. 537 (1896) expressly overruled by the Supreme Court in *Brown* v. *Board of Education*, 347 U.S. 483, decided May 17, 1954. Finally, I believe that the proposal embodied in House Joint Resolution 620 to amend the Constitution would be a backward step in the steady progress since *Brown* toward eliminating State-sanctioned racial discrimination.

The Moratorium Act, H.R. 13916, would explicitly stay the effectiveness of any busing order issued by a Federal court during the period beginning with the enactment of the moratorium and ending on the earlier of two dates: July 1, 1973, or the date on which the Equal Educational Opportunities Act, the companion to the Moratorium Act, is enacted.

The Equal Educational Opportunities Act, H.R. 13915, would impose a variety of restrictions on the ability of Federal courts to order busing to correct school segregation. These restrictions would apply notwithstanding a finding of State-imposed segregation of public schools and a determination by the district court that busing, under these circumstances, is an essential "tool"—and I am using the word from a Supreme Court opinion to which I shall make reference—to desegregate the schools and eliminate racial discrimination there in "root and branch."

It is, as I have already said, my considered opinion that the President's antibusing proposals are plainly unconstitutional because they violate the separation of powers mandated by the Constitution.

The Founders established the Federal judiciary as an independent and coequal branch of our Government. They did this in article III of our Constitution. To safeguard their independence, Federal judges are given life tenure and unreducible pay. More important, the Founders entrusted the courts with the great and, at that time, unprecedented power of judicial review of legislative and executive actions. These are to be tested by the litmus of the supreme law, the Federal Constitution. Our State constitutions are modeled upon the Federal in this regard.

Our courts, State and Federal, exercise the power of judicial review not merely as a matter of tradition but because it was intended that they should have that power; they are not usurpers but an integral part of the grand design to insure the supremacy of the Constitution as superme law to which all branches of Government—including the executive and the legislative—are subject. This is what the Constitution clearly expresses in its supremacy clause and what it clearly imports in its detailed provisions defining and limiting executive and legislative powers.

In the great case of *Marbury* v. *Madison*, decided early in our national history, Chief Justice Marshall declared that "It is emphatically the province and duty of the judicial department to say what the law is." Since then, it is a settled feature of our constitutional system for almost 200 years that decisions of the Supreme Court must be respected and obeyed by Government as well as by people.

In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, decided April 20, 1971, Chief Justice Burger traced the tortuous legal history of school desegregation stretching from the Court's decision in *Brown* v. *Board of Education*, 347 U.S. 483, decided May 17, 1954, to the present time. This is what the Chief Justice said of this history:

"Nearly 17 years"—by the way, now 18 years ago—"this Court held, in explicit terms, that State-imposed segregation in public schools denies equal protection of the laws. At no time has the Court deviated in the slightest degree from that holding or its constitutional underpinnings." 402 U.S. 11.

If I may interject, I should like to say all opinions of the Supreme Court from *Brown* to *Swann* have been unanimous in this area. They have been joined in by Justices who are described in the popular press as "liberal" or "conservative" activist or judicial restrainers—whatever these terms may mean, but all decisions have been unanimous. I will continue with the Chief Justice's observations and conclusions.

> The objective today remains to eliminate from the public schools all vestiges of imposed segregation. Segregation was the evil struck down by *Brown* as contrary to the equal protection guarantees of the Constitution. That was the basis for the holding in *Green* v. *County School Board*, 391 U.S. 430 (1968) that school authorities are "clearly charged with the affirmative duty to take whatever steps may be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch."

And finally, in specifically considering the question of school busing, Chief Justice Burger in the *Swann* opinion, had this to say:

> . . . In these circumstances, we find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans cannot be limited to the walk-in school.

Now, Mr. Chairman, and gentlemen of the committee, because of the misapprehension of the Supreme Court actions in this regard, it is important to note the restraint with which the Supreme Court unanimously considered school busing. The Court did not give a broad mandate to district courts to enforce school busing under any and all circumstances. The Chief Justice went on to say the following:

> Any objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process. District courts must weigh the soundness of any transportation plan in light of what is said in subdivisions (1), (2) and (3) above. It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed.

In light of the undeviating and unanimous line of decisions of the Supreme Court holding that State-imposed segregation in public schools is unconstitutional and that busing is a permissible tool of school desegregation, what needs to be said of President Nixon's proposals which would interfere—and that is what the proposed legislation plainly does—with the Court's handling of school desegregation cases? Perhaps the most appropriate statement would be what Justice Story remarks about the Court's decision in *Worcester* v. *Georgia*, 31 U.S. (6 Pet.) 515 (1832). In that case the Supreme Court had upheld the Cherokee Indian's claim to treaty land against annexation by Georgia. This ruling aroused great anger in President Jackson and in Georgia. There were rumors that both Georgia and the United States would decline to follow the decision. Referring to these reports Justice Story in a letter to a friend, stated simply: "The Court has done its duty; let the Nation now do theirs."

Yes, the Federal courts have done their duty in the school desegregation cases in a very difficult area, as I can bear witness, having had the privilege of sitting on the court for 3 years and participating in some of its decisions in this field. I suppose nowhere in the judicial history of the United States have so many devices or stratagems been employed to defeat a plainly declared and unanimous decision of the Supreme Court. Notwithstanding, the courts have persevered and until now have been uniformly supported by the Chief Executive of the country. It is very interesting to me as I contemplate what has transpired in the past, to see what action Chief Executives have taken. It is well known that President Eisenhower, for example, had reservations about *Brown*. The fact of the matter is that he never said that he approved *Brown* vs. *Board of Education*, but when in Little Rock, the Governor of that State, Governor Faubus, at the time, took steps to frustrate the mandate of the court, without hestitaion, President Eisenhower, despite his personal feelings about *Brown*, sent in Federal troops to enforce the court's order. President Eisenhower discharged the plain duty of the Chief Executive of our country under our constitutional scheme.

We cannot be defenders of the law if we leave the courts, and particularly our highest court, defenseless against attempts to prevent them from performing their sworn constitutional duties. Courts cannot with propriety defend themselves; it is the specific obligation of the Congress, the bar, and others to come forward and provide a defense.

What is the Nation's duty? What is the Congress' duty? To me the answer is plain because it transcends the issue of busing.

I thought Mr. McCulloch stated it better than I have stated it in my testimony. The issue is our judicial system, the concept of separation of powers, our belief in a government of laws. That is the basic issue that is involved here and that issue transcends the more limited issue of the statutory provisions relating to busing.

It is in my view the plain duty of the Congress, sworn as every official, State and Federal, is sworn to uphold the Constitution, to defend the courts, to defend their independence from executive and legislative interference, to defend the integrity of the judicial process and our constitutional commitment to the rule of law and not of men.

And I would add this. I think it is the plain duty of Congress to defend the many courageous Federal judges, many from the South and specifically the fifth circuit and its districts and from the fourth circuit, too, who have properly invoked judicial authority to ban racial discrimination in the face often of legislative default and executive defiance, on the State level principally, and, on occasion, widespread public misunderstanding and disapproval.

When I was on the Court, the Federal judges in Alabama, I can think of one in particular, Judge Johnson, a great Federal judge, lived practically in a state of seige because they were doing their duty to follow the Supreme Court and enforce the Constitution.

This has happened to other judges, Federal and State, because of their commitment to the Constitution of the United States and their responsibility as lower courts to enforce decisions handed down by the Supreme Court.

But basically what is the duty of the Nation and the Congress and all of us is to defend the Constitution, itself, which explicitly provides that no State shall deny to any person within its jurisdiction the equal protection of the laws.

As I conceive the legal problems here involved, the question before this Committee and the Congress is whether we are prepared to overrule *Marbury* v. *Madison*. That is the essential question because if we believe in *Marbury* v. *Madison*, we believe then that the Constitution as interpreted by the Supreme Court is binding upon all of us and that the courts cannot be interfered with in carrying on their duties.

So, if this legislation were to be enacted, we would in effect be overruling Chief Justice Marshall in *Marbury* v. *Madison*.

It is not an adequate answer to say, if this legislation were enacted, the courts would have a chance to review its constitutionality. The courts are not the only ones charged with the responsibility of supporting and defending the Constitution.

That obligation rests equally with the august Congress which shares that responsibility as indeed the Executive does, too.

Now, I am well aware there are different views about forced busing. All busing is forced. I have a farm in Virginia. Obviously, children who live near my farm are forced to take buses to get to school, not forced in an opprobrious sense but forced in the sense that they live in rural communities and they, therefore, must be brought to school by the only means available, which is a bus.

I suppose what is meant is forced busing is court-ordered busing, but I should note in passing that busing in our history has been far more widely practiced to enforce segregation than to eliminate it.

But what ever one's view is on this subject, I have the profound conviction that no legislator, regardless of his party or personal predilections, can or should differ with the concept that court decisions must be obeyed and enforced and not tampered with by the Executive or by Congress or by anyone else.

I believe further that no one can validly deny that the President's moratorium proposal would directly undermine Chief Justice Burger's holding for the unanimous Court in *Swann* v. *Board of Education*, and I again repeat what he said:

> We find no basis for holding that the local school authorities may not be required to employ bus transportation as one tool of school desegregation. Desegregation plans can not be limited to the walk-in school.

I am of the firm view that enactment of the President's proposed Student Transportation Moratorium Act would be an unconstitutional interference with the judicial power vested by article III in the Federal courts, and I am similarly of the view that the busing provisions in the Equal Educational Opportunities Act which are permanent in their character, suffer the same constitutional infirmity. I am not persuaded by the argument advanced by administration spokesmen that under article III Congress is empowered to limit jurisdiction of the Supreme Court and impliedly empowered to limit the jurisdiction of the Federal courts and that consequently the jurisdiction of the Federal courts to grant the busing orders may be restricted as provided in the Moratorium Act and Educational Opportunities Act.

This argument overlooks the fact that the Constitution has other provisions besides article III and that many of these provisions guarantee individual rights.

I think already in the testimony before this committee some examples have been given. The most obvious one, of course, is that Congress could not constitutionally provide a moratorium against the jury trials in our Federal system.

Obviously, this would contravene the provisions of the Constitution which guarantee the right of trial by jury so precious to the preservation of our fundamental rights.

Nor, is it conceivable that the President could propose or Congress could entertain a proposition that there would be a moratorium on the exercise by any of us of our right of free speech under the first amendment, under the guise of a statute dealing with the jurisdiction of the Federal courts which are constitutionally vested with authority to exercise the judicial power of the United States.

Federal judges are mandated by the Constitution to follow the whole Constitution and to grant relief necessary to vindicate constitutional rights found to be denied.

And the Federal courts cannot be passive and indifferent to an Executive or congressional attempt to remove jurisdiction from the Federal courts for the purpose of preventing enforcement of individual constitutional rights including the right to be free from racial discrimination imposed by law.

Now, in the second *Swann* case, Chief Justice Burger dealt with a State statute which is in many respects similar to the statutes you are considering and in that case the Chief Justice again speaking for the unanimous Court, held that such a statute contravened the fourteenth amendment. If Congress were to pass this statute, it would be in contravention of the fifth amendment since, in the case of *Bolling* v. *Sharpe*, the Supreme Court of the United States held that the fifth amendment was binding upon Congress and parallels the 14th amendment, even though the language is somewhat different, because the fifth amendment does not explicitly contain equal protection language. The Supreme Court held in *Bolling* v. *Sharpe* that equal protection was subsumed under the concept of due process of law.

To acquiesce in the removal of jurisdiction would be to alter established constitutional law to surrender the citadel of equal justice and to breach the separation of judicial and legislative powers.

Having created lower Federal courts and conferred on them jurisdiction of cases arising under the Constitution, Congress cannot limit this jurisdiction in ways that violate other provisions of the Constitution or prevent courts from granting effective relief.

Nor am I persuaded by the further argument that has been advanced by the administration that Congress has the authority under section 5, the enforcement section of the 14th amendment, to impose the suggested moratorium.

I believe Mr. Justice Black, in one of his last opinions in the 18-year-old voting case, *Oregon* v. *Mitchell*, provided the answer to this contention in these words:

> Congress may only 'enforce' the provisions of the Amendment Five—

he was dealing with the Thirteenth, Fourteenth and Fifteenth—

> and may do so only by appropriate legislation. Congress has no power under the enforcement sections to undercut the Amendments' guarantees of personal equality and freedom from discrimination.

Justice Black cited a prior decision specifically to the same effect—*Katzenbach* v. *Morgan*, 384 U.S. 641, decided in 1966. Congress has no power to undercut or dilute the undifferentiating decisions of the Court from *Brown* to *Swann*, holding that State-sanctioned segregation of public schools violates the equal protection of the 14th amendment and that relief appropriate to eliminate such racial discrimination must be granted by the courts.

For the same reason the administration's reliance upon the Supreme Court decision sustaining the Norris-LaGuardia Act is unfounded

The chairman mentioned that I had some experience in labor matters and that is so in my past reincarnation. I am well familiar with the Norris-LaGuardia Act and its history. The restriction of the Norris-LaGuardia Act on the right to an injunction of labor disputes operates to protect, not to restrict, a constitutional right. It operates to protect the first amendment right of peaceful picketing. The Norris-LaGuardia Act is often misunderstood. It does not operate to restrict a Federal court from entering into an injunction against violence. The statute does not deprive employers of a constitutionally protected right or remedy since there is no constitutional right for employers to prevent appropriate peaceful picketing.

There is another reason why Congress cast the Norris-LaGuardia Act in what appears to be jurisdictional terms. At the time the Norris-LaGuardia Act was drafted, it was unclear from Supreme Court decisions as to the scope of authority of Congress under the commerce clause to deal with the field of labor relations and therefore the legislative draftsmen cast the statute in what at first reading would appear to be in jurisdictional terms. The fact of the matter is what in later decisions, the great *Jones & Laughlin* case and others, the scope of the commerce clause was interpreted to enable Congress to deal with labor relations in areas affecting commerce. Were the act to be drafted by Congress today, it is clear from subsequent labor relations, it would be drafted in substantive rather than jurisdictional language.

But in any event, there is no analogy because here the statutes in question operate by their terms, as to restrict the full reach of the 14th amendment. This is quite different from the Norris-LaGuardia Act which, as I have said, operates to protect the first amendment right to carry on peaceful activity.

The administration also has mentioned, as support for these statutes, *ex parte McCardle*, a reconstruction case decided in 1869. Most thoughtful commentators take a dim view of *McCardle* because *McCardle* interfered with the right of habeas corpus upon which our liberties basically depend. And most thoughtful commentators assume that *McCardle* does not have very much present vitality. But even if you were to assume that it does, it is readily distinguishable from what is in issue today.

In *McCardle* the Supreme Court held that Congress could take away the right of the direct appeal Congress had provided in habeas corpus cases. The original jurisdiction of the lower Federal courts and the Supreme Court to grant habeas corpus writs was left unimpaired, as well as the discretionary power of the Supreme Court to review renewals of the great writ. Finally, and most critically, the law sustained in *McCardle* did not, as the proposed moratorium would, restrict remedies while purporting to leave the basic jurisdiction unchanged. Indeed the *McCardle* court expressly confirmed cases invalidating legislative interference with the courts in the exercise of their continuing jurisdiction.

Just as this legislation would overrule *Marbury* v. *Madison*, it would also overrule one of our early great cases, the case which really established judicially the concept for separation of powers, *Hayburn*'s case, 2 U.S. 408 (1792).

In that case the Court held that Congress could not review and reverse the Supreme Court in its constitutional adjudications.

It is quite clear to me that the legislation before you is unconstitutional, but, whether one agrees with me or not on the constitutional aspects of the matter, Congress also has the policy question before it. The persuasive note in the administration's proposals is interference with the courts in the performance of their constitutional duties. On this issue, all devoted to our constitutional commitment, to the concept of separation of powers, must and should join in opposition to the administration's proposal.

No one can really doubt the enormity of the interference with judicial process and the consequent diminution of respect for law and justice which must inevitably ensue. It is a contradiction in terms, in light of respect for law, for a statute to be enacted which says, in effect, that a court may enter an order, sustaining a constitutional right, but that its implementation may be stayed. When I was on the Supreme Court, I wrote for the Court a unanimous Court opinion in *Watson* v. *Memphis*. This is a case which involved desegregation of the public parks in the city of Memphis.

In that case I said for the Supreme Court, a unanimous Court, "Constitutional rights are for the 'here and now.' They are not rights which may be indefinitely postponed."

I have noted some testimony before this committee, trying to distinguish between the right and the remedy. Such distinctions, in the present context, are artificial and unrealistic. Once it is said, as the Court did in *Watson* v. *Memphis* and in the long line of school cases, that constitutional rights are for the here and now, and not for the indefinite future, then the remedy becomes part of the right. The remedy cannot be considered separately, because otherwise the constitutional right becomes an abstraction and not a reality.

I would like to say a few words about the joint resolution. I share the concern voiced by others who have already testified about an amendment that limits the basic human rights guaranteed by the 14th amendment and that bars even the busing of minority children whose parents want them to be bused to better and less segregated schools.

That, of course, is what the amendment would permit. I believe that such amendment would be a backward step in our stated progress toward eliminating State-sanctioned racial discrimination.

My own philosophy in this regard is set forth in another opinion I wrote as a member of the Supreme Court in *Bell* v. *Maryland*, decided June 22, 1964. If you will bear with me, I would like to read a few sentences from that opinion. This is what I said:

> The Declaration of Independence states the American Creed: We hold these truths to be self-evident, that all men are created equal and they are endowed by their Creator with certain unalienable rights, that among these rights are life, liberty, and the pursuit of happiness. This ideal was not fully achieved with the adoption of our Constitution because of the hard and tragic reality of Negro

> slavery. The Constitution of the new nation, while heralding liberty, in effect declared all men to be free and equal except black men who were to be neither free nor equal. This inconsistency reflected a fundamental departure from the American Creed, a departure which it took a tragic civil war to set right.
>
> With the adoption, however, of the Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution, freedom and equality were guaranteed expressly to all regardless of race, color or previous condition of servitude.

I shall skip some of what I said and now go on.

> The Thirteenth, Fourteenth, and Fifteenth Amendment do not permit Negroes to be considered as second-class citizens in any aspect of our public life. We make no racial distinctions between citizens in exacting from them discharge of public responsibilities.
>
> The heaviest duties of citizenship, military service, taxation, obedience to laws, are imposed even-handedly upon black and white. States may impose the burden of state citizenship upon Negroes and states in many ways benefit from equal imposition of the duties of Federal citizenship. Our fundamental law which insures such equality of public burdens in my view insures equality of public benefits. This Court has repeatedly recognized and applied this fundamental principles to many aspects of community life.
>
> The constitutional right of all Americans to be treated as equal members of the community is a civil right granted by the people in the Constitution, a right which is too important, and this is pertinent here, in our free society to be stripped of judicial protection. It is and should be more true today than it was over a century ago that the great advantage of the Americans is that they are born equal and in the eyes of the law, they are all of the same estate. The first Chief Justice of the United States, John Jay, spoke of the free air of American life. The great purpose of the Fourteenth Amendment is to keep it free and equal. Under the Constitution no American can or should be denied rights fundamental to freedom and citizenship.

Mr. Chairman, and gentlemen of the committee, I adhere to the views I expresed in this opinion and, therefore, oppose enactment of H.J. Res. 620 and the legislation which you are considering.

I want to thank you, Mr. Chairman, and members of this committee for permitting me to state my views on this most important subject.

Chairman Brooks. Justice Goldberg, we are grateful to you for your helpful testimony. I really did not try any cases with you in labor law, but I make a pretty effective witness for your cause.

The administration witnesses have urged this subcommittee that the busing moratorium legislation is needed in order to give Congress the time to study and recommend substantive standards to govern future court desegregation orders.

What is your comment on that?

Justice Goldberg. My comment on that is that it reflects a lack of confidence in the Court, including a lack of confidence in Chief Justice Burger and his colleagues who have carefully delineated the scope of protecting constitutional rights. I cannot understand the argument that more time is needed to enact a statute which would deny the protection of the 14th amendment.

Congress has no authority to do this and the administration proposal in this area simply does not hold water.

Chairman Brooks. What do you foresee as a consequence if the moratorium bill is enacted upon the capacity of the courts to hear and try cases involving segregation in public schools? What would be the impact upon Federal courts if the moratorium bill were passed?

Justice Goldberg. It would be, I think, an unprecedented and unwarranted interference with the plain duty of the courts to enforce the equal protection clause of the 14th amendment and would lead to disrespect for the law among our citizens. We need today more respect for the law, not less. As I said, Mr. Chairman, the moratorium statute is so drafted that a court could hand down an order which would say, in a given situation, that a constitutional right has been denied but the court would be impotent to implement that order. I put to you a simple proposition: What respect for law could a litigant have if a court decision came down saying that his constitutional rights were plainly abridged and concurrently that this right could not be vindicated?

But vindication would be not only temporarily delayed, but as I have pointed out, under the Equal Educational Opportunities Act, could be permanently delayed.

Mr. McClory. Will the chairman yield for this comment?

Chairman Brooks. Yes.

Mr. McClory. As I recall, we posed the question to the Attorney General when he was here and we asked him whether this Moratorium Act would deprive the Supreme Court of the right to pass upon constitutional provisions, including the equal protection clause, and he said no, that this legislation would not affect the Supreme Court. It was my understanding that his opinion was that the act would affect the district courts but would not deprive anybody of any constitutional rights in the Supreme Court. I think that should be made clear because I think we have a great deal of testimony today devoted to that point which the Attorney General conceded in his testimony.

Justice Goldberg. I cannot understand that testimony in light of the fact that the legislation applies to all Federal courts.

Mr. McClory. I am recalling for your information what I believe the Attorney General indicated to be the legislative intent, which appears to differ from the way that you have described it.

Justice Goldberg. But I have read the legislation and it is the legislation, with due respect to the Attorney General, which, if enacted, would prevail and the legislation applies to all Federal courts and the Supreme Court is a Federal court.

Chairman Brooks. The Justice is right in that. In the legislation on page 3, lines 21 and 22, refers to, "implementation of any order of a court of the United States."

Justice Goldberg. Yes.

Chairman Brooks. And this, I think, includes all of the Federal courts despite what the Attorney General said.

Justice Goldberg. Right.

Chairman Brooks. I have another question: Finding No. 5 of the busing moratorium bill reads: "There is a substantial likelihood that many local educational agencies will be required to implement desegregation plans that impose a greater obligation than required by the Fourteenth Amendment . . ."

Do you believe the Federal courts in this country have ordered desegregation that exceeds the requirements of the 14th amendment?

Justice Goldberg. No, sir; and there is a corrective if they do, and that is by review in the higher courts and I must say from my own experience that correctives are sought and speedily acted upon.

The Supreme Court is well aware of the problems involved with school semesters and has acted promptly when applications for stay have been made to the Court. It also has acted promptly in handing down its decisions in these cases recognizing the impact of these decisions upon local educational authorities.

Chairman Brooks. Mr. Justice, aside from the constitutional infirmities as you pointed them out, in your opinion, would you elaborate on what you believe to be the practical consequences of enactment of the busing moratorium.

Justice Goldberg. I have said that, as a matter of policy, whether one agrees with me constitutionally or not, it is a very undesirable thing to do. It is undesirable to do for several reasons.

First of all, the busing matter, while highly emotionally charged, and understandably so, people worry about their children—is not of the dimensions which would warrant this type of legislation.

The number of children under a busing order of a court is insignificant in relation to the total number of children who are bused for reasons quite independent of enforcement of desegregation orders.

And I think there is another basic thing involved here and that basic thing is this: Really, as I have indicated in my testimony, there is what I called a "tilt" toward restoration of separate but equal in this whole panoply of legislation.

Now, we tried separate but equal for a long time. We tried it from 1896 to 1954 and our Nation is paying the penalty for that now. It simply did not work.

There never can be—as the Court said in *Brown*—equality in separatism. It created many of the problems which now affect us in our society, not only in the school area in terms of alienation of citizens from each other and I would believe—and I do not think anybody at all can deny that—if this legislation were passed, it would be regarded among our citizens, black and white, as a movement backward from the attempt to provide equal protection of the laws for all of our citizens.

I cannot conceive that it would be construed otherwise.

Chairman Brooks. Mr. Justice, this committee has endeavored to ascertain how many students are bused for desegreation purposes in this country. From HEW we have been told that approximately 19 million students throughout this country are bused daily to their schools.

The number of those bused for desegregation purposes is relatively small but we have not been able to get a hard figure from the Department as yet.

Justice Goldberg. My estimate, if you are interested—it is not a very precise estimate—but I would doubt that more than 100,000 children are so bused and I think that is probably an overstatement because, as you recall, from Chief Justice Burger's opinion, there are severe limitations imposed by the Supreme Court on the lower courts in ordering busing.

Chairman Brooks. Thank you.

Mr. McCulloch.

Mr. McCulloch. Thank you, Mr. Chairman. I am very pleased, Mr. Justice, that you are here this morning. I think you have a record that has seldom, if ever, been excelled. You have approached this difficult question as you have approached so many, with great insight.

I think, perhaps, if I can testify 1 minute and that is as long as I will testify, the legislation which would prohibit busing would prohibit thousands of children from getting the quality education to which they are entitled in this country.

Mr. Justice, I said a day or two ago that I came from the great Miami Valley in Ohio where we have had school transportation since 1918 or 1919, at first by horse-drawn vehicles in some instances and finally by the most modern vehicles that are made in America.

Of course, back in those olden days, motor driven vehicles made us anxious for what might happen to the young students. But I do not think that Ohio or any part of it has been set backward by forced schooling, assignment, and busing to give a good education to all of the students therein.

If this legislation is adopted, we will have, by legislative enactment, denied quality education to thousands in America. I am glad you have been able to be here. You have given us some interesting information and opinion.

Justice Goldberg. Mr. McCulloch, when I grew up in Chicago, and we did not have buses but I attended a high school that was 4 miles away, my method of busing myself to high school was to either walk or search around for a discarded transfer, since I could not afford the street car fare. If I could find a transfer, that would get me to school. So that was a form of busing, too, not as good as the State provided or a city provided bus or horse-drawn vehicles.

Mr. McCulloch. I was told when younger and when I followed advice that one was not to ever try to stop a story of an able man to whom one was talking. But in Ohio I was transported to school some 10 or 15 miles by a railroad hand car.

Chairman Brooks. Congressman Hungate.

Mr. Hungate. Thank you, Mr. Chairman. On page 3 of your statement you say that the President's antibusing proposals are unconstitutional because they violate the Separation of Powers mandated by the Constitution. Would you think it possible for a court to violate Separation of Powers?

Justice Goldberg. Yes.

Mr. Hungate. What would be the remedy in that case?

Justice Goldberg. The remedy would be in this Congress. Any judge who would violate the Constitution ought to be impeached. He is bound by the oath. We are all bound, but all members of the executive, the legislative and the judiciary are bound by the separation-of-powers concept.

But I well know how careful the courts have been to respect Separation of Powers. Sometimes they are being criticized for too much caution in this regard. I will give you an example. Many people feel the courts should have passed upon the question of validity of the war in Vietnam. They have turned down every request to do so and some people feel they are not discharging their duties. It is an indication of the great caution with which courts approach problems of this character.

Mr. Hungate. Has impeachment ever been used as a weapon under such circumstances?

Justice Goldberg. Impeachment has not been used as a weapon in this area. It has been tried in others but I would say it would be to me the best cause for impeaching judges if they tried to assume powers that the Constitution does not vest in them. They are bound by the Constitution, too.

Mr. Hungate. As I understood your statement, and I think this would also follow the Coleman report,—"separate is not equal." As a factual matter, don't we have certain areas in this country which because of geography, let us say, do not have integration and in my judgment would not be said to have segregation. There just are not any people of the minority races or religions or ethnic groups there. Do we, then, necessarily have some areas that are not equal?

Justice Goldberg. Yes, we do regrettably but it is to be remembered that under the Constitution and 14th amendment the courts can only act against the State action. They are not at large to remedy situations which exist which are not the result of State action. We are dealing here with State-sanctioned segregation.

The amendment says "No State shall".

Mr. Hungate. Does that involve a distinction between de jure and de facto?

Justice Goldberg. It does.

Mr. Hungate. And there is a distinction between de jure and de facto?

Justice Goldberg. Yes, sir.

Mr. Hungate. On page 8 of your statement you say "Having created lower Federal courts," and so on. "Congress cannot limit jurisdiction."

We have had testimony earlier concerning the abolition of the Commerce Court by the Congress. Would that be relevant to this issue?

Justice Goldberg. There Congress would be eliminating a court. It would not be saying that we keep a court and it may go ahead and do its business but it may not do it a certain way which Congress does not like. That is quite a difference.

Mr. Hungate. That is analogous perhaps to the situation where a corporation is created where one is not authorized, but unreasonable or unconstitutional restrictions nevertheless cannot be imposed on such an entity.

Justice Goldberg. That is right.

Once you created the entity, that entity must be allowed to operate in conformity with law.

Mr. Hungate. With respect to suspension of constitutional rights—perhaps you covered this in discussing in re *McCardle*—was not the right of habeas corpus suspended?

Justice Goldberg. It was but you will recall one of our greatest cases, *ex parte Milligan*. Then habeas corpus was suspended in the District of Columbia by a great President, President Lincoln, even great presidents sometimes step beyond the Constitution—the Supreme Court of the United States in *ex parte Milligan* held that the writ of habeas corpus could not be suspended since the courts were sitting. The Court went on to say that the Constitution of the United States is a Constitution that applies in war and in peace and covers with the mantle of its protection all classes of citizens under all circumstances. I think that is an accurate quote.

Mr. HUNGATE. Then is it a correct statement that the courts did not sanction or did not permit suspension of habeas corpus during the Civil War?

Justice GOLDBERG. That is correct.

Mr. HUNGATE. It may have been factually done but not legally.

Justice GOLDBERG. That is correct.

Ex parte Milligan is the case which so held.

Mr. HUNGATE. On the issue of the power of Congress to restrict the Court in the exercise of its power I take it you do not think Norris-LaGuardia is precedent for that.

Justice GOLDBERG. No.

Mr. HUNGATE. But that act limits the situations in which injunctions can be issued. Wouldn't that be authority that Congress can restrict exercise of judicial power?

Justice GOLDBERG. No; I do not think so because in the Norris-LaGuardia Act Congress passed a statute to protect the constitutional rights of the workingman, not to abridge them. An employer has no constitutional rights to abridge constitutional rights of the workingman.

Mr. HUNGATE. On that point and in the statement on page 9 you say the Norris-LaGuardia Act does not deprive employers of a constitutionally protected right or remedy. Leaving aside the word "constitutionally," was it not a fact that prior to enactment of that act an employer had a right to get an injunction and after the act he had none?

Justice GOLDBERG. But the Supreme Cour held in the *Senn* case that there is a constitutional right on the part of labor organizations peacefully to picket, and, therefore, the employers' prior recourse to unrestricted injunctions was not to be further sanctioned.

Mr. HUNGATE. Thank you, Mr. Chairman, and thank you, Justice Goldberg.

Chairman BROOKS. Congressman Mikva.

Mr. MIKVA. Mr. Justice, let me state what a distinct privilege it is to have you here as a witness. I had the great pleasure of serving as an associate and partner in one of your other reincarnations.

Having said that, I will not blame my lack of legal knowledge on you. Let me ask you this. Do you know of any case on appeal where a Federal court has specifically held that de facto school segregation came within the purview of *Brown* v. *Board of Education?*

Justice GOLDBERG. No.

Mr. MIKVA. I do not, either, but assuming that there were such a case, is there any reason for you to assume that the Supreme Court of the United States would not in due course reverse or correct such a finding?

Justice GOLDBERG. I am positive in my own mind that the Supreme Court of the United States, whatever the changes in personnel, would hold that its only authority in this area is to enforce the 14th amendment which plainly applies to State action and does not apply to action which is not State action.

Mr. MIKVA. So that whether Judge Merhige or a judge in Michigan or a judge in California has exceeded the charge of *Brown* v. *Board of Education*, the proper means and only means for correction of such excesses exists by appeal to the Supreme Court of the United States.

Justice GOLDBERG. That is correct, Congressman.

Mr. MIKVA. I was very much struck by your suggestion that what we are being asked to do as the minimum is to interfere if not reverse *Brown* by taking away that normal route of correcting excesses and having Congress declare the law.

Justice GOLDBERG. That is correct. If there is a feeling in Congress that the Supreme Court is proceeding not quickly enough, it is within the purview of Congress to pass expediting legislation about consideration of cases. This has never been regarded to be an undue interference with the courts. This has been regarded as a declaration by Congress that certain cases ought to be given priority in consideration. However, the Court, itself, has been very alert in seeing to it that cases of this character are promptly acted upon.

Mr. MIKVA. Along that line, there was a provision that has been incorporated in a bill that the House passed which provided for an automatic stay of a busing order pending appeal.

Would you care to comment?

Justice GOLDBERG. In my opinion that would be an unconstitutional infringement of the judicial process. The courts are the ones who have to determine whether or not an order shall be stayed and there, too, the courts have acted with great promptness, vigor, and good sense. In one of Justice Black's last actions, a case came before him to stay an order of a court of appeals. He was of the opinion that the order in question unduly delayed desegregation under *Brown* and subsequent decisions.

Nevertheless, since he felt that the whole Court ought to pass on it, he preserved the court of appeals' order to give the whole Supreme Court the opportunity to pass on it. The whole Court did pass on it and reversed the order of the court of appeals.

Mr. MIKVA. Mr. Justice, let me ask you to turn your attention to the constitutional amendment, the one we have been looking at most specifically and on which we have heard testimony, House Joint Resolution 620, introduced by Congressman Lent. It does not mention busing in the body of the resolution. It reads: "No public school student shall, because of his race, creed, or color be assigned to or required to attend a particular school."

Let me conjure up the hypothetical case where a court found *de jure* segregation. Would you agree with me that if House Joint Resolution 620 were adopted there would be no order a court could enter to assign students in a different manner if race were to be taken into account?

Justice GOLDBERG. That is correct. The constitutional amendment is a repealer, in considerable measure of the 14th amendment. That is what it is.

Mr. MIKVA. Yesterday we heard the vice mayor of the city of Richmond who was talking about the possible results if this amendment were to be adopted. He said Congress would be saying to all black people of this country: "We tell you to follow the rules and as soon as you start to win under the rules, then we change the rules."

Justice GOLDBERG. On that, you know. I think that the whole thrust here is very unfair to school authorities, many of them in the South who have conscientiously tried to comply with the Court decisions. I mentioned that I have a farm in Virginia. In my area, the county has provided an integrated school system. They have abolished the dual system they have had. All of the children in the high school, for example, go to the same school and they are bused to that school. Everybody has to be bused because they are in the country.

I would think that school authorities who have done this would feel this is a repudiation of what they had done.

Mr. **Mikva.** Thank you very much.

Chairman **Brooks.** Congressman Poff.

Mr. **Poff.** Thank you, Mr. Chairman. I have no questions, but I do have a comment.

I think the witness does this committee a great honor by his presence. He is one of the Nation's most distinguished disciples of legal disciplines, and the testimony he has given here was scholarly and skillful as usual. As one member of the committee, I am grateful for his testimony.

Justice **Goldberg.** Thank you very much.

Chairman **Brooks.** Mr. McClory.

Mr. **McClory.** Thank you.

I want to join in the comments of my colleague from Virginia, Mr. Poff, and add that the testimony has been very forceful and cogent.

I would like to ask this question since the testimony has been directed against the moratorium bill and against the proposed constitutional amendment. You made reference to the language in the *Swann* case which seems to outline limits with regard to busing for desegregation. Would you have any suggestion, either legislative or administrative, with regard to helping to resolve what is a real problem?

It is a very deep-seated problem as you are aware. Many others have joined in this discharge petition and have taken definite action with regard to the moratorium bill and the equal educational opportunities bill. What suggestion, if any, would you have?

Justice **Goldberg.** Congressman, there is need for improving the quality of education in our country. I recognize this committee, being the Judiciary Committee, is dealing only with the constitutional aspects of the problem. I have confined my own testimony, for example, on the equal educational opportunities bill to the busing provisions because of that. There are bills on the educational aspects pending in the Congress.

Mr. Udall has offered a bill which is pending in the Congress which I have looked at and which gives even more substantial help to local authorities to improve the quality of education for everybody than the administration's proposals. I have thought that Mr. Udall's bill is a very good bill because it really preserves what we all want to preserve and that is local control of the school system and encourage these localities to provide quality education and gives them help to do so without violating constitutional provisions.

In specific reference to your question, I recognize that there is a lot of emotional feeling about this subject. I think part of the emotional feeling results from the fact that people do not understand what the Supreme Court has said on this subject. That is why I quoted Chief Justice Burger and emphasized that that was for a unanimous court. There is another aspect. The chairman asked how many children I thought were being bused. Many people, disturbed about some orders entered by district courts in their localities, are overlooking the fact that many of these orders, whether they relate to busing or whether they relate to the recent *Richmond* decision, have been stayed pending review. They are not actually in operation. I do not want to express an opinion about these orders because they are in the courts, but most of those orders have been stayed pending decision by the Supreme Court of the United States.

I think my own view is that the best thing that could be done in this situation is to stand in resolute support of our Constitution and to enlighten the people as to what the issues are.

This is not the first time in our constitutional history when people have been disturbed about decisions, but I trust the commonsense of the people and once the facts get out, the people generally and ultimately support our Constitution and the Court's role in enforcing the Constitution.

It is not so long ago that the reapportionment decision of the Supreme Court was under great attack. Recently I noticed an article describing that decision to be the success story of the Court. It takes time sometimes for adjustment to a decision. Today I am am not aware of any sentiment either in the Congress or in the people, that would deny validity of that decision, even though it has caused problems for Congress and for people.

Mr. McClory. Thank you.

Chairman Brooks. Counsel.

Mr. Polk. Mr. Justice Goldberg, on page 9 of your statement you refer to Mr. Justice Black's statement in *Oregon* v. *Mitchell.* Have you had an opportunity to compute the number of Justices now on the Court who have subscribed at sometime or other to that view?

Justice Goldberg. I do not know that the new members recently named have had an opportunity to subscribe to that view. I mentioned Justice Black's language because of my high regard for the deceased Justice, which I share with everybody in the country. Of course, he was referring really to the *Katzenbach* case where there was a majority decision to this effect.

I think one of the least profitable exercises is to try to anticipate what new members of the Court may do. When they put on the judicial robe, they become different men. That is not because they brainwash themselves. It is because they are exercising a different function. They are judges and entrusted with great responsibilities and I would not want to even anticipate what the new members of the Court may or may not do.

Mr. Polk. The arguments in favor of the moratorium bill asked us to accept an analogy that, if the courts can issue a preliminary injunction to preserve the status quo while they determine the question on the merits, then the Congress can as well. You indicate in your testimony that constitutional rights are "for the here and now"; yet, you indicate that the courts may, nevertheless, stay such constitutional rights while they decide the matter.

Why is it, in your view, that that analogy does not apply?

Justice Goldberg. Because the Constitution empowers review of lower court decisions, and review does take time.

Mr. Polk. If a substitute were introduced for the Equal Educational Opportunities Act that would enhance the Constitution, would the moratorium bill then be constitutional?

Justice **Goldberg**. I do not know, very frankly, because I would still be troubled by the concept of interfering in any way with the Court's pro or con but it would be a different problem than the problem you have here where you have a plainly declared and established constitutional doctrine that the courts have enunciated and remedies that they have said are appropriate and the proposed legislation is attempting to undercut these rights and remedies.

Mr. **Polk**. Thank you.

Chairman **Brooks**. Thank you very much, Mr. Justice. We have been delighted to have you here.

Justice **Goldberg**. It has been a pleasure to be here.

Chairman **Brooks**. The Chair calls Mrs. A. O. Kraehenbuehl, Chesterfield County Council of PTA and U.S. Citizens for Neighborhood Schools, Richmond, Va.

We are delighted to have you here. I want to advise the Committee that we hope to hear Dr. Garcia after this and then Mr. Sam Buice and Rev. John Touchberry.

You may proceed, Mrs. Kraehenbuehl.

STATEMENT OF MRS. A. O. KRAEHENBUEHL, CHESTERFIELD COUNTY COUNCIL OF PTA, AND U.S. CITIZENS FOR NEIGHBORHOOD SCHOOLS, RICHMOND, VA.

Mrs. **Kraehenbuehl**. Thank you, Mr. Chairman.

Chairman **Brooks**. We will accept for the record your entire statement.

Mrs. **Kraehenbuehl**. Thank you.

(The statement referred to follows:)

Statement by Retha Kraehenbuehl, Chesterfield County Council of P.T.A. and U.S. Citizens for Neighborhood Schools, May 4, 1972

Thank you, Mr. Chairman, for allowing a Chesterfield County mother to appear before this Committee to plead for a constitutional amendment.

My presentation is brief as I have summarized it to the point where every paragraph tells a full story.

Every day of these hearings, there has been seated in this room a busload of citizens from Chesterfield and Henrico counties as observers. We came to determine for ourselves if this Committee was sincere in its efforts to find a solution to the "busing" problem.

We have heard repeatedly "Why are the parents opposed to busing when a large percentage are already being bused?" Today, if we can make clear the distinction between (1) Busing, meaning mode of pupil transportation, and (2) Busing, meaning forced assignment to a school across town in order to achieve an artificial racial ratio in the schools, we will have accomplished a giant step. "Busing", meaning mode of transportation, is used without opposition in Chesterfield County today. In the 1970–71 school session, of pupils transported by bus, 86% (or over 17,000 students) were assigned to bus routes which required 30 minutes or less total time from home to school. An additional 11.8% were transported on routes which required between 31 and 45 minutes. In this connection, please remember that we have a very large county, most of which is rural. This type of transportation is necessary because of the limitation of tax supported institutions. We are constantly striving for less mass transportation—not more. Not by any stretch of the imagination should acceptance of this kind of busing be construed to indicate that we can condone or accept *forced* busing. Therefore, I beg you, Gentlemen, to know and understand that when a Chesterfield County mother says "I do not want my child to be bused", she really means, "I do not want my child to be forcibly assigned to a school up to 18 miles across the heavily congested streets of Richmond when there is a school within a mile of my home."

We have heard also in these hearings the insinuation that to oppose busing is an attempt to resist integration. To refute this in our case, may I offer as an exhibit a sequence of excerpts from correspondence from Health, Education and Welfare Department to our local School Administration indicating that our school system is in full compliance with policies set forth by that Department.

Again, we have heard, even from some who are against forced busing, that a constitutional amendment is not necessary to offset the extremes handed down by some courts. We believe that a constitutional amendment is the *only* solution in the long run inasmuch as legislation has not deterred the courts in the past. We feel that a bill should be reported out on the floor in order that the congressmen of the entire nation may have a vote on it. We have faith in the American form of government and will take our chances that the people's opinion will be reflected in the votes of the congressmen. Gentlemen, may I encourage you to show this same faith.

In Chesterfield County, we the people were willing to put this question before the voters. Because the referendum was not allowed on the official ballot, an organization known as United States Citizens for Neighborhood Schools conducted a highly authentic straw poll concurrent with the official election on November 2, 1971. Two questions were placed on the ballot.

Question 1—Are you in favor of the preservation of the neighborhood school concept?

Question 2.—Are you in favor of a Constitutional Amendment which would prohibit the busing of school children solely for the purpose of achieving racial balance?

There were 12,067 ballots cast. Of these, 11,512 voted "Yes" to Question #1 (Neighborhood School concept) and 10,868 voted "Yes" to Question #2 (favoring a constitutional amendment).

Now, I want to speak on behalf of the Chesterfield County Council of PTA. On October 19, 1971, at the 66th Annual State Convention, the Virginia Congress of PTA passed the following resolution:

> Whereas, our children are our most important responsibility; and
>
> Whereas, the goal of the PTA is to foster the climate that will enable each child, regardless of race, creed, color, religion or national origin, to receive a quality education; and
>
> Whereas, sensible reasoning and mature judgment dictate that this can best be accomplished in a neighborhood school located within a child's own community area; and
>
> Whereas, the Virginia PTA firmly believes that an excellent public school system and a quality education for all children can best be achieved by the neighborhood school concept; now therefore be it
>
> Resolved, That the Virginia PTA support a Constitutional Amendment guaranteeing the right of elementary and secondary education students to attend their neighborhood schools; and be it further
>
> Resolved, That the above resolution be communicated to President Nixon, Governor Holton, and Virginia members of the U.S. Congress, and the General Assembly of Virginia.

One of the few blacks who opposed this resolution stated that her child had previously gone to a black school by choice but was being assigned to a different school this year and she, the mother, had found much better equipment in the white school. Gentlemen, must our God-given children be held hostage in order to get the ransom of man-made equipment? How sad!

Here is the case of another family, typical in America. The father is an immigrant from Poland. He remembers the rape of his country by Nazi Germany. His family came to our country to find freedom. They worked hard, refusing any welfare, and became good Americans. Now, once again in his lifetime, he sees this take-over of our children as the beginning of a dangerous plot, just another step towards a police state.

Now, my personal comments as a mother. Before we bought our home, we walked up and down the street and talked to people, asking about the school just three blocks away. Only after we received favorable replies did we agree to buy the house.

The rich parents can afford to send their children to elite accredited schools. . . . The underprivileged blacks are brainwashed that this social experiment is for their own good. . . . But who will speak out and come to the aid of us, middle America?

Have your men forgotten your childhood years when security was found in familiar routines, familiar surroundings and in the knowledge that mother was near-by in case of emergency? The world may have changed, Gentlemen, but the nature of the young child has not.

I resent many things about forced busing:

I resent . . . the many long hectic hours spent on a bus that should be spent playing, developing muscles, discovering nature, yes even daydreaming.

I resent . . . the wasted money spent on the unnecessary miles across town, when so much equipment is needed.

I resent . . . that this issue has been so presented that it has set race against race just when the races were making great strides toward understanding.

I resent . . . that the blacks are now being forcibly bused *because* of race. After all, the blacks have fought for many years to be able to go to a school of their choice without regard to race.

I resent . . . the insinuation that a black child can't be taught by a black teacher or in a black-majority school. Who is the last word in such a study?

I resent . . . that the emotional security of the children has been disregarded in favor of racial ratios.

I resent . . . the encroachment of the Federal Government into the very heart of our homes, and

I resent . . . the destruction of our local government.

In closing, Gentlemen, I contend that the law, once and for all, should be color blind and that any other approach is an insidious form of racism.

SUPPLEMENT TO STATEMENT BY RETHA KRAEHENBUEHL

After my statement was written and forwarded to you, the following information was brought out in a brief which was heard in the Fourth Circuit Court of Appeals on April 13, 1972. Mr. Chairman, may I offer the following as exhibits:

1. An excerpt from the March issue of Educational Researcher, a publication of the American Educational Research Association, which reports on an interview with Dr. James C. Coleman of Johns Hopkins University, author of the 1966 Coleman Report. One paragraph in this article quotes Dr. Coleman as referring to such 1966 Report: "I don't think that a judicial decision on whether certain school systems are obeying or disobeying the Constitution ought to be based on that evidence."

2. As the next exhibit I offer two pages from The Richmond News-Leader dated April 13, 1972, showing a condensation of the brief submitted to the Fourth Circuit Court of Appeals by the appellants—the State of Virginia and the Counties of Henrico and Chesterfield. (At this point I want to apologize for any disruption caused by a spontaneous gasp from our Chesterfield residents in this room on February 29. A member of your general counsel stated that he had never heard of any judge ordering a racial ratio. We gasped because we had sat through weeks of testimony and busing plans showing just this.) In this brief, which was argued by Mr. Philip B. Kurland, the University of Chicago law professor, it cites testimony given in the District Court indicating that racial ratios were repeatedly used as a basis in the busing plan offered. The Judge of the District Court ordered adoption of such plan.

In my opinion, even if the Fourth Circuit Court of Appeals reverses the District Court in our case, there will be filed case after case in other areas with subsequent financial burden on local governments. We feel that "forced busing" is an insatiable monster. It starts in a city, then engulfs the adjoining counties and will finally engulf states unless we get a constitutional amendment.

I speak for myself, but know that I reflect the views of my neighbors in this room when I say * * *

I don't know what the final solution is to this problem.

I will give of my time . . . I will give financially . . . but

I will not sacrifice my most precious possession, my eight year old son.

Thank you.

REITHA KRAEHENBUEHL.

Mrs. KRAEHENBUEHL. Because of the cancellation and other things that have happened, I would like to make a couple of inserts but you do have these for the record.

Thank you for allowing a Chesterfield County mother to appear before this committee to plead for a constitutional amendment.

I will not touch on the law as apparently the records are full of law but I hope to reflect the people which is, after all, what makes up our great United States of America. Otherwise, we are a police state.

My presentation is brief as I have summarized it to the point where every paragraph carries a full story.

Every day of these hearings there has been seated in this room a busload of citizens from Chesterfield and Henrico Counties as observers. We came to determine for ourselves if this committee was sincere in its efforts to find a solution to the busing problem.

We have heard repeatedly, "Why are the parents opposed to busing when a large percent are already being bused?"

Today if we can make clear the distinction between (1) busing, meaning a mode of pupil transportation and (2) busing, meaning forced assignment to a school across town in order to achieve an artificial racial ratio in the schools, we will have accomplished a giant step. Busing, meaning mode of transportation, is used without opposition in Chesterfield County today.

In the 1970–1971 school session, of pupils transported by bus, 86 percent (or over 17,000 students) were assigned to bus routes which required 30 minutes or less total time from home to school; an additional 11.8 percent were transported on routes which required between 31 and 45 minutes.

In this connection, please remember that we have a very large county, most of which is rural. May I offer for the record a copy of a map of our county. That is Chesterfield County. The little yellow dot on the top is Richmond. We are talking about 400-some square miles and we are talking about 5-year-old children on the bus all the way across that town.

This type of transportation is necessary because of the limitation of tax-supported institutions. We are constantly striving for less mass transportation, not more. Not by any stretch of the imagination should acceptance of this kind of busing be construed to indicate that we can condone or accept forced busing.

Therefore, I beg you gentlemen to know and understand that when a Chesterfield mother says "I do not want my child to be bused," she really means "I do not want my child to be forcibly assigned to a school up to 18 miles across the heavily congested streets of Richmond when there is a school within a mile of my home."

We have heard also in these hearings the insinuation that to oppose busing is an attempt to resist integration. To refute this in our case, may I offer as an exhibit a sequence of excerpts from correspondence from Health, Education, and Welfare to our local school administration indicating that our school system is in full compliance with the policies set forth by that Department.

(The document referred to follows:)

June 26, 1968.—Letter from HEW advising that a plan for the elimination of the dual school structure will be required prior to the beginning of the 1968–69 school year.

August 28, 1968.—Following numerous conferences locally and with HEW officials, the Chesterfield County School Board approved a plan for the elimination of the dual structure in the county schools.

September 26, 1968.—A letter from Dr. Lloyd R. Henderson of the office for Civil Rights to Dr. Roy A. Alcorn stated: "Your desegregation plan dated August 29, 1968 has been received by this office and has been found to be adequate to satisfy the purposes of Title VI of the 1964 Civil Rights Act."

October 27, 1970.—Letter to Dr. Robert F. Kelly from Dr. Eloise Severinson stated: "According to their report, you have executed the final phase of your desegregation plan as outlined in your plan. It appears that your school system has proceeded with care in striving to accomplish the purposes of Title VI of the Civil Rights Act of 1964."

June 30, 1971.—Telephone conversation with Mr. Thomas White of Dr. Severinson's office in which he requested more details regarding Chesterfield's 1971–72 plan of organization.

August 20, 1971—Dr. Robert F. Kelly submitted Chesterfield's 1971–1972 plan of organization.

September 20, 1971.—Letter from Dr. Severinson: "The organizational structure from the coming year, including those changes outlined for the future, appears to accomplish the purpose of the Civil Rights Act of 1964 and therefore, will allow your school division to maintain its present compliance status."

Mrs. KRAEHENBUEHL. Again we have heard, even from some who are against the forced busing, that a constitutional amendment is not necessary to offset the extremes handed down by some courts.

We believe that constitutional amendment is the only solution in the long run inasmuch as legislation has not deterred the courts in the past. We feel that a bill should be reported out on the floor in order that the Congressmen of the entire Nation may have a vote on it.

We have faith in the American form of government and will take our chances that the people's opinion will be reflected in the votes of the Congressmen.

Gentlemen, may I encourage you to show this same faith?

In Chesterfield County we, the people, were willing to put this question before the voters. Because the referendum was not allowed on the official ballot, an organization known as U.S. Citizens for Neighborhood Schools conducted a highly authentic straw poll concurrent with the official election on November 2, 1971. The following questions were placed on the ballot.

Question No. 1. Are you in favor of the preservation of the neighborhood school concept?

Question No. 2. Are you in favor of constitutional amendment which would prohibit the busing of schoolchildren solely for the purpose of achieving racial balance?

There were 12,067 ballots case. Of these 11,512 voted "Yes" to question No. 1.

That was the neighborhood school concept, and 10,868 voted "Yes" to question No. 2, favoring constitutional amendment.

May I insert here that many of our residents are agricultural people. Some of them did not get a chance to finish school and when we threw that extremely long question No. 2 in front of them, they did not know what they were voting for. It was confusing to them but they knew they were for the neighborhood-school concept and that was the reason we determined the difference between the two, and the number of votes.

(The document referred to follows:)

On November 2, 1971, several hundred citizens conducted the People's Vote, a straw ballot, in Chesterfield County, concurrent with the official election. The effort was organized and conducted by United States Citizens for Neighborhood Schools. Two questions were placed on the ballot.

Question No. 1—Are you in favor of the preservation of the neighborhood school concept?

Question No. 2—Are you in favor of A Constitutional Amendment which would prohibit the busing of school children solely for the purpose of achieving racial balance?

Results by precincts are as follows:

	Question No. 1		Question No. 2	
	Yes	No	Yes	No
Bellwood	552	32	499	67
Chester	1,329	30	1,265	81
Enon	488	6	459	29
Belmont	1,092	11	1,033	41
Horners Store	311	3	293	14
Skinquarter	228	2	216	14
Wagstaff Circle	1,057	16	1,002	50
Winterpock	245	5	232	18
Beach	107	2	102	5
Beaulah	951	9	935	17
Courthouse	196	3	186	10
Drewry's Bluff	778	11	735	49
Ettrick	336	36	311	29
Harrowgate	352	12	333	30
Matoaka	543	52	489	94
Winfree's Store	63	2	61	2
Bon Air	1,151	22	1,106	53
Crestwood	1,044	20	986	57
Midlothian	341	2	301	30
Robious	348	4	324	23
Total	11,512	300	10,868	763

There were 12,067 total ballots cast and the results were certified by a recognized accounting firm.

The total vote in the official election in Chesterfield County was approximately 16,000 or 57% of the registered voters. It is believed that interest in the Peoples' Vote has contributed significantly to the voter turnout in this off-year election.

The results of the Peoples' Vote will be presented to Members of Congress, the news media and highest government officials.

United States Citizens for Neighborhood Schools appreciates the efforts of its members and other citizen volunteers in this vote. This has truly been a Peoples' Vote.

Mrs. KRAEHENBUEHL. Now, I want to speak on behalf of the Chesterfield County Council of PTA.

On October 19, 1971, at the 66th Annual State Convention, the Virginia Congress of PTA passed the following resolution:

Whereas our children are our most important responsibility; and

Whereas the goal of the PTA is to foster the climate that will enable each child, regardless of race, creed, color, religion or national origin to receive a quality education;

Whereas sensible reasoning and mature judgment dictate that this can be best accomplished in a neighborhood school located within a child's community; and

Whereas the Virginia PTA firmly believes that an excellent public school system and a quality education for all children can best be achieved by the neighborhood school concept; now therefore, be it

Resolved, That the Virginia PTA support a constitutional amendment guaranteeing the right of elementary and secondary educational students to attend their neighborhood schools; and be it further

Resolved, That the above resolution be communicated to President Nixon, Governor Holton and Virginia Members of the U.S. Congress and General Assembly of Virginia.

One of the few blacks who opposed this resolution stated that her child had previously gone to a black school, by choice, but was being assigned to a different school this year and she, the mother, had found much better equipment in the white school. Gentlemen, must our God-given children be held hostage in order to get the ransom of man-made equipment? How sad. This was a whole State PTA black and white.

At this point because of the church stand on this, do I have permission, Mr. Chairman, to read to you a short statement that I made this past week to the Clergyman Association of Richmond?

Chairman BROOKS. Yes.

Mrs. KRAEHENBUEHL. Thank you. Remember that this was read to the committee of ministers.

> Thank you for allowing me to be with you today to present the anti-consolidation side of this story. I do not expect to change your minds any more than I expect you to change mine because most of us have searched our minds and hearts before taking a stand.
>
> I do feel, however, if we listen to each side with an open mind, we will go away today with a greater understanding and respect for each other's opinion.
>
> I know you are aware of the social problems in our society as you handle these daily and that you are keenly aware that there is no simple solution to any of these problems. Some solutions are brought about by trial and error, some work themselves out and some are never-ending but it would be difficult for even you as clergymen to know all of the implications and social changes that would be brought about by crossing of political boundaries to achieve racial balance in the schools even as it would be difficult for the Baptists, Presbyterians, Episcopalians and Roman Catholics to be united into one jurisdictional grouping with one particular bishop or overseer for all denominations. Because of your religious differences and your mode of doing things, this would be almost an impossibility, yet living apart with your own ideologies, there is still cohesion to hold you together with the same goals of the dignity of man and ultimately for life in another world. So, if there is enough flexibility and Christian love to allow this separation, why is it deemed necessary to join different peoples with different opinions in a dictatorial state without the same freedoms as you would like to enjoy in your religious pursuits? If this freedom of self-government on local level is denied the individual, will we not also endanger the liberty of the churches and indeed all other institutions? Remember, please, this same Constitution that gives us all of our freedoms does not specify that one shall be greater than the other. So how can you distinguished gentlemen, with good conscience say that it is right to usurp the authority of a group of individual peoples and deny their rights in order to pacify another group?
>
> Agreed there should be equal opportunity for all but what constitutes equal opportunity? This is the question. Do you distinguished gentlemen have 30 percent blacks in your churches or do you achieve a particular racial ratio? What if you had 70 percent blacks, would this be any less dear to God's heart?
>
> When the Federal bureaucracy takes the government away from the people, there is less response to the needs of the individual. Which of you gentlemen, if you had a need within your church (say someone was hungry or needed medical attention) would want to have to go to your District Superintendent and in turn to your Bishop or beyond to the Council of Bishops or church leaders in order to meet this need? By the same token, the parents have a right to have control over the local schools and to see to the educational system's needs immediately. This attention would be impossible under the Consolidation Plan. We have no objections to a child being allowed to go to school across town if he so desires, but he should not be forced to do so in order to meet the requirements of Federal law or a given opinion. Just suppose that a Federal law were passed that every church had to have communion at 7 p.m. on Monday and could not use bread crumbs but had to use pressed wafers and had to use wine instead of grape juice or vice versa. Many of you would be willing to die to defend your right to worship when and where you please. It might be a ridiculous comparison to you but our children are just as sacred to us as the sacraments are to you.
>
> Gentlemen, that is the end of my sermon; now to some solutions. We have problems in the schools throughout our United States. We have learning problems in both cities and counties, black and white, integrated and non-integrated. Learning problems will not be solved by racial ratios.

In a published interview with Dr. James S. Coleman of Johns Hopkins University the author of the 1966 Coleman Report, he reportedly said, "I do not think a judge can say there is prima facie evidence of inequality in educational opportunity on achievement grounds if there is school desegregation."

The consolidation forced busing solution has become a garbage can in which to dump all of the failures and mistakes of the more modern educational experiments. Now, at a time when the majority of Americans are interested in the schools is the time to press for true need of the schools, lower teacher-pupil ratio, evaluation of teachers and school performance with very strict guidelines, separation of discipline problem children from regular class with specially trained teachers to seek out and stimulate the interest of these problem children, resource people to visit in the homes of underachievers to encourage parents to take a greater interest and participation in schools.

We need more qualified and dedicated testing people who will sincerely search for the reasons behind learning problems. These are just a very few of the needs to achieve quality education in all of the schools.

Parents can act as watchdogs over such things when they take an active interest in the schools and the school is a part of the immediate neighborhood.

It boils down to this. Are we asking for retribution for past wrongs or do we truly want quality education for all children?

Have any of you taught in a primary or elementary school in the last few years? I have because I want to know on a daily basis what goes on in the classroms, not what the school administration put out in its propaganda sheet. The cross town mixing will do nothing to solve the school problems but it will have caused confusion, tremendous expenditures, deterioration of race relations and loss of much needed time. Granted, it it is finally upheld by the Supreme Court, it will be accepted even as a bound man will finally quit struggling against his bindings but this is not to say this forced acceptance indicates the system is right.

May I set the record straight? I accept a person on his own merit not by the color of his skin. I had a black secretary many years ago before it was fashionable but I hired her because she was an excellent secretary—not because she was black or I had to meet a quota.

What is the feeling of the black man—not the NAACP leaders—but the parents in the streets? A black man on the streets of uptown Richmond stopped me to ask about the March to the Capitol. When I told him what we were doing and why, he said, "The races were beginning to truly accept each other but now there is trouble because the law can't force friendship. It has to be a free thing."

Back to the cause and subsequent results of consolidation. Forced busing breeds consolidation, which is the first phase of regional government. This concerns me most of all. The proponents tell us regional government is more efficient. No freedom loving American should be willing to trade their privilege of electing their officers for promised untested efficiency.

I resent every phase of this social experiment and encourage you as clergymen, above all, to be the leaders in helping us, black, white, red and yellow, to protect our American freedoms. Don't treat a sickness with a poison to kill the patient."

Here is the case of another family, typical in America. The father is an immigrant from Poland. He remembers the rape of his country by Nazi Germany. His family came to our country to find freedom. They worked hard, refusing any welfare, and became good Americans. Now, once again in his lifetime, he sees this take-over of our children as the beginning of a dangerous plot, just another step towards a police state.

Now my personal comments as a mother. Before we bought our home, we walked up and down the street and talked to people asking about the school just three blocks away. Only after we received favorable replies did we agree to buy the house.

The rich parents can afford to send their children to elite accredited schools. The underprivileged blacks are brainwashed that this social experiment is for their own good but who will speak out for us and come to the aid of us, middle America?

Have you men forgotten your childhood years when security was found in familiar routines, familiar surroundings, and in the knowledge that mother was nearby in case of emergency?

The world may have changed but the nature of the young child has not.

I resent many things about forced busing. I resent the many long hectic hours spent on the bus that should be spent playing, developing muscles, discovering nature, yes even daydreaming.

I resent the wasted money spent on the unnecessary miles across town when so much equipment is needed.

I resent that this issue has been so presented that it has set race against race just when the races were making great strides toward understanding.

I resent that the blacks are now being forcibly bused because of race. After all, the blacks have fought for many years to be able to go to a school of their choice without regard for race.

I resent the insinuation that a black child cannot be taught by a black teacher or in a black majority school. Who has the last word in such a study?

I resent that the emotional security of the children has been disregarded in favor of racial ratios.

I resent the encroachment of the Federal Government into the very heart of our homes and I resent the destruction of our local government.

After my statement was written and forwarded to you, the following information was brought out in a brief which was heard in the Fourth Circuit Court of Appeals on April 13, 1972.

Mr. Chairman, I offer the following as exhibits.

(1) An excerpt from the March issue of Educational Research, a publication of the American Educational Research Association, which reports on interview with Dr. James S. Coleman of Johns Hopkins University—author of the 1966 Coleman report.

In this article there is one quotation from Dr. Coleman as referring to such 1966 report:

> I don't think that a judicial decision on whether certain school systems are obeying or disobeying the Constitution ought to be based on that evidence.

(The documents referred to follow:)

COLEMAN ON THE COLEMAN REPORT

Most of what the federal government publishes remains forever in respectable obscurity, little read and scarcely noted. Occasionally, though, a federal document will break through not only to front page headlines, but to the best seller list as well. The Warren Commission Report, the Pentagon Papers, and five years ago the Coleman Report—Equality of Educational Opportunity—emerged to become the year's most discussed educational issue.

The report presented the results of a survey which sought to define the extent to which educational opportunities are equally available to all citizens. The controversy which followed the report's publication was inevitable in view of certain of the findings—that the resource inputs into schools were not greatly unequal for blacks and whites, but that these resource inputs showed little relation to achievement of students.

E.R. recently discussed the Coleman Report with Dr. James S. Coleman of Johns Hopkins University, who headed the investigative team, and for whom the work is called. We asked him his view of the impact of the study, and about his more recent activities.

"LONG RANGE IMPACT IS IN FOCUSING ON OUTPUTS OF SCHOOLS . . ."

The Long range impact of the report will probably be to strengthen the move toward evaluating schools in terms of their results rather than their inputs. The idea of evaluating schools performance in terms of student performance is fairly commonplace now, but was less so when the report came out. I think the report helped to strengthen an existing trend. Inputs have been traditional measures of school quality because it is very hard to access the functioning of school on the basis of achievement outputs. School superintendents and educators have been reluctant to measure schools by how well the students do. Whether or not they admit it, they feel the primary variation in student performance is not what the schools are doing but what the child comes to school with. Research techniques had not been capable of sorting out the effect of various school inputs. They still do so only poorly, but it has become possible to measure some aspects of the performance of a school by careful use of the achievement of its students.

"COURTS HAVE USED THE REPORT AS EVIDENCE . . ."

The study has had impacts I never would have predicted. The primary impact of the study as far as quality of educational opportunity is concerned has been in the courts.

Issues such as school segregation, which the report didn't explicitly address, have left judges looking around for some kind of evidence on which to base a ruling about what constitutes equal educational opportunity.

The courts make different use of research results than do social scientists, or even legislators. The results of our report indicate that a child has a greater educational opportunity in a school with children from backgrounds that are educationally stronger. The legislator can use this conclusion to devise a bill which will attempt to make possible that kind of student mix. But a judge doesn't have that kind of power. He has only coercive power. The court examines an existing situation and makes a decision about the legality of a school attendance pattern.

In their search for evidence, judges view this report as one of the few which provides some kind of evidence on which they can base a decision.

It's probably not appropriate to say on achievement grounds alone that segregated schooling does not provide equality of educational opportunity. There is not sufficient evidence to show that the kind of benefits to lower-class children that arise from a socio-economically heterogeneous or racially heterogeneous school can't also be provided by other means. I don't think a judge can say there is prima facie evidence of inequality in educational opportunity on achievement grounds if there is school segregation. In this sense, I think judges have looked at that study and used the results more strongly than the results warrant.

I remain uncertain about the appropriate role of social science evidence or statistical evidence in relation to the courts. The concept of evidence by lawyers or judges is very different from the concept of evidence in social science. When results show that certain kinds of attendance patterns provide higher achievement for children from lower socio-economic levels, as our results did, the results ought to *contribute* to the question of whether schools should be integrated, and to the decision of how much effort should be put into school integration. But I don't think that a judicial decision on whether certain school systems are obseying or disobeying the constitution ought to be based on that evidence.

At the same time I think the report has been underutilized by legislatures and school boards. The results of the report are appropriate for legislators and school boards in encouraging the kind of student body mix which can provide achievement benefits.

"THE USE OF THE REPORT BY POLICY-MAKERS . . ."

The experience of this research has suggested several things to me concerning the relation of research to social policy. One is that a major reason for nonuse of research results in policy lies in the fact that it's not commissioned by a policy-making body. A different pattern existed with Equality of Educational Opportunity. It was not initiated by a grant from the OE Bureau of Research, but in implementation of legislation from the congress. That fact in itself created the presumption of policy relevance, and automatically created audiences among policy-making bodies, from the presidency to local school boards.

The actual use of the report has been more at the local than the state or federal level. One specific piece of legislation, a $1.5 billion bill for aiding school desegregation, was in part an outgrowth of the report, a bill initiated within the Nixon Administration. But an adventitious coalition of some liberals in congress and some conservatives in the administration has until now prevented passage of a bill that would aid schools and children undergoing desegregation or attempting to do so.

"I.Q. AND GENETICS—THE DISCUSSION IS PREMATURE . . ."

The question of the heritability of intelligence is very complex. I don't think data from studies like the one I did contributes at all to such knowledge. Questions as to how much variation in child or adult performance is accounted for by genetic backgrounds and how that genetic background varies from one large ethnic or racial group to another can only be answered through studies of extremely sophisticated experimental design. I don't see that that data is available now. I think the controversy is not fruitful until that research is done. In my opinion (Arthur) Jensen's conclusions are based in part on research which is not relevant. Until better research is done, I think the whole discussion is premature. I do regard such research as important to carry out, however. I don't believe, as some of my colleagues do, that such knowledge can have only bad, or primarily bad, consequences.

"EDUCATIONAL GAMES TEACH THROUGH EXPERIENCE . . ."

Among my current activities, I have been working in the development of games which simulate certain kinds of social settings, or games which stimulate or involve certain kinds of intellectual activity, such as, number counting games for small children. Others are designed for high school students to function in a fairly highly structured social situation. The situation must be one in which they well learn about the activities of that role or the characteristics of that activity through functioning in the activity itself.

I feel the usual structure of activity in the classroom is not appropriate to learning. The classroom structure assumes that people learn through a different sequences: being exposed to information, assimilating that information, and then finally using it. Most learning, however, proceeds by a different sequence: persons learn through experiencing some kind of activity through action itself, and then inferring or generalizing from the experience.

For example, legislative games provide some idea of the process that goes on in a legislature. Students see what kinds of things they would have to do to get reelected. The legislative game involves the kinds of bargaining actions they would have to undergo and offers more insight into the governmental processes.

Learning through games involves fewer symbolic intermediaries. It uses the direct activity itself and relies on language and symbolic processes. We find that children who do not perform well on I.Q. or other tests which involve symbolic processing capacity, do learn very well from games. There is a very low correlation between performance of the game and learning from the game on the one hand and I.Q. or verbal skills on the other hand. With almost any other kind of teaching tool, this is not true. I think the reason for this is that games use much less symbolic manipulation; learning occurs through a path that does not have as its starting point assimilation of information through the symbolic medium of language.

"I'M HOPEFUL BUT CONSERVATIVE ON NIE . . ."

I would like very much to see a good deal of attention given to the question of alternatives to and within secondary education and post secondary education. My general view of NIE is hopeful but conservative. I don't believe that creating NIE is going to bring a brand new ear of educational research.

(2) As the next exhibit I offer two pages from the *Richmond News Leader*, dated April 13, 1972, showing a condensation of the briefs submitted to the Fourth Circuit Court of Appeals by appellates, the State of Virginia and Counties of Henrico and Chesterfield.

(The exhibit follows:)

APPELLANTS' BRIEF: "NO MANDATE TO DISMANTLE UNITARY SCHOOL SYSTEM;" STATE ARGUES THAT LAW DOES NOT REQUIRE CONSOLIDATION OF SCHOOLS

(The following is a condensation of the brief submitted to the Fourth Circuit Court of Appeals by the appellants—the State of Virginia and the Counties of Henrico and Chesterfield—in the Richmond school consolidation case. The case was docketed for a hearing by the Fourth Circuit Court, sitting in Richmond, at 9:30 a.m. today. Editorial comment at left.—EDITOR.)

The issue presented in this case is whether the State Board of Education and the governing bodies and school boards of the three separate political subdivisions of the City of Richmond, the County of Henrico and the County of Chesterfield are constitutionally required to consolidate the separate school systems—the boundaries of which are and have always been coterminous with the boundaries of the three political subdivisions and which have been operating independently for more than a century—for the sole purpose of providing an interchange of pupils to bring about a majority white racial ratio in each school in the consolidated system. . . .

THE FACTS:

DISTRICT ORIGINS

The City of Richmond, Henrico County and Chesterfield County were established as separate school divisions at least as early as 1871 and have remained separate school divisions to the present time.

In the fall of 1970 the Richmond school division had 47,824 pupils and was the third largest school division in Virginia; the Henrico school division had 34,080 pupils and was the fifth largest in Virginia; and the Chesterfield school division had 24,069 pupils and was the twelfth largest in Virginia. Richmond has an area of 63 square miles, Henrico, 244, and Chesterfield, 445. A consolidated school division of the three political subdivisions would thus contain over 750 square miles and in excess of 100,000 pupils. . . .

A consolidated school division consisting of Richmond, Henrico and Chesterfield would be in the upper 0.2 per cent of school districts in the United States in pupils population. It would be among the top 28 school divisions in the United States in school population.

The three poltical subdivisions here concerned had their origin prior to the birth of the nation. The evidence disclosed that Henrico County was created in 1634. In 1742 the City of Richmond was formed out of a portion of Henrico County. In 1749 Cesterfield County was formed from that part of Henrico County lying south of the James River. Since the creation of the city, its boundaries have been expanded 11 times at the expense of one or the other or both of the countries. Following the most recent annexation, which involved the taking on January 1, 1970, of approximately 23 square miles and 45,000 citizens from Chesterfield County, the area of the city was increased to 63 square miles and the population to 249,621, of which 143,857 (58 per cent) were white and 105,764 (42 per cent) were black.

Plaintiffs concede that the establishment of the boundaries of the city and the counties was not racially motivate. The present boundaries between the counties of Henrico and Chesterfield and the City of Richmond were established by State courts as the result of various annexation proceedings by the City of Richmond since 1906 and were neither established, nor have they been maintained, for the purpose of the coatainment of blacks within the City of Richmond. Each boundary expansion has brought into the city more white citizens than black citizens. Thus, in 1970–71, 9,867 white and 373 black students were added to Richmond by the 1970 annexation.

Of the 34,000 pupils enrolled in Henrico County schools for the school year 1970–71, only 2,035 (5.9 per cent) were black. Of the more than 2,500 pupils listed by the Richmond School Board as missing from the Richmond City schools for the 1970–71 school year, only 145 enrolled in Henrico County schools that school year, and of this number 36 (25 per cent) were black.

Of the 20,676 Chesterfield children enrolled in the Chesterfield County schools for the year 1970–71, only 1,335 had transferred from Richmond City schools during the preceding 12 years. Of this number 1,299 were white and 36 were black. Thus, only 6.46 per cent of the entire Chesterfield school population ever attended Richmond schools.

Post-trial exhibits, entered of record, indicate that the Richmond white school population decreased from 17,203 in 1970-71 to 13,500 in 1971–72—a net loss of 3,703. Obviously, these white students did not move to Chesterfield or Henrico Counties, for Chesterfield Exhibit 41 shows that its white enrollment in 1971–72 decreased from 21,796 to 21,588—a net loss of 208; while Henrico Exhibit 40 shows that its white enrollment in 1971–72 decreased from 31,665 to 31,299—a net loss of 366.

UNITARY SYSTEMS

In its opinion of April 15, 1971, the District Court approved (the school board's) Plan III for operation in the city for the 1971–72 school year as fulfilling "the school board's legal duty. . . ."

As shown by the report submitted to the Court following the opening of schools, the plan achieved the announced goals.

Prior to the school year 1962-63, the schools in Chesterfield County were racially separate. In 1962, a suit was filed in the District Court. A general injunction against discrimination in the assignment of students was entered and the case has lain dormant on the docket while the county effectuated first a freedom of choice plan and more recently a unitary geographical attendance zone plan.

The Chesterfield County School Board is operating a unitary school system, providing quality education for its students and receiving outstanding citizen support for and participation in its programs. No benefits will flow to the children of the county from consolidation.

Manifestly, the Henrico County School Board is operating a unitary, nonracial school system in which no schools are racially identifiable, which system fully complies with both judicial and executive guidelines. It is uncontroverted in this case that, on four separate occasions during the past two years, the school authorities have been commended by HEW for their leadership in meeting the provisions of Title VI of the Civil Rights Act of 1964 and in providing an equal educational opportunity for all of the students in the school division.

STATE BOARD'S ROLE

The State Board was, and remains, without power to assign pupils or teachers or to impose pupil transportation routes upon local school boards. These factors, of course, are the basic components of a desegregation plan.

Nevertheless, the city, the plaintiffs and the District Court have scored the State Board for all that occurred in the "massive resistance" era in Virginia. Surely, this Court is not unmindful (that in 1964) the Supreme Court of the United States recognized that Virginia had turned its back on "massive resistance":

"The legislation closing mixed schools and cutting off State funds was later invalidated by the Supreme Court of Appeals of Virginia, which held that these laws violated the Virginia Constitution. In April, 1959, the General Assembly abandoned 'massive resistance' to desegregation and turned instead to what was called a 'freedom of choice' program."

The freedom of choice approach adopted by Virginia's school boards found substantial acceptance and approval in this Court. It was this judicially approved approach to integration which the State Board initially encouraged.

And consistent with the authority vested in it under the Constitution and statutes of Virginia, the State Board has continued to assist in effectuating integration by advising, instructing, and encouraging local school boards to come into compliance with the evolving law and changing regulations. The rendering of such encouragement and assistance by the State Board discharged its duty as interpreted by HEW.

This Court recognized and plainly held in (1971) that, where a State board has no authority under the law of the State to regulate school attendance plans, it cannot be ordered to participate in the formulation of plans for converting to unitary school systems. It follows that, where a State board of education exercises its authority to the fullest extent possible by instructing, advising and encouraging local school boards to achieve unitary plans, it cannot be derelict in its constitutional duty.

By the time of the trial of this case, each school division in the Commonwealth was operating under HEW or Court approved desegregation plans.

RICHMOND'S PLAN

The District Court by its order entered January 10, 1972, adopted and ordered the implementation of the "plan presented to the Court by the School Board of the City of Richmond." Therefore, in order to understand the constitutional implications of the decision below, it is necessary to understand the plan adopted by the Court.

Dr. Little stated that the first objective of the plan is "that each and every school would be composed of a viable racial mix." The Court asked the witness for his definition of "viable racial mix." His answer:

"Viable racial mix, I mean that, in my opinion, it is a racial mix that is well enough established that it will continue to prosper. It will be a desirable reasonable racial mix for educational purposes, as well as meeting the judicial requirements in that.

"Generally the parameter ranges from 20 to 40 per cent in each school." He further amplified his views: "We were shooting at here the same thing I indicated to you in interrogatories very early in this case when I used somewhere around 30 per cent because I do feel that when you get too much below 30 per cent your black child is in isolation and he does not benefit from the experience. When you get too far over that you run into resegregation and a lot of the disadvantages of the all-black school."

Having started with this objective, Dr. Little then drew his six subdivisions in the city-county area. He used attendance figures for September, 1970. He had before him spot maps showing the residence of all children in each division by race and maps showing the location and attendance zone of each school and the number of pupils of each race attending each school. He drew the subdivision lines upon the basis of this information so as to locate in each, as nearly as he could, the desired racial mix. . . .

He then found the percentage of black and white children in each category in each subdivision Applying this fixed racial percentage to the number of children each building could accommodate, he determined "by computer, the number of white and black students required in each facility in order to deliver the racial mix they sought . . ."

Dr. Little's plan requires that the selection of those children to be transported should be determined by an annual birthday lottery to be conducted in each attendance area for each school. Consecutive birthdays after the date drawn in the lottery are to be taken (always skipping the white or black child depending upon which race is to be taken from the school) until the number needed to reach a "viable racial mix" has been obtained. The plan thus insures that the children to be bused will be chosen in their neighborhoods on the basis of race and transported to and from school in racially segregated bus loads.

PETTIGREW, CARMICHAEL

The principal witness produced by the City in support of the theory upon which its metropolitan plan is predicated was Dr. Thomas F. Pettigrew. Dr. Pettigrew described himself as a "social psychologist" and described social psychology as "an emerging social science discipline." In differentiating between the terms desergregation and integration, Dr. Pettigrew defined the latter term in the following manner:

Integration, however, implies the mix plus positive interaction as we would want to say between white and blacks, or if I may put it less socially psychologically in situations where they become friends across race, where there is cross racial acceptance, where there is reduced racial tension, hopefully none of it. In other words, where the school begins to approach the American idea as opposed to the American reality in race relations where there is cross racial acceptance and reduces much of its potent and negative qualities."

As the best method of achieving integration as thus defined, Dr. Pettigrew recommended establishment in each school of the following racial quotas:

". . . I think, for inter-racial maximizing the opportunity of getting integration in the way I have just defined it, would be from 20 to 40 per cent black. . . . So I would argue that 20 per cent avoids tokenism and 40 per cent maintains stability. The 20 to 40 per cent mix maximizes possibilities for integration and the positive benefits for integration that I prevously outlined."

Dr. Pettigrew's testimony in this case with respect to the uniform 20 to 40 per cent minority racial percentages for blacks in each school is substantially identical to that which he has given in every case in which he has testified as an expert.

The tenuous nature of the theory advanced by Dr. Pettigrew, which was adopted by the city in formulating its plan and now given the stamp of judicial approval by the District Court, is best described by him when, in one short statement, he qualified his findings as follows:

"You sort of know . . . this seems to be the case . . . that seems to produce these positive benefits . . . that is the question we have been asking ourselves intensively . . . The Coleman Report can hint at process but can't really tell you directly . . . we think we have pretty good ideas . . . we don't pretend that we understand it completely."

Supplementing the testimony of Dr. Pettigrew was that of Dr. Carmichael. Dr. Carmichael testified that to deal with "present perceptions of what a school is and what is inferior and superior." the racial ratio must always be maintained so that the black is in the minority situation and this, the Richmond metropolitan plan does. Specifically, under the Richmond plan, no school is permitted to have as much as 41 percent black children, and no school (other than several in Subdivision Six) is permitted to have less than 17 percent black children. Adjustments to the plan would be made if necessary to assure that black children are always bracketed in these racial percentages. Indeed, Dr. Carmichael testified:

"Q. What you are telling this Court is that in America we can't make a system work if it is majority black?

"A. Right."

HOOKER'S TESTIMONY

In contrast to the foregoing testimony, Dr. Clifford P. Hooker, an expert witness for the defendants described the city's plan to consolidate the three school divisions for the purpose of interchanging black and white children in order to reach a minority black ratio of 20 to 40 percent in the following language:

"I think we, and I began to preface my remark by saying I know I am wading into very deep water in making the statement, but I want to be as honest and useful to this Court as I can be. I honestly think in identifying a group of people and suggesting, as we are quite directly, that this group of people is inferior and that we Anglos know what it is that causes this inferiority and that we can do something about it, we are insulting that group of people involved. We are indeed becoming paternalistic as we take into our custody their particular needs and propose solutions for those particular needs.

"So it seems to me that too much of the testimony, and I am quite upset about this, has equated blackness with badness, black schools as bad schools, black schools as poor schools. I submit that much of that testimony comes from the eyes of people who see this in a racist fashion. That only a person with this particular set of lenses would be able to see badness upon driving past a school and seeing black children come out of it. Only this kind of person would say it is a bad school. . . ."

None of the expert witnesses who testified on behalf of the City and the plaintiffs had made any detailed study of the systems of the three communities here involved, and their knowledge of the systems was limited largely to the racial composition of the enrollments of each system. None of them had any particular expertise in the consolidation of school systems.

In contrast, the State and County defendants presented three natitonally prominent educators whose experience in the field of organizing and consolidating school divisions has been extensive: Dr. James W. Whitlock (Director of the Division of Surveys and Field Services and Professor of Education of George Peabody College for Teachers, and Director of the Center for Southern Education Studies); Dr. William P. McLure (Director of the Bureau of Educational Research and Professor of Educational Administration and Supervision of the College of Education of the University of Illinois); and Dr. Clifford P. Hooker (Professor of Education and Chairman of the Division of Educational Administration of the College of Education of the University of Minnesota). Dr. Hooker's experience included consolidation of schools in biracial metropolitan communities.

Dr. Whitlock, prior to this case, had been employed by each of the three school divisions to make studies and recommendations concerning their operations. He was, therefore, intimately familiar with each system. Drs. McLure and Hooker, in reviewing and evaluating the proposed consolidation, studied in some detail the three systems including the per pupil financial support, pupil-teacher ratios, school offerings, etc., and visited schools in each of the three jurisdictions.

EXPERTS' CONSENSUS

These experts were unanimous in the view that the optimum size of a school division was one having a school population of from 20,000 to 50,000 pupils. They all stated that systems of that size could be efficiently operated, and the pupils offered a full, well-rounded educational program. They all agreed that as school systems increased in size beyond that point, no further economies were obtained, the systems became unwieldy and parent participation diminished.

To the same effect, indeed, was the testimony of Dr. Thomas C. Little:

"You also reach a point, and I don't know exactly what that point is, some 50, 60, 70 thousand students, whereby it becomes unwieldy for certain types of operations, particularly your curriculum, your involvement, and neighborhood input into the operation of your schools."

The State and County experts all agreed that to consolidate the schools of the three political subdivisions here involved, each having a separate tax base and each having a separate and distinct electorate, with the result that the school board of the consolidated district would have to look to three separate governing bodies for approval of school budgets would be castastrophic. In their opinion, such a system would, for reasons wholly unrelated to race, lose the public support so vital in securing the funds necessary for school operations and needed capital outlay . . . . As pointed out by the State and County experts, this case does not involve a proposed consolidation of separate school districts having any significant disparity in the number of pupils or the ability of the respective divisions to provide the necessary financial support to insure a quality educational program for each child. In this connection, the wealth per child in each division (expressed in true property value per child, including necessary adjustments for annexation) shows that Chesterfield had $28,377 per child; Henrico had $31,592 per child; and Richmond had $32,166 per child.

In sum, it was the opinion of the State and County experts that there is no educational reason supporting the consolidation and that many educational disadvantages would result from the proposed consolidation. None was aware of any instance in American education in which any expert in the field had ever recommended the consolidation of three separate school divisions into a single consolidated school division having three separate tax bases. According to these experts, the proposed consolidation would be an educational first in America and, in their opinion, a disastrous one. It would be "completely contrary to what is acceptable educational practice in this country . . ."

If, as contended by witnesses for the City and the plaintiffs, the providing of a racial mix of 80 per cent to 60 per cent white to 20 per cent to 40 per cent black would have educational advantages, such advantages would be more than outweighed by the educational disadvantages flowing from a consolidation of the schools of Richmond with those of Henrico and Chesterfield for the purpose of securing such a racial mix. The proposed consolidation manifestly has no other purpose than to give effect to the theories of Dr. Pettigrew. Indeed, Dr. Little of the Richmond City Schools admitted that, racial consideration aside, he would not have recommended the proposed consolidation.

DEMOGRAPHY

The Court below heard much testimony and laid great stress in its opinion on the effect of governmental actions and the use of racial covenants on the demographic patterns in the two counties.

The record reveals no governmental action for which the State and County defendents are responsible which has had any substantial impact on the residential patterns in the counties. To the contrary, the zoning laws, building restrictions, and license requirements in both counties are less restrictive than those of the city. Indeed, a witness for the plaintiffs testified that an independent study of the administration of the zoning laws in the Richmond SMSA disclosed "no evidence to support (racially) discriminatory zoning practices whatsoever."

Clearly, the development of suburbia in Henrico and Chesterfield occurred after the period when racial covenants could have affected the demographic patterns of the nation. (The record) reveals that it was following 1950 that each of the two counties experienced their periods of greatest growth. During that period, not only were racial covenants unenforceable as a matter of law, but, subsequent to 1950 they were rarely inserted in deeds in the two counties. No suit to enforce a racial covenant in either county at any time was disclosed by the evidence, and there was uncontradicted positive evidence that no such suit had been flied since 1936 in Henrico and 1938 in Chesterfield.

The movement of population to the suburbs in the Richmond SMSA is not the result of State or local governmental actions but is merely a repetition here of a phenomenon observable across the nation. The decision to move to the surburbs or remain in the city is one of personal choice, resulting from reasons principally economic.

Contrary to popular belief and to the surprise even of the Richmond City Planner, the net in-migration of blacks to the City of Richmond has been negligible. During the decade 1960 to 1970, despite an increase in the black population in the city of 13,433, the net in-migration accounted for only 782 of that gain, or an average gain of 78 blacks per year. It is clear, therefore, that the increase in the black population is not the result of movement out of the adjoining counties by black citizens. The net in-migration of whites to the city, including those acquired by annexation, exceeded that of blacks, totaling 16,000.

Nothing in the record can sustain the charge required in the Charlotte case "that either the school authorities or some other agency of the State has deliberately attempted to fix or alter demographic patterns to affect the racial composition of the schools."

THE ARGUMENT

THE ISSUE

At bottom, the case presents the fundamental issue of whether independent unitary school systems established on municipal and county lines, which systems have operated independently under State law for more than a century and each of which is currently being operated in full compliance with the requirements of (previous rulings), must be merged into a single consolidated school system by the extrusion of one system's black children to the other predominantly white school systems and the replacement of such children by a simultaneous infusion of white children into the predominantly black system, solely to avoid the existence, in one of the independent systems, of a majority black student body.

Clearly, the principles enunciated in the District Court's opinion, if sustained, will affect not only the schools but, indeed, the fundamental organization and structure of municipal and county governments throughout the nation. The Court, in its opinion, does not come to grips with one of the principal questions before it for decision: whether the unitary school system requirement of the Fourteenth Amendment compels the consolidation of three separate and independent unitary school divisions whose lines have been drawn coterminous with political subdivision lines? The Court bypasses this problem by treating each separate division as a mere attendance zone of a consolidated division composed of Richmond, Chesterfield and Henrico.

Here, the District Court, for the first time in the judicial history of the United States, purports to establish: (1) a constitutional right for black children attending a judically approved unitary school system of a municipality to be transported to and enrolled in the independent unitary school systems of two adjoining counties; and (2) a constitutional obligation of white children attending unitary school systems in the adjoining counties to be transported to and enrolled in the schools of the judicially approved unitary school system of the municipality, in order to obtain a white majority racial ratio. No such constitutional right or obligation had been held to exist prior to the rendition of the decision and order in this case; nor had any decision of any court ever hinted that achievment of a viable racial mix was a constitutional imperative or, indeed, that the term "viable racial mix" embodied any sort of judicially enforceable standard. On the contrary, the goal of all the school desegration cases had been (and still is), the establishment of unitary school systems in which no child is denied the right to attend a school on the basis of race.

THE STATE'S POWER

Each State has broad power to establish, disestablish or reorganize by contraction or expansion, its political subdivisions. This power of a State to establish municipal and county boundary lines has been recognized from the earliest times by the Supreme Court of the United States.

The power of a State to establish school divisions is no less plenary. City or county boundary lines provide natural geographic boundaries for the establishment of school division lines.

In this case, it is conceded that the original boundary lines of the three political subdivisions here involved were not established for racial reasons. It is also uncontroverted that the establishment of the three separate school divisions here involved along the boundary lines of the political subdivisions was without racial purpose. Moreover, the setting of municipalities as local school districts has been held to be a reasonable standard, especially if the effect of such establishment is to cause the school divisions to conform to the municipal or county taxing authority.

The reasonableness of requiring school divisions to conform to the boundaries of the political subdivision is especially true in Virginia, for in Virginia local school boards do not possess independent taxing authority, but are dependent on the local governing body for fiscal support. The national experts, whose opinions were verified by the practical experience of the State Board, concur that consolidation of the three separate and independent school divisions here involved would be "educationally disadvantageous" and "completely contrary to what is acceptable educational practice in this country. . . ."

THE STATE'S DUTY

. . . It is too clear for argument that the duty to dismantle a dual school system and establish a unitary school system is the obligation of each school district. Moreover, every member of this Court knows full well that no school desegregation case previously considered by it has ever sought, much less resulted in, an order consolidating independent school divisions established along political subdivision lines.

Significant in this connection is the status of the three separate school systems here involved. There is no doubt that the City of Richmond is operating a unitary school system in the sense required by the Supreme Court. The District Court has specifically so held. Equally true is it that both Henrico and Chesterfield are currently operating unitary systems. Initially it should be noted that no litigation has ever been instituted in any court to bring about the desegregation of schools in Henrico County, and the desegregation suit filed against the Chesterfield School Board has lain dormant on the District Court's docket for a decade. The establishment of a unitary school system in each of these counties has been achieved entirely by the county school board working in cooperation with HEW and without prodding from the courts, and it is clear that the law encourages the dismantling of formerly dual school systems in just this way.

In this case, the Henrico County School Board has been commended by HEW not only for its leadership in meeting the provisions of Title VI of the Civil Rights Act of 1964, but "even more important, providing an equal educational opportunity for all of the students in your school division." Moreover, since receipt of this letter, the Henrico County School Board has continued to cooperate with HEW in making further refinements to the unitary system already established. Similarly, the Chesterfield County School Board has also established to HEW's satisfaction a racially balanced unitary school system in which no school in the county is racially identifiable.

According to the Supreme Court, once the school system has become unitary, it is not "constitutionally required to make year-by-year adjustments of the racial composition" of its own student body, much less consolidate with another system.

CURRENT LAW

Not only is the decision of the District Court inconsistent with the Supreme Court's ruling last year in the Charlotte case, but it is squarely in conflict with the more recent decision of the Supreme Court in Spencer v. Kugler (January 17, 1972), a case completely ignored by the District Court in its opinion. In that case, a challenge to the constitutionally of New Jersey's statutory scheme establishing the boundaries of school districts to coincide with those of political subdivisions was dismissed for failure to state a claim upon which relief could be granted, even though the complaint alleged that patterns of racial imbalance were being statutorily imposed upon the public schools of New Jersey. During the course of its opinion, the three-judge District Court declared: (1) that the setting of municipalities as local school districts was a reasonable standard, especially when viewed in light of the municipal taxing authority, (2) that racially balanced municipalities are beyond the pale of either judicial or legislative intervention, (3) that school district lines based upon municipal boundaries were not unreasonable, (4) that if school division lines were reasonable and not intended to foster segregation, then the mandate of (the Supreme Court) is satisfied, and (5) that the (Supreme Court) "never required anything more than a unitary school system."

The Supreme Court affirmed the District Court's decision answering that question in the negative. Mr. Justice Douglas dissented and set forth at length in his opinion the contentions of the appellants in that case, which were substantially identical to those made by the plaintiffs and the City in this case and adopted by the District Court.

The decision affirming the District Court is thoroughly consistent with the observation in (the Charlotte case) that the objective of school desegregation cases "does not and cannot embrace all the problems of racial prejudice, even when those problems contribute to disproportionate racial concentrations in some schools."

Moreover, this Court has found nothing whatever unconstitutional about the side-by-side existence of a predominantly white and a predominantly black school system resulting entirely from such State action. If affirmative State action giving rise to such a result is not antagonistic to the Fourteenth Amendment, then a mere failure to alter political subdivision lines to consolidate similar contiguous school systems cannot be violative of the Fourteenth Amendment. This Court has approved State action resulting in the withdrawal of a predominantly white municipal school system from a county in which remains an overwhelmingly black school system. In light of that decision, it is difficult to conceive how the District Court (in this case) could decree that the State must take affirmative action to prevent the continuance of an identical situation.

NEW RIGHTS, DUTIES

Clearly, the District Court has stated an entirely new constitutional imperative made up out of whole cloth and unsupported by any decision of the Supreme Court of this Court. The District Court has decreed that a viable racial mix throughout a metropolitan area, which mix will sustain an overall racial stabilization and cause a school system to "prosper," is the new constitutional aim. Under this new rule, the target of the school desegregation cases from 1954 through 1971 (the dual school system) is overlooked and the remedy commanded by all the school desegregation cases from 1954 through 1971 (the dismantling of the dual school system) is ignored. In their place racial balance, as far as it can be achieved without any reference to political subdivision lines or school division structures, is now decreed.

There is nothing in the Fourteenth Amendment or any decision of the Supreme Court or this Court which says that a school district which has established a unitary system in which blacks are in the majority must, if by chance it happens to be contiguous to a unitary school system in which whites are in the majority, take action to combine itself with the contiguous school district for the purpose of thinning out its majority black school population and subordinating it to a majority white school population so that the combined school system will contain a viable racial mix.

Surely, every member of this Court well knows that there is nothing in the Fourteenth Amendment which forbids blacks to be in the majority in any school division. The concept that the integration of any school division in which blacks predominate over whites necessitates further desegregation to insure that whites predominate over blacks (has been) expressly and resoundingly rejected in this Court's decisions.

Nor, has this Court, in any of its decisions, ever so much as intimated that it was constitutionally impermissible for a majority black unitary school system, drawn along political subdivision lines, to co-exist side by side with a majority white unitary school system, and that in such situations the Constitution requires those systems to be merged to create a white majority in each school in the consolidated system. If that is the law (the District Court so held), what are the Constitutional implications with respect to the political subdivisions which exist on the periphery of Chesterfield and Henrico counties and which will continue to exist on the perimeter of the new consolidated school division, which the District Court projects will have a racial ratio of 65 per cent white and 35 per black? Under the "perception theory" stated by the plaintiffs' expert witnesses and adopted by the District Court, the consolidated system will be perceived as a white system. This, even the plaintiffs' expert admit. On the boundaries of this consolidated system there will exist at least four predominantly black systems: Petersburg, Charles City, New Kent, and Amelia. The schools in these predominantly black unitary school systems will be predominantly black schools and will, according to plaintiffs' experts, be perceived as inferior.

If the Richmond black school child has a constitutional right to be bracketed into a 20 per cent to 40 per cent minority ratio (1) in order to be the beneficiary of meaningful integration, and (2) in order for the city in which he lives to have the benefit of overall racial stabilization, then, unless the Richmond school child who is black has a superior constitutional right to the black school child in Petersburg, New Kent, Charles City, and Amelia, the black school child in those systems also has that right. Vindication of that right, if such right exists, will necessarily mean consolidation of portions of Henrico with Charles City and New Kent Counties and portions of Chesterfield with the City of Petersburg and Amelia County.

When this is done, and it is the only way in which the newly created rights of these latter children can be vindicated, the 65–35 ratio of white to black envisioned by the District Court for the metropolitan area vanishes as the white children in portions of Henrico and Chesterfield are added to the other majority black school divisions. Indeed a motion is even now pending before the School Board of the City of Petersburg to require it to institute a suit to consolidate its majority black school system with the majority white school system in Colonial Heights and that portion of the majority white school system of Chesterfield County in the Ettrick Magisterial District. The motion is currently tabled, but its existence suggests the question of the nature of the constitutional rights of the black children of the City of Petersburg.

If a majority black status is a violation of the constitutional rights of the Richmond school children because of Virginia's past history of de jure segregation, then the children of Petersburg are also children whose constitutional rights are being violated. If their rights are indeed being violated, are they not at least as entitled to have their constitutional rights vindicated as are the children in Richmond? It is no answer to the question to state that the District Court will have to do the best it can when that situation arises. The situation itself goes to the heart of the existence of the individual constitutional right claimed in this case, and the affirmative constitutional duty of school authorities to vindicate that right. The end result, as Dr. Pettigrew admitted, is to set in motion a domino effect, which must continue until all school systems in the State are majority white.

Again, if such is the law (and the District Court so held), it necessarily follows that, unless the domino theory is fully implemented, some black children in Virginia have a constitutional right which other black children in the State do not possess—i.e., the right to attend a majority white school. Manifestly, the black child in Greensville County has no such right, or if he does, it cannot be judicially vindicated because Greensville County (whether Emporial is included or excluded) has a majority black school system and is bounded by three majority black school systems. Therefore, there is simply no way in which its black children can be afforded access to a majority white school. How ironic it would be for a court to give judicial approval to the notion that majority black schools must be perceived as inferior in the face of its inability to provide majority white status for all.

Despite the fact that the right which the District Court now orders vindicated is a new creation, the Court condemns the State Board and the school boards and governing bodies of the counties for failing to perceive what no other court has heretofore seen. The (District) Court painstakingly searches their minutes across the years for references to "white" and "black" and for actions, then legal but since outlawed, with which to indict them in its opinion.

. . . Of course, this Court has never fallen into the error of according racial quotas constitutional dignity. This Court has never professed any such "unyielding fidelity to the arithmetic of race" as to suggest that a black child is constitutionally entitled to be arithmetically maintained in a minority position in order to achieve the educational benefits which certain social psychologists see for him. This Court has never held that this status is a constitutional right which sweeps everything before it, including school division lines established along political subdivision lines without racial purpose.

NO JUDICIAL STANDARDS

The essence of the new constitutional obligation imposed by the District Court is the duty upon school authorities to achieve something called a "viable racial mix" throughout something defined as a metropolitan area "bi-racial" school community. This duty is a correlative of the newly decreed constitutional right of black children to attend public schools in which white children predominate. If this Court is now prepared to confirm a constitutional right for a black child always to attend a school in which exists a white majority (or stated in the terms of the City's witnesses, a school which is not constitutionally deficient because of a black majority), the area in which this right is to be applied must be determinable through the application of intelligible judicial standards.

No judicial standard is articulated by the District Court to delimit the bi-racial community. In this case, this community embraces the three political subdivisions of Richmond, Henrico, and Chesterfield only, and the racial percentage required to be achieved by implementation of the District Court's plan is the racial percentage which exists in those three political subdivisions alone. Specifically, it is uncontroverted in this record that there are certain schools in the separate political subdivision (and separate school division) of Hanover County, the border of which is only three and one-half miles from the city limits of the City of Richmond, each of which schools is closer to the Richmond schools than are a number of schools in Henrico and Chesterfield. However, the bi-racial community here involved is determined entirely and arbitrarily by excluding Hanover County and including all of Henrico and Chesterfield.

By what conceivable judicial standard can such action be justified?

Included within the alleged bi-racial community are large square mile areas of eastern Henrico County comprised of farm lands, dairly lands, and woodlands, and also included in the alleged bi-racial community are hundreds of square miles of veritable rain forests in southern Chesterfield County. Both of these areas are less densely populated and farther removed from the City than is the "bedroom community" of Hanover County. Since the trial judge well realized that once he departed from the political subdivision lines of Chesterfield and Henrico he was lost, he included these areas of Chesterfield and Henrico. In so doing, he fell back upon political subdivision lines, although he had declared political boundaries to be "unrelated to any administrative or educational needs." The racial ratio constituting the viable racial mix is thus established by the political subdivision lines arbitrarily selected by the District Court in delineating the bi-racial community.

By arbitrarily limiting the bi-racial community to the three jurisdictions currently before it, the District Court has fixed the racial percentage at 70–30, permitting only a 10 per cent deviation on either side of the ratio. If the lines are extended (and we have no judicial standard to determine that they should not be), additional counties would be brought in which would change the racial ratio of the bi-racial community.

RACIAL RATIOS

Clearly, if racial ratios are to be judicially embedded in constitutional law, there must be some judicial standard which can be uniformly applied to determine what those ratios should be. In every case (decided by the Supreme Court from 1954 to 1971), the racial ratio to be utilized as the starting point for dismantling dual school systems has been ascertained with reference to individual school divisions. If individual school divisions are now to be disregarded for that purpose, some other ascertainable standard must be applied, for if neither the required ratio nor the applicable territory are known, school authorities have no starting point to begin the task of restructuring school systems to meet the newly decreed constitutional right.

The District Court has properly concluded that attainment of a unitary status "will not insulate a school division from judicial supervision to prevent frustration of the accomplishment." Launching from that sound base, however, it predicts "frustration," forgets "State action" and ignores the Charlotte case.

Alteration of the racial composition of the unitary school system now in operation in the City of Richmond under Plan III can come about only in two ways: (1) people exercise their constitutional right to move from one place to another in this country; or (2) people exercise their constitutional right to remove their children from the public school system and send them to private schools. If a person exercises either of these constitutionally protected liberties, he will necessarily affect the racial composition of the plan now in operation or the plan now under consideration. Neither of these events is subject to supervision by a Federal court to prevent "frustration" of a plan, nor does either enlarge the rights of black children who may remain in the city.

As long as the Bill of Rights remains in the Constitution of the United States, citizens of the three political subdivisions here involved will have an absolutely unfettered, Federally-protected constitutional liberty to move where they please. . . . Such citizens will also have a right to send their children to private schools and shun the public school system entirely. No District judge is permitted by the Constitution of the United States to view either of these exercises of constitutional rights as offensive to the Constitution, or as endowing him with the power to pursue those who move or those who send their children to private schools and bring those children back into the public school system of any political subdivision for the purpose of achieving some sort of racial balance.

In short, even if the unitary system now operating in the City of Richmond is someday "frustrated" because of the exercise by citizens of their constitutional rights, no cause for Federal intervention will arise. Surely, such intervention based upon anticipated "frustration" is improper.

Thus, it is clear that a constitutional right predicated on racial quotas will be illusory and cannot be sure of judicial vindication. On the other hand, if the "constant theme and thrust of every holding from 1954 to date" is followed—i.e., that school systems operate just schools (not schools for whites, and schools for blacks; not schools for 70–80 per cent white or schools for 20–40 per cent black, but just schools), the constitutional rights of all blacks and whites alike, will be vindicated.

MEANING OF CHARLOTTE

The plaintiff class in this case is composed of black school children of the City of Richmond. Their constitutional right, as has been made clear by the most recent decisions of the Supreme Court, is the right to attend schools in a unitary school system. That right the plaintiffs now enjoy, and we have the District Court's word for that. In this situation, we may ask what decision of the Supreme Court or this Court has ever commanded, indeed even warned, the Chesterfield or Henrico County school boards that they were required to merge their schools with those of Richmond in order to conform to their constitutional obligation?

In what year, and under what decision of the Supreme Court or this Court, did it become the obligation of the State Board to ascertain the racial composition of the various separate school divisions in Virginia, and then take action to merge those school divisions which were majority black with other school divisions which were majority white to insure that whites would predominate in every school in each consolidated division? In what year, and under what decision of the Supreme Court or this Court, did it become the duty of the State Board to adopt as a constitutional imperative the suggestion that a majority black school system cannot be made to work in America, and take action to insure that no predominantly black school system would exist in the Commonwealth of Virginia? In what year, and under what decision of the Supreme Court or this Court, did it become the duty of the State Board (1) to assume that the percentage segregation theories of Dr. Pettigrew had been enshrined in the Fourteenth Amendment as indispensable to equal educational opportunity, and (2) to realize that this placed upon it the affirmative obligation to establish, wherever possible, school systems in which blacks would be subordinated to whites in at least a 60–40 per cent ratio?

We submit that no decision of the Supreme Court or this Court has ever intimated that the right of black children in any school system is the right to attend schools which have a "viable racial mix," or the right to attend schools in which the mixture is constantly adjusted so that the school system will "prosper," or the right to attend schools in which there shall be "meaningful integregation," or the right to attend schools in which there will be an "overall stabilization."

In short, there is simply no decision of this Court or any other court which proclaims that black plaintiffs are, wherever possible, entitled to be placed in minority situations so that they may receive the supposed educational benefits of associating with a majority of their white peers and where, according to some educational theorists, their educational advancement will be enhanced. Indeed, if a black plaintiff resisted the white majority racial quota plan now imposed by the District Court, how long would it take this Court to reverse this decision

> and emphatically reject each and every conclusion which purports to underpin it?
>
> Let us view the matter from another perspective. Assume that a unitary system has been established in Henrico and that the system is 90 per cent white and 10 per cent black. Assume, further, that suit is instituted by the white parents of Henrico to force the county school board to merge the county school system with the contiguous 70 per cent black school system of Richmond for the purpose of increasing the percentage of black children in the Henrico schools to 20–40 per cent, so that the white children of Henrico could have the benefit of "meaningful integration." If the Richmond School Board resisted this effort upon the ground that it had established a unitary school system pursuant to a decision of the District Court, affirmed by this Court on appeal, and that, under the Supreme Court's ruling in Charlotte, it could not be required to alter its system to achieve any sort of racial balance in the county, could such a suit by Henrico citizens possibly prevail? We submit that it could not, and that the reasons for the failure of such a suit are obvious. Having established a unitary system within its school division, the Richmond School Board has fully discharged its obligation under the Fourteenth Amendment and cannot be forced to disrupt its unitary system to achieve any sort of racial quotas in the county. In this case, the fact that Richmond is quite willing to disrupt its school system, even though unitary in nature, for the purpose of diluting its black student population, does not for one minute change the natural of the constitutional right involved or the power of the District Court.
>
> ### DISMANTLE SYSTEM?
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> Clearly, the concepts of meaningful integration, viable racial mix, and overall racial stabilization are not judically recognized concepts. From 1954 through 1971, no decision of the Supreme Court has made even tangentical reference to such terms—nor even purported to deal with such concepts. On the contrary, these term embody concepts of "sociology and educational theory," and are without shadow of decision support. It is the dismantling of the dual school system and the creation of the unitary system, not the achievement of "meaningful integration" or "viable racial mix" or "overall stabilization," that is the thrust of the Supreme Court's ruling in the Brown case (1954), and every decision rendered since Brown.
>
> Nor is there any substance to the suggestion that it is futile to establish a unitary school system and have that system resegregate. The establishment of a unitary system fully vindicates the constitutional right defined in Brown and confirmed in the Charlotte ruling. The latter decision has made it perfectly clear that this is so.
>
> It is manifest from prior decisions of the District Court, that a unitary system in the sense of the Supreme Court's decisions . . . has been established in the City of Richmond, and that the school authorities of the City of Richmond have achieved full compliance with the Supreme Court's decision in Brown I. Equally clear is it that there is no constitutional requirement that the unitary system, once established, must remain stable. Indeed, . . . the Supreme Court has predicted that it will not do so. The suggestion that a unitary school system in which blacks predominate must be dismantled and consolidated with other unitary systems in which whites predominate to produce meaningful integration or a stable school system is utterly without constitutional foundation. There is no constitutional mandate to dismantle the unitary school system.

Mrs. KRAEHENBUEHL. At this point I want to apologize for any disruption caused by spontaneous gasps by Chesterfield residents on February 29. A member of your committee said he had never heard of any judge ordering a racial ratio. We gasped because we had sat through weeks of testimony and busing plans showing just this.

In this brief which was argued by Mr. Phillip B. Kurland, the University of Chicago law professor, it cites testimony given in the district court indicating that racial ratios were repeatedly used as the basis in the busing plan offered. The judge of the district court ordered such adoption.

In my opinion, even if the Fourth Circut Court of Appeals reverses the district court in our case, there will be filed case after case in other areas with subsequent financial burden on local governments.

We feel that forced busing is an insatiable monster. It starts in a city, then engulfs the adjoining counties and will finally engulf States unless we get a constitutional amendment.

I speak for myself but know that I reflect the views of my neighbors in this room when I say I do not know what the final solution is to this problem. I will give of my time. I will give financially but I will not sacrifice my most precious possession, my eight-year old son.

Thank you.

Chairman BROOKS. Thank you.

I had one question.

Do I understand that you are opposed to the moratorium legislation and favor the constitutional amendment?

Mrs. KRAEHENBUEHL. We fear the moratorium, and I have no legal things to back this up, but we fear this because we think that it will probably instill a false feeling of security in people and now that the American public and mothers are up in arms, we do not want anything to detract from this movement.

Chairman BROOKS. Thank you very much.

Mr. Mikva.

Mr. MIKVA. I was interested in your comments about the constitutional amendment. You have directed your concern to the situation in Richmond involving court-ordered busing. I understand your concern but in my town in Evanston the school board on its own decided on the desegregation plan which includes busing, not pursuant to any court order. It has been a hot political controversial issue. A couple of the school board members have lost their seats and the superintendent is no longer with us. It was decided at the local school district level and most of the parents in Evanston now are satisfied with the decision.

Do you suggest that all assignment laws ought to be constitutional matters?

Mrs. KRAEHENBUEHL. I think parents, any child, any resident of the United States ought to have the freedom to go from State to State, county to county, city to city, or school to school.

Mr. MIKVA. If I want to go to school in Virginia, I should be free to go there even if I live in Illinois.

Mrs. KRAEHENBUEHL. By all means.

Mr. MIKVA. And I should not have to pay for it?

Mrs. KRAEHENBUEHL. By all means, no.

Mr. MIKVA. That would create problems.

Mrs. KRAEHENBUEHL. No more than the busing problems.

Mr. MIKVA. Are you aware that prior to the busing issue, this was not the rule by which school systems functioned. One could go to any school one wanted to.

Mrs. KRAEHENBUEHL. Because of the financial situation but I think our courts in California, and I am not going to compete with you on the legal thing—I am not that equipped, but in California the courts have ruled that kind of financial support of the schools is not constitutional.

I think in the coming years and we will see it in this room, in the coming years there will be complete U.S. financial support of the schools.

Mr. Mikva. The only thing that I find curious is that for several hundred years now we have been operating under a contrary system and no one complained about it. I could not go to any school I wanted to when I grew up. I was made to go to school where the school board assigned me.

Mrs. Kraehenbuehl. Did this make it right, sir?

Mr. Mikva. What I am saying is that system existed for many years and busing existed for many years.

Mrs. Kraehenbuehl. Busing as a mode of transportation only, though.

Mr. Mikva. My only point is that when did it become a constitutional right to go to any school you would like?

Mrs. Kraehenbuehl. I think now, this goes 'way, 'way back, and this is what I stand up and tell my neighbors. I think this is much greater than just assignment to a school. I, personally, as well as my neighbors, have become much more interested in how our laws are made. I think we are becoming more knowledgeable about what is happening.

For many years many of the parents sat at home and if their child went off to school, they left it in the hands of the principal or teacher. I think we are becoming more knowledgeable of all facts of life.

Mr. Mikva. If that is true, that is an extra plus of *Brown* v. *Board of Education* that we did not know about.

Mrs. Kraehenbuehl. Believe me, we have all said this time and time again, that if we do anything, we must turn this thing around. It has gone too far the other way. If we do, we will all come out better Americans.

Chairman Brooks. Thank you. We appreciate your fine statement and appreciate your being here.

The next witness is Dr. Hector P. Garcia and you are accompanied by James De Anda, American GI Forum of the United States, Corpus Christi, Tex.

Dr. Garcia is a distinguished American of Mexican origin and is a well-known man in Corpus Christi. He is a former member of the U.S. Commission on Civil Rights and is interested in freedom for all people.

Dr. Garcia, we are delighted to have you here. We would appreciate and would accept for the record, your entire statement and hope you epitomize the major aspects of it.

(The prepared statement is at p. 1515.)

STATEMENT OF HECTOR P. GARCIA, M.D., ACCOMPANIED BY JAMES DeANDA, AMERICAN G.I. FORUM OF THE UNITED STATES, CORPUS CHRISTI, TEX.

Dr. Garcia. Thank you, Congressman Brooks.

Mr. Chairman, I am very pleased to see my former boss at the U.N., Justice Goldberg, with whom I have had the honor of serving as one of your ambassadors.

Since my return from World War II up to the present time I have spent 25 years in trying to achieve and to expect unending, never found "quality education" for Mexican-American people who reside in the Southwest United States. I am here today in opposition to the two proposals that have already been talked about because the educational system of Texas and the Southwest United States has failed miserably in giving the Mexican-American child even a "fair degree" of education.

I am here to ask you members of the Judiciary Committee to study the sad plight and terrible denial of educational opportunities to Mexican-Americans and to the blacks.

I am convinced that in the halls of Congress there would be few if any Congressmen who would not be shown that the Mexican-American child today is still being treated like a "colonial child" instead of like an American citizen.

All I am asking is that after you study our reports and exhibits that I have left with you, you will vote against the two proposals.

I am here as a man with 25 years of involvement in the fight against the segregation and abuse of the Mexican-American child in the public schools system.

In 1948, the Mexican-American children in Texas filed and won the *Minerva Delgado* v. *Bastrop School* case. Since 1948 until now I have felt the frustration and suffering of Mexican-American children who are still today receiving unequal and inferior education not only in Texas but the Southwest United States also!

We have made progress, it is true, but the little progress that we have had today has been through the Federal courts of our country.

The Federal courts with the help of the U.S. Congress is responsible so that today we still have a small degree of faith and hope that eventually perhaps in 50 years or more we Mexican-Americans will be able to achieve some degree of quality in education.

If Congress passes these two pieces of legislation, the Mexican-American child is forever destined to achieve at the most a functional, illiterate level!

Members of this committee and Congress, you must not be threatened or stamped by racists into denying us this hope.

I am well acquainted with the constitutions of Texas and the United States. I am well acquainted with all of the Civil Rights acts, since I served on the U.S. Commission on Civil Rights as the first Mexican-American ever to serve as a commissioner.

I know title IV by heart because we have worked it. We have filed over 200 complaints against the school districts in the United States in the last 25 years.

But, even today, we are still abused, segregated, and treated as inferiors. We have heard witnesses speak about the neighborhood concept and about free choice, "equal but separate" schools. I know all about that, too, since all and each one of them has been used for the purpose of giving us an inferior education.

We are talking about "busing", forced and otherwise. Let me assure you that "busing" has always been used against us for the same purpose.

We have talked about "extra money" given by some States to help the minority child. We have seen some modern air-conditioned buildings built with this money turn out worse achievement-level for Mexican-Americans than the previous old buildings.

Members of Congress, you must understand the historical and prejudicial beginning of the segregation of the Mexican-American child which had his beginning in Texas in 1836 and continued after it became a State in 1845 and still exists today!

It should be quite a shock to Members of Congress that after Texas became a Republic, there was never any legal or constitutional ground to segregate the Mexican-American child. In fact, even today there is not one "single State" law or "one single Federal law" that gives the Southwest States the right to segregate the Mexican-American child; but even after 136 years they are still doing it.

Then how is it possible that today the segregation carries on and on and on? In the beginning there arose the philosophy that Mexican-American people were inferior and should be treated as inferior and today it is still believed by many to be so. Despite the United States and Texas constructions and the Civil Rights acts, the Mexican-American child is still the victim of racism, hypocrisy and bigotry.

I make my presentation here to show how this is possible. How the only protection we have is in your hands. How Federal courts are the only ones who can help and, therefore, you can not leave us to the whims of local boards who by tradition and custom, abetted by State educational boards, are responsible for the sordid and terrible conditions of the Mexican-American child and if this legislation passes, it will retard us again—100 years!

Being familiar with the Corpus Christi schools, and Mr. DeAndra here on my right is one of the leading counsels in the *Cisneros* case, I will show you the ways and means and the horrible results of the educational system set up to deny "quality education" to minority students. I will show you the end result of such a system and also the attitude of the local school board.

If this legislation passes, then the horrible sordid education of Mexican-Americans will become a nightmare to the Congress of the United States and it will become a destructive tool for complete total devastation of the Mexican-American child as soon as he enters such school system.

I refer you to *Cisneros* vs. *Corpus Christi Independent School District*, where Judge Woodrow Seals decreed that CCISD had been guilty of violating the constitutional rights of Mexican-Americans by de jure and de facto acts in pupil assignment, teacher assignment, inferior buildings, and so forth.

The myth of equal but separate schools was again destroyed by official findings of the Department of Health of Texas when they found that three Mexican-American-black schools, which were health hazards and had over 1,000 pupils, did not have one single faucet of hot running water. Yessir, not one single faucet of hot running water, and even the toilets could have overflowed into the drinking water pipes.

I will leave these pictures of those schools with you and please do not see them until after dinner.

A dozen more Corpus Christi schools could be added to the list as typical of the Mexican neighborhood schools. This is the "neighborhood concept" we have had over 100 years and it still continues to be just an abuse.

We will also show you in our exhibits what happened to a free voluntary transportation request made by 24 children through their parents. This free voluntary request which has nothing to do with achieving racial or ethnic ratio or ethnic balances was proposed to the Corpus

Christi School District. After these 24 children were asked to get out of an overcrowded American-Mexican school district, the children under majority and minority rule transferred to a good, air-conditioned, modern, with better curriculum Anglo elementary Sanders school. The school board said "no," despite the fact that the written rule said "yes," and despite the fact under the same rules and conditions they had given free transportation to the black students.

Then the poor parents went to the city council and city council said no to their request for a bus route to Sanders school.

Then they went to the Texas Board of Education which, under State statute laws, can give money for busing for children who have to go a distance of over 2 miles to their new school.

The State said no. Finally the Nueces County Board of Poverty granted them free transportation. Because of denial of equal protection under the law, the U.S. Department of Justice also received a request by the same parents for investigation under title IV, section 407. The Department of Justice had to investigate this case under your Civil Rights Act which you passed in 1964. However, they said "No."

I do not understand their weakness in reading since evidently they did not go to segregated schools like we did. Certainly they did not read the Civil Rights Act as you wrote it.

Let me point out to you that Anglo children were "bused voluntarily" across the Corpus Christi high bridge to North Beach so they would no go to a "neighborhood school" with the blacks in their own neighborhood areas. The Army children of the Laughlin Air Base were transferred by bus voluntarily around the San Felipe Mexican School District across to the Del Rio School District so that they would not attend a Mexican school.

In the 1971 achievement tests, we have five high schools in Corpus Christi that participate and we will leave you those charts. There are two high schools that we call Mexican-American-Black high schools. The high school on top is King High. The ones on the bottom are Moody and Miller High Schools. The Mexican-American high schools, Moody and Miller, competed in the same examination with three Anglo schools called Ray, Carroll and King.

Needless to say, Mexican-American children in this testing in the Moody and Miller High Schools scored 7 points lower in achievement level than the Anglo schools on a level from 1 to 36.

Gentlemen, this is the segregated neighborhood Mexican high school supposedly under a unitarian system. Then how is it possible to explain the end results in achievement tests given to Mexican-American senior students who were there and graduated? Since we are not talking about dropouts—how can anyone explain this?

This happens because we have an inferior dual school system. In the grade level of 11 to 12 on this same chart of 1 to 36 the ones who reached the 11 to 12 level had only a 9th grade educational level on graduation.

We know for a fact that 63 and 69 percent of the girls and 56 and 63 percent of the boys of "Mexican Miller-Moody High Schools" were graduated at that level. At the very most they received a high school diploma with a ninth grade educational level.

Therefore, some of them graduated with a fifth grade educational level. Then how is it possible that anyone can come before you as Concerned Neighbors, Inc., and tell you that we have an "equal but separate system?"

We will leave these charts with you and I will not bother you with it.

However, let me tell you that you talk about representative school board. We have here a city map and this will show you that the poor and black have no such representation.

This green line in the middle would show the dividing area of the affluent south side and on this side the poor west side.

All of the school board members live in the rich part of the city. There are seven of them. There are six Anglos and one Mexican American. Before the election there were six Anglos and one Mexican American.

After election there were six Anglos and one Mexican American. There are no blacks.

The "Concerned Neighbors" from Corpus Christi are the ones who came to talk about the good neighborhood schools for all. We have here an exhibit to show you two of their statements wherein they say we will "boycott the schools" rather than obey the courts.

Is that terrible? And yet they say there are good black neighborhood schools. I have presented to you a part of their brief on intervention showing you their "racist philosophy."

In this *Corpus Christi* case how can anyone talk about the neighborhood concept being so good? We can go to the final point that they talk about, "that the Mexican Americans not being identified as ethnic minority groups."

In 1954 the Supreme Court of the United States of America in the *Hernandez* case in which Mr. DeAnda was one of the attorneys, decreed unanimously that the Mexican American was a separate identifiable ethnic minority class of the Caucasian race. Still, today the Department of Justice wants to argue with us that it is not so, that this has not been determined.

The President has asked you to interfere with court decisions. The decisions that were already rendered. Yet, today the President of the United States through the Department of Justice, is trying to ask you to interfere with decisions already taken by Federal courts in Austin, Corpus Christi, and now in Dallas in favor of Mexican-American students. Why?

These Department of Justice men are the same men who serve political masters, not the people. These Department of Justice men now obstructing justice are the same men who could not order the school district in Corpus Christi to furnish "24 poor children" free transportation.

Today the issue facing Congress is whether you will pass legislation which is being sponsored by some racist, selfish people who speak hypocritically about "neighborhood schools," "quality education," "free choice" and "separate but equal schools. Do not pass such legislation.

On April 27 the sale of school bonds was halted by order of the Fifth Circuit Court of Appeals because although bonds passed, they were halted because there was no movement at all by the C.C.I.S.D. to desegregate schools according to court order. Therefore, Corpus Christi, Tex., is no different than the entire Southwest in the denial of good education for Mexican-American children.

The U.S. Commission on Civil Rights studies of Mexican-American education in the Southwest point out this denial of opportunity to educate the Mexican-American child in these three brochures that I will leave here. Studies 1, 2 and 3, and they are attached to our exhibit. The last one came out only 2 days ago.

In conclusion, gentlemen, I am here to ask of you, to beg of you not to pass these proposals. Mexican Americans still have faith that they will receive equal education only when it is ordered by the judiciary. These two proposals would obstruct justice for us.

We ask Congress to consider the plight of the Mexican American child. After a thorough and complete study, I feel certain that the future of education of the children will be impaired by passage of such legislation.

Thank you for allowing me time to listen to the plea for Mexican American children, who could not be here today because they are too poor but had they been here, you would better understand them and help them and love them, as I do.

Chairman BROOKS. Thank you. It was a pleasure to see you again.

Mr. GARCIA. I have left all of these exhibits for you and the pictures.

STATEMENT OF DR. HECTOR P. GARCIA, FOUNDER, AMERICAN G I FORUM OF THE UNITED STATES, A NATIONAL MEXICAN AMERICAN VETERANS FAMILY ORGANIZATION, ACCOMPANIED BY JAMES DE ANDA ESQUIRE

On my return to Texas after serving overseas in World War II, since that time and for the next 25 years of my life, I have spent trying to achieve "quality" education for the Mexican American child in the State of Texas and in the Southwest United States.

I am here today, therefore, in opposition to the two above proposals (H.J. Res. 620 and H.R. 13916) because the educational system of Texas, the Southwest and the United States "failed" miserably in giving the Mexican American child even a "fair degree" of education.

My presence here is to ask you members of the Judiciary Committee and the rest of the United States Congress to study the sad plight and terrible denial of educational opportunities to the Mexican Americans and to the Black. I am convinced that in the Halls of Congress, there will be very few if any Congressmen, who will not be convinced that the Mexican American today is still being treated like a "colonial child" instead of an American citizen. All I am asking is that you study our reports and then you will vote against these two proposals.

I am not here as a teacher, or a philosopher, I am here with 25 years of actual involvement in the fight against segregation and abuse of the Mexican American child in the public school system. In June 1948, Mexican American children filed and won the "Minverva Delgado vs. Bastrop School Case." Since 1948 until 1972, I have felt the frustration and the suffering of Mexican American children who are still today receiving unequal and inferior education not only in Texas but in the Southwest United States.

We have made some progress, it is true, but the little progress that has been made has been in the "Federal Courts" of our country. The Federal Courts and with the help of the United States Congress are responsible so that today we do have some degree of "faith and hope" that eventually perhaps in 50 years or more we will achieve some degree of "equality in education".

If Congress passes these two pieces of legislation, then the Mexican American child is forever destined to continue at the most with a level of a "functional illiterate". Members of this committee and Congress, you must not be threatened or stampeded by some racists into denying us the only hope that we have after 136 years of abuse.

I am well acquainted with the Constitution of Texas and the United States. I am well acquainted with the Bill of Rights and the 14th Amendment. I know about the Civil Rights Acts of 1957, 1960, 1964, 1968, etc. I did serve in the United States Commission of Civil Rights as the first Mexican American to serve. I know Section 407, Title IV of the Civil Rights Act of 1964.

I know the problems of the Mexican American in schools, after all, we have filed over 200 complaints against school districts in the United States in the last 25 years, but we are still abused, segregated, and treated as inferiors.

You have heard witnesses speak about "neighborhood concept" as expounded by the "concerned neighbors incorporated". You have heard about "free choice", "equal but separate", etc. I know all about those too since all and each one of them have been used for the purpose of giving us an inferior, segregated education. We are talking about "bussing" forced and otherwise and let me assure you that *bussing* has also been used for the same purpose. We have talked about "extra money" by some States and Congress to "help" the minority child. We have seen some modern, air conditioned buildings built with this money turn out the worse "achievement level" for the Mexican Americans than the previous old buildings.

Members of Congress, you must understand the historical and prejudicial beginning of the "segregation" of the Mexican American child which had its beginning in Texas after the State became a Republic in 1836 and continued after it became a State in 1845.

It should be "a shock" to members of Congress that since Texas became a Republic there was never any "legal or constitutional ground" to segregate the Mexican American child. In fact, even today there is not one single State law or Federal law that gives the Southwest States the right to segregate the Mexican child.

Then how is it possible that today this segregation is carried on and on? The answer is easy and simple. It received its beginning in the philosophy that Mexican people were inferior and should be treated as inferior and today it is still so!

So today, in spite of "no statutory or legal grounds"; in spite of the United States and Texas Constitution; or the different Civil Rights Acts, the Mexican American child is still the victim of racism, prejudice, hypocrisy and bigotry at the hands of local school boards!

I will make my presentation today to show you how this is possible. How the only protection we have is in your hands. How the courts are the only ones who can help us. Then, therefore, you cannot leave us at the hands of local school boards who by tradition and custom are the ones who protected, aided, and abetted by the States Boards of Education are eager and waiting to turn us back 100 years in the educational field, and will do so if you pass these two proposals.

Being familiar with the Corpus Christi School situation and being familiar with the Cisneros case, I will show you the ways and means and results of the so called educational system in its effort to deny educational equality to the minority group members.

I will use the Corpus Christi system to show you the end results of such a system and also the attitude of the board. I do this to point out to you the reason why you must stop this type of legislation. If this legislation passes then this horrible, sordid, status of the education of the Mexican American will become a nightmare of torture to the Congress of the United States and it will become a tool of complete, total devastation of the Mexican American child as soon as he enters such school systems as Corpus Christi.

I. Exhibit "I" Cisneros V.S. C. C. I. S. D. July 22, 1968.

Federal Judge Woodrow Seals decreed that the C.C.I.S.D. had been guilty of both, by de jure and defacto acts, violated the constitutional rights of the Mexican American and Black child in maintaining a "dual" school system in placement of students and assignment of teachers.

II. Exhibit "II" Texas Department of Health report June 1971 in its findings of conditions in 3 Mexican American elementary schools.

"The myth" of "equal but separate schools" was again destroyed by the official findings of the Department of Health when they found that the three Mexican American-Black elementary schools: Austin, Zavala, and Southgate were:

> 1. Fire hazards 2. Health hazards 3. Inadequate schools these 3 elementary schools which have over 1.500 children did not have one single "hot water faucet" and even the toilets could have overflown into the drinking water.
>
> A dozen more schools could have been added to the list. This is a typical "Mexican American neighborhood school" in Texas and in the Southwest. This is the "neighborhood concept" that we have had for over 100 years.

III. Exhibit "III" denial of the C.C.I.S.D. of free voluntary transportation to 24 Mexican American children who under a "free choice" wanted to go to a "better school".

On September 1, 1971 School Season Opened. On September 12, 1971 due to Travis School mentioned conditions of over 1,100 students, it was decided to transfer 203 Mexican American students to 3 other mexican schools. Parents of 24 children decided to option transfer to modern "Sanders Elementary" under the majority to minority transfer.

The 24 children were accepted in the Sanders Elementary School but the school board on September 21, 1971 *denied* them free transportation in clear violation of their own written school policies.

This request under the majority minority transfer was not undertaken to achieve "racial balance". It was merely a request to go from the "mexican" Travis School to the "anglo" Sanders Elementary School because *Sanders* was a modern air conditioned, carpeted, well lit school with better curriculum. Travis was a run down, old, portable plus building in the the mexican barrio.

When such transportation was given under the same conditions to "Black students" then the parents appealed to the *Corpus Christi City Council* for a "bus route" so that the students could pay. On September 22, 1971 the city council refused to set up the request for voluntary busing for pay.

The parents then went to the *State Education Agency* on October 12, 1971 to request "free State bus transportation" since under State laws a child who has to travel more than 2 miles from his school zone is entitled to "free transportation". Sanders being 5.2 miles from Travis (*see map*). The State then turned them down.

On the expressway, the children could get to Sanders as fast as if they walked to the other mexican schools. Finally Nueces County Committee on poverty furnished them transportation.

In spite of the fact that the transfer change originally was ordered by the school board, in spite of the fact that the transfer had "nothing" to do with achieving ethnic balance, in spite of the fact that it was over 2 miles distance, the end results were the same, "*even*" voluntary transportation was denied.

The United States Department of Justice received a request by the parents of the 24 children to investigate the denial of free transportation offered other children authorized under title IV, section 407, section (a.) And (b.) civil rights act of 1964. In a letter dated November 10, 1971, David L. Norman and Brian K. Lansberg refused to take action. What good is civil rights if administration officials refuse to take action?

"LOCAL BUSING OF WHITES"

It is to be noted that prior to the Cisneros case, white children were transferred to North Beach across the High Bridge to a "white school" so that they would not attend the school in "neighborhood with black children!"

"STATE BUSING OF ANGLO CHILDREN TO AVOID INTEGRATION"

I will also add that children who resided in the Laughlin Air Base in the San Felipe "Mexican School District in Del Rio" were voluntarily bused around the San Felipe School District to attend the "Del Rio" (anglo) School District.

IV. Exhibit "IV" achievement tests C.C.I.S.D. May 1971.

Senior achievement tests were given to all the seniors in the five high schools in Corpus Christi in May 1971. On October 10, 1971, the results prove conclusively existence of a "dual" school system in Corpus Christi which was disastrous for the mexican american and blacks.

The anglo high schools, "King", "Ray", and "Carroll", scored about 7 points higher than the *Mexican-black* high schools "Moody" and "Miller". This is based on a grade scale from 1 to 36 points.

That the dual school system exists in proven by the fact that the 7 elementary schools (Roseshaw, Austin, Garcia, Crockett, Prescott, Travis, and Chula Vista) and the 2 Junior high schools, Martin Jr. High and Cunningham Jr. High that "feed *Moody High School* all are predominantly Mexican American in composition. [See tables at p. 1527.]

Again the argument that "separate but equal schools" afford certain advantage is destroyed by realizing that "Moody" High School was 85% Mexican Americans, 11% blacks and 4% anglos is the most modern, the newest, best air conditioned, best lit, best arranged high school and still of all the five high schools, "Moody" did the worse on the tests. Therefore, modern school buildings or money allocated to "segregated schools" does not guarantee any improvement on the educational achievement level as proven by Moody High School.

Based on an American college testing (act) composite score, pupils who have a composite score in the (11–12) level have only a ninth grade achievement level, therefore, our charts show that:

60% of the boys in Miller and Moody and 65% of the girls in Miller and Moody at the most graduated with a ninth grade achievement level and it is assumed that some of them graduated with as little as a "fifth" grade level or less.

Therefore, the Corpus Christi Independent School District by its "de jure and de facto acts" have created an unequal and separate school system which is denying the Mexican Americans even a "second rate educational status".

Since the Corpus Christi school board has offered no solution or submitted an acceptable plan. I cannot see how they could avoid "transporting" some of the children to achieve "quality" education in its unequal and separate school system.

V. Exhibit "V" letter HEW, September 21, 1968.

As early as October 21, 1968, the HEW in a 4 page letter to superintendent Dana Williams signed by Lloyd R. Henderson, Education Branch Chief Office of Civil Rights advised the C.C.I.S.D. of these and other horrible findings of their dual school system. As of this date May 4, 1972, four years later, the system has not improved very much. It will improve only if the Federal District Courts and Circuit Courts and the Supreme Court "orders" such improvement. It will not improve if President Nixon's plan is implemented.

Definitely it will not improve if the "philosophy and nebulous ideas of the "concerned neighbors" are substituted for the law and order of the United States Constitution, the Judiciary and the United States Congress.

VI. Exhibit "VI" make up and residency of the C.C.I.S.D. school board.

The map exhibit will give you the names of the seven school board members before the school board election of April 1, 1972. After the election there were still 6 anglos, 1 mexican american, no blacks. The scholastic population being over 50% mexican american and black. The 7 members before the election were: Allen, Hudson, Bass, McQueen, Vasquez, and Allbright (one mexican american, no black)s.

AFTER THE ELECTION

Allen was out and the concerned neighbors claimed their two candidates Barnard and Marsha Darlington (concerned neighbors secretary) won. The results were 6 anglos, one Mexican American and no blacks. No students, no poor. All live on the "richest" part of Corpus Christi.

Certainly, now that the make up of the board is more "*Concerned neighbor*" *oriented* than before, the board certainly is not going to take any "steps" to desegregate unless they are ordered by the courts as has been decreed by the Federal judge in the Cisneros case.

After all, it was the "concerned neighbors" and its officers and its president Les Schultz who before the school opened in September 1971 recommended "boycotting" the schools rather than obey the Federal court and integrate. The "Concerned Neighbors, Inc." are the ones today who are pushing for this legislation rather than obey the constitutional law that already is the law of the land.

To quote the Concerned Neighbor president, Les Schultz, "if a boycott were successfully carried out for a period of time, it would force the district to go back to the court and say the plan is completely workable".

It is hard for me to believe that the honorable members of this great Congress would fall victims of such a philosophy as expounded by these leaders of the "Concerned Neighbors, Inc".

VII. Exhibit "VII" a chart will dispel the myth that the main reason why the Mexican American child is retarded is because he speaks "Spanish" instead of "English".

If this was true then the "black" student in the Corpus Christi school district should be doing much better than the so called Spanish speaking "Mexican American student".

Since the black child speaks only "English", he carries English surnames and yet in the Corpus Christi school district from the year 1950 to 1960, a period of ten years, the black progressed only ⅓ years of school while the Mexican American progressed slightly better 1⅓ grades of school.

This lack of any measurable progress, both for blacks and Mexican Americans in the Corpus Christi schools in spite of English language advantage for the blacks *is again proof* that the reasons for this retardation is a dual school system, not the fact that the Mexican American speaks English.

In *1959* the Corpus Christi anglos had 8.6 years more of schooling than Mexican Americans and 4 more years than blacks.

In 1960 the anglos had 4.2 years more than blacks in spite of blacks speaking only English the gap widened.

In 1950 Corpus Christi Mexican Americans had a lower grade level than Mexican Americans statewide, while in contrast the anglos had a higher level than their brothers statewide. This recurred again in 1970.

EXHIBIT VIII—BRIEF CISNEROS SCHOOL CASE

DEPARTMENT OF JUSTICE

The intervention of the Department of Justice in cases involving discrimination against Mexican Americans continues. On Monday, April 17, 1972 the Justice Department under Brian K. Landsberg intervened in the Dallas school segregation case. They have already intervened in the Corpus Christi and Austin, Texas school cases involving discrimination of Mexican Americans.

Their requests are based on the "contention" that Mexican Americans are not an identifiable ethnic minority group although this point in law was settled in the Supreme Court of the United States in October of 1953 in "the Pete Hernandez vs. the State of Texas case".

The Hernandez case was brought to the United States Supreme Court on the fact that over 70 counties of the 254 counties in Texas excluded mexican americans from juries, petit, grand, or jury commissioners. This was won on the finding that "Mexican Americans" were a separate identifiable class within the "caucasian race". The decision for the Hernandez people was unanimous by te Supreme Court and yet today, the Landsbergs, Normans, etc., of the Justice Department under instructions of the President of the United States are trying to intervene on decisions and actions already taken by the Federal courts in Austin, Corpus Christi and now Dallas, in favor of Mexican Americans.

These are the men who serve their "political masters" not the people. These are the men who would not order the C.C.I.S.D. to furnish 24 small, poor Mexican American children free transportation for better education.

Today, the issue facing Congress and specially the Judiciary Committee is whether they will pass on legislation which has been sponsored by some racist, selfish people who speak hypocritically about "quality education", "free choice" "separate but equal schools", etc.

EXHIBIT IX

Article about "Concerned Neighbors, Inc". and their boycott of the Corpus Christi Schools if integration was ordered by the courts.

EXHIBIT X

Article Corpus Christi Times April 27, 1972, "sale of bonds" halted by order of the 5th Circuit Court of Appeals" because although the bonds were passed. There was no movement at all to desegregate according to the original district court orders and findings.

EXHIBIT XI

U.S. Commission Civil Rights studies of Mexican American education in the southwest pointing out to the serious abuse, exploitation and denial of the opportunity to educate the Mexican American child.

1. Mexican American educational study, April 1971.
2. Mexican American educational series, October 1971.
3. The excluded student, May 1972.

I am here to ask of you, to beg of you not to pass these proposals. Mexican Americans still have faith that they will receive equal education only when it is ordered by the Judiciary. We ask Congress to consider the plight of the Mexican American child and after a thorough and complete study, I feel certain that the future education of our children will not be impaired or turned back by such legislation.

I want to thank you for allowing me your time to listen to the plea for Mexican American children who could not be here today because they are too poor and if they could be here you would understand and help them.

DR. HECTOR P. GARCIA,
American G. I. Forum of the U.S.

Chairman BROOKS. Mr. DeAnda, we will accept your statement for the record and we appreciate your comments.

(The statement follows:)

STATEMENT OF JAMES DEANDA

My name is James DeAnda. I am a lawyer from Corpus Christi, Texas. I am legal advisor for the American G.I. Forum of Texas, a Mexican-American veteran's organization. I am also one of the lawyers for the plaintiffs in the Corpus Christi school segregation case prosecuted by Corpus Christi children with the financial assistance and support of the United Steel Workers of America.

Although civil rights litigation comprises an insubstantial part of the practice of our lawfirm, since 1951 I have been involved periodically in school situations involving desegregation of Mexican-American children, and in the Corpus Christi litigation, the segregation of both Mexican-American and Black children from Anglo children. Some of these disputes were resolved by common sense discussions between the parties, others by amicable court settlements, and a few by bitter, lengthy litigation.

I appear today in opposition to the bill called "The Student Transportation Moratorium Act of 1972."

Part I. Administrative problems and practical effect of Act.

The proposed legislation suggests that the courts have required more student transportation than necessary to achieve desegregation thereby causing hardship to children and adversely affecting education. It suggests that the courts will erroneously interpret rights secured by the Fourteenth Amendment, and that by virtue of "pending legislation" Congress will determine Fourteenth Amendment rights and such determination will be more restrictive than the interpretation of those rights by the federal courts. Consequently, the bill proposes a delay in the implementation of certain court orders using student transportation as a means of desegregating schools.

Let us suppose that this bill does pass; let us suppose it is constitutional, and let us further suppose that it applies to cases already decided. What would this legislation do? I will make reference to the Corpus Christi case because I am factually familiar with it and because it has much in common with the desegregation cases to which this bill is directed.

In July, 1968, a segregation suit was filed against the Corpus Christi Independent School District of Corpus Christi, Texas. This school district has about 44,000 students. The Federal District Court entered a judgment in June, 1970, in favor of the school children, finding that the district engaged in a sustained, intentional program to maintain or promote segregation of its three groups of children, Anglo American, Mexican-American and Negro, from each other at first, and later the segregation of Mexican Americans and Negroes on the one hand, from Anglo American students on the other.

Although requested by the court, the school district refused to submit a constitutional desegregation plan and consequently the court ordered a plan of desegregation in July, 1971. This plan utilizes all reasonable means available to desegregate the school system. In order to bring about any meaningful integration of the student body, approximately 15,000 students will require transportation. The district is not a large district geographically and transportation time of the students involved ranges from a minimum of 5 minutes to a maximum of 25 minutes. Implementation of the plan has been stayed pending a current appeal by the school district.

The court's decision was not lightly reached. Testimony lasted for weeks and the court considered the matter for many months before ordering a desegregation plan. Time and again the court solicited the school board to submit a constitutional plan, but even after the court's plan was announced, the school district admitted its inability to desegregate its schools without requiring transportation of students, and this it would not do.

The conduct of the court in this case is typical of the approach used by federal courts in desegregation matters. Courts invariably defer to local school boards, permitting the boards to promulgate plans to effectively end segregation, if they can and will. It is only when school boards demonstrate that the desegregation cannot be achieved without transportation that courts resort to the use of this tool to establish unitary school systems. The suggestion in the proposed legislation that courts have ordered more busing than necessary to desegregate schools is unfair and simply does not comport with the facts.

If local school boards, with their vast and superior knowledge of the peculiar and specific local conditions which exist in their particular districts cannot devise constitutional desegregation plans without transportation use, it would appear unrealistic to attempt to "establish a clear, rational and uniform standard" to determine the extent to which schools will be required to reassign students to accomplish preservation of Fourteenth Amendment rights. The ethnic make-up of student bodies, geographical consideration, safety factors, financial circumstances, past conduct of public officials and other local conditions greatly vary. Because conditions do vary, the remedy fashioned to meet them must also vary. A workable plan in one district might well accomplish nothing in another. The fact that a court order may require use of a substantial amount of transportation does not mean that the amount is excessive. Certainly, if there were any alternatives, local boards would suggest them. Can Congress do better than the local boards? Can Congress do better than a local judge who has heard volumes of testimony, who has the benefit of the talents and knowledge of the litigants, the expertise of government agencies and who has generally spent months of time studying the problem? If a local board and a local court, unfettered by any arbitrary requirements as to how to desegregate and considering only the specific logistics involved, cannot do this without use of transportation, how can removing or restricting use of this desegregation tool help resolve the problem? As is discussed later in more detail, the courts recognize the desirability of guidelines and consistency in dealing with this matter. But in consistently striving to desegregate schools, flexible use of a variety of means is indispensable.

The bill also speaks of desegregation plans that have caused substantial hardship to the children and have impinged upon the educational process. Let us direct attention to this educational process as conducted in Corpus Christi and now in danger of being "impinged" upon.

Corpus Christi has five senior high schools, King, Carroll, and Ray (predominantly Anglo student bodies), and Miller and Moody (predominantly Mexican-American and Black student bodies). In the spring of 1971, seniors in these high schools and 301 other Texas high schools, participated in a special school assessment program conducted by the Texas Education Agency. This agency is charged with the general control of the system of public education at the state level. The testing program was called "The Texas High School Profile Report of 1971".

Four tests of educational development published by the American College Testing Program were given. The tests covered English, mathematics, social studies and natural sciences. The English usage examination measured the students' understanding and use of the basic elements in correct and effective writing, punctuation, capitalization, usage, phraseology, style and organization. The mathematics test measured mathematical reasoning ability, emphasizing the solutions of problems in advanced arithmetic, algebra and geometry, problems encountered in most high school and college work and in everyday life. The social studies reading examination measured evaluative reasoning and problem solving skills required in social studies; it measured the comprehension of reading and understanding of essential concepts to comprehend basic ideas in social studies. The natural sciences examination included biology, chemistry and general science. It covered basic principles in science and reasoning and problem solving skills required in natural sciences.

Based on a scale of 1 to 36, the national average for high school seniors is about 18. A score in the 11–12 range is considered to be the average ninth grade achievement level. The results of the tests are attached to this statement. The test scores speak for themselves. Minority schools are graduating eighth and ninth graders.

Since only high school seniors were tested, these results reflect the achievement of students who have successfully completed or are completing their high school curriculum. The large number of minority drop-outs do not enter into this computation. The sad truth is that the majority of graduates from Corpus Christi's black and brown schools are but ninth grade drop-outs with a diploma.

Bussing is a useful and acceptable desegregation tool. The school bus has been as commonplace as the schoolhouse on the American educational scene. No objections were ever raised to its use as an educational aid. It is only when used as a desegregation tool that the school bus has fallen into disrepute.

Time and distance of travel, and cost, are factors that have influenced courts to use bussing only as a last resort.

Because the Corpus Christi school district is geographically small, transportation time and travel distance are not serious arguable points for bussing opponents. Hence the cost factor has been the principle objection raised. The Corpus Christi school board estimated the cost of the court ordered bussing program to be $1,718,556.00, (including a capital investment of $500,000.00 plus $768,000.00 for the purchase of 96 new buses). The current school budget is approximately $29,000,000.00. In light of the present educational return for tax dollars, the added annual expense (less than 5% of the total budget) is bland. The alternative in Corpus Christi (and what the proposed legislation does) is to permit the school district to continue doing business as usual. It will prevent any change or disruption of the inferior schooling that minority children receive. It will allow children to continue walking to inferior, segregated schools so they will be spared the anguish of riding to integrated, equal schools. I am afraid that the children are not going to appreciate this benevolence. Though these children have not received a very good education, they realize that they have been cheated. That is why the children went to court. And that is why the children won their case. That is why the court granted the children their remedy. Why would any congressman take it from them?

What can our nation gain by turning out more and more classes of ninth grade graduates?

Some of the administrative problems and practical consequences of this proposed legislation have been discussed. Is there any need for this legislation? Its purpose is to delay even further, the desegregation of public schools. This legislation is unneeded. The federal courts already have it within their power to stay the implementation of desegregation orders pending appeal, and indeed have done so in certain cases, including the Corpus Christi school case. If these stays have grown less and less frequent in recent years it is largely because the school authorities have not shown themselves entitled to postponement. Indeed, the federal courts have been faced time and again with recalcitrant school authorities who, despite the mandate of the Supreme Court in 1954, have failed to take a single meaningful step to end the dual school systems. The proposed legislation, by awarding stays indiscriminately, serves only to encourage and perpetuate the footdragging and delay that has characterized the history of segregation.

Part II. The unconstitutionality of the proposed statute.

The intent of the legislation, if not its explicity stated purpose, is to establish Congressional supremacy over the Judiciary in the interpretation of the Fourteenth Amendment to the Constitution with respect to the desegregation of the public schools. Under Section 2(a)(5) of the bill, the Congress is invited to find a substantial likelihood that many local educational agencies will be required to implement desegregation plans that impose a greater obligation than that required by the Fourteenth Amendment, and permitted by the euphemistically labeled "Equal Educational Opportunities Act of 1972". The bill would have the Congress find that the federal courts are about to act in a lawless manner, and therefore, court orders, to the extent that they require the transportation of students not already being transported, must be rendered unenforceable until Congress can pass legislation redefining (and reducing) the Fourteenth Amendment obligation to end dual school systems. The bill appears to speak prospectively, staying only those federal court orders entered after the date of enactment. However, the language of the act is broad enough to have a retroactive effect on cases pending on appeal on the day the bill is enacted.

So bold is this proposed legislative encroachment on the judicial function that it is almost entirely without precedent. *Ex parte McCardle*,[1] notwithstanding the Administration's protests to the contrary, is no authority for the subject legislation. The 1868 legislation in the *McCardle* case did not, as does this so-called moratorium act, attempt to determine what the result should be in a certain class of cases or to restrain the enforcement of a particular judicial remedy. Rather, it simply withdrew from the Supreme Court jurisdiction to entertain appeals of habeas corpus cases. It did not attempt to tell the Supreme Court that in the event it found for McCardle that its order releasing him from custody must be held in abeyance; it simply deprived McCardle of one avenue to the Supreme Court. The Court's power to issue original writs of habeas corpus and to review lower court decisions by granting certiorari remained undisturbed.[2]

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[1] 7 Wall. 506 (1868).

[2] *Ex parte Yerger*, 8 Wall. 85, 19 L. Ed. 332 (1869).

More in point is *United States* v. *Klein*[3] decided by the Supreme Court in 1871, three years after the *McCardle* case.

In the *Klein* case, the plaintiff had brought suit in the Court of Claims under the Civil War Enemy Property Acts which provided for the reclamation of confiscated property or its proceeds upon proof that the claimant had a right to the property and that he had never given aid or comfort to the Confederacy during the Civil War. The plaintiff had taken part in the rebellion, but had received an executive pardon, which the Court of Claims and the Supreme Court had held in a prior case[4] satisfied the act's loyalty requirement. On the basis of this holding, the Court of Claims ruled for the plaintiff and the government appealed to the Supreme Court.

While the case was pending Congress passed legislation providing that no pardon or amnesty should be taken as evidence of loyalty. In addition, the legislation provided that any recitation in the pardon that the person in question had been disloyal should be considered as conclusive proof of disloyalty and upon finding this fact the court should dismiss the case for want of jurisdiction.

In declaring the act unconstitutional, the Supreme Court used the following language:

> . . . Undoubtedly the legislature has complete control over the organization and existence of [the Court of Claims] and may confer or withhold the right of appeal from its decisions. And if this act did nothing more, it would be our duty to give it effect. If it simply denied the right of appeal in a particular class of cases, there could be no doubt that it must be regarded as an exercise of the power of Congress to make "such exceptions from the appellate jurisdiction" as should seem to it expedient.
>
> But the language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny to pardons granted by the President the effect which this court has adjudged them to have. . .
>
> It is evident from this statement [summarizing the provisions of the act] that the denial of jurisdiction of this court, as well as to the Court of Claims, is done solely on the application of a rule of decision, in causes pending, prescribed by Congress. The Court has jurisdiction of the cause to a given point; but when it ascertains that a certain state of things exist, its jurisdiction is to cease and it is required to dismiss the cause for want of jurisdiction.
>
> . . . What is this but to prescribe a rule for the decision of a cause in a particular way? In the case before us the Court of Claims has rendered judgment for the claimant and an appeal has been taken to this court. We are directed to dismiss the appeal, if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. Can we do so without allowing one party to the controversy to decide it in his own favor? Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of the government in cases pending before it? We think not;
>
> We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power.[5]

The impact and effect of the proposed legislation on desegregation suits presently pending in the federal courts is no different. The federal courts are allowed to continue hearing the cases, but if they decide upon the evidence presented that the reassignment and transportation of students is required as an adequate remedy, they are effectively denied the jurisdiction to enforce said remedy. This type of legislative intervention into the judicial sphere the Court held in *Klein* to be constitutionally impermissible.

The proposed legislation now before Congress presents a far more profound threat to the fabric of constitutional government than did the legislation in the *Klein* case, since here there is involved not merely a legislative determination regarding the effect to be given certain evidence, but a congressional decision delimiting the breadth and scope of Constitution itself. The answer of the Nixon Administration has been to cite Section 5 of the Fourteenth Amendment providing Congress with the "power to enforce, by appropriate legislation, the provisions of this article." To be sure, Congress has the right to enact legislation *to enforce* the Fourteenth Amendment, but, as was noted by the Supreme Court in *Katzenbach vs. Morgan*,[6] Section 5 does not give Congress the power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court."

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[3] 13 Wall. 128 (1871).

[4] United States v. Padelford, 9 Wall.531;

[5] 7 Wall. at 145–147.

[6] 384 U.S. 641, 86 S. Ct. 1717 (1966).

We have decided that Congress power under § 5 is limited to adopting measures to enforce the guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be—as required by § 5—a measure "to enforce" the Equal Protection Clause since that clause of its own force prohibits such state laws.[7]

This is exactly the effect of the moratorium act. Last year the Supreme Court, in striking down North Carolina's anti-busing law,[8] declared that:

To forbid, at this stage, all assignments made on the basis of race will deprive school authorities of one tool absolutely essential to fulfillment of the constitutional obligation to eliminate existing dual schools systems.

Similarly the flat prohibition against assignment of students for the purpose of creating a racial balance must inevitably conflict with the duty of school authorities to disestablish dual school systems. As we have held in *Swann*, the Constitution does not compel any particular degree of racial balance or mixing, but when past and continuing constitutional violations are found, some ratios are likely to be useful starting points in shaping a remedy. An absolute prohibition against the use of such a device—even as a starting point—contravenes the implicit command of Green vs. the County School Board, 391 U.S. 430 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968), that *all reasonable methods be available to formulate an effective remedy.*

We likewise conclude that an absolute prohibition against transportation of students assigned on the basis of race, "or for the purpose of creating balance or ratio" will similarly hamper the ability of local authorities to effectively remedy constitutional violations. As noted in *Swann*, 401 U.S. p. 177 91 S Ct p 1282, *bus transportation has long been an integral part of all educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it.*[9]

The instant legislation, while not an explicit prohibition on judicial orders requiring transportation of students, effectively reaches the same result as the North Carolina statute. And for this reason the proposed legislation is not only a violation of separation of powers unauthorized by Article III of the Constitution or Section 5 of the Fourteenth Amendment, but is a violation of due process of law guaranteed by the Fifth Amendment. By placing in limbo and rendering ineffectual federal court orders requiring transportation of students, the proposed legislation deprives federal courts of their historical right to redress violations of the United States Constitution and deprives litigants of the only truly effective remedy for the abridgment of their constitutional rights. As the Second Circuit Court of Appeals recognized in the *Battaglia et al. vs. General Motors*,[10]

> . . . while Congress has the undoubted power to give, withhold, and restrict jurisdiction of courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property with our due process of law or to take private property without just compensation.[11]

By withholding the only effective remedy to racial discrimination to public school, the act denies to those seeking an end to such discrimination due process of law.

This conclusion is in no way weakened by the Supreme Court's decision in *Yakus v. United States*,[12] another case that has been cited as authority for the instant legislation. In *Yakus* the petitioners have been convicted under the Emergency Price Control Act of 1942 of the willful sale of wholesale cuts of beef at prices above those prescribed by the administrator. During the course of the trial, the defendants had attempted to raise the constitutionality of the act and of the order that they had allegedly violated. These attempts were denied by the trial court and the conviction was affirmed by the Court of Appeals.[13]

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[7] 384 U.S. at 652, 86 S. Ct. at 1724 n. 10:

See also, *Scismograph Corporation* v. *Offshore Raydist, Inc.*, 135 F. Supp. 342, (E.D. La. 1955), *aff'd* 263 F. 2d 342 (5th Cir. 1956) stating that the Supreme Court is the final authority on Constitutional standard of patentability under Article 1, § 8, and that Congress may not therefore validly reduce the standard of invention as recognized by the Supreme Court; *Jones* v. *Meehan*, 175 U.S. 1, 20 S. Ct. 1 (1899) holding that interpretation of treaties is the peculiar province of the judiciary and that therefore congressional acts attempting to affect rights under a treaty are ineffective.

[8] North Carolina general statute § 115–176.1 read, in pertinent part, as follows:

No student shall be assigned or compelled to attend any school on account of race, creed, color, or national origin, or for the purpose of creating a balance or ratio of race, religion, or national origins. Involuntary busing of students in contravention of this article is prohibited, and public funds shall not be used for any such bussing.

[9] *North Carolina State Board of Education* v. *Swann*, 401 U.S. 177, 91 S. Ct. 1284, 1286 (1971).

[10] 169 F. 2d 254 (2d Cir. 1948).

[11] 169 F. 2d at 257.

[12] 321 U.S. 414, 64 S. Ct. 660 (1944).

In affirming the conviction, the Supreme Court[14] found that the exclusive statutory procedure set up by the act for administrative and judicial review of regulations provided a sufficiently adequate means of determining the constitutional validity of the regulations; therefore, the provision of the act precluding consideration of the validity of the regulation as a defense to prosecution for its violation did not offend due process. In addition, the Court upheld the act's provisions (a) prohibiting the Emergency Court of Appeals, established by the act, from issuing temporary stays or injunctions during the pendency of litigation and (b) staying permanent injunctions issued by that court until the expiration of thirty days or disposition of the case by the Supreme Court

It is in this last holding in *Yakus* that the proponents of the Nixon Administration's anti-busing legislation seek its justification. This is, of course, a perversion of the Court's decision in *Yakus* which involved an entirely different situation than is presented here.

To begin with, the Court in *Yakus* relied greatly on the fact that this was emergency legislation passed by Congress during wartime to meet the grave danger of war-time inflation. Were the validity and effectiveness of prescribed maximum prices to be subjected to the delays of litigation in the several federal and state courts, or were these orders to be rendered ineffective by injunction or stay prior to their revision or final determination of their validity, the court reasoned, the whole purpose of the legislation—to prevent the destruction of the national economy by excessive prices—would be sorely endangered.[15] Second, the Court noted that even though the Emergency Court of Appeals was deprived of injunctive power pending appeal, the price control administrator was not; that he was vested with wide discretionary power to modify and suspend a regulation pending its administrative and judicial review. Since the petitioners had not applied to the administrator or in any way tried to take advantage of the administrative procedure provided by the act, the Court could not find a denial of due process.[16] Additionally, the Court felt that in exercise of the power to protect the national economy from the disruptive influence of inflation in time of war, Congress could, as could a court of equity, postpone injunctions restraining the operation of price regulations until there lawfulness could be ascertained by the adequate and expeditious procedure provided by the act.[17]

The material differences between the situation in *Yakus* and the situation now before Congress are obvious. There are no exigencies bearing on the national security of this country that mandate the postponement of the vindication of constitutional rights. The Congress must not confuse the hysterical outcries against busing heard in some parts of the country with the very real considerations of national security and safety that motivated the *Yakus* Court.[18] Furthermore in *Yakus* the complaining parties had not availed themselves of the arguably adequate administrative and judicial remedy provided them by the questioned statute; here the complaining parties, the discriminated against minority school children of this country, are left by the moratorium legislation totally deprived of any effective and expeditious means of enforcing the constitutional rights long denied them by recalcitrant local school authorities. Lastly, the legislation involved in *Yakus*, unlike the legislation now before the Congress, did not involve a Congressional determination of constitutional standards less stringent than those determined by the Supreme Court and the lower federal courts.

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[13] 137 F. 2d 850 (1st. Cir. 1943).

[14] Three justices dissented. Roberts, J. felt the act had unconstitutionally delegated legislative authority [321 U.S. at 448, 64 S. Ct. at 679], while Rutledge, J., with Murphy, J. concurring, thought the act violated due process and the separation of powers [321 U.S. at 684, 64 S. Ct. at 684].

[15] 321 U.S. at 432, 64 S. Ct. at 671.

[16] 321 U.S. at 438–9, 64 S. Ct. at 674.

[17] 321 U.S. at 439–443, 64 S. Ct. at 674–676.

[18] It should be remembered that wartime pressures and security were also cited as reasons justifying the federal government's outrageous discriminatory policies against Japanese-Americans during World War II. See, *Korematsu* v. *United States*, 323 U.S. 214, 65 S. Ct. 193 (1944); *Ex Parte Endo*, 323 U.S. 283, 65 S. Ct. 208 (1944); *Hirabayashi* v. *United States*, 320 U.S. 81, 63 S. Ct. 1375 (1943); Rostow, *Japanese-American Cases—A Disaster*, 54 Yale L.J. 489 (1945). Indeed, the *Hirabayashi* case was cited by the *Yakus* majority as supporting Congress' authority to postpone injunctive relief pending final review of price control orders. 321 U.S. at 443, 64 S. Ct. at 676.

What has been said thus far against the Student Transportation Moratorium Act should not be taken as an argument against the desirability of developing clear, substantive guideline governing the transportation of students in desegregation cases. Indeed, the need for guidelines of this sort was one of the principal reasons underlying the Supreme Court's opinion in *Swann v. Charlotte-Mecklenburg Board of Education.*[19] The Court, after describing the process of integration since *Brown v. The Board of Education*[20] as "an area of evolving remedies" produced by a process of "trial and error", sought to amplify [the] guidelines" that had been developing in desegregation cases. The Court was forced to admit, as it inevitably had to do, that even these new guidelines were "incomplete and imperfect".[21] The Court did specifically approve of transportation of students as a means of achieving the goal of maximum racial integration, but it also recognized that in large districts the travel time necessary to achieve this goal in each could be prohibitively long. In other words, the Supreme Court instructed the lower courts that other factors, such as the age of students and the time required for transit, should be considered as limits on the amount of busing required.[22]

Admittedly, the *Swann* decision left the lower federal courts with considerable discretion in formulating desegregation decrees. It did so because flexibility in meeting each individual case is required by the very nature of the desegregation problem. Individual differences within the school districts make one standard capable of governing all situations virtually impossible. Uniformity and consistency are unquestionably laudable goals, but they cannot be exalted over the compelling need to tailor each remedy to meet the specific case presented. The point is that the moratorium act and the Equal Educational Opportunities Act, constraining and limiting the federal courts in dealing with desegregation cases, are not only constitutionally abhorrent, but are practically and administratively indefensible.

SUMMARY

This is bad legislation. It is not needed. Courts generally have done no more than what is necessary to integrate a segregated school. Courts can and do grant delays when delays serve a worthwhile purpose. If courts are to be criticized, it is for being overly lenient and indulgent with school boards which have persisted in depriving children of their educational and constitutional rights. The mandate to integrate schools was issued 18 years ago. Children unborn at the time have completed their public school life in a segregated and inferior environment.

We should not further delay integration, rather we should accelerate it. Only then can unfounded fears which sway so many be removed. The old theory that Negroes, Mexicans and other minorities were born inferior has been so thoroughly refuted by science, by experience, by logic and plain common sense that even the most ardent racist will not espouse it. Equally false is the theory that while Negroes and Mexicans are not born intellectually inferior, they become that way through association with their parents and home in their early years to a degree that the school cannot undo the harm. Unfortunately, many school administrators, including our Corpus Christi Board of Education, seem to be advocating this latter proposition in an effort to shift responsibility for the system's shortcomings and failings. Certainly, minority children from the barrios and ghettos enter school with poverty related problems. The median educational level for Spanish surnamed adults in Corpus Christi was four years of formal schooling according to 1960 census statistics. Segregated schools have never done well. However, the affluent child carries problems to school as well. Each child presents a challenge to his teachers. These challenges, whatever they are and whatever the cause, can best be met in an integrated facility. Massive tutorial programs can be undertaken to help children who cannot receive this help at home because of the educational deficiencies of their own parents. The Spanish speaking child will get exposure to English correctly pronounced. And the public will learn that problems, like color, do not rub off on the child on the next seat. Inferior schools are not that way because of the children put into them, but rather because of what the Board of Education puts into them.

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[19] 401 U.S. —, 91 S. Ct. 1267 (1971).
[20] 347 U.S. 438, 74 S. Ct. 686 (1954).
[21] 401 U.S. at —, 91 S. Ct. at 1271.
[22] *Id.* at 1283.

Integrated schools will produce an integrated effort. All segments of the community will be interested in all schools in the community. It will happen no other way.

One final thought. There are those who never intended that there be integration of our public schools. Long, drawn out litigation, tokenism and lip service were intended to replace meaningful integration and equality in the public schools. If apartheid is what a majority of our Congress wants, this wish should be made known to the minority children of this country. If the legal battles are not really meant to be won; if the rules will be changed whenever necessary to perpetuate what we now have, then the children should be told. The game has gone far too long. The children have a right to know.

JAMES DEANDA.

RACIAL-ETHNIC STUDENT ENROLLMENT

In percent]

High school	Anglo	Mexican	Negro
King	89.00	10.58	0.42
Carroll	75.00	24.48	.15
Ray	68.02	31.69	.29
Moody	5.68	83.48	10.85
Miller	19.10	65.39	15.51

COMPOSITE SCORES[1]

Grade	Anglo schools			Minority schools	
	King	Carroll	Ray	Moody	Miller
36	0	0	0	0	0
35	0	0	0	0	0
34	0	0	0	0	0
33	0	0	0	0	0
32	0	0	0	0	0
31	1	0	3	0	0
30	2	1	2	0	1
29	4	3	6	0	0
28	4	7	5	0	0
27	10	7	10	3	0
26	20	9	12	0	4
25	15	8	19	0	4
24	17	11	20	1	4
23	29	14	24	3	2
22	16	26	18	2	1
21	28	24	29	4	3
20	27	32	28	6	8
19	21	25	21	5	13
18[2]	[3] 29	30	[3] 22	5	10
17	22	[3] 25	21	4	6
16	17	27	10	15	13
15	20	25	29	15	23
14	14	24	20	14	15
13	16	27	21	30	16
12[4]	18	15	15	39	27
11	15	12	19	30	[3] 31
10	14	16	15	[3] 37	34
9	16	10	17	37	31
8	6	5	11	40	33
7	7	7	6	36	26
6	4	5	5	18	13
5	4	1	3	16	9
4	1	1	4	6	6
3	0	1	2	3	4
2	1	0	0	0	2
1	0	0	0	0	0
Total	398	398	417	369	339

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[1] Composite scores of 4 tests given 12th grade (senior) students. Number of students from each school scoring the grade indicated.

[2] National 12th grade average.

[3] Mean average of group tested at each school. It means that ½ of the group scored above the average grade and ½ of the group scored below the average grade.

[4] National 9th grade average.

RACIAL ETHNIC STUDENT ENROLLMENT

[In percent]

High school	Anglo	Mexican	Negro
King	89	10.58	0.42
Carroll	75	24.48	.15
Ray	68.02	31.69	.29
Moody	5.68	83.48	10.85
Miller	19.10	65.39	15.51

NATURAL SCIENCE TEST SCORES

[Number of students from each school scoring the grade indicated]

Grade	Anglo schools			Minority schools	
	King	Carroll	Ray	Moody	Miller
36	0	0	0	0	0
35	0	0	0	0	0
34	1	0	1	0	0
33	6	1	3	1	0
32	6	4	5	0	2
31	5	6	6	0	0
30	5	2	7	2	0
29	6	5	8	0	0
28	13	10	12	1	2
27	10	8	18	0	3
26	21	16	20	1	1
25	20	19	18	4	5
24	10	7	11	4	2
23	26	20	22	5	9
22	10	10	15	5	2
21	12	19	13	5	5
20	13	19	16	2	3
19	23	15	9	5	2
18	[1] 41	33	[1] 40	14	16
17	12	[1] 23	19	6	8
16	18	20	13	12	21
15	18	21	17	26	23
14	12	14	26	24	19
13	20	27	21	32	27
12	18	23	10	26	[1] 35
11	12	21	14	[1] 23	24
10	20	18	16	31	26
9	14	13	26	65	41
8	10	8	12	26	16
7	6	8	3	13	19
6	2	4	7	9	9
5	4	2	5	15	12
4	1	1	2	7	4
3	3	1	0	1	1
2	1	1	0	1	1
1	0	0	2	3	2
Total	399	399	417	369	340

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[1] Mean average of group tested at each school. It means that ½ of the group scored above the average grade and ½ of the group scored below the average grade.

RACIAL-ETHNIC STUDENT ENROLLMENT

[In percent]

High school	Anglo	Mexican	Negro
King	89.00	10.58	0.42
Carroll	75.00	24.48	.15
Ray	68.02	31.69	.29
Moody	5.68	83.48	10.85
Miller	19.10	65.39	15.51

ENGLISH TEST SCORES

[Number of students from each school scoring the grade indicated]

Grade	Anglo schools			Minority schools	
	King	Carroll	Ray	Moody	Miller
36	0	0	0	0	0
35	0	0	0	0	0
34	0	0	0	0	0
33	0	0	0	0	0
32	0	0	0	0	0
31	0	0	1	0	0
30	0	1	0	0	0
29	1	0	1	0	0
28	2	1	2	0	0
27	10	2	5	0	0
26	7	9	10	0	4
25	6	11	15	0	3
24	14	11	12	1	2
23	27	17	32	4	5
22	15	22	18	4	6
21	35	24	40	3	4
20	35	35	24	5	5
19	25	29	26	7	14
18	[1] 38	35	[1] 38	8	16
17	26	[1] 32	28	13	9
16	17	21	21	19	14
15	28	33	19	24	22
14	12	18	12	20	18
13	12	31	15	25	16
12	18	14	11	27	16
11	10	14	18	17	[1] 19
10	9	10	9	[1] 23	29
9	12	15	13	23	21
8	8	14	13	25	19
7	10	21	11	38	34
6	8	9	6	16	18
5	6	11	7	20	17
4	8	11	7	29	16
3	2	3	4	16	11
2	3	3	1	4	18
1	2	1	1	3	5
Total	406	458	420	374	345

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[1] Mean average of group tested at each school. It means that ½ of the group scored above the average grade and ½ of the group scored below the average grade.

RACIAL-ETHNIC STUDENT ENROLLMENT

[In percent]

High school	Anglo	Mexican	Negro
King	89.00	10.58	0.42
Carroll	75.00	24.48	.15
Ray	68.02	31.69	.29
Moody	5.68	83.48	10.85
Miller	19.10	65.39	15.51

SOCIAL SCIENCES TEST SCORES

[Number of students from each school scoring the grade indicated]

Grade	Anglo schools			Minority schools	
	King	Carroll	Ray	Moody	Miller
36	0	0	0	0	0
35	0	0	0	0	0
34	0	0	0	0	0
33	0	0	0	0	0
32	5	0	5	1	0
31	8	5	5	0	0
30	5	4	4	0	0
29	15.	8	13	1	0
28	12	14	12	1	4
27	8	6	12	1	2
26	30	19	29	2	2
25	17	11	13	0	1
24	21	22	23	2	4
23	26	19	25	6	5
22	25	35	30	2	6
21	4	12	11	4	6
20	22	29	22	6	4
19	[1] 21	[1] 37	[1] 24	5	14
18	10	15	12	5	11
17	18	13	9	7	8
16	19	12	8	10	12
15	12	19	13	12	3
14	10	17	12	9	12
13	23	22	25	35	35
12	16	22	11	28	18
11	10	14	8	20	21
10	0	0	0	0	0
9	12	11	16	22	[1] 27
8	3	4	17	[1] 32	23
7	11	7	10	43	24
6	12	6	10	21	17
5	7	9	11	26	17
4	5	9	9	23	12
3	7	6	4	23	12
2	1	3	4	8	10
1	8	5	3	24	31
Total	403	415	410	369	341

[1] Mean average of group tested at each school. It means that ½ of the group scored above the average grade and ½ of the group scored below the average grade.

RACIAL-ETHNIC STUDENT ENROLLMENT

[In percent]

High school	Anglo	Mexican	Negro
King	89.00	10.58	0.42
Carroll	75.00	24.48	.15
Ray	68.02	31.69	.29
Moody	5.68	83.48	10.85
Miller	19.10	65.39	15.51

MATHEMATICS TEST SCORES

[Number of students from each school scoring the grade indicated]

Grade	Anglo schools			Minority schools	
	King	Carroll	Ray	Moody	Miller
36	0	0	0	0	0
35	1	0	0	0	1
34	0	0	0	0	1
33	1	1	6	0	0
32	2	2	2	0	0
31	3	4	5	0	1
30	2	3	1	0	0
29	3	3	5	0	3
28	12	4	12	0	2
27	5	7	12	0	3
26	12	8	10	3	2
25	7	9	5	1	0
24	26	14	15	5	8
23	19	20	13	4	2
22	11	7	15	3	2
21	28	25	22	7	11
20	21	13	12	1	6
19	25	39	45	6	15
18	21	24	11	13	15
17	[1] 23	23	16	11	8
16	43	[1] 45	[1] 50	28	22
15	20	34	17	21	21
14	18	23	21	30	19
13	18	23	24	41	22
12	22	25	25	[1] 35	[1] 21
11	0	0	0	0	0
10	9	22	17	38	41
9	0	0	0	0	0
8	16	18	14	30	32
7	0	0	0	0	0
6	0	0	0	0	0
5	15	12	14	37	26
4	0	0	0	0	0
3	11	21	13	30	22
2	0	0	0	0	0
1	9	17	16	30	31
Total	404	446	418	374	343

[1] Mean average of group tested at each school. It means that ½ of the group scored above the average grade and ½ of the group scored below the average grade.

Mr. DeAnda. You have my statement—my statement covers many of the points cove[illegible] Justice Arthur Goldberg who testified before me.

I point out that I have had occasion to participate in several of these cases that concern this legislation including the *Corpus Christi* case which incidentally was stayed, the busing order in the *Corpus Christi* case was stayed by the Supreme Court.

I do want to urge this committee to understand, because having been involved at the district court level and knowing what these Federal judges go through, and the time that is involved, and studies that are made, the evidence that is heard, which is voluminous, as to the best way to achieve an integrated school system, is not done lightly and that these judges are by far the best persons in a position to determine the best way to achieve an integrated system.

The courts invariably defer to local boards in trying to set up desegregation plans and if you have a busing plan, it is simply because all other alternatives have been thoroughly explored and have been found wanting in order to desegregate a system.

So what you are doing by this legislation, since it applies only to those cases which have busing plans, is in effect telling those children, those minority children who are unfortunate enough to live in an area which could not be desegregated without busing, that they are going to have to continue being deprived of their rights for some time in the future and perhaps forever.

This is basically wrong. This is but a continuation of what for too long minority children have heard from other bodies, from other boards, from other administrators—by various means, by blockage of whatever kind of name you want to give it, to delay the desegregation of school systems.

My feeling is that these children have been wronged enough and that it is time to stop and tell them what their rights are.

I do not see any purpose that can possibly be served by delaying desegregation even longer than the courts have already done it.

This has been delayed for 18 years. Children who were not even born when the *Brown* decision came up are now out of school and they never saw an integrated school; yet we have before us now still another means or method being proposed to further delay this matter.

Another thing, this legislation implies that the courts have overstepped. It confirms what many people throughout this Nation are saying; that is, that these Federal judges are just a bunch of dictators who are trying to run our lives for us.

It gives credence to this thinking and I do not think it is right or helpful to these men who I think have made a tremendous sacrifice by trying to do what needs to be done to follow the Constitution and to protect the minority children of this Nation, to give credence to the slander by passing a law of this type.

There are stastics before you in the statement I have prepared but I will summarize them by saying this, that not considering the dropout rates of minority children, minority children in Corpus Christi graduate with a ninth grade education. This is according to ACT test scores, that is the American college testing program, a test battery given to all 12th grade schoolchildren in Corpus Christi, all high school seniors, and given extensively throughout the State of Texas. So there is no point in trying to perpetuate this system because it has failed to do its job. I urge you not to pass this legislation and I will try to answer any questions that any of the committee members may have.

Chairman Brooks. Mr. De Anda, I want to thank you for a very well thought out and scholarly statement. It seemed to be very well documented. Obviously, you have spent a considerable time in preparing it?

Mr. Zelenko?

Mr. Zelenko. Mr. De Anda, your statement says that you are not entirely clear how the moratoruim bill affects the Corpus Christi litigation. The Justice Department has released information showing that the *Corpus Christi* case is a case on appeal. It does not indicate whether or not or how the moratorium bill would affect that decision. Has the district court already entered an order desegregating Corpus Christi schools?

Mr. De Anda. Yes, they entered an order which includes busing as well as other desegregation tools but includes the busing of approximately 15,000 out of 44,000 schoolchildren in the system. This order was entered over a year ago, approximately, and was stayed by the Supreme Court.

Mr. ZELENKO. Do you have any opinion as the counsel in that case, Mr. De Anda, whether an order by the court of appeals in the *Corpus Christi* case remanding the case to the district court would be affected by the moratorium bill? For example, the Fifth Circuit Court of Appeals might order different busing than was ordered originally.

Mr. DE ANDA. Some of the plans that were submitted to the court did encompass more busing than the court actually required. Of course, the Fifth Circuit has the case under advisement and has advised us that it is waiting for the Supreme Court to rule on another case that apparently concerns some of the matters involved in the *Corpus Christi* case, and it could require more busing.

Mr. ZELENKO. Or different busing.

Mr. DE ANDA. Or different busing because the courts have in the past changed district court orders after reviewing them.

Mr. ZELENKO. Thank you.

Chairman BROOKS. We thank you very much, Doctor, and Mr. De Anda.

Chairman BROOKS. Mr. Sam Buice, chairman, Parents Against the Forced Busing, St. Petersburg, Fla.

Mr. Buice, we will accept your statement for the record.

(The statement of Mr. Buice follows:)

STATEMENT OF SAM BUICE, CHAIRMAN PARENTS AGAINST FORCED BUSING ST. PETERSBURG, FLA.

Mr. Chairman, distinguished members of the judiciary committee: Thank you for the opportunity of appearing before you to bring you the voice of Florida in general and Pinellas County in particular on this most important issue of forced busing of pupils to achieve racial balance in the public schools.

Parents Against Forced Busing is a 50,000 member strong organization of parents and citizens dedicated to the neighborhood schools concept and equal educational opportunity for all children, but adamantly opposed to forced busing of pupils to achieve racial balance. We in Pinellas County are experiencing the evils of forced busing and can testify from the first hand experiences that nothing good has been accomplished by forced busing either socially, economically or educationally.

There is ample evidence that race relations rather than improving, are deteriorating rapidly. Riots in the schools are commonplace. Students describe the schools as powder kegs and educators admit that little or no learning is taking place in the classroom. In Dixie Hollins High School an estimated 30,000 pupil days have been lost—thus far—in the 1971–72 school year because of racial strife.

In Boca Ciega High School an estimated 20,000 pupil days have been lost because of rioting.

Figures from the school administration's public records verify the following facts:

In the school year 1970–71 there were 11 reported assaults. In the school year 1971–72, September through March, there were 195 reported assaults, *an increase of 1,772 percent*. At the Elementary school level prior to the 1971–72 school year, there were 7 suspensions—for serious misbehavior. This was considered normal. In the 1971–72 school year, September through March there have been 150 suspensions, *an increase of 2,143 percent*.

At the junior, senior high level there were 100 suspensions in the 1970–71 school year. In the 1971–72 September through March there have been 1,200 suspensions, an increase of 1,200 percent. Our schools are in a state of rebellious confusion and chaos. I quote from the St. Petersburg Independent Newspaper, Monday, March 17, 1972, caption "Racial Harmony Aim of Park Group."

Describing conditions at Pinellas Park Junior High School, where 1,000 students walked out March 14th, quote "in a formal statement issued by both black and white students following the walkout and a meeting with principal Thomas Wooley, the students said: "all this year Pinellas Park Junior High has been a school of constant and seemingly endless turmoil and friction." End quote. The following morning, Tuesday, April 18, 1972, from the St. Petersburg Times Newspaper, caption, "Fence to go up at school." The story relates how the administration had decided to erect a six (6) foot chain link fence to keep pupils in and troublemakers out.

In a related story from the St. Petersburg Times dated Tuesday, April 18, 1972, caption "Dixie Hollins gets warning on accreditation." This story relates how Dixie Hollins, because of its turmoil and strife has lost the interest of the pupils. The report from the accrediting team from the Southern Association of Colleges and Schools, as reported in the St. Petersburg Times states, quote "the report found fault with the schools activities programs and observed that the school spirit that once flourished here is now at a low ebb."

The report concludes again I quote from the St. Petersburg Times "despite the fact that recent *violent upheavals* often brought about by circumstances beyond the control of school officials—can understandably cause a staff to be "gun shy" in regards to allowing more student activity. The faculty and staff must generate new enthusiasm and vigor so that young people will feel that they are a part of Dixie Hollins and not just students attending Dixie Hollins" end quote.

These are not isolated cases, they are ones which made news in April 1972.

Economically our school system is on the verge of bankruptcy. Florida statutes allow each school system 10 mills on which to operate without referendum. The Pinellas County School Board insists that to maintain quality education under the present court ordered forced busing plan to achieve racial balance, they need an additional 4 mills, or eight million dollars per year.

This referendum was submitted to the voters on September 14, 1971, who for the first time in the history of Pinellas County rejected it by a margin of 3 to 1. This was not a vote against quality education, but a protest against forced busing to achieve racial balance.

Parents Against Forced Busing led the fight to defeat this millage election. However, we have stated publicly that we will also lead a drive to pass a millage levy for all the money needed for quality education for *all* children once we are assured that this money will be spent for quality education for *all children* and not for forced busing to achieve racial balance. We will lead this drive once we are assured that our children will no longer be used as pawns in a socio-economic experiment by Federal judges in direct violation to existing laws and far in excess of any Supreme Court rulings.

From the educational standpoint, I submit a statement from a man very high in school administration here in Pinellas County, but who asked that his name not be used, quote "If an honest achievement study were made at the end of the 1971–72 school year it would be found that education is nil". End quote.

It is not necessary for me to trace the history of busing for you distinguished lawmakers. However, in the interest of pointing out the intolerable situation in Pinellas County, please bear with me as I briefly review the past and observe the present.

In the landmark decision of 1954 Brown versus The Board of Public Instruction, the Supreme Court ruled that under the equal protection of the law clause of the 14th amendment no child could be assigned to any school because of race, color, creed, sex or national origin. The equal protection clause in its simplest form says that no State can treat one person in a given situation differently than it treats another person in the same situation.

Every subsequent Supreme Court decision including the most recent *Charlotte-Mecklenburg* case has held to this conclusion, yet has clouded the decision with legal jargon to the extent of allowing lower courts enough latitude to impose their own judgment on the people even to the extent of violating the mandate of the Congress and the equal protection clause of the 14th amendment. It is a fact that we are being forced to violate the 14th amendment under the guise of enforcing the 14th amendment.

As an example Pinellas County schools are operating under an exact black-white ratio. One child in a neighborhood is allowed to walk to the neighborhood school, but his enrollment fills the quota for his race. The child next door is bused across town in order to maintain the racial quota for another school. I submit to you gentlemen that both children are in the same situation but one is denied access to the neighborhood school solely because of race. If it was unconstitutional to assign pupils by race in 1954 it is unconstitutional in 1972.

Further you gentlemen know that transportation of pupils for racial balance is expressedly forbidden in the 1964 Civil Rights Act, yet, we are operating under Federal court orders in direct violation to this mandate of the Congress. I submit that portion of the order relating to black-white ratios and orders to bus to achieve this ratio for your inspection.

Regarding the President's proposed legislation and moratorium on busing, we are pleased that the President has made his thinking known regarding the evils of forced busing and we have hoped that this will arouse the Congress to the extent that the American public is aroused.

There is much confusion and disagreement among the highest officials in the Nation as to the effect of this proposed moratorium.

Secretary Elliot Richardson of the Health, Education, and Welfare is quoted as testifying before this committee on April 13th, that only "recent" busing orders would be subject to review. Recent is a relative word, our question is what will it do for Florida?

Acting Attorney General Kleindienst is quoted as testifying on April 12th, that the moratorium would affect every case ordered in violation of the 1964 Civil Rights Act.

Congressman C. W. "Bill" Young of Florida, who is with me here today, has called on Mr. Kleindienst to intervene in the Pinellas County case which is certainly in violation of the 1964 Civil Rights Act. We respectfully add our plea for relief under the law to that of Congressman Young.

The people of Florida made their sentiments abundantly clear in the March 14th Presidential Primary when they were given the opportunity to vote yes or no for a Contitutional amendment to prevent forced busing to achieve racial balance. The vote was an overwhelming 4 to 1 yes. Every poll across the Nation has reflected like sentiment.

Gentlemen, with this type of evidence, with forced busings proven track record of failure to achieve its stated goals in every area where it has been tried, with the overwhelming sentiment of America from the President down expressing diapproval of forced busing, how can you in good conscience do less than bring this matter out of committee and before the Congress who is elected as the voice of the people.

EXHIBIT A

The student assignment plans submitted to this court by the defendant School Board involve modification of existing zone lines, elimination of all pairing and clustering, implementation of the zone-within-a-zone or satellite zone concept and increased transportation of students. The plan submitted to this court for the senior high schools in Pinellas County desegregates every high school so that each high school in the entire system will have both black and white students and no high school will have a student body with a majority of black students. The percentage of black students in each high school student body ranges between approximately 3.1 per cent and 17.5 percent. The senior high school plan involves only a very minor zoning change from that plan which it formerly contemplated using for the 1971–72 school year. The student assignment plan submitted to this court for the desegregation of every junior high school in Pinellas County will result in all junior high schools having student bodies consisting of both black and white students and no junior high having a student body with a majority of black students. The plan of student assignment creates a percentage of black students in junior high school student body composition between approximately 5.6 per cent and 22.2 per cent in all regular junior high schools. The student assignment plan for the elementary schools in the Pinellas County school system is designed so that each elementary school will have both black and white students and no elementary school will have a student body with a majority of black students. All elementary schools will return to the traditional concept of kindergarten through sixth grade. The student assignment plan submitted to this court by the defendant School Board is designed so that the percentage of black students in each elementary school will vary between approximately 8.1 per cent and 24.9 per cent. The court holds that the student assignment plans do not violate the constitutional rights of anyone, white or black.

STATEMENT OF SAM BUICE, CHAIRMAN, PARENTS AGAINST FORCED BUSING—ST. PETERSBURG, FLA.

Mr. BUICE. Mr. Chairman, I thank you. I appreciate the opportunity to come here to bring you the voice of Florida in general, Pinellas County in particular.

In the interest of time I will not stick to the prepared statement which you have before you.

However, I wish to state that we, in Pinellas County, are prepared to tell you from firsthand experience that nothing good has come of forced busing either educationally, economically, or socially.

There is ample evidence that race relationships, rather than improving are deteriorating at a fast pace. Students in our public school system describe our schools as a powder keg.

Our educators admit without hesitation that little or no learning has taken place in the classroom. Racial strife is rampant. We do not attempt to place this blame on either race. We simply say that forced busing, forced association brings out the worse in all kids. Forced busing, if it must be imposed and policed, loses any virtue that can be claimed for it. In our largest high school, one of our largest, Dixie Hollins, over 30,000 student days have been lost because of race rioting. In Boca Ciega High School 20,000 pupil days have been lost because of rioting.

In the school year 1970–71 there were 11 reported assaults, and, gentlemen, when I say "reported assaults," this means assaults serious enough that legal action was taken.

In the school year 1971–72 September through March— remember this is only a partial school year—there were 195 assaults, an increase of 1,772 percent. At the elementary school year prior to 1970–72 school year there were seven suspensions for serious misconduct. The 1970–71 school year, September through March, there were 150 suspensions, an increase of 2,143 percent.

It is not working. At the junior-senior high school level there were 100 suspensions in the 1970–71 school year. In the 1971–72 school year, September through March, there have been 1,200 suspensions, a 1,200 percent increase.

There were 1,000 students walked away from the school just recently. These students said, "All this year Pinellas Park Junior High has been a school of constant and seemingly endless turmoil and friction."

Again I will take up quotation "All this year Pinellas County Park Junior High has been a school of constant and seemingly endless turmoil and friction."

The following day St. Petersburg Times newspaper reported and this is the caption "Fence to Go up at School." The story relates how the administration had decided to erect a 6-foot chain link fence to keep students in and troublemakers out.

A related story from St. Petersburg Times dated April 8, 1972, captioned "Dixie Hollins Gets Warning on Accreditation."

The report found fault with school activities program stating the spirit which once flourished here now is at a low ebb.

The report concludes:

> Despite the fact that recent violent upheavals often brought about by circumstances beyond the control of the school officials, can understandably cause

the staff to be gunshy in regard to allowing school activities, the faculty must find some way to engage the students in more activities in order to make them feel a part of the school and not just students attending the school.

These are not isolated cases. These are the ones which made news April 18, 1972. Our school system is on the verge of bankruptcy. Our school board contends that in order to maintain quality education under the forced busing court orders, busing that we are operating under now, they must have an additional $4 to $8 million per year. That was submitted to the voters in September 1971, who for the first time in the history of Pinellas County, rejected a millage election by a margin of 3 to 1. This was not, gentlemen, a vote against the quality education. It was against the wasting of money for forced busing of schoolchildren for racial balance. We have parents against the forced busing and we are instrumental against defeating that millage election.

I now submit a statement from a man very high in the school administration in Pinellas County who asked for obvious reasons that his name not be used.

> If an honest achievement study were made at the end of 1971–72 school year, it would be found that education is nil.

It is not necessary for me to trace the history of forced busing for you lawmakers. In the interest of observing the situation as it now stands, I wish to ask your indulgence to go back to the 1954 *Brown* v. *Board of Education* landmark case. This case said in substance that we must be color blind, that no child could be assigned to a school because of race, color, creed or national origin, and so on.

Yet we in Pinellas County are operating under just such a system although every subsequent Supreme Court decision has upheld the *Brown* v. *Board of Education* decision.

It is an ironic fact that we are being forced to violate the 14th amendment which says in effect, you can not treat one person in a given circumstance any different than you do another person under the same circumstance. We are being forced to violate this constitutional amendment under the guise of enforcing the 14th amendment. I will give you example after example in Pinellas County where one child is admitted to the neighborhood school to which he can walk. The next child is being forced to walk across town against his will to satisfy a racial balance under which we are now operating.

If it was unconstitutional to bus children in 1954 because of race, it is unconstitutional in 1972 to bus children because of race and this is the reason we are being bused in Pinellas County and as proof of this I attach the court order which you have in your hands which spells out the racial balance under which we must operate in Pinellas County.

Regarding the President's proposal on the moratorium, we are encouraged that the President, himself, would make his feelings known to the American people and we hope that this will add more impetus to the opinion of the American people and arouse you gentlemen to the point of responding to the wishes of the people of the United States which in poll after poll has shown a 4 to 1 majority against forced busing.

We, in Pinellas County as you know, rather had an opportunity to vote. It was a straw vote and it carried no legal standard but in the March 14 presidential primary we had the question: Do you favor a constitutional amendment to prevent forced busing of children to achieve racial balance?

This vote came out to astounding 4 to 1, yes. We favor the constitutional amendment.

Again we are encouraged by the moratorium act but our question is what does it do for Florida. There seems to be a great deal of confusion among even the highest officials of the U.S. Government as to what effect this would have.

Secretary Elliot Richardson of HEW is quoted as testifying before this committee on March 13 that this moratorium would affect the recent court cases. Recent is a relative word. Would it affect Florida?

Mr. Kleindienst, the Acting Attorney General, is quoted as saying on April 14 that all orders in violation of the 1964 Civil Rights Act would be affected.

Chairman BROOKS. This committee has been trying to determine exactly what cases would be affected. We have not been able to get that information in any usable form from the Justice Department although we have requested it. You may proceed.

Mr. BUICE. This is the question in our minds, but to summarize, we believe the people who are in favor of busing are using the 1964 Civil Rights Act as a means of pointing out the evils which have been forced on the minority race and we could not agree more that this has happened.

We cannot unscramble eggs. We must start from where we are and go on. We believe that a constitutional amendment guaranteeing each individual, regardless of race, color, creed or national origin, the right to attend the neighborhood school of his choice is the only solution and we urge you gentlemen to bring this matter before the Congress who is elected as the voice of the people to allow the Congress to decide this for themselves.

I do appreciate your hearing me.

Chairman BROOKS. We appreciate your statement and your coming here. We are glad you could bring your son with you.

Mr. Hungate.

Mr. HUNGATE. Thank you.

Mr. BUICE. You mentioned the Florida referendum and public opinion polls indicating 70 percent in opposition. We have heard a great many witnesses on almost all sides of the question. We face a difficult problem when dealing—with rights guaranteed by the constitution. For example, should a constitutionally protected right such as freedom of speech, depend on whether 70 percent of the population agrees or disagrees? So, I hope you appreciate our dilemma in dealing with this question if a constitutional right is involved.

What is the nature of the suit that resulted in court ordered busing in your area? Who were the parties and what did the Court find?

Mr. BUICE. The NAACP brought the suit before the courts who ruled in their favor. I might add after we had been declared unitary twice in 12 months. We were not a segregated school system.

Our question is just what is unitary? How unitary can you get?

We were a unitary school system. We had been declared so twice in 12 months. Yet we were taken back to court and ordered again to bus simply for racial balance—not for any other reason.

Mr. Hungate. Was there busing in the school district prior to this decision?

Mr. Buice. Yes, much busing.

Mr. Hungate. Then could you tell me, if you know, what did the court find—why did it find it necessary to order this busing? What did they say?

Mr. Buice. The judge who heard the case, the late Judge Joseph Lee, declared that in the interest of better education, he found that a racial proportion would be desirable.

Mr. Hungate. Thank you.

Mr. Brooks. Mr. Hungate, could I clarify that point?

In 1968 the records of HEW indicate there were 13,170 minority pupils in that school system. About 12,500 of the black pupils attended schools having 80 to 100 percent minority enrollment. So that was the status of desegregation that existed in 1968. I shall place the HEW information on Pinellas County in the record at this point.

	(A)	(B)		(C)		(D)		(E)		(F)	
						Black pupils attending schools which are—					
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 percent minority		80 to 100 percent minority		100 percent minority	
District		Number	Percent of (A)	Number	Percent of (A)	Number	Percent of (C)	Number	Percent of (C)	Number	Percent of (C)
Pinellas County, Fla. (Clearwater):[1]											
1968	78,466	13,170	16.8	12,715	16.2	2,762	21.7	9,303	73.2	3,298	25.9
1969	81,885	13,603	16.6	13,153	16.1	4,029	30.6	8,238	62.6	4,257	32.4
1970	85,117	14,192	16.7	13,766	16.2	6,264	45.5	2,881	20.9	667	4.8
1971	85,878	14,710	16.9	14,137	16.3	13,408	94.8	0	0	0	0

[1] District with 1971 desegregation plan.

Mr. Hungate. That brings one more question: What is the geographic size of your school district?

Mr. Buice. Do you mean in square miles, sir?

Mr. Hungate. Yes, sir.

Mr. Buice. That would be extremely hard for me to answer because Pinelas County is a peninsula, a very long area.

Mr. Hungate. Would you obtain that information and send it to us later?

Mr. Buice. I can estimate it now, and the school district is approximately 30 miles north to south and varies from 2 miles to possibly 15 east and west. More or less of a triangle.

Mr. Hungate. Thank you.

Your testimony has been helpful. Thank you, Mr. Chairman.

Chairman Brooks. Thank you for coming down.

We were glad to see you.

Mr. Buice. Thank you, Mr. Chairman.

Chairman Brooks. The final witness today is Rev. John Touchberry, chairman, Upper Pinellas Council on Human Relations, Clearwater, Florida.

STATEMENT OF REV. JOHN TOUCHBERRY, CHAIRMAN, UPPER PINELLAS COUNCIL ON HUMAN RELATIONS

Mr. TOUCHBERRY. Mr. Chairman and members of the committee, I have Mr. and Mrs. Gabriel Cesares with me to give support and they have worked hard on some of the documents that we have included in our report.

Chairman BROOKS. We will accept for the record your complete statement. I will ask you to expain your statement.

(The statement follows:)

STATEMENT OF REV. JOHN TOUCHBERRY, CHAIRMAN, UPPER PINEALLAS COUNCIL ON HUMAN RELATIONS

It has been said that our nation is heading toward two societies, separate and unequal, one white and one black. To continue that trend would be tragic.

Almost 2000 years ago, it was said: "Every kingdom divided against itself goes to ruin. No town, no household divided against itself can stand." (St. Matthews Gospel, NEB). Men moved by that belief later stated that God honors all people and we must not dishonor those whom God honors, for "He has created every race of men of one stock, to inhabit the whole earth." (Acts of the Apostles). Other prophets and religious seers have added their voice to that affirmation and inspired thousands of persons in the world to keep this vision before mankind.

Our founding fathers gave free reign to the religious conscience as they forged this nation which acknowledges:

"All men are created equal and are endowed by their Creator with certain inalienable rights." (Declaration of Independence). All men have certain God given rights which no government may take away from them.

This was re-iterated in THE GETTYSBURG ADDRESS by Abraham Lincoln who declared:

"This nation was conceived in liberty and dedication to the proposition that all men are created equal."

The Civil War and what has happened since prove that a nation so conceived and so dedicated can endure.

America through its constitution guarantees that every person shall have the opportunity to live the best, happiest, most productive existence possible. No matter who the person is, where he is, or what his station in life, he has the right to make the best of his situation and to improve on it. We all affirm this each time we pledge allegiance to the flag and say this is "One nation, under God, indivisible, with liberty and justice for all."

There is ample evidence in our history that going our separate, segregated ways, breeds hostility and conflict setting up the situation for us to prejudge one another as odd, strange, inferior. There is an increasing body of evidence that bringing persons of different races together for study, recreation, projects, and food creates good will and friendship.

Further there are reports available that the bonds of friendship across racial lines are more easily forged among the young than among the old who are set in their patterns and fixed in their attitudes. (See attached document).

This is why school integration is so important to the peaceful functing of our society. Good relations between races is a total community problem and requires broad community response in the areas of housing employment and health services. However we must not underestimate the responsibility and role of the schools in educating our young people in the areas of human relations and social concerns—which are as integral to the educational task as the teaching of reading, writing and arithmetic. (See attached document 2.)

It is here that busing and school integration become issues for Pinellas County. Busing is not new. We have had it before and even to a greater degree than now. In 1963–64, the last year before accelerated desegration, there was more busing in Florida than in the last two years. The amount of busing now being done seems both reasonable and acceptable in terms of time and distance.

Consider these statistics:

In the Fall of 1970: 34,233 children were bused in Pinellas County with only partial integration in our schools.

In the Fall of 1971; 35,253 children were bused, only 1,020 more.

47,692 children walk to their neighborhood schools. Only 6.4 percent of the white children in Pinellas County are bused to achieve integration. (See attached document 3.)

Studies of integrated schools in Pinellas County indicate that there is high quality education there. Children from deprived areas have made notable progress. High achievers have not been slowed down. Black and White children, faculty members, and administrators are getting to know, appreciate and visit with one another. (See attached document 2.)

Busing is neither good or bad. It is a tool, a means to an end, a method of transporting people to where they need to be, when no other way is available. The opponents of busing offer no legally acceptable alternative. They claim opposition only to busing, but in effect they would return us to an illegal, dual school system, with segregation and inferior schools for some.

I, as a citizen, and parent insist that we do what is right and what is best for all our children so that one day we can realize the American dream of all people living as brothers and sisters, members of one family. This view is not just a personal one. It is representative of members of many organizations in our county. Organizations such as: Upper Pinellas Council on Human Relations, Clearwater Neighbors, League of Women Voters, NAACP, Community Alliance, the Education Committee of the Greater St. Petersburg Chamber of Commerce. The Community Relations Board of Clearwater. A roll back to integration would be a denial of the American Promise and a betrayal of those who in good faith, have labored to establish universal justice and equality.

Respectfully submitted.

JOHN W. TOUCHBERRY,
President of Upper Pinellas Council on Human Relations.

A REPORT ON THE INTEGRATION OF PINELLAS COUNTY SCHOOLS

(Prepared by the Education Committee of Clearwater Neighbors)

Subject: A History of School Desegregation in Pinellas County.

In May of 1954 the Supreme Court decreed dual school systems illegal. At that time, the schools of Pinellas County were definitely segregated. Separate schools were provided for black and white students.

Between 1954 and 1964 there was little, if any, effort in Pinellas County to desegregate the school system. In fact, the record shows that the dual school system was perpetuated and expanded. School sites were purchased, buildings were constructed, zone lines were gerrymandered, and teachers were assigned for the purpose of continuing the dual school system. As Pinellas County grew the dual school system grew with it.

In May of 1964 the dual school system was challenged in United States District Court. That legal battle between the NAACP and the School Board has now encompassed a period of seven years with the NAACP consistently pushing for full desegregation and the School Board consistently dragging its feet and doing only the minimum that the Court would demand. The pattern was broken with this summer's School Board admission of non-complinace with the law and the subsequent approval of a desegregation plan that both parties realistically expect to bring an end to the dual school system.

The history of Pinellas County schools the past 17 years provides ample evidence that the County created a dual school system, that it operated that system in direct violation of the law long after 1954, that school sites were selected to maintain segregation and therefore were a factor in the segregated residential areas of the County, and that cross-busing was fully utilized to keep white and black pupils separated.

Segregation in Pinellas Copunty is not past history. Until integration of Largo's elementary schools was ordered in the summer of 1969, the segregated system operated without criticism from public officials or a majority of white citizens. Any individual, group, or public officials who by his actions or inactions prior to 1969 accepted the segregated system raises serious questions of racism in attacking desegregation plans.

According to some of the rhetoric heard recently about busing in Pinellas County, a newcomer might believe that this fall's desegregation plan will be the first experience of students riding buses. This is certainly not the true situation.

In fact, it was estimated two years ago that 70% of the students in Pinellas County would be bused during their school life.

Busing in Pinellas County over the past ten years has been used for a variety of purposes—some wise, some foolish, and some illegal. Untill 1969 there was little public outcry against the busing of students in Pinellas County. Public officials like Congressman C. W. "Bill" Young, School Board Chairman Ron Fisher, and head of the state legislative delegation Jack Murphy are not known to have ever criticized the forced cross-busing of Pinellas County students until they began attacking desegregation plans on that basis.

The most striking criticism of cross-busing before 1969 was offered by Talmadge Rutledge, chairman at that time of the Clearwater NAACP. In 1968 Rutledge stopped a bus engaged in cross-busing. That bus was carrying white children directly past an all-black school. Amid complete silence of Young, Fisher, and Murphy, Rutledge was arrested, tried, convicted, and given probation.

That incident, painful as it was for Rutledge, serves to provide an excellent perspective on those individuals who today claim they are opposed to cross-busing *on principle*.

The "neighborhood school concept" is one of the most frequently heard and least understood terms in the current debate over this fall's desegregation plan. It should be made a requirement for all users of the term "neighborhood school" to first define what is meant by the term. This requirement, if enforced, would probably eliminate most arguments in which the "neighborhood school" is cited because a definition of the concept forces the speaker to place the desegregtation of schools in its proper perspective.

The most restrictive, and appealing, idea of a neighborhood school envisions a walk-in school, located within easy walking distance of all its students, and situated in a contiguous, urban residential area. Under this view of a neighborhood school Pinellas County is not and has not been a neighborhood school system for a number of years. There are only two elementary schools in all of upper Pinellas County that might conceivably be called neighborhood schools by this restrictive, yet appealing, description.

The reason that such schools are not present at the Northern end of Pinellas County is that there has been a definite, educational trend away from the small, walk-in school toward school plants that are large enough to operate efficiently from both an economic and educational standpoint.

A second, less restrictive but also less appealing, notion of "neighborhood schools" would define the term as the school being least distant to its pupils. This seems to be the intent of Congressman Young's proposed constitutional amendment whereby no student could be bused away from the school nearest his home for the purpose of "racial balance." Those who accept this definition of "neighborhood school" should be extremely happy with the school board's desegregation plan for upper Pinellas County. Basically that plan preserves the area characteristics of every previously all-white school while meeting the legal requirement of school integration.

Those that decry the loss of "neighborhood schools" because of their affect on quality eductaion have not done adequate research on the subject. There appears to be no direct correlation between "neighborhood schools" and quality education, but research has shown a correlation between integration and quality education.

One interesting fact about neighborhood schools is the legal standing of such institutions. The integration of public schools is a legal requirement based on the U.S. Constitution. The neighborhood school concept shares no such legal status either as a constitutional right or a statutory privilege. The Supreme Court has ruled specifically that in any case where the legal desegregation of a school interferes with the neighborhood school system then it is the neighborhood school that must be sacrificed.

This committee feels that the "neighborhood school concept" is a red herring issue designed to obscure rather than enlighten any discussion on school integration.

The current arguments against cross-busing fall into several categories and rationalizations that have become well-known to the parents of Pinellas County. These arguments must be considered within the logic and experience of what we already know about students who have been bused in the past.

Most Catholic students who have gone to parochial schools have been bused most of their academic lives. Have these students as a whole suffered academically and emotionally from the daily bus rides?

Almost all rural children now and in the past have been bused to schools in a central area distant from their homes and farms. Has our society been diminished by adults who were once bused to rural schools?

In fact, let us consider the students who have been bused to private schools for part or all of their pre-college years. Have they indeed become mediocre students and disrupted the lives of their families because they rode the bus to a school somewhat distant from their homes? If so, one wonders why their parents willingly paid extra for their educations.

This brand of logic could be taken to infinite and ridiculous lengths. It is for these reasons that Clearwater Neighbors believes that arguments against busing, as such, are not really about busing at all. We believe that most of the arguments are about any method that would bring about integration and the racial balancing of schools.

For parents who attest that they are not racists and are not against integration there seems to be but one argument. If these parents are sincere, their sole protest against busing is one of inconvenience. That inconvenience, one might add, is usually much greater in the minds of parents than in reality for the child.

In a world of growing conveniences why are so many people unwilling to ask their children to accept an inconvenience? Is not the ultimate goal worth the inconvenience? Is not a unified community where children are given equal educational opportunities and may learn side by side to know each other as people, not races, a sound investment in the future? Are we determined to perpetuate a dual society and a divided people in the community all for the sake of "convenience"?

Clearwater Neighbors asks all the citizens of Pinellas County to consider these questions.

Myth No. 1: It is the high-handed, federal courts which are pushing desegregation plans down the throats of southern school boards.

Plain Facts: The original Supreme Court decision on desegregation of public schools was issued in 1954 against a school board in Kansas. That decision clearly outlawed segregated schools, but the relief given by the court against dual systems was limited. The Court decreed that school boards operating dual school systems must desegregate with "deliberate speed." Most federal courts have interpreted that decree as meaning a reluctance to force compliance until and unless a school district shows no intention or promise of dismantling obvious dual features in its school system.

Pinellas County is a good example of the federal courts' reluctance to force the school system into compliance. Ten years after the 1954 decision, almost no desegregation had been accomplished in Pinellas County. Yet the current desegregation plan is the direct result of a case filed against the county in 1964. It has taken 17 years, 7 with a direct court suit filed against them, for the leaders of Pinellas County to devise a desegregation plan required by the 1954 Supreme Court decision.

Myth No. 2: Integration is social experimentation.

Plain Facts: The latest speaker to voice this myth is Congressman C. W. "Bill" Young. His statement ignores the sociological and psychological evidence presented to the Supreme Court for its 1954 decision: it ignores the research of educators such as that given in the Coleman Report: it ignores the conclusions of the National Advisory Commission on Civil Disorders (Kerner Commission): and it ignores the recommendations of the U.S. Civil Rights Commission. This myth is never accompanied by any documentation of its accuracy nor a repudiation of all the prestigious sources it contradicts.

Myth No. 3: The Civil Rights Act of 1964 made busing illegal.

Plain Facts: There is an amendment to the Act which purports to define "not desegregation" which is something akin to saying a cat is not a red barn. There is also a curious statement that "nothing in this Act shall empower the Courts" to require busing, but since the Courts do not receive such powers from this Act that statement is also meaningless. The amendment has been repeatedly brought to the attention of the courts and found to have no legal standing.

It is interesting to note that Bill Cramer proudly claims authorship of this amendment in 1964, the same year that all black students from Port Richey were cross-bused to Clearwater.

Myth No. 4: Blacks are opposed to desegregation by busing:

Plain Facts: This myth is usually accompanied by the charge that dissident blacks are forced to keep quiet by the NAACP and JOMO. There is so little substance to this myth that its racist overtones are impossible to miss. As a bi-racial organization with its headquarters in the heart of Clearwater's black community, Clearwater Neighbors has never heard the slightest hint of any evidence to support this myth.

Myth No. 5: President Nixon is opposed to the type of desegregation plan used in Pinellas County.

Plain Facts: About a year ago President Nixon told civil rights groups that they should pay attention to what his administration does rather than what it says. We suggest that the anti-busers should do likewise.

President Nixon's first announcement against busing received lots of headlines, but few people noticed that it was coupled with the explanation of a justice department appeal of a desegregation plan for Austin, Texas. The desegregation plan being appealed did not require cross-busing, but the justice department appeal will probably result in a busing plan for that city. Republican Senator John Tower of Texas was certainly not happy with the Nixon statement.

Also President Nixon declared that he would only support the minimum amount of busing required by law. Since the recent Supreme Court decision is the law on busing and since that decision allows for all the busing necessary to eliminate a dual school system, the President's minimum actually can be considered a maximum.

Of special interest to Pinellas County is the fact that the President has pledged his support to any desegregation plan already imposed by a federal court. This places the President in direct opposition to those in Pinellas County who intend to fight the desegregation plan.

Myth No. 6: C. W. "Bill" Young, Ron Fisher, and Jack Murphy are dedicated public servants acting in the best interests of those truly opposed only to busing—not integration.

These three public officials have been in positions of political power for a number of years in Pinellas County and therefore must bear special responsibility for the situation now facing the schools. Racial problems are not now new to this County. The desegregation of public schools did not come up overnight. These problems have cried for solutions for years, but there is no evidence that these officials have provided leadership in seeking solutions. Besides obvious steps our schools should have taken years ago there are other actions that county officials still avoid. Do we have any open housing laws to try to eliminate the segregated neighborhoods of the county? No. Does the county government exercise any leadership in the hiring or training of black employees? No. Does the county plan a meaningful role in providing adequate, low-cost housing? No.

One of the most often heard statements against the desegregation of schools is: "we settled in our neighborhood and chose our home carefully because it was near good schools. Now our children will be bused elsewhere and the schools there are not so good. It is not just or right or fair."

Clearwater Neighbors urges each citizen to consider several questions before deciding what is right and just and fair.

(1) If certain schools are not good enough for our children why, then, are they good enough for the children who have been attending them all along?

(2) Is quality education to be considered only in the light of *my* children and the children in *my* neighborhood? Is citizenship a duty within the narrow limits of "me and mine?"

(3) Is not the quality of our community reflected in great part by the quality of our schools—not "some" schools but all schools?

(4) Is quality education really our goal and not merely a pretext to avoid or postpone integration? If quality education is really the issue, why have there been no mass meetings *for* this purpose to benefit *all* schools instead of meetings *against* busing and racial balancing of the schools?

(5) Did you know that research has shown that integration is the best method for upgrading the quality of education? If integration has been shown to be a prime ingredient of quality education then why allow the arguments about busing and neighborhood schools to interfere with a well-conceived desegregation plan?

Clearwater Neighbors recommends that truly concerned parents study what is really involved in quality education and then spend their time and energies improving all the schools of Pinellas County.

We believe that the millage election should be only indirectly related to the integration of schools this fall. The group that is opposing passage of the millage is acting in vengeance against the school board which approved the desegregation. The true issue is integration and the "NO, NO's" are really expressing their displeasure with the desegregation of schools. Appeals to racism are preventing the facing of issues honestly and forthrightly.

Various groups have announced their support of the millage and their willingness to stand with the school board is appreciated. We do believe, however, that those supporting a "yes, yes" vote on the millage without taking a position on school integration do so because they feel personally uncomfortable confronting the basic issue at hand.

Racism in this country poses perhaps the greatest danger to our national existence. It is time we confronted racism itself instead of hiding behind code words designed to conceal its nature.

(1) The desegregation plan approved for the fall of 1971 is the first, honest and conscientious effort of the school system to truly meet the spirit and letter of the law as required by the U.S. Supreme Court decision of 1954. For the first time in 17 years Pinellas County will be in compliance with the law of the land.

(2) The desegregation plan preserves the area characteristics of every previously all-white school. Black students will carry the major burden of the busing. Each school in the county will enjoy the benefits of a minority black student population with an overall enrollment that provides the opportunity for real quality education to every child in Pinellas County.

(3) The major cause of community resistance to the desegregation plan is *racial prejudice*. Racism and appeals to racial fears are the real issues behind the arguments of "cross-busing" and "neighborhood schools."

(4) This nation has paid, is paying, and will continue to pay a high price for the race problems that beset us. The elimination of prejudice is a necessity for our national survival as a country where "all men are created equal."

(5) Governmental officials of both national parties have been especially remiss in exercising their moral leadership toward finding solutions to the difficult problems involved in the elimination of racial prejudice. Too frequently, officials like Congressman C. W. "Bill" Young have sought political power by exploiting the problems of desegregation.

(6) It is our belief that children, black and white, who grow up together and learn together, and who get to know each other as "people" will find it difficult to show violence, hate, and destructiveness toward each other as adults.

EDUCATION COMMITTEE SCHOOL SURVEY REPORT, MARCH 1972

In the fall of 1970 approximately 35,000 children were riding buses to school. This past fall, 1971, 36,500 children were riding the bus to school. Zoning and transportation changes have brought about complete integration of all schools in Pinellas County. Each school now has a student body composed of a majority of white students with a black student population in the minority.

Busing has become a very controversial issue in our community. It has also become an emotional issue and a political issue. Because of widespread community hostility toward busing, the Education Committee of Clearwater Neighbors and the Upper Pinellas Council on Human Relations decided it was time to find out just what was happening in our schools now that they are fully integrated on a racial balance. We were looking for answers to the questions:

1. Is the clamor against busing solely for racial balance justified?
2. Are there any apparent educational or social benefits attributable to integration on a racial balance which have been observed by school teachers or administrators?

Seven schools in the central part of the county were chosen for our study. In some of the schools integration had been going on for a number of years. Other schools were chosen because they were experiencing integration for the first time. The interviews were conducted in January of 1972.

Contact was made with the School Administration to request permission for seven people to visit schools and interview school personnel in order to obtain their comments and opinions on the progress of integration. We were particularly interested in finding out what effect busing had on the education of students. However, no attempt was made to statistically evaluate academic progress or the lack of it. Our purpose was to observe the school situation after integration occurred. We wanted to know if busing was detrimental to the school program, or if it had any effect on student performance or conduct in school.

This is, admittedly, neither a conclusion nor scientific report. However, our interviewers saw and heard many things that are not being given the public attention they deserve. It is hoped this report will add a different dimension to the Forced Busing controversy which may effect the attitudes or opinions of the people of Pinellas County on this issue.

School situations which represent a very positive picture of integration were especially obvious when the interviews were conducted in two formerly all-black elementary schools. Both schools are located in black neighborhoods and white pupils are used from all white neighborhoods to these schools. The principal of one school, a black man, could see no adverse effects whatsoever because of either busing or integration on the pupils attending this school. He gives great credit for this successful situation to the total participation of parents who held group meetings during the summer and formulated a group philosophy which was passed on to their children. In this school parent commitee for safety, homerooms and grievances were formed. Over 100 parents participated in this activity. There has not been any trouble between students. The first day matriculation went so smoothly that the parent aides were deemed unnecessary and did not come back. The parent organization has continued to be active and recently raised $1,000.00 for the school by sponsoring a jazz concert. They have also enlisted the aid of the students at the University of South Florida to design some new and very imaginative playground equipment which in turn will be constructed by the parents organization.

Personnel in this school could not recall any racial incidents between the children. Any playground incidents were reported as being normal and quickly responding to counseling. There have ben no incidents of trouble on the buses. In fact, the children consider it good fun, indeed a privilege to ride them.

In another formerly all-black school, the principal reported that this particular school benefited in every way imaginable because of integration. She emphasized this point by saying, "Our greatest gain, material-wise, was in the stocking of our school library (4,000 books in all). Also each primary grade was given hundreds of books on the primary reading level. Primary grades were also given special learning and materials never present before. Record players were available for almost each classroom. Special reading teachers were assigned to the school." She also praised her faculty for treating each student with equal concern and fairness. When asked if there had been racial incidents it was reported that there had been some very minor ones in the beginning (1968). "Now, however, they are unheard of," said the principal. She also praised the white students for accepting their black teachers fully and paying them due respect. The interviewer asked if the faculty had been given special preparation for integration. She reported that there had been no formal preparation at all. When asked the question, "Do your white students, who are in the majority, feel any reluctance about attending a formerly 'Black' school", the principal replied, "None that I could detect. If anything, extreme loyalty to the school has developed here by both students and parents. We feel they (black and white) have truly begun to know each other. After all, isn't this what early truly American citizen is seeking?" Most of the children attending the school were bused. There were no problems.

Another elementary school had been integrated a year ago on a 50-50 percentage. This year additional white students reduced the black ratio to under 30%. School personnel reported that busing had given the students a more realistic picture of the world outside of the school. The school now had not only black and white students, but also students with varying economic backgrounds ranging from poor to wealthy. In response to the question, "What are some of the effects of busing that you have noticed?", a teacher said the following:

"Most of the children who live close to school and within walking distance, both black and white, are from lower-income families. If the school consisted of these children only, it makes it too easy for them to identify themselves as children in an all lower-income bracket school. Now they are busing children from higher-income families into this school. The lower-income children are going to find out that they aren't going to be treated any differently than the upper-income children because they'll all be going to the same school."

Several interesting sidelights were uncovered by the interviewer who visited a formerly all-white elementary school in Clearwater. This school was integrated for the first time in the fall of 1971. Since the school has been integrated, a number of parents from white feeder neighborhoods have instituted a visitation program inviting black children into their homes to play and visit with their families. To a lesser extent white children have been invited to visit in the homes of black children. The interviewer felt a great deal of insight and friendliness was developed by this activity. A white parent from this school recorded her experience in an interesting letter to a Human Relations Council member. This parent had actively resisted the busing program. She states:

"My reason for volunteering as a teacher's aide at Plumb, at first was to make sure the white children weren't neglected because of the colored children. Well you can't be around children long, before you love them all. You also can't be around them long before you notice a smile with cavities in back teeth. As a mother I just couldn't bear to think of ignoring this situation any longer. I found out there is a limited facility at the Health Department for taking care of family children on welfare to age six, but a very willing and concerned dentist there, Dr. Christionson.

"I found out what a neglected area dental health has been in our schools. There are films, visual aids and literature to be had, that have not been used.

"I think our first concern should be dental education program in our schools and an adult education and awareness program in deprived neighborhoods. Now many of these people realize how important dental health is or that with proper care they may never have a cavity."

Two Junior High Schools and a Senior High School were also included in this survey. Only one of the Junior Highs had been integrated for the first time this year and the black enrollment was only three percent of the student population. In this school there had been no racial incidents. The principal reported that one incident did occur between a white boy and a black boy with the white father registering a racial complaint. However, after the father left, the white boy let the principal know that his feelings did not correspond with his father's on the subject of race. The child said that the "tiff" was simply one of boy-to-boy and had nothing to do with race.

In this school the School personnel's only objection to busing was that the bused students had difficulty participating in organized school activities after or before school.

The other Junior High School observed had been integrated since 1968. The principal advised that integration made little change in the routine school operation. There had been no organized opposition to integration, but neither had there been any organized group supporting integration. The only area where black students are involved in numbers equal to or greater than their percentage of the student population was in athletics. Two thirds of the children attending this Junior High School have always ridden buses. Busing has not been an issue at this school. Student relations at this school seem satisfactory.

In the one High School where interviews were conducted, it must be pointed out that the school has been integrated since 1968. When the interviewer asked the questions concerning busing problems, all felt that there were none now "because the schools had been integrated years before this busing thing." The principal felt that there was very little racial tension in the school now and stated "One of the reasons there was tension before was that they closed down the black high schools and those students felt that they had been torn away from the school they had identified with and felt comfortable in. They were bitter about being pushed into a white school. Now those students in this high school have come from integrated Junior Highs. This is as much their school as anyone else's and they feel it now."

A teacher interviewed noted that he had not noticed any black students holding back any white students. He remarked that he had good, in-between, and poor students in both races. He went on to say, "One of the greatest things about integration is that the kids get to form their *own* opinions about the other race or culture. There are so many generalizations about the black and white races. And many kids only know about the other race, what their parents have told them. With integration they meet each other and form their own opinions."

CONCLUSIONS:

1. From these interviews, it seemed apparent that riding a school bus made no difference in the school program of the individual student who rides the bus.

2. Integration seems to be working especially well in the elementary schools. Children are accepting each other on an individual basis and racial differences play little part in the lives of the children while in school. Fear does not play a part in the lives of the children. Undoubtedly parental involvement stressing a positive attitude toward the integrated school situation and the busing" issue helped the children tremendously as they entered into an integrated school experience.

3. The longer a school has been integrated the fewer were the problems reported based upon racial differences or "busing". They no longer consider this issue to be a problem in their schools.

The general conclusion of all the interviewers was that integration was a positive force in improving the education of the students who were involved.

Mr. TOUCHBERRY. I was going to say that I will give you a children's version of the sermon.

It has been said that our country is moving toward a society; separate and unequal, one white and one black. Two thousand years ago a great religious leader said that every kingdom that is divided against itself will go to ruin. That a house divided against itself cannot stand.

People who have been inspired by this have gone on to say that every race of men on the face of the earth has been made of one stock by God and therefore there is a oneness among us all.

This vision has been kept alive down through the centuries and I will not repeat what has been said about reference to this in the Declaration of Independence and Constitution as in Abraham Lincoln's Gettysburg address. We give reference to this in the allegiance to the flag.

I think there is a lot of evidence in our past history that, when we go our separate, segregated ways, we breed hostility and conflict and set up a situation in which we prejudge one another as odd, strange, or inferior and I think this is part of the problem in Pinellas County, Fla., where we are having some trouble in our schools because of the hostility that is being experienced and expressed is not the integration but the years of segregation which has caused this to build up and it is now coming out but the cause is the separate and unequal system and not in the integration that has come about very recently.

There is also evidence as a result of study done by our council, League of Women Voters, and other organizations in our county that when children are brought together across racial and cultural lines, that this creates friendship and good will and we do have a considerable amount of evidence in our country that black and white children, faculty members and administrators are getting to know each other and learning to appreciate and have fellowship with one another. I think this is a considerable gain. We know that this often is easier to bring about among the young than among the old who sometimes have set patterns and fixed attitudes and this is why I think school integration is so very important to the peaceful functioning of our society.

This is not to say that the schools should bear the whole brunt of the burden of good race relations. This is a total community problem. But the schools do have an important role to play and responsibility to fulfill in educating our young people in human relations and social concerns for these are as integral to the educational task as the teaching of reading, writing, and arithmetic. There is busing taking place in Pinellas County. It was necessary in order to bring about a unitary system to end an illegal dual system. Not a great deal more busing was necessary in order to bring about complete integration.

In the State of Florida there was more busing in the year 1963 and 1964 than there was in the year 1969–71. In the fall of 1970 there were 34,233 students who were bused in Pinellas County with only partial integration. In order to complete the task, only 1,020 more students had to be bused. We believe the amount of busing that is being done in our country is both reasonable and acceptable.

We have not been presented with nor seen any legally acceptable alternative to this and we feel that the opponents of busing—while they claim their opposition is only to that—would return us to an illegal—dual system that would leave segregation and inferior schools for some and my view is shared by members of many organizations in Pinellas County and they are listed in this report that I have turned into you.

These are not in the majority in our county but it does represent a sizable number of people who want to do what is right and what is best for all of our children. We feel that to roll back the progress that has been made would be denial of the American promise and also betray all of those who have labored so hard and in such good faith to establish universal justice and equality.

Thank you very much for this opportunity.

Chairman **Brooks**. We want to thank you for a fine statement. We appreciate your contribution.

Congressman Hungate?

Mr. **Hungate**. Reverend, is it not one great feature of America that the American dream may look different to each of us?

Mr. **Touchberry**. Yes.

Mr. **Hungate**. Thank you.

Chairman **Brooks**. Reverend Touchberry, we thank you very much for coming down here.

We will include in the record the following documents:

A memorandum entitled "The Changes Have Begun—Do We Stop Now" by Charles B. Foster, William K. Keane, J. Richard Rossie, and James J. Tanous of the University of Virginia Law School; a statement of Hon. J. Herbert Burke, a U.S. Representative in Congress, from the State of Florida; and a statement of Ermon O. Hogan, Ph. D., education director, Community Development Department, National Urban League.

(The documents referred to follow:)

The Changes Have Begun—Do We Stop Now?

(Submitted by Charles Bradford Foster, William Kennedy Keane, J. Richard Rossie, James J. Tanous, University of Virginia Law School, April 1972)

I. AN INTRODUCTION—THE ISSUES DEFINED

The issue of school busing vitally affects thousands of parents and school age children of all races. Recent attempts have been made by federal courts, prominent political figures, and private individuals and institutions to provide a workable and satisfactory solution to this issue. As is often the case, political expediencies and in some instances racial prejudices have been infused into the picture with the distasteful result of confusing the issues and distorting the motives of the interested parties. To be able to reach a solution which is not only socially advisable but also constitutionally required one must first cut through the rhetoric superimposed on the issue. Once this is done it is necessary to appraise objectively the social and constitutional policies that have formed the basis for the principle that this country will not tolerate dual school systems and unequal educational opportunities.

The Supreme Court's landmark decision of *Brown* v. *Board of Education*, 347 U.S. 483 (1954), expressly held that segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprived the children of the minority group of equal educational opportunities. This decision was based on the finding that separation of students solely on the basis of their race generates "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." Since the *Brown* case, the federal courts have been confronted with both *de jure* and *de facto* school segregation cases. These courts, in their effort to create integrated school systems, have turned for guidance to both *Brown's* literal holding and its policy.

It is at precisely some of these lower federal court decisions that the recent criticism over busing orders has been directed. President Nixon, in his message to Congress on March 17, 1972, proposed that the Congress accept its responsibility in this area and exert its authority to "clear up the confusion which contradictory court orders have created, and to establish reasonable national standards" for the reorganization of school districts and the transportation of pupils. Accompanying this Presidential message were two bills sponsored by the Nixon Administration: "Student Transportation Moratorium Act of 1972" (the Moratorium) and "Equal Educational Opportunities Act of 1972" (EEOA).

The Moratorium, while it would not put a stop to desegregation cases, would impose a temporary freeze on new busing orders by the federal courts in order to establish a waiting period while Congress considers alternative means of enforcing Fourteenth Amendment rights. This freeze would be effective immediately on enactment, and would remain in effect until July 1, 1973, or until passage of the appropriate legislation, whichever is sooner.

Title IV of the proposed EEOA would impose limitations on the federal courts in formulating remedies for a denial of equal educational opportunity or a denial of the equal protection of the laws. Section 402 would establish a priority of remedies with the courts required to use the first remedy on the list, or the first combination of remedies, that would correct the unlawful condition. A busing order would be the seventh and last remedy permitted. Under Section 403(a) a federal court would be unable to issue a remedy that required increased busing of students in the sixth grade or below. A busing remedy could be ordered under Section 403 (b) and (c) for students in the seventh grade or above, but only if the following requirements were met: It could not be ordered unless there was clear and convincing evidence that no other method would work; in no case could it be ordered on other than a temporary basis; it could not pose a risk to health or significantly impinge on the educational process; and the school district could be granted a stay until the order had been passed on by the court of appeals.

It is our firm contention that the Moratorium and the EEOA, as outlined above, are both socially undesirable and unconstitutional for the following reasons.

II. THE LEGAL AND SOCIAL IMPLICATIONS INVOLVED

Since the constitutionality of the Moratorium and the EEOA would not be ultimately decided for at least a year after Congress enacts them, congressional concern must be centered on the wisdom of the Acts. The central issue relating to the busing of students is whether Congress should impose on the federal courts anti-busing limitations that bar immediate desegregation of school districts found to be in violation of the *Brown* principle.

Unless each Congressman and Senator can be sure in his own conscience that complete school desegregation has been achieved in accordance with *Brown*, both the Moratorium and the EEOA must be rejected as threatening the equal protection rights of the Nation's school children.

The eighteen-year effort to enforce the *Brown* decision has been frustrated by ingenius and ingenuous practices which seek to delay implementation of unitary school plans. The Supreme Court in *Green* v. *County School Bd.*, 391 U.S. 430 (1968), tired of such delaying tactics and demanded that workable desegregation plans be implemented *NOW*. *Alexander* v. *Holmes County Bd. of Educ.*, 396 U.S. 19 (1969), reiterated the commitment to immediate desegregation, and the case of *Swann* v. *Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1 (1971), recognized the necessity for student busing orders by federal courts because of the constitutional command to desegregate immediately.

The Congress now threatens to enact a rollback provision which would allow a dedicated school board to hark back to the pre-*Brown* days of racially segregated school systems; school systems that would be racially separate but *theoretically* equal in educational opportunity. To determine that "the neighborhood is an appropriate basis for . . . public school assignments," (EEOA § 2(a) (2)), ignores the sophisticated actions of school boards seeking to perpetuate racially separate schools. Chief Justice Burger recognized the necessity of busing as a remedial option to effectuate unitary schools, and the Moratorium and the EEOA provisions against busing are a clear affront to the Supreme Court's reasoned decision in *Swann*.

The finding in Section 3(a)(2) of the EEOA that the abolition of racially segregated school systems "has been virtually completed" is not borne out by federal court school caseloads. Furthermore, the Administration's claim of virtual elimination of dual school systems ignores the necessity of an immediate remedy for those school districts which "backslide" into racially discriminatory patterns. There lies the true danger in both Acts—a failure to be continually concerned with the racial and equal educational effect of school board decisions.

To show the effect that enactment of the Moratorium and EEOA would have on school districts which seek to perpetuate racially separate school systems, apply each of the EEOA—allowed remedies in the following hypothetical school system. Our hypothetical district is not unusual in any major respect; it simply has its own idea of "quality schools". The school board has found that the district is divided geographically by a river (it could be an interstate highway or any other physical barrier and that it is burdensome to surmount the barrier.

The children in two of the high school attendance zones do noticeably better on achievement tests than do students in the remaining two high schools and their "feeder" schools. Schools are built in or close to the school-age population center of attendance zones in the hope that the schools will be close to all children in the zone. Since the higher-scoring schools have the greatest demand for science laboratory equipment, they are given more materials. The district's schools are all less than thirty years old and may be used for at least fifteen years before the first one will be abandoned. Though new schools may be built to meet increased need, the post-World War II "baby boom" appears to have peaked with a result that few new schools will be needed. The attendance zones were set up in 1958 and few changes have been made since then. The zones in which children score markedly higher on tests are eighty-five percent white and the lower scoring zones are predominantly black (90%).

The first two remedies provided in the EEOA require courts to consider neighborhood schools before any other alternative, and only if such schools deny students equal protection of the laws may courts consider "permitting" students to transfer out of a school in which they are a majority to a school in which they are minority students. Few white parents would seek to have their children moved from a white-majority school to a black-majority school, and because of the inconvenience and cost involved it is doubtful that many black students could make a permitted transfer. Even then the hands of the federal courts are tied from efforts to require any aid from the schools to offset transportation costs or assure a uniform black-white ratio in the school system.

The revision of attendance zones is hampered by average distance and time limits that could be used to transport school children to the new schools, and for most school districts, other than those which blatantly segregate by attendance zones, this remedy offers little help to the federal court seeking immediate unitary systems. To integrate any urban school system characterized by a largely black core city and a largely white outer rim without increasing busing would be so difficult as to be no remedy at all.

The fifth and sixth possible remedies are long-term remedies that concern location of schools to be built or closed. Few school districts would have the capital to immediately launch a new building program designed to balance racially the schools, and that some financial pressure on school boards would make unlikely the closing of even deteriorating schools. Few, if any, school districts in the Nation have the financial ability to launch a school construction drive aimed at racial balance.

The last remedy, a "catchall clause", allows for the possibility of busing to achieve educational opportunity, but Section 403 of the EEOA effectively limits busing to the present average distance and time that any child is transported. If the present amount of busing is not achieving equal educational opportunity and redrawing school attendance zones does not achieve the desired aim, it would seem that the limits in Section 403 effectively preclude a workable desegregation plan which can be implemented *NOW*.

Section 403 distinguishes between those school children in the sixth grade or below and those above the sixth grade. No busing can be ordered beyond the limits in Section 403(a) for those in the sixth grade or under, but children in the seventh grades and above may be transported if "it is demonstrated by clear and convincing evidence that no other method set out in Section 402 will provide an adequate remedy."

Consider the situation presented by a school district which has sought to segregate elementary school pupils, not by gerrymandering attendance zones but by placement of school sites. The neighborhood schools are racially segregated through a policy of the school board but no school busing beyond that previously used could be ordered by a federal court once Section 403(a) was enacted. No remedy to immediately achieve equal educational opportunity is open to the federal courts, and the Congress has clearly limited the clear language of *Brown*, *Green*, and *Swann*.

In short, Congress has before it two bills which could prevent federal courts from immediate enforcement of the equal educational opportunity principle set down in *Brown* and its genre. Such an enactment could allow school boards to revert to pre-*Brown* policies and actions if they wished to do so. While school desegregation has progressed admirably in recent years, Congress should not undo its historic equal education legislation which has improved the lot of the Nation's school children. Further, the legislation threatens to present a test case of Congressional authority to limit the federal court's Article III judicial power. While Congress undeniably has power to limit federal jurisdiction over courts it creates, it could be argued that the anti-busing provisions prevent any immediate remedy to constitutional violations of the Fourteenth Amendment Equal Protection Clause. Such a contest could only diminish the standing in public eyes of both branches of government.

III. THE CONSTITUTIONAL ISSUES DEFINED

The passage of the Moratorium and the EEOA would force a confrontation between the judicial branch of the federal government and the legislative branch. To comprehend the magnitude of this confrontation, it is essential that one understand what the proposed legislation would be saying to the federal courts once enacted. Congress in passing the Moratorium would be telling the federal courts that, even though the Constitution guarantees an equal educational opportunity which, by definition, includes a racially unitary school system, the federal courts may not enforce and protect this constitutional right in certain cases if busing is involved. Furthermore, Congress in its definition of equal educational opportunity in the EEOA has diluted 14th Amendment rights and thereby has usurped the interpretive role of the Supreme Court.

It is our position that the Moratorium and Section 403 of the EEOA (the anti-busing provision) if enacted would be declared unconstitutional. A detail analysis for this position appears below.

Before discussing why these proposed laws would be unconstitutional, it is essential to see the constitutional and legal nightmare that the passage of these acts would create. Once the full legal and constitutional implications are laid out, it will be clear why the Supreme Court must declare these Acts unconstitutional if the Congress should pass them.

The EEOA sets national guidelines. However, states are permitted to go beyond these guidelines. For example, states could pass laws encouraging or requiring its own courts to issue busing orders when needed. The reality would be very different in most states. Most states would require no more than federal law demands. In short, the remedies preserved and those negated or limited by the EEOA and the Moratorium will be the only ones available to aggrieved parties. Therefore, arguments that these acts would be constitutional because state courts would still be open to plaintiffs and state courts can order busing will simply not stand up to the reality of the situation. If federal courts cannot order busing, we can rest assure that most state courts will not order busing—or more correctly, will not be permitted by state law or constitutional provision to order busing beyond federal requirements.

Under the terms of these proposed laws, a federal court cannot order busing involving students in the sixth grade and below even if state imposed (*de jure*) segregation exists and a busing order would be the only effective remedy. Furthermore, in cases involving students in the seventh grade and above, the federal courts' power to order busing is so limited as to create the probability that in many cases the courts would be without any effective power to protect constitutional rights which are being violated.

The effect of these Acts if passed, would create, in a sense, an area of "immunity" for the states to violate 14th Amendment rights. This action would violate the principle that Congress' powers are limited by the guarantees of the Constitution. The Supreme Court would have to declare the laws unconstitutional.

While Congress does have the power via Section 5 of the 14th Amendment to define equal educational opportunity and what is or is not a violation of the 14th Amendment, its power is not unlimited and is shared with the Supreme Court. The Supreme Court is the final interpreter of the Constitution. Therefore, when Congress uses its power to define constitutional rights, it is limited by what the Supreme Court has already defined. This limitation is a negative one: Congress may go beyond what the Court has defined, but it cannot undo the Court's interpretation in constitutional matters. Any other position on this issue would undermine the independence of the federal judiciary—i.e. the Supreme Court.

IV. CONSTITUTIONAL ANALYSIS

A. *The Moratorium and the Equal Educational Opportunities Acts are both unconstitutional as patent restrictions of equal protection rights and hence inconsistent with the letter and spirit of Congress' duty to enforce the Fourteenth Amendment under § 5 thereof.*

It took 86 years after adoption of the Fourteenth Amendment for its guarantee of equal protection to become recognized for the Nation's black school children in *Brown.*

It took another fourteen years from enunciation of the principle of equal educational opportunity to renunciation in *Green* of the dilatory tactics.

Again, it took another three years for the Court to approve remedies held essential in one case to the realization of equal educational opportunity. *Swann.*

The unmitigated impact of the Moratorium Act is to turn back the clock on hard-won advances by hampering federal court equity jurisdiction to fashion relief for the violation of constitutional rights, and by offending the maxim that "the nature of the violation determines the scope of the remedy." *Swann,* 402 U.S. 1, 16. Specifically, the Moratorium condemns those plaintiffs currently in the Federal courts, for whom busing is a necessary remedy, to continued abuse of their constitutional rights.

Green and *Alexander* are crystal clear in their insistence that "the obligation of every school district is to terminate dual school systems ***at once*** . . ." *Alexander,* 396 U.S. 19, 20 (1969) (emphasis added); and see *Green,* 391 U.S. 430, 439 (1968).

Moreover the Court has already struck down a state antibusing statute in a companion case to *Swann.* In *North Carolina State. Bd. of Education* v. *Swann,* 402 U.S. 43 (1971), the Supreme Court stated:

> We likewise conclude that an absolute prohibition against transportation of students on the basis of race, 'or for the purpose of creating a balance of ratio', will . . . hamper the ability of local authorities to effectively remedy constitutional violations. As noted in *Swann, supra,* at 29, bus transportation has long been an integral part of *all* public educational systems, and *it is unlikely that a truly effective remedy could be divised without continued reliance on it.* 402 U.S. at 46 (emphasis added).

The above statement must be read in conjunction with the Court's reference to "the implicit command of *Green,* that *all reasonable methods be available* to formulate an effective remedy." 402 U.S. at 46 (emphasis added).

In the light of these cases, and indeed as a general matter of equal protection theory, the Moratorium and the EEOA are glaringly inconsistent with the letter and the spirit of Congress' commission under § 5 of the Fourteenth Amendment to "enforce, by appropriate legislation, the provisions of this article;" and hence, are unconstitutional.

Following *United States* v. *Guest,* 383 U.S. 745 (1966) and *Katzenbach* v. *Morgan,* 384 U.S. 641 (1966), precedent favored those who saw Congress as at least an agent co-equal with the federal courts in effectuating Fourteenth Amendment rights. But the five opinions of the "Voting Rights Cases", *Oregon* v. *Mitchell* 400 U.S. 112 (1970), leave the true nature of § 5 Congressional power unsettled. Whether the correct opinion is that of the late Justice Harlan as enunciated in *Morgan, supra,* that is, that Congress may precede the Court in elaborating on a Fourteenth Amendment guarantee only when the Court subsequently agrees that the specific legislative findings demonstrate a violation of a constitutional right, 384 U.S. at 666-69 (Harlan and Stewart J. J. dissenting); or whether the correct view is that of Justice Brennan who said for the Court, "Correctly viewed, § 5 is a positive grant of legislative power authorizing Congress to exercise its discretion in determining whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment" 384 U.S. at 651, the following principle holds. As with the Necessary and Proper Clause, Art. I, § 8, cl. 18:

> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819).

This standard was affirmed in *Guest*, *supra* at 783–84 (Brennan, Douglas, J. J. and Warren, C. J. concuring) and *Morgan*, *supra* at 649–51. The standard would be subject to no less deference (indeed probably greater) with those taking the narrow view of Congressional § 5 power. For example it would be absurd to argue that busing itself satisfies Justice Harlan's test for legitimate Congressional action i.e. that it is "an established violation of a constitutional command." *Morgan*, 384 U.S. at 667 (concurring opinion). And Justice Stewart, joined by the Chief Justice and Justice Blackman, stated: generally in the Voting Rights Case that Congressional power must be exercised consistently with the letter and spirit of all constitutional guarantees. *Oregon*, 400 U.S. 112, 281, 287 (1970). Justice Brennan states in a footnote to his opinion for the court in *Morgan:*

> Contrary to the suggestion of the dissent, ... § 5 does not grant Congress power to exercise discretion and to enact 'statutes so as in effect to dilute equal protection and due process decisions of this Court.' We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. . . . 384 U.S. at 641.

There can be no doubt that the Moratorium's elimination of what has often been a necessary remedy, and of which the Supreme Court has said ". . . it is unlikely that a truly effective remedy could be devised without continued reliance on it." *North Carolina State Bd. of Education*, supra at 46, is patently inconsistent with the letter and spirit of Congress' duty to "enforce" the equal protection clause.

The same holds true for the EEOA bill since it "restricts, abrogates [and] dilutes" these guarantees by relegating perhaps *the* most effective remedy to the lowest priority, and frustrated plaintiffs to delay and inefficiency in vindication of their rights.

Some might say that greater latitude should be allowed for Congressional action under § 5 if the legislation is grounded on an appraisal of social conditions and a resolution of competing values, both calling for exercise of the legislature's special competence in fact-finding. One commentator suggests that Congress may have virtual *carte blanche* in acting pursuant to § 5 with limited scope for judicial review.[1] This broad power would be qualified only by those very specific guarantees in the Bill of Rights which have been incorporated into the Fourteenth Amendment (such as freedom from double jeopardy); or by "a universal and relatively absolute rule of law" which could be applied in a due process or equal protection case (such as the absolute that the Equal Protection Clause would proscribe, by its very terms, Congressional authorization to the states, to establish segregated schools). Congress would be unable to diminish constitutional guarantees in the former case, "except possibly in a few very marginal cases," because there would be "no room for judgments upon particular conditions or differences of degree," and thus no occasion for judicial deference to legislative fact-finding. In the latter case, the terms of the guarantee are so unequivocal as to nullify any opportunity for material fact-finding.

Apart from these qualifications, when Congress modifies a Fourteenth Amendment right based on an appraisal of social conditions, traditional judicial deference to the fact-finding expertise of the legislature argues for a limited scope for review, and a larger Congressional role in defining constitutional rights.

Notwithstanding this analysis, however, Professor Cox recognizes a large exception, an area where the Court exercises a more vigorous evaluation of the factual findings supporting legislation. For when the claim is based on a preferred right, that is one touching on First Amendment freedoms or involving legislation with a suspect classification (such as race), and when the claim is that the legislation impinges on the right, the Court scrutinizes the legislative determination.

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[1] Cox, *The Role of Congress in Constitutional Determinations*, 40 U. Cinn. L. Rev. 199, 247–61 (1971).

Green, Alexander, and the impetus to equal rights that has been our national committment for the last several years, enshrine equal educational opportunity regardless of race as a constitutionally-protected right requiring immediate remedy; is it reasonable to expect that legislation diminishing this right should receive less rigorous scrutiny than that which would impair other preferred rights? How can the Moratorium—a total suspension of any possibility for federal court-ordered busing; or the Equal Educational Opportunities Act—a severe, across-the-board restriction of this essential remedy, satisfy the rigorous review that should be required before restricting this remedy necessary for vindication of a constitutionally-protected right? They obviously cannot so pass review, for in effectively abolishing the remedy, they effectively grind down the right.

B. Congress Article III power to control the existence of the lower federal courts, and the appellate jurisdiction of the Supreme Court, is qualified by the principle that in so acting the legislature must not violate the letter or spirit of any other constitutional provision

Our preceding argument that these two bills are inconsistent with Congress' duty under § 5 of the Fourteenth Amendment is sufficient in itself to warrant the judgment of unconstitutionality. We include the subsequent discussion to meet those who would claim that Congress' Article III power is unchecked by any other constitutional guarantee. The phrasing of that Article is indeed broad:

> Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish . . . .
>
> Section 2. cl. 2. . . . . In all other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

Nevertheless, constitutional authority and sound logic are clearly contrary to the claim. *Marbury v. Madison*, 5 U.S. (1 Cir.) 137 (1803), affirmed the vital axiom that Acts of Congress are subject to the superior law contained in the Constitution, and that when the two unavoidably clash, it is the judiciary's function to declare the latter paramount. Justice Stewart said in his partial concurrence to the Voting Case, *supra*, 400 U.S. at 287.

> But even though general constitutional power clearly exists [such as Article III power], Congress may not overstep the letter or spirit of any constitutional restriction in the exercise of that power. For example, Congress clearly has power to regulate interstate commerce, but it may not, in the exercise of that power, impinge upon the guarantees of the Bill of Rights (or, by analogy, the equal protection clause of the Fourteenth Amendment].

Battaglia v. General Motors Corp. is a specific illustration of a federal court first satisfying itself that a restriction on its jurisdiction to hear employee claims for back pay did not deprive the petitioners of their property without due process or just compensation under the Fifth Amendment; having done that, it sanctioned the jurisdictional limitation. 169 F.2d 254, 257 (2d Cir. 1938).

Simple logic compels the conclusion that Article III power is subject to the other fundamental guarantees. Were this not the case, the Bill of Rights and equal protection clause could be made sham; the Congress could pass rules of decision for the courts amounting to Bills of Attainder (*see generally United States v. Klein*, 80 U.S. (13 Wall.) 128 (1871)); and, in the case of these two bills, the legislature could veil Acts inconsistent with the letter and spirit of a specific guarantee in the cloak of "mere" Congressional action to control jurisdiction under Article III.

There is an independent argument that can be laid against restriction of the Supreme Court's powers of appellate review of busing orders (or their denial), as § 3(a) of the Moratorium can be read to require. This construction of the bill would infringe on the essential role of the Court in our system as insuror of uniform Constitutional interpretation and guarantor of individual rights, and thus of the Constitution's supremacy. Originally outlined by Prof. H. M. Hart,[1] his thesis has been well documented by Prof. L. G. Ratner[2] drawing on the records of the Constitutional Convention. Specifically, the Moratorium can be read to preclude the Court from correcting an unwarranted denial of the busing remedy by a state supreme court, thus leaving the plantiff's rights meaningless.

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[1] Hart, *The Power of Congress to Limit the Jurisdiction of the Federal Courts: An Exercise in Dialectic*, 66 Harv. L. Rev. 1362, 1364–65 (1953).

The essential role is also underscored here by the terms of § 1 of the Fourteenth Amendment which plainly contemplate federal enforcement against state violation.[3] If the Moratorium is to exclude all federal courts, including the Supreme Court, from reviewing such denials, then federal enforcement would have to rely on the executive, or the legislative branch. But surely neither of these is the institution to review the facts of particular cases and claims that the state courts had, by failing to order the necessary remedy, left unfulfilled the right.

For these reasons, § 3(a) must be construed so as to except the Supreme Court, and preserve its essential role, or risk unconstitutionality.

C. *The Moratorium by purporting to supplant federal court definition of the scope of the Fourteenth Amendment and the remedies necessary to effectuate it, is a gross violation of the separation of powers principle and a direct threat to Constitutional supremacy.*

Finally, we note with respect to the Moratorium, that findings (3), (4), and (5) state in effect that Congress is not just co-equal in determination of the Fourteenth Amendment's scope (a notion, as we have seen, that is far from established), but that Congress can preclude *all* Supreme Court definition of what the Fourteenth Amendment requires in a given area! Whether or not there may be a constitutional right to busing, this strikes us as a fundamental and disconcerting violation of the principle of a government of three branches, co-equal and co-ordinate. As Chief Justice Marshall said it in *Marbury:*

> It is emphatically the province and the duty of the judicial department to say what the law is. . . .
>
> If then, the courts are to regard the constitution, and the constitution is superior to any ordinary act of the legislature, the constitution, and not such ordinary act, must govern the case to which they both apply. 5 U.S. (1 Cr.) at 176.

If the Congress may suspend judicial definition of the scope of the Fourteenth Amendment and of the remedies that may be necessary to effectuate it, what further remedies and rights might not the legislature suspend in response to a heated electorate, but under a veil of "reasonableness"?

Our civil liberties are too dear to be left to the clutches of the passing majority. We respectfully submit that whether one is pro-busing, or anti-busing, one should be *for* the Constitution, *for* the independence of the judicial branch, and *for* the integrity of its processes of decision—these bills are an assault on each of these.

STATEMENT OF HON. J. HERBERT BURKE, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, in my two decades of serving the people as an elected official, first on the local level and now on the national level, I do not believe that I have witnessed such a persistent, emotional issue as the controversy over the busing of children to achieve racial balance in our public schools.

All of us have, in the past, received a good number of letters on such issues as taxes, the war, gun registration, and on many other matters, but busing is, and will be a persistant issue; one which we in the Congress, should face honestly and with resolute determination.

I feel it is my duty to testify today in favor of H.J. Res. 620 and an accompanying measure which I introduced, H.J. Res. 606, both of which call for a Constitutional Amendment which will outlaw the busing of children to achieve a racial balance in our schools, and which, if enacted, perserve the concept of neighborhood schools.

The issue should be the proper and equal education of all children rather than the busing of our children to achieve racial balance, yet, the question of busing has probably become one of the hottest national issues confronting all of us today. It grew from a spark in the 1960's when federal agencies ordered mixing plans of students in order for school districts to qualify for federal monies. It became a national problem when federal courts upheld the views of the national planners, contrary to the intent of the 1964 Civil Rights Act.

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[2] Ratner, *Congressional Power over the Appellate Jurisdiction of the Supreme Court,* 109 UNIV. PENN. L. REV. 157, 160-68 (1960).

[3] All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In March of this year, when Florida became the first state to hold a referendum on the subject, 74 percent of the voters indicated they oppose busing and support the Constitutional Amendment set forth in H.J. Res. 620. This support came from all areas of the State, including two counties with a majority of its population composed of Black citizens, as well as from one county with an almost equal population of Whites and Blacks. In Gadsden County which has a population of 15,933 Whites and 23,228 Blacks, the vote for the Constitutional Amendment was 4,639 in favor, and 1,727 against.

In Hamilton County, with a population of 4,695 Whites and 3,083 Blacks, the vote was 979 for the amendment and 213 against. In Jefferson County with a population of 3,874 Whites and 4,897 Blacks, the vote was 1325 for and 458 against.

Florida, however, is not alone in voicing its opposition to busing. National polls consistently show a strong resentment in almost every part of the Nation to the busing of students. Even the delegates to the National Black Political Convention, which was held in Gary, Indiana voted overwhelmingly in opposing busing and in favoring local schools.

I have never felt that the protection of the rights of the minorities call for overruling the equal rights of the majority. To solve our racial problems in such a way will only lead to further polarization of the races. Yet, despite this danger, we are witnessing federal judges who enjoy the comfort of lifetime appointments, imposing radical sociological views on the majority of the American people.

What it really amounts to is a brand of judicial dictatorship by judges who under the protection of their judicial robes legislate by judicial decree for social expediency rather than to interpret the law within the scope of the Constitution.

There seems to be little hope for the majority of the people from our Supreme Court. On April 20, 1971 the High Court in SWANN, et al. V. the CHARLOTTE (North Carolina)-MECKLENBURG Board of Education, et al. held: "That assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system is supported by record."

The decision further states . . . "That desegregation plans cannot be limited to the walk-in school."

While the federal courts, and perhaps the U.S. Supreme Court will not alter their views, it should be apparent to all that the majority of Americans resent their rulings as a usurpation of their rights of freedom of choice and an invasion of the constitutional concept of the preservation of neighborhood schools.

Meanwhile, thousands of youngsters are caught in the maze of objections.

I strongly believe that all of us should abide by the law, but one can hardly blame the thousands of parents who are wondering when the Court will begin interpreting the laws as passed by the legislature in accordance with the Constitution, instead of ignoring the Constitution or passing law by judicial dictate.

It is my honest conviction that most Americans want quality education for all children, regardless of color or creed, but do not honestly believe in destroying the pride of children in their neighborhood schools with busing as the answer.

Most parents, who want good education for their children will move to areas where it is provided. This is the principle of the neighborhood school that we have all accepted and this is why higher taxes are paid in some neighborhoods than in others. State and local taxes have gone up and a large part of this money has gone to school systems.

Those who disguise the busing of students as a means to better education either ignore the fact, or fail to realize that busing is used mainly in rural areas to transport students to the nearest school in their area. School busing in urban areas is a fairly new concept for it was not too long ago that most urban students walked to school or used public transportation.

The only honest answer is not busing, but is, instead, quality education for all children. This is a fact that most of us recognize today. It is true perhaps that we should have been concentrating our efforts on this in the past, but the truth is that populations of the urban areas have changed in the past few years. New people moved in while others moved out. Neighborhoods have changed and so has the concept of education.

The costs of education have risen tremendously and our American taxpayer, namely, the middle class working man, who carries the greatest brunt of the taxes levied is beginning, and I think rightfully so, to ask: "What has happened to our rights?"

President Nixon, in his message to Congress on March 20th placed the legislative responsibility on our shoulders. Rregrettably, if the Supreme Court and the lower courts had ruled on that part of the 1964 Civil Rights Act, which was passed in the 88th Congress and forbid the busing of students to achieve racial balance, this issue would be mute today.

The problem would also be solved if the courts would heed the various amendments to some education appropriation bills forbidding the use of federal funds for the purpose of busing to achieve a racial balance.

Also in his recent speech, the President proposed a moratorium on all new busing and asked the Congress to enact legislation to halt busing for the sole purpose of promoting racial balance, and once again called for the Congress to pass the Quality Education Act so that standards in inferior schools can be upgraded to an acceptable level.

I regret that the question of busing must be the subject of an Amendment to the Federal Constitution, but if such an Amendment is the only answer then so be it.

To those who argue that this method is too extreme, I say let our courts quit legislating. Let the majority retain the rights granted them as free Americans.

I am sure that the majority has learned to respect the rights of all Americans—Black, White, Red and Yellow. The rights granted to all under our Constitution are too great for the courts to ignore.

It is then our judiciary that has lost faith in the justice of the American people, who have lost faith in our Constitution, or in each other.

This Constitutional Amendment may help restore that faith once again.

STATEMENT OF ERMON O. HOGAN, PH. D., EDUCATION DIRECTOR, COMMUNITY DEVELOPMENT DEPARTMENT, NATIONAL URBAN LEAGUE

Mr. Chairman and members of this Subcommittee, My name is ERMON HOGAN and I am the Education Director for the National Urban League.

The National Urban League is a professional, non-profit, non-partisan community service organization governed by an Interracial Board of Trustees and founded in 1910 to secure equal opportunity for black Americans and other minorities.

The League seeks solutions to problems of income, employment, education, housing, health and civil rights for the masses of black and brown Americans who want a better way of life. It recognizes that any meaningful and significant changes in these problem areas rest with changing the network of systems which produce black-white disparities.

It works through local affiliates in 100 cities located in 37 States and the District of Columbia, five regional offices and a Washington-based Department of Government Affairs. These units are staffed by some 2,000 persons, trained in the social sciences and related disciplines, who conduct the day-to-day activities of the organization throughout the country.

Strengthened by the efforts of more than 25,000 volunteers who bring expert knowledge and experience to the resolution of minority problems, the National Urban League is unique as the only national educational and community service agency which devotes its entire resources to the use of social work and research techniques for bettering the lives of the disadvantaged and for improving race relations.

I am here today at your invitation to share the Urban League's views on the "Student Transportation Moratorium Act of 1972" and H.J. Res. 620 and related proposed amendments to the Constitution.

Mr. Chairman, the National Urban League, is gravely concerned about the proposed Constitutional Amendment and other pending legislation designed to call a halt to busing as a desegregation tool and to restrict the power of the court in fulfilling this national commitment. Mr. Vernon E. Jordan, Jr., Executive Director of the National Urban League, expressed his concern March 30, in testimony before the Senate Subcommittee on Education. At that time, he said:

"For eighteen years, black Americans and concerned white citizens have labored to win compliance with the Supreme Court's 1954 *Brown* vs Board of Education decision. For nearly two decades, we have put up with violence, intimidation, open defiance of the law, and a multitude of strategies designed to maintain segregated schools. Now, as we stand poised at the brink of the final dismantling of the dual school systems, the Congress is considering not only these newly proposed bills, but several other bills and proposed Constitutional amendments, all of which would return us to the evil system from which we are struggling to escape.

"The current crisis over desegregation is not so sudden as many would have us believe. For nearly two decades the law has been defied at will; for nearly two decades, school systems have had the opportunity to correct past segregationist patterns. And throughout these nearly two decades of deceptions and lies, the executive branch, the Congress, and above all, the courts, have been stalwart in insisting upon the desegregation of the schools. I would hope that this committee and this Congress will refuse to become a party to the betrayal of the ideals that have formed the actions of the government over these past eighteen years."

Testimony presented before this committee demonstrates the extent of nationwide polarity surrounding this issue. In fact, this has become so emotion-laden that it has gotten totally out of perspective. We would, therefore, like to see this issue placed in proper perspective *which means exploding many of the false premises upon which HR 13416 and House Joint Resolution 620 are based.* We would also like to inform you that the majority of black people still favor school integration as a viable goal and support the use of busing as a tool to achieve it.

The argument that court-ordered busing imposes unreasonable burdens upon school children is a myth. In its statement of "findings and purpose" H.R. 13916, however, asserts that "attendant increases in student transportation have caused substantial hardship to the children thereby affected . . ." *If any substantial instances can be demonstrated, and we doubt it, the remedy lies in the courts and not in legislation or in Constitutional amendments that would frustrate the larger purpose of desegregation.* In many southern school districts, court-imposed busing plans have resulted in less travel time and less riding mileage than previously.

It is also noteworthy that in many districts, black children have borne the major part of the busing burden, as previously all-black schools have been closed because white district officials and parents refused to permit white children to attend them. Therefore, it is generally black children who must be bussed to previously all-white schools.

Another "finding" accompanying the proposed bill is that many local educational agencies have been required to re-organize their school systems, re-assign students, and engage in *extensive transportation of students for the purpose of desegregation.*

Mr. Chairman, we believe that the so-called finding is a gross distortion of the facts. The issue is not one of massive busing to achieve racial balance. Court-ordered busing takes place for one reason only—to desegregate segregated schools.

The Metropolitan Applied Research Center (MARC) recently compiled a "Fact Book on Educational Transportation" which states that:

"Up to the present, pupils are being transported to schools for generally accepted economic, logistic, and general special education reasons, e.g., school reorganization and consolidation, distances in rural and suburban areas and absence or inconvenience of public transportation; for special cooperative educational and vocational training services, and the transportation of handicapped or other special groups of students."

"The best estimate based upon data available to date is that *approximately 3% of students are being transported to schools for purposes of school desegregation—or to obtain racial balance in public schools.*"

Another "finding" of H.R. 13916 concludes that, in many cases, local educational agencies will be required to "expend large amounts of funds for transportation equipment, and for its operation, thus diverting those funds from improvements in educational facilities and instruction which otherwise would be provided." To that conclusion, we say that school districts have always spent large sums of money on the transportation of school children. According to the

MARC Fact Book, transportation of students to public schools with public funds has been taking place in 48 of our 50 states since 1919.

In a recent speech by Senator Walter F. Mondale, it was pointed out that nearly 20 million pupils were transported some 2.2 billion miles at a cost of nearly $1 billions in public funds in 1971–72. While this cost is high, it accounts for only about 5% of the total cost of public education. A recent study conducted by the Department of Transportation showed that the total cost of public school busing increased from $1.5 billion in the 1970–71 school year to 1.7 billion in 1971–72. Of the 200 million increase, 95% was due to population growth, 3% to school centralization and less than 1% each for desegregation, safety factors and other causes.

Mr. Jordan, in a recent nation-wide television statement on busing, said:

"Busing is a tool to achieve quality, integrated education. So long as the nation creates and maintains pockets of racial and economic isolation, it cannot afford to dispense with any mechanism that will implement and strengthen the role of its public schools in providing a democratic environment that prepares our children to live in a world, that is three-fourths non-white. To have busing become prey to the kind of hysterical and irrational debate that can only polarize the nation further is tragic; to have busing eliminated would be disastrous."

There is a clear and present danger that busing as a tool to achieve quality, integrated education, may well be eliminated under the provisions of the busing moratorium called for in H.R. 13916. *Placing a ban on all new or additional busing until July 1, 1973, could set the stage psychologically to make it easier for the nation to accept repressive legislation leading to the re-establishment of legally sanctioned dual school systems.* The danger is even greater when one considers that the bill would also allow a local educational agency to halt busing already in progress if it had its beginning in a court order or a desgregation plan submitted under Title VI of the Civil Rights Act of 1964.

Dr. Vivian W. Henderson, the distinguished President of Clark College in Atlanta, Georgia, puts the issue in another way. In an address to the National Policy Conference on Education for Blacks three weeks ago he said:

"In all the talk there has been about the evils of busing, I haven't heard enough about a fact that has been documented by scholars, verified by our Supreme Court and widely accepted by a growing proportion of Americans—the simple proposition that racial segregation, however caused, creates for its minority group victims a permanent sentence to second-class citizenship. There is no way to undo in later life the disqualificaitons imposed by racial segregation."

Thus, Mr. Chairman, we are opposed to the provisions of the "Student Transportation Moratorium Act" because it would permit racists the privilege of segregating, a privilege they have been fighting to maintain since Plessy vs Ferguson.

As noted earlier, much has been said on where the majority of blacks stand on the busing issue and I would like to comment briefly on that subject. A recent Gallop Poll survey indicated that 44 percent of blacks support busing while 40 percent oppose it.

The National Urban League's Research Department has analyzed three national surveys conducted during the period 1970–1972 to determine the extent of, and attitudes toward, school busing. Mr. Chairman, I will submit this League study to the Subcommittee for the record, but I would like to share its major findings with you.

Although the proportion of white people opposed to school busing for purposes of desegregation remained about the same (77–78%) between 1970 and 1972, the proportion of blacks opposed to it declined sharply according to two Louis Harris surveys conducted over that period.

Over the past two years, the Louis Harris survey states that the proportion of blacks favoring busing steadily increased until a majority (52%) now favor it. Although about 40 percent of black people were opposed to busing in 1970, only one-third opposed it in 1972.

The Harris poll also shows that although about half of all white children take a bus to school, only 5 percent are being bused for purposes of school desgregations. At the same time, while one-fourth of all black children are bused to school, approximately 15–20 percent of them are bused for reasons of desegregation.

In other words, among those children who are bused to school, only one-tenth of the white children, but approximately 50–75 percent of the black children who are bused are bused for purposes of desegregation.

These data strongly suggest that most of the present busing for desegregation is one-way; blacks being bused to predominantly white schools. Thus, it is black, not white, children who are currently bearing the brunt of busing for desegregation purposes, and it is the black community who rejects legislation prohibiting their children's right to use busing as a desegregation tool.

House Joint Regulation 620

House Joint Resolution 620 is an outright attempt to put an end to desegregated public education. There is no guile, no finesse, no veil—just the bare statement that "no public school student shall, because of his race, creed, or color be assigned to or required to attend a particular school."

Needless to say, we are strongly opposed to the Lent resolution and other related legislative proposals now before this Subcommittee designed to return the nation to a dual-school, separate—but—equal society mandated by the *Plessy vs. Ferguson* decision of 1896. Such a doctrine is clearly a denial of the equal protection clause of the Constitution. If we are to remain a free nation with pretensions to democracy and openness, that sacred right guaranteed by the 14th Amendment must not be trampled upon. The moratorium on busing pits the political right to decide the advantage and priorities of the majority against the duty of the Court to provide equal protection under the laws.

Neither H. J. Res. 620 nor any of the other proposed anti-busing Constitutional Amendments will solve the real problems of education. A return to segregation will leave schools in black communities underfinanced and inadequately operated, and it will promote further hostility in an already polarized society.

Therefore, if legislation is called for, it should be legislation that increases the speed of the desegregation process; it should be legislation that supports the Courts rather than diminishes them; it should be legislation that provides ample funds to educate our children; it should be legislation that once and for all ends the poverty and deprivation that afflict millions of minority youngsters; and it should be legislation that heals our divided nation and brings it together again, rather than legislation such as that before you now, which rubs salt in the wounds of a racially divided society and drives contending forces further and further apart.

Chairman **Brooks**. We will now adjourn until Wednesday at 10 a.m.

(Whereupon, at 12:45 p.m. the committee adjourned to reconvene Wednesday at 10 a.m., May 10, 1972.)

SCHOOL BUSING

WEDNESDAY, MAY 10, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment, in room 2141 Rayburn Building, Hon. Emanuel Celler (chairman) presiding.

Present: Representatives Celler, Hungate, Mikva, McCulloch, and McClory.

Staff present: Benjamin L. Zelenko, general counsel, Franklin G. Polk, associate counsel, and Herbert E. Hoffman, counsel.

Chairman Celler. The committee will come to order. Our first witness today is the Honorable Stephen Horn, Vice Chairman, U.S. Commission on Civil Rights.

Mr. Horn.

STATEMENT OF HON. STEPHEN HORN, VICE CHAIRMAN OF THE U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY LAWRENCE GLICK, DEPUTY GENERAL COUNSEL; JOHN BUGGS, STAFF DIRECTOR; AND MARTIN SLOAN, ASSISTANT STAFF DIRECTOR FOR CIVIL RIGHTS PROGRAM AND POLICY

Mr. Horn. Thank you very much, Mr. Chairman and Congressman McClory.

Let me introduce the staff that accompanies me this morning. On my right is Mr. John Buggs, Staff Director Designate of the Commission. On my left, Mr. Larry Glick, Deputy General Counsel, and shortly joining us will be Martin Sloan, Assistant Staff Director for Civil Rights Program and Policy.

Mr. Chairman, let me say on behalf of Father Hesburgh and six members of the Commission how grateful we are for the interest that you and the colleagues of both parties on this committee have taken in the work of the Commission and the recent legislation that you successfully ushered through the House in terms of our extension.

Mr. Chairman, I am Stephen Horn, Vice Chairman of the U.S. Commission on Civil Rights. I wish to thank you for the opportunity to testify on H.R. 13916, the Student Transportation Moratorium Act of 1972.

H.R. 13916 is one of a number of proposals which attempt, through congressional action, to prevent or limit further efforts to desegregate our public schools. It was sent to Congress by the President and accompanied by a supplementary measure, H.R. 13915, the so-called Equal Educational Opportunities Act of 1972.

The Commission on Civil Rights has consistently opposed such legislation. On March 29, the Commission issued a statement expressing our deep concern about the President's message to Congress and the proposed legislation on busing and equal educational opportunities. I believe that statement already has been made a part of the record of these proceedings, Mr. Chairman.

As you know, the busing moratorium bill is designed to stop any increase in transportation of students for the purposes of desegregation until July 1, 1973, or the date of enactment of H.R. 13915, or a similar proposal which would establish permanent limitations on school desegregation.

It is our view that congressional action limiting school desegregation would have a negative effect on racial relations in the country and would unsettle and thwart the progressive development of constitutional law in this area.

Despite protestations to the contrary, legislation of this type will not bring us together as a people.

In fact, it will divide us as a people. H.R. 13916, and its supplementary measure, H.R. 13915, cannot provide true equality of educational opportunity in this land. For no matter how many dollars are poured into educating the disadvantaged, it avails nothing if our children—black, brown, yellow, red, and white—are educated in isolation under the rubric of "stick with your own kind."

The legislation will amount to a declaration that national policy henceforth will tolerate the continuance of racial isolation in our schools.

We have had enough bitter experience in recent years with the consequences of racial animosities to persuade us, that as a nation, we should avoid such a declaration.

Many of the advocates for this legislation, no doubt, honestly believe it will not perpetuate a policy of racial isolation in our schools. But H.R. 13916, and its supplementary measure, H.R. 13915, can have no effect other than to bring an end to the continuing process of school desegregation. This would be accomplished by redefining what constitutes a denial of equal protection of the laws in education and by hamstringing the ability of the courts to provide relief.

FINDINGS UNSUBSTANTIATED

The legislation sets forth a number of proposed findings by Congress which purport to state why it is necessary for Congress to act. Some of the key findings of fact on which this legislation is based are demonstrably wrong.

For example, H.R. 13915, the "Equal Educational Opportunities Act of 1972," declares in its findings that the dual schools system has been virtually disestablished. This conflicts directly with school enrollment statistics from the Department of Health, Education, and Welfare, which show that in the 1971–72 school year, approximately one-third of all black students in 11 Southern States are attending nearly all-black schools—those with between 80- to 100-percent minority enrollment. These figures show that, while we have made a great progress within the last 3 years to desegregate schools, we still are a long way from the elimination of the dual school system and its vestiges.

BUSING NOT EXCESSIVE

Both bills make findings that student transportation for the purpose of school desegregation has required school districts to expend large amounts of funds on such transportation. Both find that school districts have been required to engage in extensive transporation of students for the purpose of desegregation. These findings simply are not supported by the facts. Extensive student transportation long has been a fact of life in America. Since 1921, the number of children transported at public expense has risen from 600,000 to nearly 20 million. The number of buses has jumped from about 60,000 in 1930 to about 256,000 at the beginning of the last school year. During the 1970–71 school year, school buses logged over 2.2 billion miles at a total cost of $1.5 billion. From coast to coast, 43.5 percent of the public school enrollment is bused.

Mr. McCulloch. Mr. Chairman, I should like to interrupt the witness at that point. Do you have any figures showing the number of accidents that took place while traveling an almost unbelievable total number of miles, and the number of people, if any, who lost their lives?

Mr. Horn. Congressman, I was shortly going to introduce a study which we asked Secretary Volpe in the Department of Transportation to complete for us, which lists material to answer that question, but let me refer to it now. Our exhibit C of this study that I will submit for the record summarizes material on accidents relating to pupil transporation since 1961, a little over a decade.

We do not have the 1972 data, but we found that the number of accidents in the last decade in this fantastic number of buses and almost 20 million children, were 9,246; the number of students injured were 2,906; the number killed were 46; and total number of buses involved, this is really for 1962, was 190,753.

Now, looking at the accidents by the decade we started out with, 9,000 roughly as I mentioned in 1961–62, in 1962, there were 10,000 accidents. In 1965, that jumped to 32,000 and stayed fairly stable until 1968–69, 37,000 to 39,000; and in 1970, the last year for which we have figures, there were 42,000 accidents.

Now, of those accidents which could be defined as everything from a dent in the fender to the tragic accident that recently occurred in New York, which had nothing to do with desegregation but was a school on an outing hitting a railroad, raised the total injured in 1972 to 39,000.

The number killed was 75. If we look back a decade earlier when no one could say there was extensive busing for desegregation, we find the total number killed was 65. Total number of students injured 2,100. So, while students injured have gone up, the number killed has gone up only slightly. The number of buses has increased in that period from 187,000 over the decade to 285,000.

Now, the National Safety Council's latest statistics show that while there were 2.4 fatalities in private automobiles and 0.29 in airplanes, the figure for schoolbuses is 0.06.

In other words, it is safer to ride a schoolbus in this country than it is to take a transcontinental jet, which I hope will dispel some of the mythology we have heard in this area.

Chairman Celler. Last week we heard testimony from Professor Pettigrew of Harvard who said there are more accidents among children who are pedestrians and walk to school than those students who are bused to school.

Mr. Horn. Mr. Chairman, I do not doubt that a bit. I suspect a lot of those accidents would be students riding by means of bicycles to schools as well as walking. Despite some tragedies that occasionally get in the news such as the New York situation. The fact is, as a student I was figuring out how many miles I had been bused when growing up in rural California.

Between first grade and high school I was bused 50,000 miles to get my education. The shortest bus trip I had since I grew up on a farm was 5 miles in the morning because I was the last on. At night I was the last out, so it took me 15 miles to get home. In high school, I had a 30-mile round trip to get my education. I do not believe that I or any of the students I grew up with suffered in the process. I do not say riding buses is fun, but if it is the difference between an inferior education and a quality education, we long ago in America, especially in rural America that Congressman McCulloch and I come from, decided that school consolidation was in the public interest rather than continuing one-room schools, to have eight different levels in various levels built within each level.

From coast to coast, 43.5 percent of the public school enrollment is bused. As I say, this has been substantially true for the last three or four decades in the United States.

COST

To be sure, a schoolbus is not an inexpensive item. The average schoolbus costs $8,500.

However, pupil transportation is a relatively small part of the Nation's total education budget. Down through the decades, although the number of schoolchildren bused has risen substantially, that part of the education budget which goes for pupil transportation has stayed about the same. In 1933, the expenditure for pupil transportation was 3.5 percent of the total cost of education; in 1971, it was 4 percent.

In other words, the cost of busing as proportion of the total cost of elementary and secondary public education in America rose a half percent in a generation, despite the increasing number of buses, despite the increasing cost of buses and recognition that busing is just the same as buying chalk and blackboards and other supplies in the school system.

The Department of Transportation, at the request of the Commission, prepared a report on school busing.

Mr. Chairman, I request permission to have the Commission's questions to the Department of Transportation concerning schoolbusing and the report which was sent to the Commission by Secretary of Transportation John Volpe made a part of the record of this hearing.

Chairman Celler. That information will be received for the record at this point.

(The document referred to follows:)

U.S. COMMISSION ON CIVIL RIGHTS,
Washington, D.C. January 31, 1972.

HON. JOHN A. VOLPE,
Secretary of Department of Transportation,
Washington, D.C.

DEAR MR. SECRETARY: The Commission on Civil Rights is in the process of gathering data on school busing and would appreciate your Department's assistance by furnishing the following data:

(1) The student transported to public school at public expense each year since 1954, by state and region:
  (*a*) Number, percentage, racial breakdown,
  (*b*) Total cost including capital expenditures.

(2) The students transported at public expense (for any portion of their ride) who attended nonpublic schools for each year since 1954, by state and region:
  (*a*) Number, percentage, racial breakdown.
  (*b*) Total cost including capital expenditures.

(3) Referring to question No. 1, what amount of the annual increase is attributable to the following causes:
  (*a*) Population growth,
  (*b*) Centralization,
  (*c*) Safety,
  (*d*) Desegregation,
  (*e*) Other.

(4) Regarding accidents related to pupil transportation for the last ten years:
  (*a*) The number of accidents,
  (*b*) The number and percentage of students involved,
  (*c*) The number of students injured,
  (*d*) The number of students killed.

(5) The school buses in operation for each year since 1964:
  (a) Number,
  (b) Rate of increase.

(6) What is the projected number of school buses for 1972–73 based upon the school bus purchase orders received by the manufacturers.

(7) The students transported to nonpublic schools at private expense for the last five years, by state and region:
  (a) Number and percentage (estimate if necessary),
  (b) Total cost including capital expenditures (estimate if necessary).

(8) Referring to question #2 and #7, what amount of the increase in the busing of nonpublic school students is attributable to the following causes:
  (a) Population growth,
  (b) Safety,
  (c) Desegregation of the public schools,
  (d) Other.

This information will be very helpful in the completion of a Commission project on this sensitive issue.

Sincerely,

JOHN A. BUGGS,
Staff Director-Designate.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., March 24, 1972.

MR. JOHN A. BUGGS,
Staff Director-designate,
U.S. Commission on Civil Rights,
Washington, D.C.

DEAR MR. BUGGS: In response to your letter of January 31, 1972, concerning school busing, I am enclosing a brief report that relates generally to six of your eight questions.

Since this Department does not have any information on the racial composition of school bus users, we are not able to respond to your question relating to that matter. Also, since the Department's material relates to transportation of pupils to public schools, we cannot supply answers to your two questions which relate to non-public school pupils. I would suggest that you or a member of your staff may wish to discuss the report in some detail with members of the staff of the National Highway Traffic Safety Administration since that administration is the source of most of the material.

I hope that the report will be of value to you in your study.

Sincerely,

JOHN A. VOLPE.

Enclosure.

REPORT ON SCHOOL BUSING

This report has been prepared as a response to the series of questions on school busing addressed to the Department by the Commission on Civil Rights. It consists of material currently available within the Department. The attached exhibits relate generally to the following questions submitted by the Commission:

Exhibit A indicates the number of enrolled pupils transported at public expense—question (1)(e). A racial breakdown of this data is not available in DOT.

Exhibit B shows the expenditure of public funds for pupil transportation—question (1)(b).

Exhibit C summarizes the material on accidents related to pupil transportation since 1961—question (4), except for 1962. The data for 1962 is:

Number of accidents	9,246
Number of students injured	2,906
Number killed	49
Number of buses	190,753

The Federal Highway Administration (FHWA), advises that the gross data includes students who were pedestrians rather than passengers on buses such as those who had left a school bus and were struck by the bus itself.

Exhibit D gives the number of school and other buses registered from 1964 to 1970 and the number of buses used to transport pupils at public expense—question (5)(a).

The FHWA estimates that about 90 percent of the buses registered in the country as shown in the exhibit are school buses.

Exhibits A, B and D are based on reports submitted to the National Association of State Directors of Pupil Transportation Services, the National Commission on Safety Education and the Office of Education, DHEW by the Department of Education of each state. As a result, it should be noted that the data is not necessarily uniform. Some figures are estimated, some include spare buses in the totals and some are previous year figures. Some expenditure figures include capital outlay cost. The figures are reported for public schools but in some states pupils are transported to non-public schools on public school buses. These may or may not be reported in pupil rider totals. To assure absolute accuracy of data on pupil transportation, it must be obtained from the responsible department of each state.

The National Highway Traffic Safety Administration (NHTSA), has submitted information in response to the following questions:

Total cost including capital expenditures—question (1(b):

1970–71	$1,517,900,000
1971–72	$1,700,177,000

Amount of the annual increase attributable to the following causes—question (3):

(*a*) Population growth—95 percent
(*b*) Centralization—about 3 percent
(*c*) Safety—less than 1 percent
(*d*) Desegregation—less than 1 percent
(*e*) Other—less than 1 percent

Rate of increase in number of school buses—question (5)(b). Approximately five (5) percent per year since World War II.

The projected number of school buses for 1972–73—question (6). 262,000.

The Department does not have specific information on questions two and seven; both of which pertain to transportation of pupils to non-public schools. As previously indicated in some states pupils are transported to non-public schools on public school buses. In some cases such non-public school pupils may be included in the figures shown in Exhibit A.

Exhibit E contains information assembled in a nationwide personal transportation study which gives some indication of the relative magnitude of students reaching school by all means of transportation. The data is based on statistical samplings. It does not represent an analysis of a universe of data.

NUMBER OF ENROLLED PUPILS TRANSPORTED AT PUBLIC EXPENSE

1967-68

Alabama	397, 754	Maine	137, 556	Oregon	231, 559
Alaska	23, 447	Maryland	362, 270	Pennsylvania	1, 279, 362
Arizona	114, 000	Massachusetts	488, 999	Rhode Island	71, 270
Arkansas	232, 022	Michigan	745, 880	South Carolina	352, 064
California	873, 235	Minnesota	361, 478	South Dakota	38, 049
Colorado	156, 084	Mississippi	313, 466	Tennessee	422, 744
Connecticut	71, 026	Missouri	526, 252	Texas	491, 855
Delaware	55, 002	Montana	50, 675	Utah	76, 965
Florida	368, 968	Nebraska	59, 047	Vermont	48, 787
Georgia	517, 517	Nevada	17, 517	Virginia	573, 949
Hawaii	18, 000	New Hampshire	76, 759	Washington	351, 757
Idaho	85, 629	New Jersey	491, 726	West Virginia	255, 455
Illinois	759, 954	New Mexico	109, 708	Wisconsin	446, 370
Indiana	562, 523	New York	1, 317, 356	Wyoming	25, 041
Iowa	275, 931	North Carolina	603, 069		
Kansas	145, 777	North Dakota	56, 807	Total	17, 271, 718
Kentucky	388, 329	Ohio	1, 131, 560		
Louisiana	508, 007	Oklahoma	203, 161		

1968-69

Alabama	394, 864	Louisiana	525, 700	Oklahoma	197, 306
Alaska	25, 389	Maine	139, 561	Oregon	233, 222
Arizona	133, 666	Maryland	382, 307	Pennsylvania	1, 277, 463
Arkansas	222, 291	Massachusetts	480, 000	Rhode Island	82, 622
California	910, 385	Michigan	800, 000	South Carolina	325, 205
Colorado	160, 775	Minnesota	370, 696	South Dakota	41, 712
Connecticut		Mississippi	313, 517	Tennessee	435, 559
Delaware	65, 956	Missouri	548, 689	Texas	505, 346
District of Columbia	3, 700	Montana	44, 411	Utah	81, 567
Florida	387, 397	Nebraska	60, 053	Vermont	53, 408
Georgia	537, 626	Nevada	39, 156	Virginia	598, 773
Hawaii	21, 115	New Hampshire	79, 440	Washington	350, 820
Idaho	86, 750	New Jersey	535, 042	West Virginia	257, 999
Illinois	682, 346	New Mexico	113, 330	Wisconsin	486, 949
Indiana	586, 614	New York	2, 164, 569	Wyoming	25, 608
Iowa	282, 288	North Carolina	610, 760		
Kansas	162, 202	North Dakota	56, 807	Total	18, 467, 944
Kentucky	397, 099	Ohio	1, 189, 883		

1954-55

Alabama	396, 517	Louisiana	531, 633	Oklahoma	203, 127
Alaska	25, 685	Maine	145, 448	Oregon	241, 721
Arizona	139, 483	Maryland	451, 344	Pennsylvania	1, 313, 025
Arkansas	234, 107	Massachusetts	480, 000	Rhode Island	86, 753
California	1, 000, 000	Michigan	781, 8[illegible]	South Carolina	351, 323
Colorado	160, 804	Minnesota	429, 902	South Dakota	47, 250
Connecticut	328, 346	Mississippi	301, 965	Tennessee	438, 642
Delaware	71, 475	Missouri	581, 387	Texas	534, 979
District of Columbia	2, 400	Montana	49, 303	Utah	90, 543
Florida	417, 986	Nebraska	62, 479	Vermont	57, 377
Georgia	550, 066	Nevada	45, 321	Virginia	618, 960
Hawaii	30, 700	New Hampshire	85, 314	Washington	368, 192
Idaho	86, 750	New Jersey	560, 000	West Virginia	255, 222
Illinois	662, 145	New Mexico	117, 514	Wiscobsin	498, 889
Indiana	586, 614	New York	1, 520, 840	Wyoming	27, 936
Iowa	286, 732	North Carolina	629, 953		
Kansas	168, 003	North Dakota	59, 154	Total	18, 752, 735
Kentucky	420, 283	Ohio	1, 216, 211		

NUMBER OF ENROLLED PUPILS TRANSPORTED AT PUBLIC EXPENSE—Continued

1964-65

None.

1965-66

Alabama	397, 622	Maine	126, 675	Oregon	223, 671
Alaska	15, 834	Maryland	314, 095	Pennsylvania	1, 105, 179
Arizona	109, 397	Massachusetts	378, 351	Rhode Island	57, 710
Arkansas	230, 128	Michigan	685, 000	South Carolina	344, 264
California	880, 950	Minnesota	330, 974	South Dakota	31, 627
Colorado	144, 378	Mississippi	314, 880	Tennessee	420, 667
Connecticut	266, 930	Missouri	458, 813	Texas	473, 079
Delaware	49, 239	Montana	47, 880	Utah	83, 296
Florida	379, 948	Nebraska	55, 000	Vermont	39, 549
Georgia	505, 888	Nevada	24, 738	Virginia	538, 579
Hawaii	14, 394	New Hampshire	64, 093	Washington	312, 536
Idaho	80, 013	New Jersey	395, 737	West Virginia	252, 250
Illinois	495, 028	New Mexico	97, 427	Wisconsin	859, 101
Indiana	498, 611	New York	1, 239, 042	Wyoming	24, 093
Iowa	266, 098	North Carolina	592, 318		
Kansas	126, 083	North Dakota	55, 836	Total	16, 423, 396
Kentucky	369, 038	Ohio	956, 823		
Louisiana	479, 149	Oklahoma	180, 785		

1966-67

Alabama	396, 224	Maine	137, 963	Oregon	225, 454
Alaska	21, 491	Maryland	340, 082	Pennsylvania	1, 189, 250
Arizona	113, 367	Massachusetts	425, 764	Rhode Island	63, 620
Arkansas	212, 520	Michigan	730, 471	South Carolina	350, 624
California	953, 000	Minnesota	344, 193	South Dakota	35, 091
Colorado	151, 115	Mississippi	311, 244	Tennessee	414, 159
Connecticut	287, 347	Missouri	476, 975	Texas	480, 353
Delaware	52, 745	Montana	49, 509	Utah	84, 573
Florida	363, 721	Nebraska	53, 775	Vermont	43, 813
Georgia	515, 252	Nevada	27, 539	Virginia	555, 829
Hawaii	16, 002	New Hampshire	70, 408	Washington	340, 512
Idaho	60, 806	New Jersey	422, 419	West Virginia	250, 985
Illinois	557, 872	New Mexico	103, 219	Wisconsin	368, 277
Indiana	521, 769	New York	1, 330, 930	Wyoming	25, 202
Iowa	272, 420	North Carolina	597, 786		
Kansas	149, 114	North Dakota	56, 711	Total	16, 684, 922
Kentucky	373, 439	Ohio	1, 056, 127		
Louisiana	499, 700	Oklahoma	203, 161		

1961-62

Alabama	355, 800	Maine	105, 911	Oregon	191, 714
Alaska	12, 586	Maryland	252, 538	Pennsylvania	825, 908
Arizona	96, 380	Massachusetts	391, 820	Rhode Island	39, 967
Arkansas	222, 260	Michigan	545, 720	South Carolina	321, 491
California	807, 150	Minnesota	333, 014	South Dakota	21, 479
Colorado	119, 809	Mississippi	348, 000	Tennessee	389, 553
Connecticut	200, 549	Missouri	368, 501	Texas	425, 777
Delaware	35, 924	Montana	43, 382	Utah	71, 712
Florida	335, 903	Nebraska	34, 500	Vermont	32, 946
Georgia	455, 647	Nevada	16, 501	Virginia	463, 491
Hawaii	5, 371	New Hampshire	49, 063	Washington	272, 579
Idaho	74, 378	New Jersey	309, 122	West Virginia	242, 303
Illinois	422, 692	New Mexico	79, 776	Wisconsin	252, 522
Indiana	438, 980	New York	969, 583	Wyoming	22, 241
Iowa	235, 262	North Carolina	560, 667		
Kansas	112, 804	North Dakota	52, 194	Total (50 States)	13, 687, 547
Kentucky	324, 409	Ohio	795, 632		
Louisiana	408, 097	Oklahoma	193, 848		

NUMBER OF ENROLLED PUPILS TRANSPORTED AT PUBLIC EXPENSE—Continued

1962-63

Alabama	367, 908	Maine	101, 327	Oregon	207, 128
Alaska	13, 802	Maryland	269, 286	Pennsylvania	859, 458
Arizona	98, 307	Massachusetts	334, 746	Rhode Island	50, 050
Arkansas	222, 522	Michigan	565, 183	South Carolina	327, 878
California	823, 293	Minnesota	349, 846	South Dakota	24, 019
Colorado	140, 716	Mississippi	354, 922	Tennessee	399, 704
Connecticut	220, 978	Missouri	390, 089	Texas	444, 990
Delaware	38, 530	Montana	44, 766	Utah	76, 178
Florida	345, 480	Nebraska	47, 522	Vermont	35, 069
Georgia	471, 019	Nevada	19, 086	Virginia	486, 933
Hawaii	10, 632	New Hampshire	60, 063	Washington	290, 673
Idaho	75, 508	New Jersey	333, 191	West Virginia	248, 116
Illinois	422, 692	New Mexico	82, 175	Wisconsin	285, 086
Indiana	454, 117	New York	1, 037, 253	Wyoming	23, 415
Iowa	252, 525	North Carolina	575, 516		
Kansas	118, 564	North Dakota	54, 465	Total (50 States)	14, 247, 753
Kentucky	324, 409	Ohio	838, 811		
Louisiana	428, 001	Oklahoma	201, 795		

1963-64

Alabama	375, 215	Maine	107, 845	Oregon	207, 128
Alaska	14, 144	Maryland	287, 697	Pennsylvania	926, 895
Arizona	102, 794	Massachusetts	358, 285	Rhode Island	59, 671
Arkansas	227, 424	Michigan	601, 581	South Carolina	334, 878
California	839, 753	Minnesota	368, 454	South Dakota	28, 715
Colorado	153, 286	Mississippi	360, 715	Tennessee	410, 264
Connecticut	236, 743	Missouri	404, 599	Texas	456, 577
Delaware	42, 871	Montana	46, 348	Utah	77, 848
Florida	362, 877	Nebraska	48, 322	Vermont	36, 197
Georgia	484, 313	Nevada	20, 746	Virginia	505, 261
Hawaii	10, 744	New Hampshire	56, 431	Washington	298, 291
Idaho	76, 815	New Jersey	353, 363	West Virginia	252, 848
Illinois	1, 119, 021	New Mexico	91, 201	Wisconsin	308, 013
Indiana	459, 231	New York	1, 115, 470	Wyoming	23, 455
Iowa	263, 248	North Carolina	587, 064		
Kansas	123, 173	North Dakota	62, 355	Total (50 States)	15, 559, 524
Kentucky	350, 781	Ohio	872, 505		
Louisiana	448, 303	Oklahoma	199, 766		

1955-56

Alabama	326, 693	Maryland	184, 241	Oregon	144, 928
Arizona	66, 169	Massachusetts	184, 667	Pennsylvania	595, 423
Arkansas	211, 351	Michigan	389, 834	Rhode Island	36, 456
California	600, 000	Minnesota	197, 860	South Carolina	269, 285
Colorado	68, 741	Mississippi	268, 580	South Dakota	21, 000
Connecticut	128, 092	Missouri	243, 978	Tennessee	332, 945
Delaware	24, 201	Montana	35, 459	Texas	388, 161
Florida	250, 167	Nebraska	19, 500	Utah	60, 799
Georgia	374, 933	Nevada	9, 326	Vermont	23, 004
Idaho	67, 895	New Hampshire	38, 100	Virginia	385, 382
Illinois	312, 114	New Jersey	197, 567	Washington	190, 685
Indiana	337, 810	New Mexico	47, 900	West Virginia	214, 402
Iowa	177, 135	New York	570, 263	Wisconsin	149, 967
Kansas	83, 522	North Carolina	487, 712	Wyoming	18, 997
Kentucky	277, 393	North Dakota	23, 795		
Louisiana	314, 693	Ohio	604, 968	Total	10, 199, 276
Maine	77, 433	Oklahoma	165, 750		

NUMBER OF ENROLLED PUPILS TRANSPORTED AT PUBLIC EXPENSE—Continued

1956-57

Alabama	528, 286	Maryland	193, 592	Oregon	145, 775
Arizona	70, 000	Massachusetts	208, 234	Pennsylvania	626, 719
Arkansas	211, 711	Michigan	423, 550	Rhode Island	40, 491
California	654, 000	Minnesota	212, 404	South Carolina	280, 381
Colorado	74, 658	Mississippi	296, 180	South Dakota	21, 500
Connecticut	131, 183	Missouri	262, 100	Tennessee	340, 983
Delaware	26, 744	Montana	36, 281	Texas	375, 571
Florida	273, 178	Nebraska	20, 000	Utah	56, 984
Georgia	368, 109	Nevada	9, 761	Vermont	23, 004
Idaho	71, 512	New Hampshire	40, 806	Virginia	404, 685
Illinois	310, 000	New Jersey	211, 563	Washington	207, 667
Indiana	355, 440	New Mexico	49, 306	West Virginia	220, 805
Iowa	184, 680	New York	621, 990	Wisconsin	159, 661
Kansas	89, 948	North Carolina	503, 880	Wyoming	19, 754
Kentucky	287, 226	North Dakota	25, 020		
Louisiana	336, 946	Ohio	623, 878	Total	10, 683, 643
Maine	80, 658	Oklahoma	167, 077		

1957-58

Alabama	337, 421	Maryland	203, 660	Oregon	166, 765
Arizona	70, 000	Massachusetts	212, 662	Pennsylvania	675, 936
Arkansas	210, 528	Michigan	432, 251	Rhode Island	41, 557
California	654, 964	Minnesota	279, 002	South Carolina	286, 000
Colorado	81, 650	Mississippi	300, 121	South Dakota	20, 000
Connecticut	154, 033	Missouri	282, 293	Tennessee	350, 101
Delaware	29, 142	Montana	38, 339	Texas	392, 469
Florida	288, 233	Nebraska	25, 000	Utah	59, 303
Georgia	408, 701	Nevada	12, 322	Vermont	36, 677
Idaho	72, 302	New Hampshire	42, 746	Virginia	386, 557
Illinois	388, 293	New Jersey	242, 936	Washington	216, 154
Indiana	370, 620	New Mexico	58, 133	West Virginia	226, 736
Iowa	197, 091	New York	714, 125	Wisconsin	176, 913
Kansas	94, 236	North Carolina	507, 036	Wyoming	20, 018
Kentucky	301, 520	North Dakota	28, 635	Alaska	7, 859
Louisiana	349, 178	Ohio	661, 611		
Maine	85, 196	Oklahoma	163, 949	Total (48 States)	11, 343, 132

1954-55

Alabama	320, 401	Maryland	170, 664	Oregon	134, 057
Arizona	60, 000	Massachusetts	176, 209	Pennsylvania	564, 533
Arkansas	213, 020	Michigan	367, 951	Rhode Island	26, 600
California	370, 000	Minnesota	181, 787	South Carolina	254, 227
Colorado	64, 019	Mississippi	258, 533	South Dakota	20, 250
Connecticut	113, 758	Missouri	224, 561	Tennessee	323, 981
Delware	22, 131	Montana	34, 550	Texas	400, 000
Florida	244, 691	Nebraska	18, 500	Utah	57, 178
Georgia	356, 721	Nevada	8, 323	Vermont	21, 546
Idaho	66, 947	New Hampshire	35, 592	Virginia	373, 515
Illinois	267, 962	New Jersey	178, 801	Washington	187, 505
Indiana	324, 947	New Mexico	45, 495	West Virginia	211, 365
Iowa	167, 554	New York	526, 643	Wisconsin	140, 675
Kansas	82, 371	North Carolina	477, 031	Wyoming	18, 115
Kentucky	263, 567	North Dakota	21, 971		
Louisiana	305, 325	Ohio	590, 000	Totals	9, 509, 699
Maine	71, 799	Oklahoma	144, 114		

EXPENDITURE OF PUBLIC FUNDS FOR PUPIL TRANSPORTATION

(Excluding Capital Outlay)

1967-68

Alabama	$11, 789, 974	Maine	5, 639, 305	Oregon	10, 779, 112
Alaska	2, 726, 229	Maryland	19, 665, 345	Pennsylvania	51, 271, 132
Arizona	5, 025, 482	Massachusetts	25, 165, 065	Rhode Island	2, 567, 450
Arkansas	9, 255, 499	Michigan	35, 864, 760	South Carolina	6, 824, 666
California	63, 980, 113	Minnesota	25, 087, 628	South Dakota	4, 282, 615
Colorado	8, 407, 745	Mississippi	10, 522, 970	Tennessee	13, 880, 230
Connecticut	15, 651, 936	Missouri	24, 741, 773	Texas	18, 347, 459
Delware	2, 801, 866	Montana	5, 600, 000	Utah	3, 471, 470
Florida	13, 032, 700	Nebraska	5, 316, 733	Vermont	2, 760, 630
Georgia	20, 022, 167	Nevada	2, 155, 829	Virginia	18, 014, 457
Hawaii	1, 250, 000	New Hampshire	3, 878, 947	Washington	18, 624, 622
Idaho	4, 065, 836	New Jersey	29, 887, 197	West Virginia	12, 389, 919
Illinois	9, 984, 563	New Mexico	7, 313, 170	Wisconsin	32, 318, 611
Indiana	31, 051, 594	New York	87, 213, 389	Wyoming	3, 204, 019
Iowa	19, 740, 525	North Carolina	10, 574, 546		
Kansas	11, 090, 185	North Dakota	3, 388, 947	Total	$822, 595, 699
Kentucky	14, 912, 867	Ohio	37, 457, 967		
Louisiana	28, 923, 260	Oklahoma	10, 043, 195		

1968-69

Alabama	NA	Louisiana	30, 994, 779	Oklahoma	11, 957, 015
Alaska	$3, 285, 362	Maine	NA	Oregon	11, 559, 018
Arizona	5, 336, 943	Maryland	22, 189, 879	Pennsylvania	58, 313, 835
Arkansas	9, 984, 671	Massachusetts	29, 077, 178	Rhode Island	8, 573, 116
California	68, 890, 113	Michigan	29, 000, 000	South Carolina	7, 711, 469
Colorado	9, 039, 203	Minnesota	28, 369, 794	South Dakota	3, 443, 759
Connecticut		Mississippi	11, 682, 412	Tennessee	15, 284, 334
Delaware	3, 718, 771	Missouri	27, 397, 817	Texas	18, 471, 425
District of Columbia	700, 000	Montana	4, 923, 484	Utah	3, 626, 603
Florida	14, 779, 398	Nebraska	6, 037, 163	Vermont	3, 296, 820
Georgia	21, 143, 345	Nevada	2, 222, 479	Virginia	20, 589, 355
Hawaii	1, 937, 000	New Hampshire	4, 238, 503	Washington	21, 333, 069
Idaho	4, 838, 211	New Jersey	36, 486, 833	West Virginia	13, 395, 901
Illinois	10, 729, 934	New Mexico	7, 605, 290	Wisconsin	38, 168, 394
Indiana	32, 746, 748	New York	128, 390, 209	Wyoming	3, 196, 817
Iowa	21, 311, 500	North Carolina	11, 616, 273		
Kansas	13, 119, 614	North Dakota	3, 388, 948	Total	901, 353, 107
Kentucky	16, 695, 529	Ohio	40, 554, 839		

1969-70

Alabama	$13, 633, 457	Louisiana	31, 516, 715	Oklahoma	12, 467, 000
Alaska	3, 392, 162	Maine	8, 688, 603	Oregon	12, 247, 349
Arizona	2, 389, 207	Maryland	29, 014, 991	Pennsylvania	69, 530, 207
Arkansas	8, 926, 563	Massachusetts	29, 077, 175	Rhode Island	9, 301, 871
California	22, 431, 364	Michigan	35, 149, 646	South Carolina	8, 790, 583
Colorado	10, 535, 000	Minnesota	23, 543, 647	South Dakota	4, 832, 645
Connecticut	16, 102, 707	Mississippi	11, 980, 934	Tennessee	16, 253, 095
Delaware	4, 683, 063	Missouri	30, 462, 144	Texas	18, 556, 525
District of Columbia	595, 350	Montana	7, 271, 107	Utah	3, 809, 680
Florida	17, 031, 431	Nebraska	7, 339, 902	Vermont	3, 809, 376
Georgia	22, 623, 203	Nevada	2, 745, 127	Virginia	19, 632, 047
Hawaii	2, 770, 002	New Hampshire	4, 806, 527	Washington	24, 374, 672
Idaho	4, 741, 099	New Jersey	42, 000, 000	West Virginia	15, 123, 264
Illinois	40, 625, 515	New Mexico	8, 175, 366	Wisconsin	41, 491, 314
Indiana	32, 746, 745	New York	107, 156, 301	Wyoming	2, 815, 431
Iowa	22, 973, 678	North Carolina	14, 197, 653		
Kansas	14, 672, 583	North Dakota	7, 605, 725	Total	966, 135, 767
Kentucky	17, 271, 389	Ohio	44, 393, 359		

1964-65

None.

EXPENDITURE OF PUBLIC FUNDS FOR PUPIL TRANSPORTATION—Continued

1965-66

Alabama	$10, 292, 755	Maine	75, 096	Oregon	10, 207, 547
Alaska	2, 054, 599	Maryland	15, 039, 806	Pennsylvania	44, 002, 771
Arizona	4, 195, 315	Massachusetts	18, 798, 620	Rhode Island	2, 445, 191
Arkansas	7, 145, 399	Michigan	32, 000, 000	South Carolina	5, 935, 227
California	46, 760, 000	Minnesota	2—78, 547	South Dakota	3, 354, 162
Colorado	7, 500, 790	Mississippi	9, 299, 114	Tennessee	12, 538, 846
Connecticut	11, 868, 927	Missouri	20, 205, 019	Texas	18, 503, 429
Delaware	2, 349, 245	Montana	4, 740, 393	Utah	3, 309, 661
Florida	11, 037, 146	Nebraska	4, 262, 231	Vermont	2, 057, 112
Georgia	17, 306, 020	Nevada	1, 585, 333	Virginia	12, 796, 363
Hawaii	700, 020	New Hampshire	3, 217, 586	Washington	13, 958, 978
Idaho	3, 582, 452	New Jersey	20, 316, 606	West Virginia	8, 601, 234
Illinois	26, 616, 500	New Mexico	6, 429, 792	Wisconsin	24, 600, 000
Indiana	37, 505, 913	New York	71, 598, 764	Wyoming	2, 701, 787
Iowa	16, 848, 959	North Carolina	8, 129, 506		
Kansas	10, 178, 128	North Dakota	5, 610, 194	Total	696, 325, 421
Kentucky	12, 178, 096	Ohio	27, 063, 863		
Louisiana	23, 767, 920	Oklahoma	9, 023, 673		

1966-67

Alabama	$11, 406, 109	Maine	5, 187, 474	Oregon	10, 779, 113
Alaska	2, 554, 152	Maryland	17, 342, 651	Pennsylvania	50, 124, 395
Arizona	4, 575, 502	Massachusetts	20, 054, 755	Rhode Island	2, 445, 191
Arkansas	8, 889, 083	Michigan	29, 314, 588	South Carolina	6, 168, 454
California	56, 681, 066	Minnesota	24, 402, 055	South Dakota	3, 778, 272
Colorado	7, 961, 726	Mississippi	9, 815, 678	Tennessee	12, 924, 401
Connecticut	11, 823, 566	Missouri	21, 929, 159	Texas	18, 243, 464
Delaware	2, 547, 013	Montana	4, 800, 000	Utah	3, 173, 550
Florida	12, 173, 423	Nebraska	4, 866, 737	Vermont	2, 414, 476
Georgia	19, 085, 980	Nevada	1, 875, 426	Virginia	14, 410, 405
Hawaii	843, 417	New Hampshire	3, 547, 940	Washington	16, 181, 445
Idaho	3, 772, 515	New Jersey	22, 735, 065	West Virginia	10, 957, 127
Illinois	31, 471, 056	New Mexico	4, 985, 249	Wisconsin	26, 047, 460
Indiana	28, 882, 557	New York	75, 500, 000	Wyoming	2, 329, 275
Iowa	18, 269, 117	North Carolina	11, 807, 148		
Kansas	14, 026, 971	North Dakota	5, 972, 959	Total	763, 600, 617
Kentucky	13, 234, 637	Ohio	34, 367, 867		
Louisiana	26, 920, 868	Oklahoma	10, 000, 000		

1961-62

Alabama	$7, 832, 316	Maine	4, 566, 255	Oregon	8, 351, 214
Alaska	1, 390, 354	Maryland	10, 529, 350	Pennsylvania	33, 354, 603
Arizona	2, 333, 778	Massachusetts	12, 258, 599	Rhode Island	1, 465, 360
Arkansas	7, 200, 064	Michigan	22, 052, 592	South Carolina	5, 630, 631
California	37, 931, 040	Minnesota	20, 315, 763	South Dakota	1, 928, 100
Colorado	5, 782, 434	Mississippi	8, 103, 164	Tennessee	3, 712, 427
Connecticut	7, 714, 221	Missouri	16, 215, 219	Texas	18, 509, 391
Delaware	1, 592, 000	Montana	3, 742, 108	Utah	2, 192, 036
Florida	8, 671, 464	Nebraska	3, 400, 000	Vermont	1, 573, 055
Georgia	15, 231, 624	Nevada	619, 710	Virginia---	9, 781, 519
Hawaii	, 358, 305	New Hampshire	2, 354, 300	Washington	10, 221, 019
Idaho	3, 494, 650	New Jersey	16, 326, 297	West Virginia	6, 775, 890
Illinois	22, 304, 704	New Mexico	4, 825, 145	Wisconsin	15, 875, 269
Indiana	22, 732, 839	New York	51, 319, 175	Wyoming	2, 349, 420
Iowa	14, 814, 961	North Carolina	7, 062, 119		
Kansas	8, 506, 277	North Dakota	4, 666, 122	Total (50 States)	540, 168, 114
Kentucky	10, 733, 137	Ohio	17, 805, 739		
Louisiana	19, 082, 710	Oklahoma	8, 189, 614		

EXPENDITURE OF PUBLIC FUNDS FOR PUPIL TRANSPORTATION—Continued

1962-63

Alabama	$8, 311, 937	Maine	4, 609, 419	Oregon	8, 717, 171
Alaska	1, 451, 736	Maryland	11, 744, 712	Pennsylvania	35, 722, 400
Arizona	3, 330, 390	Massachusetts	13, 327, 619	Rhode Island	2, 223, 980
Arkansas	6, 231, 165	Michigan	22, 141, 320	South Carolina	5, 910, 360
California	42, 314, 242	Minnesota	20, 812, 075	South Dakota	1, 977, 290
Colorado	6, 462, 916	Mississippi	8, 390, 227	Tennessee	11, 040, 815
Connecticut	8, 590, 350	Missouri	17, 655, 155	Texas	18, 752, 944
Delaware	1, 852, 935	Montana	4, 532, 550	Utah	2, 353, 144
Florida	9, 101, 882	Nebraska	3, 657, 545	Vermont	1, 722, 675
Georgia	15, 626, 994	Nevada	1, 076, 600	Virginia	10, 515, 411
Hawaii	[1] 410, 204	New Hampshire	2, 534, 597	Washington	10, 943, 407
Idaho	3, 376, 847	New Jersey	17, 863, 248	West Virginia	8, 254, 808
Illinois	22, 304, 704	New Mexico	5, 435, 385	Wisconsin	17, 259, 677
Indiana	22, 891, 432	New York	56, 033, 774	Wyoming	2, 023, 559
Iowa	15, 365, 684	North Carolina	7, 326, 831		
Kansas	8, 855, 345	North Dakota	5, 320, 485	Total (50 States)	578, 017, 634
Kentucky	10, 733, 137	Ohio	22, 596, 894		
Louisiana	19, 743, 357	Oklahoma	8, 555, 899		

1963-64

Alabama	$8, 909, 763	Maine	4, 628, 657	Oregon	4, 677, 073
Alaska	1, 577, 272	Maryland	12, 611, 586	Pennsylvania	36, 131, 963
Arizona	3, 635, 551	Massachusetts	14, 966, 103	Rhode Island	2, 423, 000
Arkansas	7, 554, 366	Michigan	22, 346, 805	South Carolina	5, 652, 450
California	44, 629, 107	Minnesota	21, 673, 114	South Dakota	2, 119, 142
Colorado	6, 690, 697	Mississippi	8, 754, 151	Tennessee	11, 442, 426
Connecticut	9, 262, 855	Missouri	17, 770, 000	Texas	18, 887, 543
Delaware	2, 044, 185	Montana	4, 553, 734	Utah	2, 666, 339
Florida	9, 593, 403	Nebraska	3, 761, 000	Vermont	1, 759, 430
Georgia	16, 121, 365	Nevada	1, 168, 152	Virginia	11, 205, 593
Hawaii	464, 155	New Hampshire	2, 752, 375	Washington	11, 793, 911
Idaho	3, 402, 243	New Jersey	17, 992, 500	West Virginia	8, 547, 380
Illinois	25, 236, 720	New Mexico	5, 923, 409	Wisconsin	18, 845, 587
Indiana	26, 882, 274	New York [11]	63, 080, 689	Wyoming	2, 488, 005
Iowa	15, 743, 373	North Carolina	7, 645, 879		
Kansas	9, 039, 839	North Dakota	5, 566, 964	Total (50 States)	612, 310, 333
Kentucky	11, 602, 123	Ohio	23, 765, 741		
Louisiana	20, 618, 149	Oklahoma	8, 693, 020		

1958-59

Alabama	$8, 539, 372	Maryland	8, 425, 670	Pennsylvania	24, 078, 949
Alaska	1, 267, 623	Massachusetts	9, 162, 002	Rhode Island	1, 091, 451
Arizona	2, 004, 225	Michigan	17, 797, 362	South Carolina	5, 272, 134
Arkansas	5, 441, 899	Minnesota	17, 412, 497	South Dakota	1, 950, 000
California	32, 121, 611	Mississippi	7, 345, 299	Tennessee	8, 655, 831
Colorado	4, 515, 707	Missouri	13, 032, 215	Texas	15, 900, 000
Connecticut	5, 864, 449	Montana	3, 744, 141	Utah	1, 358, 105
Delaware	1, 138, 506	Nebraska	2, 470, 266	Vermont	1, 453, 415
Florida	7, 185, 558	Nevada	679, 175	Virginia	8, 156, 333
Georgia	12, 378, 257	New Hampshire	1, 920, 757	Washington	8, 163, 868
Idaho	2, 899, 422	New Jersey	12, 760, 266	West Virginia	5, 671, 674
Illinois	19, 591, 030	New Mexico	4, 230, 714	Wisconsin	12, 760, 000
Indiana	17, 693, 000	New York	39, 305, 653	Wyoming	1, 635, 003
Iowa	12, 314, 005	North Carolina	6, 221, 754	Hawaii	198, 943
Kansas	7, 505, 909	North Dakota	2, 845, 160		
Kentucky	8, 145, 729	Ohio	13, 700, 000	Total (49 States)	441, 402, 559
Louisiana	16, 179, 416	Oklahoma	7, 307, 033		
Maine	3, 416, 897	Oregon	7, 195, 345		

EXPENDITURE OF PUBLIC FUNDS FOR PUPIL TRANSPORTATION—Continued

1959-60

Alabama	$8, 769, 683	Maine	3, 746, 162	Oregon	7, 594, 409
Alaska	1, 296, 958	Maryland	8, 960, 310	Pennsylvania	27, 909, 406
Arizona	2, 495, 274	Massachusetts	10, 161, 324	Rhode Island	1, 366, 411
Arkansas	5, 667, 511	Michigan	18, 704, 122	South Carolina	5, 929, 824
California	33, 909, 311	Minnesota	18, 329, 135	South Dakota	1, 489, 459
Colorado	5, 103, 543	Mississippi	7, 615, 549	Tennessee	9, 160, 372
Connecticut	6, 438, 532	Missouri	14, 107, 815	Texas	15, 468, 057
Delaware	1, 416, 764	Montana	3, 879, 932	Utah	2, 054, 923
Florida	8, 599, 613	Nebraska	2, 815, 380	Vermont	1, 544, 019
Georgia	13, 655, 522	Nevada	709, 015	Virginia	8, 495, 210
Hawaii	7, 262, 622	New Hampshire	2, 069, 568	Washington	8, 774, 711
Idaho	2, 979, 737	New Jersey	13, 636, 309	West Virginia	6, 165, 395
Illinois	20, 783, 101	New Mexico	4, 472, 213	Wisconsin	13, 430, 881
Indiana	20, 207, 212	New York	43, 047, 950	Wyoming	1, 882, 967
Iowa	12, 939, 540	North Carolina	6, 416, 967		
Kansas	8, 240, 771	North Dakota	3, 597, 677	Totals	474, 202, 128
Kentucky	8, 814, 192	Ohio	13, 881, 089		
Louisiana	17, 404, 396	Oklahoma	7, 621, 253		

1960-61

Alabama	$7, 829, 496	Maine	3, 598, 809	Oregon	7, 929, 550
Alaska	1, 347, 749	Maryland	9, 978, 244	Pennsylvania	30, 535, 626
Arizona	2, 874, 784	Massachusetts	11, 147, 067	Rhode Island	1, 465, 361
Arkansas	5, 869, 653	Michigan	21, 114, 970	South Carolina	5, 832, 620
California	35, 832, 056	Minnesota	19, 182, 231	South Dakota	1, 850, 000
Colorado	5, 351, 464	Mississippi	8, 036, 852	Tennessee	9, 407, 273
Connecticut	6, 999, 911	Missouri	15, 249, 900	Texas	16, 170, 663
Delaware	1, 482, 143	Montana	3, 888, 246	Utah	2, 051, 339
Florida	9, 132, 581	Nebraska	3, 150, 903	Vermont	1, 563, 407
Georgia	15, 008, 274	Nevada	83[illegible], 973	Virginia	9, 203, 202
Hawaii	307, 856	New Hampshire	2, 218, 944	Washington	9, 394, 759
Idaho	3, 040, 627	New Jersey	14, 710, 096	West Virginia	6, 429, 363
Illinois	21, 726, 642	New Mexico	4, 794, 365	Wisconsin	15, 464, 800
Indiana	22, 000, 119	New York	46, 417, 600	Wyoming	1, 945, 115
Iowa	13, 887, 325	North Carolina	6, 497, 111		
Kansas	8, 408, 919	North Dakota	4, 147, 507	Total (50 States)	505, 754, 515
Kentucky	8, 814, 192	Ohio	15, 147, 997		
Louisiana	18, 570, 839	Oklahoma	7, 923, 932		

1955-56

Alabama	$6, 732, 429	Maryland	6, 167, 132	Oregon	5, 805, 640
Arizona	1, 815, 832	Massachusetts	6, 700, 693	Pennsylvania	20, 344, 481
Arkansas	4, 719, 122	Michigan	15, 241, 958	Rhode Island	954, 389
California	23, 385, 799	Minnesota	14, 251, 958	South Carolina	4, 515, 645
Colorado	3, 119, 925	Mississippi	5, 958, 746	South Dakota	1, 630, 422
Connecticut	4, 901, 182	Missouri	10, 057, 200	Tennessee	7, 440, 756
Delware	882, 707	Montana	2, 954, 592	Texas	14, 460, 000
Florida	5, 439, 313	Nebraska	2, 250, 000	Utah	1, 484, 824
Georgia	10, 957, 367	Nevada	477, 337	Vermont	1, 188, 551
Idaho	2, 625, 421	New Hampshire	1, 572, 000	Virginia	7, 728, 902
Illinois	16, 889, 460	New Jersey	9, 288, 651	Washington	6, 617, 112
Indiana	13, 899, 944	New Mexico	3, 242, 122	West Virginia	4, 858, 666
Iowa	1, 971, 914	New York	30, 000, 000	Wisconsin	9, 559, 621
Kansas	6, 220, 912	North Carolina	5, 479, 400	Wyoming	1, 494, 808
Kentucky	6, 428, 291	North Dakota	1, 810, 925		
Louisiana	12, 864, 506	Ohio	12, 530, 925	Total	396, 349, 783
Maine	2, 892, 639	Oklahoma	6, 235, 533		

EXPENDITURE OF PUBLIC FUNDS FOR PUPIL TRANSPORTATION—Continued

1956-57

Alabama	$6,987,447	Maryland	6,916,226	Oregon	6,428,803
Arizona	1,225,000	Massachusetts	7,756,477	Pennsylvania	20,095,701
Arkansas	5,019,443	Michigan	16,773,443	Rhode Island	1,036,192
California	25,714,473	Minnesota	15,027,272	South Carolina	5,211,015
Colorado	3,390,950	Mississippi	6,034,773	South Dakota	1,940,749
Connecticut	5,000,094	Missouri	11,076,307	Tennessee	7,834,449
Delaware	994,556	Montana	3,131,195	Texas	14,546,372
Florida	5,570,108	Nebraska	2,500,000	Utah	1,514,250
Goergia	11,005,000	Nevada	556,233	Vermont	1,168,551
Idaho	2,685,709	New Hampshire	1,664,793	Virginia	8,380,315
Illinois	17,000,000	New Jersey	10,252,435	Washington	6,996,560
Indiana	14,000,000	New Mexico	3,433,144	West Virginia	5,206,967
Iowa	10,493,900	New York	33,500,000	Wisconsin	10,177,173
Kansas	6,643,487	North Carolina	5,601,768	Wyoming	1,603,000
Kentucky	7,052,978	North Dakota	1,994,252		
Louisiana	15,032,473	Ohio	15,555,201		
Maine	3,069,169	Oklahoma	6,643,095	Total	362,751,975

1957-58

Alabama	$8,327,766	Maryland	7,658,815	Oregon	6,805,465
Arizona	2,155,040	Massachusetts	8,431,637	Pennsylvania	24,078,549
Arkansas	5,352,419	Michigan	17,778,460	Rhode Island	1,049,538
California	28,726,503	Minnesota	16,193,969	South Carolina	5,823,570
Colorado	3,715,854	Mississippi	6,458,431	South Dakota	1,922,429
Connecticut	6,074,751	Missouri	12,706,340	Tennessee	8,322,143
Delaware	1,138,506	Montana	3,572,415	Texas	15,847,464
Florida	6,650,783	Nebraska	2,700,000	Utah	1,729,729
Georgia	12,520,774	Nevada	645,831	Vermont	1,385,344
Idaho	2,796,707	New Hampshire	1,796,010	Virginia	7,718,338
Illinois	18,181,418	New Jersey	11,602,045	Washington	7,616,461
Indiana	15,866,073	New Mexico	3,929,711	West Virginia	5,462,169
Iowa	11,205,947	New York	36,074,188	Wisconsin	11,285,883
Kansas	7,105,775	North Carolina	6,221,754	Wyoming	1,691,252
Kentucky	7,475,339	North Dakota	2,420,254	Alaska	916,643
Louisiana	15,633,281	Ohio	17,811,321		
Maine	3,055,259	Oklahoma	6,815,043	Total (48 States)	419,539,863

1952-53

None.

1953-54

None.

1954-55

Alabama	$6,964,607	Maryland	5,560,069	Oregon	5,525,614
Arizona	1,609,923	Massachusetts	6,067,976	Pennsylvania	17,800,356
Arkansas	4,637,650	Michigan	13,753,209	Rhode Island	776,446
California	20,953,456	Minnesota	12,557,410	South Carolina	4,313,586
Colorado	2,915,855	Mississippi	5,551,854	South Dakota	1,395,206
Connecticut	4,471,826	Missouri	9,629,462	Tennessee	6,960,572
Delaware	807,209	Montana	2,861,896	Texas	16,960,000
Florida	4,990,984	Nebraska	1,945,460	Utah	1,390,023
Georgia	10,195,656	Nevada	375,167	Vermont	1,075,566
Idaho	2,562,687	New Hampshire	1,459,000	Virginia	7,244,662
Illinois	15,993,245	New Jersey	7,583,975	Washington	5,969,370
Indiana	12,023,039	New Mexico	3,043,075	West Virginia	4,566,540
Iowa	8,922,837	New York	25,492,963	Wisconsin	9,143,675
Kansas	5,767,436	North Carolina	5,457,941	Wyoming	1,412,516
Kentucky	6,101,399	North Dakota	1,637,564		
Louisiana	11,707,163	Ohio	12,216,542		
Maine	2,755,207	Oklahoma	6,256,946	Total	329,035,047

EXPENDITURE OF PUBLIC FUNDS FOR PUPIL TRANSPORTATION—Continued

Year	4(a) Number of accidents (thousands)	4(c) Number of students injured	4(d) Number killed	5(a) Number of buses	5(b) Percent increase
1970	42.0	3,900	75	285	4.0
1969	39.0	3,900	75	275	5.5
1968	37.0	3,600	75	260	3.8
1967	33.0	3,200	60	250	11.0
1966	34.0	3,800	50	225	2.2
1965	32.0	3,700	50	220	10.0
1964	(?) 10.7	3,700	50	200	4.2
1963	10.0	3,500	41	192	2.7
1962					
1961	9.0	2,100	65	187	

Source: National Safety Council Accident Facts.

SCHOOL AND OTHER BUSES REGISTERED IN THE UNITED STATES

	Number registered
Calendar year:	
1964	221,367
1965	229,315
1966	237,714
1967	247,835
1968	262,204
1969	273,973
1970	288,750

"Other" buses include those owned by churches, Boy Scout troops, industrial plants, sightseeing companies, bands, etc. Some of these are used to transport school children. It is estimated that the "other" buses do not exceed 10 percent of the total shown each year.

1967–68

Alabama	5,515	Maine	1,469	Oregon	2,615
Alaska	286	Maryland	3,896	Pennsylvania	12,619
Arizona	1,358	Massachusetts	5,498	Rhode Island	513
Arkansas	3,559	Michigan	9,048	South Carolina	5,495
California	10,604	Minnesota	6,083	South Dakota	1,294
Colorado	2,923	Mississippi	5,307	Tennessee	4,740
Connecticut	2,730	Missouri	6,793	Texas	7,864
Delaware	751	Montana	1,240	Utah	907
Florida	4,033	Nebraska	2,116	Vermont	879
Georgia	5,203	Nevada	612	Virginia	6,368
Hawaii		New Hampshire	1,012	Washington	3,828
Idaho	1,399	New Jersey	7,145	West Virginia	2,296
Illinois	8,914	New Mexico	1,627	Wisconsin	6,677
Indiana	6,884	New York	16,738	Wyoming	819
Iowa	6,376	North Carolina	9,232		
Kansas	6,086	North Dakota	1,854	Total	230,578
Kentucky	5,099	Ohio	12,842		
Louisiana	5,921	Oklahoma	3,511		

SCHOOL AND OTHER BUSES REGISTERED IN THE UNITED STATES

1968-69

Alabama	5, 416	Louisiana	6, 133	Oklahoma	3, 518
Alaska	324	Maine	1, 497	Oregon	2, 888
Arizona	1, 464	Maryland	4, 235	Pennsylvania	12, 899
Arkansas	3, 610	Massachusetts	5, 400	Rhode Island	763
California	11, 495	Michigan	10, 125	South Carolina	5, 584
Colorado	3, 085	Minnesota	6, 363	South Dakota	1, 153
Connecticut		Mississippi	5, 364	Tennessee	4, 847
Delaware	846	Missouri	6, 834	Texas	7, 880
Distric of Columbia	90	Montana	1, 125	Utah	880
Florida	4, 161	Nebraska	2, 180	Vermont	908
Georgia	5, 294	Nevada	1, 641	Virginia	6, 599
Hawaii	333	New Hampshire	1, 040	Washington	3, 353
Idaho	1, 406	New Jersey	8, 171	West Virginia	2, 314
Illinois	9, 335	New Mexico	1, 683	Wisconsin	7, 007
Indiana	7, 003	New York	18, 659	Wyoming	825
Iowa	6, 483	North Carolina	9, 275		
Kansas	5, 758	North Dakota	1, 854	Total	238, 102
Kentucky	5, 116	Ohio	14, 286		

1969-70

Alabama	5, 073	Louisiana	6, 237	Oklahoma	3, 563
Alaska	357	Maine	1, 576	Oregon	2, 949
Arizona	1, 439	Maryland	4, 507	Pennsylvania	13, 471
Arkansas	3, 627	Massachusetts	5, 400	Rhode Island	801
California	11, 495	Michigan	9, 011	South Carolina	5, 634
Colorado	3, 180	Minnesota	6, 660	South Dakota	1, 243
Connecticut	2, 611	Mississippi	5, 199	Tennessee	4, 902
Delaware	984	Missouri	7, 277	Texas	7, 900
District of Columbia	101	Montana	1, 136	Utah	1, 032
Flordia	4, 508	Nebraska	2, 309	Vermont	906
Georgia	5, 386	Nevada	695	Virginia	6, 825
Hawaii	371	New Hampshire	1, 070	Washington	4, 160
Idaho	1, 457	New Jersey	8, 800	West Virginia	2, 339
Illinois	9, 129	New Mexico	1, 733	Wisconsin	7, 092
Indiana	7, 003	New York	19, 165	Wyoming	850
Iowa	6, 629	North Carolina	9, 447		
Kansas	5, 517	North Dakota	1, 971	Total	239, 973
Kentucky	5, 199	Ohio	10, 047		

1964-65

None.

1965-66

Alabama	5, 304	Maine	1, 418	Oregon	2, 954
Alaska	225	Maryland	3, 428	Pennsylvania	11, 477
Arizona	1, 213	Massachusetts	4, 333	Rhode Island	465
Arkansas	3, 602	Michigan	7, 950	South Carolina	5, 373
California	9, 596	Minnesota	6, 139	South Dakota	1, 067
Colorado	2, 873	Mississippi	5, 248	Tennessee	4, 556
Connecticut	2, 074	Missouri	6, 191	Texas	7, 939
Delaware	666	Montana	1, 041	Utah	767
Florida	3, 849	Nebraska	1, 901	Vermont	748
Georgia	5, 102	Nevada	525	Virginia	5, 945
Hawaii	272	New Hampshire	947	Washington	3, 585
Idaho	1, 330	New Jersey	6, 080	West Virginia	2, 187
Illinois	8, 014	New Mexico	1, 516	Wisconsin	6, 583
Indiana	6, 709	New York	14, 728	Wyoming	782
Iowa	6, 094	North Carolina	9, 108		
Kansas	3, 570	North Dakota	1, 710	Total	210, 692
Kentucky	4, 830	Ohio	9, 542		
Louisiana	5, 530	Oklahoma	3, 606		

SCHOOL AND OTHER BUSES REGISTERED IN THE UNITED STATES—Continued

1966-67

Alabama	5, 394	Maine	1, 417	Oregon	3, 053
Alaska	272	Maryland	3, 687	Pennsylvania	11, 855
Arizona	1, 316	Massachusetts	4, 628	Rhode Island	465
Arkansas	3, 591	Michigan	8, 158	South Carolina	5, 462
California	10, 013	Minnesota	7, 634	South Dakota	1, 212
Colorado	2, 838	Mississippi	5, 336	Tennessee	4, 658
Connecticut	2, 236	Missouri	6, 553	Texas	7, 855
Delaware	701	Montana	1, 034	Utah	807
Florida	3, 896	Nebraska	2, 048	Vermont	773
Georgia	5, 158	Nevada	577	Virginia	6, 157
Hawaii	419	New Hampshire	979	Washington	3, 611
Idaho	1, 368	New Jersey	6, 419	West Virginia	2, 230
Illinois	8, 284	New Mexico	1, 550	Wisconsin	6, 615
Indiana	6, 446	New York	15, 796	Wyoming	856
Iowa	6, 297	North Carolina	9, 170		
Kansas	5, 451	North Dakota	1, 846	Total	221, 722
Kentucky	4, 945	Ohio	11, 446		
Louisiana	5, 721	Oklahoma	3, 511		

1961-62

Alabama	4, 941	Maine	1, 501	Oregon	2, 631
Alaska	175	Maryland	2, 827	Pennsylvania	9, 231
Arizona	1, 150	Massachusetts	3, 581	Rhode Island	376
Arkansas	3, 363	Michigan	6, 422	South Carolina	5, 190
California	7, 592	Minnesota	5, 923	South Dakota	773
Colorado	2, 592	Mississippi	5, 111	Tennessee	4, 248
Connecticut	1, 622	Missouri	5, 518	Texas	8, 173
Delaware	527	Montana	952	Utah	785
Florida	3, 483	Nebraska	1, 409	Vermont	761
Georgia	5, 013	Nevada	553	Virginia	5, 045
Hawaii	143	New Hampshire	864	Washington	3, 483
Idaho	1, 279	New Jersey	4, 816	West Virginia	2, 009
Illinois	7, 312	New Mexico	1, 350	Wisconsin	6, 508
Indiana	6, 798	New York	12, 108	Wyoming	810
Iowa	5, 573	North Carolina	8, 571		
Kansas	3, 458	North Dakota	3, 058	Total	191, 160
Kentucky	4, 412	Ohio	8, 908		
Louisiana	4, 907	Oklahoma	3, 320		

1962-63

Alabama	5, 088	Maine	1, 342	Oregon	2, 555
Alaska	188	Maryland	3, 014	Pennsylvania	9, 550
Arizona	1, 278	Massachusetts	3, 730	Rhode Island	418
Arkansas	3, 088	Michigan	6, 553	South Carolina	5, 260
California	8, 375	Minnesota	5, 399	South Dakota	800
Colorado	2, 848	Mississippi	6, 134	Tennessee	4, 357
Connecticut	1, 751	Missouri	5, 687	Texas	8, 169
Delaware	553	Montana	1, 005	Utah	702
Florida	3, 616	Nebraska	1, 760	Vermont	731
Georgia	5, 041	Nevada	529	Virginia	5, 258
Hawaii	178	New Hampshire	[illegible] 365	Washington	3, 252
Idaho	1, 297	New Jersey	5, 037	West Virginia	2, 070
Illinois	7, 312	New Mexico	1, 355	Wisconsin	6, 171
Indiana	6, 814	New York	12, 523	Wyoming	786
Iowa	5, 738	North Carolina	3, 727		
Kansas	3, 632	North Dakota	2, 554	Total	195, 397
Kentucky	4, 412	Ohio	9, 073		
Louisiana	5, 021	Oklahoma	3, 451		

SCHOOL AND OTHER BUSES REGISTERED IN THE UNITED STATES—Continued

1963-64					
Alabama	5,237	Maine	1,366	Oregon	2,555
Alaska	198	Maryland	3,176	Pennsylvania	5,892
Arizona	1,600	Massachusetts	1,696	Rhode Island	230
Arkansas	3,350	Michigan	6,716	South Carolina	5,335
California	9,732	Minnesota	6,342	South Dakota	928
Colorado	3,003	Mississippi	5,203	Tennessee	9,162
Connecticut	1,361	Missouri	5,813	Texas	3,323
Delaware	607	Montana	596	Utah	724
Florida	3,756	Nebraska	1,753	Vermont	745
Georgia	5,301	Nevada	500	Virginia	5,196
Hawaii	162	New Hampshire	907	Washington	3,361
Idaho	1,825	New Jersey	5,413	West Virginia	2,111
Illinois	7,117	New Mexico	1,461	Wisconsin	6,368
Indiana	6,130	New York [1]	13,361	Wyoming	738
Iowa	5,933	North Carolina	5,561		
Kansas	3,613	North Dakota	1,806	Total	200,125
Kentucky	1,554	Ohio	9,137		
Louisiana	5,210	Oklahoma	3,657		
1958-59					
Alabama	4,841	Maryland	2,402	Pennsylvania	[1] 7,937
Alaska	152	Massachusetts	3,438	Rhode Island	230
Arizona	[1] 937	Michigan	5,736	South Carolina	4,913
Arkansas	3,133	Minnesota	5,374	South Dakota	[1] 1,600
California	7,546	Mississippi	4,902	Tennessee	3,986
Colorado	2,396	Missouri	5,016	Texas	8,163
Connecticut	1,404	Montana	649	Utah	633
Delaware	[1] 439	Nebraska	1,184	Vermont	728
Florida	2,889	Nevada	378	Virginia	4,439
Georgia	4,502	New Hampshire	[1] 351	Washington	3,129
Idaho	1,198	New Jersey	4,143	West Virginia	1,850
Illinois	7,500	New Mexico	1,274	Wisconsin	6,391
Indiana	6,555	New York	[1] 9,189	Wyoming	644
Iowa	4,916	North Carolina	8,068	Hawaii	196
Kansas	2,821	North Dakota	2,910		
Kentucky	4,016	Ohio	8,331	Total	178,222
Louisiana	4,558	Oklahoma	3,322		
Maine	1,326	Oregon	2,257		
1959-60					
Alabama	4,898	Maine	1,327	Oregon	2,252
Alaska	164	Maryland	2,529	Pennsylvania	8,969
Arizona	991	Massachusetts	2,853	Rhode Island	397
Arkansas	3,162	Michigan	6,079	South Carolina	5,015
California	7,413	Minnesota	5,471	South Dakota	645
Colorado	2,529	Mississippi	4,964	Tennessee	4,110
Connecticut	1,475	Missouri	5,119	Texas	8,241
Delaware	484	Montana	874	Utah	643
Florida	3,002	Nebraska	1,283	Vermont	821
Georgia	5,011	Nevada	401	Virginia	4,591
Hawaii	118	New Hampshire	2,842	Washington	3,216
Idaho	1,190	New Jersey	4,430	West Virginia	2,143
Illinois	7,274	New Mexico	1,343	Wisconsin	6,570
Indiana	6,767	New York	3,745	Wyoming	783
Iowa	5,188	North Carolina	8,292		
Kansas	2,938	North Dakota	2,644	Total	179,780
Kentucky	4,104	Ohio	8,458		
Louisiana	4,668	Oklahoma	3,373		

SCHOOL AND OTHER BUSES REGISTERED IN THE UNITED STATES—Continued

1960-61

Alabama	4, 936	Maine	1, 336	Oregon	2, 488
Alaska	185	Maryland	2, 695	Pennsylvania	8, 884
Arizona	1, 072	Massachusetts	3, 099	Rhode Island	376
Arkansas	3, 321	Michigan	6, 236	South Carolina	5, 095
California	7, 422	Minnesota	5, 831	South Dakota	674
Colorado	2, 763	Mississippi	5, 078	Tennessee	4, 194
Connecticut	1, 798	Missouri	5, 292	Texas	3, 200
Delaware	501	Montana	904	Utah	605
Florida	3, 454	Nebraska	1, 299	Vermont	745
Georgia	5, 020	Nevada	531	Virginia	4, 834
Hawaii	126	New Hampshire	845	Washington	3, 292
Idaho	1, 235	New Jersey	4, 501	West Virginia	2, 189
Illinois	7, 274	New Mexico	1, 338	Wisconsin	6, 536
Indiana	6, 700	New York	11, 174	Wyoming	796
Iowa	5, 397	North Carolina	8, 385		
Kansas	3, 307	North Dakota	3, 006	Total	185, 869
Kentucky	4, 104	Ohio	8, 775		
Louisiana	4, 815	Oklahoma	3, 266		

1955 56

Alabama	4, 617	Maryland	2, 076	Oregon	2, 105
Arizona	706	Massachusetts	2, 411	Pennsylvania	7, 329
Arkansas	3, 123	Michigan	5, 521	Rhode Island	303
California	6, 001	Minnesota	4, 985	South Carolina	4, 491
Colorado	2, 491	Mississippi	4, 722	South Dakota	1, 500
Connecticut	1, 389	Missouri	4, 366	Tennessee	3, 658
Delaware	366	Montana	786	Texas	7, 794
Florida	2, 532	Nebraska	738	Utah	584
Georgia	4, 631	Nevada	311	Vermont	764
Idaho	1, 116	New Hampshire	736	Virginia	3, 912
Illinois	7, 250	New Jersey	3, 008	Washington	2, 713
Indiana	6, 343	New Mexico	1, 158	West Virginia	1, 698
Iowa	4, 915	New York	8, 073	Wisconsin	6, 463
Kansas	2, 330	North Carolina	7, 498	Wyoming	761
Kentucky	3, 455	North Dakota	1, 855		
Louisiana	4, 153	Ohio	7, 537	Total	159, 764
Maine	1, 306	Oklahoma	3, 351		

1956-57

Alabama	4, 691	Michigan	5, 745	Oklahoma	3, 299
Arizona	710	Minnesota	4, 601	Oregon	2, 220
Arkansas	3, 130	Mississippi	2, 574	Pennsylvania	7, 561
California	6, 336	Michigan	5, 745	Rhode Island	323
Colorada	2, 354	Minnesota	4, 601	South Carolina	4, 679
Connecticut	1, 463	Mississippi	4, 619	South Dakota	1, 800
Delaware	397	Missouri	4, 674	Tennessee	3, 781
Florida	2, 693	Montana	805	Texas	7, 793
Goeogia	4, 930	Nebraska	911	Utah	573
Idaho	1, 150	Nevada	363	Vermont	764
Illinois	[1] 7, 500	New Hampshire	901	Virginia	4, 059
Indiana	6, 345	New Jersey	3, 503	Washington	2, 891
Iowa	4, 690	New Mexico	1, 152	West Virginia	1, 744
Kansas	4, 458	New York	7, 824	Wisconsin	6, 365
Kentucky	3, 764	North Carolina	7, 701	Wyoming	802
Louisiana	4, 334	North Dakota	2, 470		
Maine	1, 309	North Carolina	7, 701	Total	164, 953
Maryland	2, 296	North Dakota	2, 470		
Massachusetts	2, 574	Ohio	7, 656		

SCHOOL AND OTHER BUSES REGISTERED IN THE UNITED STATES—Continued

1957-58

Alabama	4, 749	Maryland	2, 230	Oregon	2, 270
Arizona	718	Massachusetts	2, 671	Pennsylvania	7, 997
Arkansas	3, 312	Michigan	5, 567	Rhode Island	349
California	6, 703	Minnesota	5, 281	South Carolina	4, 586
Colorado	2, 264	Mississippi	5, 793	South Dakota	1, 470
Connecticut	1, 629	Missouri	4, 641	Tennessee	3, 844
Delaware	423	Montana	23	Texas	8, 098
Florida	2, 753	Nebraska	1, 037	Utah	625
Georgia	4, 800	Nevada	467	Vermont	768
Idaho	1, 162	New Hampshire	835	Virginia	4, 247
Illinois	7, 520	New Jersey	3, 345	Washington	2, 997
Indiana	6, 351	New Mexico	1, 244	West Virginia	1, 807
Iowa	4, 916	New York	8, 413	Wisconsin	6, 312
Kansas	2, 568	North Carolina	7, 908	Wyoming	6, 812
Kentucky	3, 655	North Dakota	2, 833	Alaska	146
Louisiana	4, 441	Ohio	7, 950		
Maine	1, 375	Oklahoma	3, 335	Total	170, 683

1952-53

None.

1953-54

None.

1954-55

Alabama	4, 481	Maryland	2, 016	Oregon	2, 087
Arizona	681	Massachusetts	2, 253	Pennsylvania	7, 418
Arkansas	3, 097	Michigan	4, 658	Rhode Island	240
California	5, 373	Minnesota	4, 210	South Carolina	4, 123
Colorado	1, 931	Mississippi	4, 585	South Dakota	1, 440
Connecticut	1, 424	Missouri	4, 361	Tennessee	3, 563
Delaware	359	Montana	765	Texas	8, 060
Florida	2, 414	Nebraska	744	Utah	516
Georgia	4, 084	Nevada	341	Vermont	939
Idaho	1, 147	New Hampshire	681	Virginia	3, 765
Illinois	7, 241	New Jersey	2, 684	Washington	2, 654
Indiana	6, 475	New Mexico	1, 135	West Virginia	1, 662
Iowa	4, 011	New York	7, 252	Wisconsin	6, 782
Kansas	3, 070	North Carolina	7, 368	Wyoming	752
Kentucky	3, 311	North Dakota	666		
Louisiana	3, 978	Ohio	7, 760	Total	154, 057
Maine	1, 244	Oklahoma	3, 513		

TRAVEL TO SCHOOL,[1] 1969 SURVEY

Mode of travel:	Number of students
School bus—No charge	18, 253, 443
School bus—Charge	808, 602
Public transportation—No charge	352, 667
Public transportation—Charge	1, 291, 666
Walk or bicycle	21, 173, 220
Automobile driver	1, 191, 176
Automobile passenger	7, 192, 186
Motorcycle	28, 098
Other means	128, 524
Not reported	102, 805
Total	50, 522, 387

[1] Persons 5 through 18 years of age.

Note: We have no trend data available.

Source: Nationwide Personal Transportation Study.

TABLE 23.—RACE BY SEX, FOR AREAS AND PLACES: 1970

	Total	White	Negro and other races		Other races					
			Total	Negro	Total	Indian	Japanese	Chinese	Filipino	All other
STANDARD METROPOLITAN STATISTICAL AREAS										
Portland	1,009,129	970,857	38,272	23,284	14,988	4,011	3,991	3,165	1,060	2,761
Male	486,449	467,526	18,923	11,597	7,326	1,976	1,806	1,639	573	1,332
Female	522,680	503,331	19,349	11,687	7,662	2,035	2,185	1,526	487	1,429
Oregon portion	880,675	843,892	36,783	22,715	14,068	3,613	3,846	3,095	997	2,517
Male	423,481	405,316	18,165	11,288	6,877	1,756	1,753	1,607	548	1,213
Female	457,194	438,576	18,618	11,427	7,191	1,857	2,093	1,488	449	1,304
Portland	382,619	352,635	29,984	21,572	8,412	1,967	2,084	2,462	618	1,281
Male	179,163	164,409	14,754	10,584	4,170	938	955	1,280	365	632
Female	203,456	188,226	15,230	10,988	4,242	1,029	1,129	1,182	253	649
Urban balance	381,225	376,038	5,197	778	4,409	1,196	1,398	583	287	945
Male	185,135	182,626	2,509	438	2,071	580	624	292	130	445
Female	196,090	193,412	2,678	340	2,338	616	774	291	157	500
Washington portion	128,454	126,965	1,489	569	920	398	145	70	63	244
Male	62,968	62,210	758	309	449	220	53	32	25	119
Female	65,486	64,755	731	260	471	178	92	38	38	125
Urban part	82,348	81,181	1,167	508	659	270	103	64	40	182
Male	39,714	39,117	597	272	325	151	37	28	16	93
Female	42,634	42,064	570	236	334	119	66	36	24	89
Seattle-Everett	1,421,869	1,336,979	84,890	41,609	43,281	9,496	13,872	7,434	7,361	5,110
Male	697,506	655,124	42,382	20,849	21,533	4,594	6,379	3,834	4,236	2,498
Female	724,363	681,855	42,508	20,760	21,748	4,902	7,493	3,600	3,125	2,628
Bellevue	61,102	59,788	1,314	348	966	80	468	190	81	147
Male	30,258	29,594	664	192	472	36	226	92	44	74
Female	30,844	30,194	650	156	494	44	242	98	37	73
Everett	53,622	52,454	1,168	380	788	521	69	32	36	130
Male	25,874	25,329	545	198	347	237	20	18	17	55
Female	27,748	27,125	623	182	441	284	49	14	19	75
Seattle	530,831	463,870	66,961	37,868	29,093	4,123	9,986	6,261	5,830	2,893
Male	254,393	220,898	33,495	18,806	14,689	1,931	4,662	3,277	3,370	1,449
Female	276,438	242,972	33,466	19,062	14,404	2,192	5,324	2,984	2,460	1,444
Urban balance	614,220	601,915	12,305	2,390	9,915	3,230	2,984	882	1,214	1,605
Male	304,562	298,577	5,985	1,255	4,730	1,573	1,319	409	675	754
Female	309,658	303,338	6,320	1,135	5,185	1,657	1,665	473	539	851
Spokane	287,487	280,174	7,313	2,989	4,324	1,988	1,323	235	141	637
Male	139,926	136,283	3,643	1,621	2,022	923	583	127	86	303
Female	147,561	143,891	3,670	1,368	2,302	1,065	740	108	55	334
Spokane	170,516	165,339	5,177	2,161	3,016	1,419	985	149	99	364
Male	80,926	78,406	2,520	1,101	1,419	653	452	84	62	168
Female	89,590	86,933	2,657	1,060	1,597	766	533	65	37	196

Urban balance	75,745	74,201	1,544	625	919	382	239	79	33	186
Male	38,062	37,211	851	417	434	184	94	39	19	98
Female	37,683	36,990	693	208	485	198	145	40	14	88
Tacoma	411,027	382,429	28,598	18,501	10,097	3,343	2,496	357	1,683	2,218
Male	215,056	199,375	15,681	10,743	4,938	1,838	823	185	916	1,176
Female	195,971	183,054	12,917	7,758	5,159	1,505	1,673	172	767	1,042
Tacoma	154,581	140,301	14,280	10,436	3,844	1,703	820	165	464	692
Male	73,939	67,111	6,828	5,124	1,704	840	245	76	234	309
Female	80,642	73,190	7,452	5,312	2,140	863	575	89	230	383
Urban balance	183,986	171,276	12,710	7,595	5,115	1,170	1,299	173	1,078	1,395
Male	103,787	95,924	7,863	5,224	2,639	756	400	96	595	792
Female	80,199	75,352	4,847	2,371	2,476	414	899	77	483	603
URBANIZED AREAS										
Portland	824,926	789,038	35,888	22,778	13,110	3,347	3,459	3,080	928	2,296
Male	393,785	376,146	17,639	11,260	6,379	1,630	1,555	1,587	502	1,105
Female	431,141	412,892	18,249	11,518	6,731	1,717	1,904	1,493	426	1,191
Oregon portion	751,756	716,947	34,809	22,287	12,522	3,105	3,359	3,028	891	2,139
Male	358,512	341,426	17,086	10,998	6,088	1,493	1,518	1,565	486	1,026
Female	393,244	375,521	17,723	11,289	6,434	1,612	1,841	1,463	405	1,113
Washington	73,170	72,091	1,079	491	588	242	100	52	37	157
Male	35,273	34,720	553	262	291	137	37	22	16	79
Female	37,897	37,371	526	229	297	105	63	30	21	78
Seattle-Everett	1,238,107	1,156,607	81,500	40,972	40,528	7,753	13,495	7,360	7,157	4,763
Male	604,595	564,012	40,583	20,445	20,138	3,687	6,226	3,793	4,105	2,327
Female	633,512	592,595	40,917	20,527	20,390	4,066	7,269	3,567	3,052	2,436
Spokane	229,620	223,810	5,810	2,254	3,556	1,690	1,121	179	114	452
Male	109,839	107,027	2,812	1,150	1,662	773	512	97	74	206
Female	119,781	116,783	2,998	1,104	1,894	917	609	82	40	246
Tacoma	332,521	305,666	26,855	17,992	8,863	2,836	2,087	337	1,535	2,068
Male	174,631	160,004	14,627	10,326	4,301	1,580	631	171	826	1,093
Female	157,890	145,662	12,228	7,666	4,562	1,256	1,456	166	709	975
PLACES OF 50,000 OR MORE										7 4 3
Bellevue	61,102	59,788	1,314	348	966	80	468	190	81	140
Male	30,258	29,594	664	192	472	36	226	92	44	75
Female	30,844	30,194	650	156	494	44	242	98	37	75
Everett	53,622	52,454	1,168	380	788	521	69	32	36	133
Male	25,874	25,329	545	198	347	237	20	18	17	5
Female	27,748	27,125	623	182	441	284	49	14	19	7
Seattle	530,831	463,870	66,961	37,868	29,093	4,123	9,986	6,261	5,830	2,89
Male	254,393	220,898	33,495	18,806	14,689	1,931	4,662	3,277	3,370	1,44
Female	276,438	242,972	33,466	19,062	14,404	2,192	5,324	2,984	2,460	1,44
Spokane	170,516	165,339	5,177	2,161	3,016	1,419	985	149	99	364
Male	80,926	78,406	2,520	1,101	1,419	653	452	84	62	168
Female	89,590	86,933	2,657	1,060	1,597	766	533	65	37	196
Tacoma	154,581	140,301	14,280	10,436	3,844	1,703	820	165	464	692
Male	73,939	67,111	6,828	5,124	1,704	840	245	76	234	309
Female	80,642	73,190	7,452	5,312	2,140	863	575	89	230	383

Mr. Horn. For the record, I also wish to state that the Commission reaffirms its confidence in the accuracy of the data contained in the Department of Transportation's report to us. We are satisfied that the estimates which is reflects are based on the best available information and are not simply the result of idle speculation as has been suggested elsewhere. Should the Congress desire more detailed statistics on a district-by-district basis, perhaps action on the legislation now before this body should be delayed until the funds can be appropriated for such a study and that study carried out.

Figures supplied by the Department of Transportation show that the total cost of schoolbusing—including capital expenditures—in 1970–71 to have been $1.5 billion and in 1971–72 it is estimated that they will be $1.7 billion, an increase of $200 million.

The amount of the annual increase of schoolbusing is attributed by the Department of Transportation to the following causes:

(1) Population growth, 95 percent.
(2) School centralization, about 3 percent.
(3) Safety factors, less than 1 percent.
(4) Desegregation, less than 1 percent.
(5) Other factors, less than 1 percent.

I wish to emphasize that these are national aggregates. They do not reflect the situation in a specific school district.

Mr. Zelenko. Mr. Chairman, at this point I think Dr. Horn should be made aware of the statement that Secretary Richardson made before this subcommittee a few weeks ago that the increase in busing 1970–71 to 1971–72 was approximately 300,000 pupils nationwide. However the Department of Health, Education, and Welfare had no nationwide figures showing how many of those 300,000 pupils, out of approximately 19 million students, were actually being transported for desegregation purposes.

Is the Commission of Civil Rights able to identify how much current busing is attributable to desegregation?

Mr. Horn. Mr. Zelenko, I was aware of Secretary Richardson's statements and using the figure of 300,000—the best data we have is data we requested earlier this year from Secretary Volpe. This estimate is their top experts' estimate of the increase in students bused. They have given most of the increase in students bused as 95 percent due to population growth, and despite the TV and radio and newspaper coverage on issues of desegration and trials and traumas that various districts are going through in America, when you look at it on a national aggregate basis, it is a very small proportion in the Department of Transportation figures, less than 1 percent is for desegregation, 99 percent fall into other categories.

In the Commission, as you know, we are limited in terms of staff and budget but we are going to have to rely on the Department of Transportation and Secretary Volpe and his experts for this data. We have no reason to doubt that data. It is the best that is available to us. But as I suggest perhaps the committee, if they really want, we will mention later, we have phoned many school districts under court order which have been mentioned by press releases and we will refer to those statistics later and give you the best information we have got.

We would not point to that as random sampling precisely. We did the best we could, given the time period.

The members of this committee know that a national expenditure of $1.7 billion on busing for all purposes is a relatively small fraction of the total national expenditure on public elementary and secondary education which is $45 billion annually. The cost of busing for all purposes represents about 4 percent of the Nation's precollege public educational costs. The annual cost increase attributable to more schoolbusing for desegregation in 1971 is a very small fraction of the total national education outlay. This does not constitute a depletion of educational resources that should warrant special legislative action by Congress.

It is difficult to imagine greater benefits for our schools, our children and our Nation than the spending of a few million additional dollars in 1972 to continue to bus to desegregate our schools and thus attempt to provide quality education for some children who would not have such an education otherwise.

We recognize that in some instances some local school districts may be faced with extraordinary initial cost due to purchasing schoolbuses to facilitate desegregation. This initial expenditure can put a severe strain on limited school funds. In those cases, the Commission believes the proper remedy is to make Federal funds available to the district. Past legislation has made Federal funds available for this purpose, and this seems the logical answer to the initial burden of acquiring buses, rather than to halt busing altogether.

TIME AND DISTANCE

The legislation also makes findings that for the purpose of abolishing dual school systems—and eliminating the vestiges of the dual school system—school districts have been required to engage in extensive transportation of students.

This finding misrepresents the amount of pupil transportation actually required to achieve desegregation.

The Secretary of Health, Education, and Welfare testified before the Senate Select Committee on Equal Educational Opportunity in August 1970 that there has been more busing of students to preserve segregation than to implement desegregation plans. He supported his statement with a study done by the Department which reported that in 300 counties in the South, only seven were required under the desegregation plan to increase busing; the remaining 293 districts would have had the same or less busing. The Department's report cited Sturgis, Miss., which bused black pupils 93 miles daily to attend a segregated school. Until 3 years ago, black students in an Atlanta suburb were bused 75 miles to attend segregated schools.

Indeed, desegregation actually can cause many children to spend less time on the bus. This is because children are no longer bused past one segregated school to get to another, and hence the trip is much shorter.

In Georgia the number of pupils bused has risen gradually from 517,000 in 1967 to 566,000 in 1971. During the same period however, the number of miles logged by Georgia buses has dropped from 53,997,000 to 51,257,000.

Other information from HEW also suggests that schoolbusing for the purposes of desegregation can result in less, not more, pupil transportation. For example, this year, busing to desegregate in Alabama has resulted in 1 million fewer miles than the previous year under segregation.

Before the *Charlotte-Mecklenburg* decision, pupils averaged over an hour on the bus. When the desegregation plan was carried out, however, bus trips were cut substantially. Similarly, the *Richmond* decision would call for average bus rides of about 30 minutes, which is less than the current average in an adjacent district involved in the decision.

Where pupils are being bused for the first time, trips are rarely long. The average travel time reported seems to be 20 to 30 minutes. Trips of an hour or more would be out of the ordinary. A trip of a half hour or so would not bring the pupil home much later than if he walked from a neighborhood school.

That such bus trips are not unreasonable was recognized by the Supreme Court in its decision approving the busing order in Charlotte-Mecklenburg. The Court in formulating its test of how much busing is permissible said:

> An objection to transportation of students may have validity when the time or distance of travel is so great as to either risk the health of the children or significantly impinge on the educational process.

Moreover, the Lambda study, "School Desegregation With Minimum Busing," commissioned by the Department of Health, Education, and Welfare, and recently released, concludes that with a small amount of additional busing we can achieve practically complete desegregation. This conclusion suggests that the threat of "massive schoolbusing" is overrated.

To be sure, some districts have experienced sharp increases in busing. But the national pattern is not such as to warrant congressional action of the kind represented by H.R. 13916.

IMPINGEMENT ON THE EDUCATIONAL PROCESS

The bill finds that "increases in student transportation have caused hardship to the children thereby affected," and "have impinged on the educational process in which they are involved."

The nationwide extent of schoolbusing with 43.5 percent of the public school enrollment being bused to school, should demonstrate that educators do not feel that transportation of students causes hardships to children or impinges on the educational process. Busing at this level is primarily the result of demands by parents that their children be transported to school at public expense.

That a great deal of busing can be tolerated—and by deliberate choice of the parents—was illustrated by statistics on public and private schoolbusing published 1970 by South Today. The South Today article surveyed pupils at 10 segregated private schools and found that the number of pupils bused averaged 62 percent and that the distance averaged 17.7 miles each way. By contrast, public schools in the eight States in which these private schools are located were busing less than half the enrollment, an average of 10.1 miles each way. Thus more of the private school students were being bused, and they were traveling an average of 7.6 miles each way farther than pupils at the public schools.

To grasp the importance of the schoolbus to American education, one needs only to imagine the national outcry that would result if all bus service for all purposes suddenly were withdrawn. Only when busing is used for desegregation purposes is there bitter complaint.

ACADEMIC ACHIEVEMENT

There are those who when they say education suffers as a result of busing, mean that education suffers as a result of school desegregation. There is no evidence that academic achievement suffers as a result of desegregation.

On the contrary, study after study has found that minority children often increase their achievement in integrated classrooms while majority children generally perform as well, and in some instances, better. Integration through busing has had clearly beneficial effects on achievement in such diverse school districts as those in Louisville, New York City, New Rochelle, Buffalo, Rochester, Syracuse, Riverside, Berkeley, Evanston, Denver, and Hartford.

Mr. Chairman, I ask that a short list of supportive studies for that statement be inserted in the hearing record at this point.

Chairman CELLER. That will be accepted.

(The document referred to follows:)

Stallings, F. H., A study of the effects of integration on the scholastic achievement in the Louisville public schools. *The Journal of Negro Education*, 28, 439–534, 1959. Wrightstone, J.W., Forlano, G., Frankel, E., Lewis, B., Turner, R. and Bolger, P. *Evaluation of the Higher Horizons Program for Underprivileged Children*. Bureau of Educational Research, Board of Education of the City of New York, 1964. Walman, T.G. Learning effects of integration in New Rochelle, *Integrated Education*, December, 1964—January 1965, 2, 30–31. Sullivan, N.V. The Berkeley Unified School District. *Harvard Educational Review* 1968, 38, 148–155. Jacquith, D.H. *School Integration in Syracuse, New York*. National Conference on Equal Educational Opportunity in America's Cities, U.S. Commissioner on Civil Rights, U.S. Government Printing Office, 1967. Maham, T. The busing of students for equal opportunities. *Journal of Negro Education*, 1968, 37, 201–300. *Integration in Evanston*, 1967–71: A Longitudinal Evaluation. A summary of the Major Findings; Sendder, Bonnie Todd and Jurs, Stephen G., "Do Bused Negro Children Affect Achievement of Non-Negro Children." *Integrated Education: Race and Schools*, March, April 1971. Rock, W.C., Goldberg, H.R., Knapp, T., and Lang, J.E. *An Interim Report on a Fifteen Point Plan to Reduce Racial Isolation and Provide Quality Integrated*. Rochester, New York: Rochester Public School, 1968. Banks, R., and DiPasquale, M.E. *A Study of the Educational Effectiveness of Integration:* Buffalo, New York, Buffalo Public Schools, 1969. *Quality Compensatory Education and Quality Integrated Education:* A report of a three-year longitudinal study in the City School District of Rochester, N.Y. 1967–70, Rochester Public Schools, 1971.

Mr. McCLORY. Mr. Chairman, may I make an inquiry at this point? I think the Coleman report and other studies have demonstrated—and I think this is the real basis for the emotional interest in this subject—that where you bus students from a suburban area where the schools provide a good education into the inner city where schools are inferior, there is a reduction in achievement on the part of these children. If you bus children from the inner city to the suburban school, there is a substantial increase in achievement; the decrease in achievement in the reverse situation is not as great but there is some reduction.

Is not that correct? Are you aware of that?

Mr. Horn. Congressman McClory, let me say, No. 1, I am not familiar with that particular finding of Dr. Coleman. I am aware and you are certainly correct that there is great concern about the busing from the suburbs into inferior inner city schools.

Mr. McClory. I think that is our big problem. I do not think that the resistance to busing for racial purposes is as great in situations where black inner city students are bused into white suburban schools as there is when white suburban children are sent into a black ghetto to be integrated into an overwhelmingly black school.

Mr. Horn. My understanding, however, is that in those cities where they have had cross busing such as in Richmond, Va. and I think Vice Mayor Marsh testified to that recently, that the fact is that it is a transitory phenomenon because all of a sudden when some of the white children from the suburbs do get bused to inferior schools, there is a substantial change in the amount of money, funds, facilities, quality of teacher and every other thing that makes for a successful school going in the direction of these inner city schools.

I know you would agree with me because you and I have talked about it, that it is tragic that there be any inferior schools in America, in an inner city, suburbs or rural America.

Our problem is not only to direct sufficient funds at the National and State level, and you are well aware of the recent cases in California and Michigan that would improve the ability of one district to have quality schools in relation to another and simply not be dependent upon the tax base of that district, but I think it is a national crisis, not simply for the black children and brown children but for poor white children that are trapped in inner cities as industry and offices have fled to the suburbs, taking the tax base with them, that has enabled the central city to support those school systems.

The Commission has had hearings in the last 3 years in St. Louis, Baltimore, and Washington, D.C. on suburban access and housing desegregation and everywhere you look, when you examine the tax figures, this is the problem that confronts the American central city.

Mr. McClory. Would it be your general observation then that any academic disadvantage to the suburban child who is being bused into the inner city is a temporary disadvantage which would be rapidly overcome?

Mr. Horn. I think, as I said, I am not familiar with that statement of Mr. Coleman's so, until I see it, I would not want to agree with it at this point. I would like to see his data. But my argument would be that even if there was a disadvantage, it is temporary and that I think it maybe shows us something that, if the white leadership in the suburbs and in the inner city have some of their children in those schools, those schools are not going to be inferior too long and maybe what is needed in these cities, my children happen to go to integrated public schools, one junior high, my daughter went to a school which was two-thirds black and I know your children have gone into integrated schools—the high school she goes to in Long Beach is 50 percent minority.

I have seen no decline in achievement. I do not doubt that the transition problem is difficult. I think it is more one of attitude and change. Teenagers, as you and I know, are difficult at that area anywhere, whether they are all black or all white, and the hubbub that parents make of this puts pressure on children and if we would let children solve some of these problems, it would be over faster.

Mr. McClory. It is more of a parental adjustment.

Mr. Horn. It certainly is.

Mr. McClory. Thank you.

Mr. Horn. Moreover, the evidence suggests that students in integrated schools are more likely to finish elementary and high school and to attend and finish college. A lower dropout rate appears to accompany school integration.

So, far from damaging or "impinging" on the educational process, busing clearly has permitted many school districts to offer all their children demonstrable, positive gains, both academic and attitudinal.

COURTS HAVE NOT GONE TOO FAR

The Congress is asked to find in H.R. 13916 that school districts have been required to transport students "often in excess of that necessary to accomplish desegregation" and that districts "will be required to implement desegregation plans that impose a greater obligation than required by the 14th amendment."

The only evidence, offered to date in support of these findings is a press release from the Department of Justice, which purports to list 157 school districts which could be affected by the proposed legislation out of the Nation's total of 18,000 school districts.

The Justice Department press release includes a list supplied by HEW of 20 school districts which are described as districts where desegregation plans have resulted in "racial balance." The press release then states that section 202 of the President's proposed Equal Educational Oportunities Act of 1972—H.R. 13915—would attempt to legislate that the failure of a school district to achieve a racial balance in the student population of each of its schools would not constitute a denial of the equal protection of the laws. The juxtaposition of the HEW list with this provision of the President's proposed legislation is clearly intended to imply that the 20 districts on the list represent examples of the courts imposing racial balance plans on unwilling school districts.

We examined these districts closely. This is what we discovered.

Mr. Chairman, the impression conveyed by the press release that these school districts represent ones in which the Federal courts have arbitrarily imposed racial balance plans is grossly misleading. In many instances the district desegregation plan was adopted voluntarily without any litigation at all. In many districts litigation was involved in desegregating the schools, usually, however, the districts themselves proposed the plan which was adopted by the court.

In addition, the examples on the list often do not represent desegregation plans which have resulted in racial balance. And, even in those cases where racial balance has in fact resulted, most of these instances are due either to the voluntary decision of the school board or to the various physical, geographic, and demographic characteristics of the school district which have naturally lent themselves to the achievement of racial balance when boundaries or routings were developed on a nondiscriminatory basis. We found that many of these school districts had desegregated their schools by operating only one high school, one junior high, and only two or three elementary schools.

Since there are only 20 school districts noted by the Department of Justice press release, I think it would be well worth the time to consider each one briefly.

There are three Alabama districts listed: Auburn City, Bullock County, and Lanett City. Auburn City is located in Lee County and has a student population of only some 5,000 to 6,000 students, 20 to 25 percent of whom are black. The Auburn City School District was a defendant to a statewide desegregation suit brought by the Department of Justice and adopted a plan which, according to HEW records, ended the dual school system in 1970. Admittedly the desegregation of the Auburn schools has resulted in racial balance. Each school has a student population which is 20 to 25 percent black. But this has not been the result of the wild decree of a rabid Federal judge.

Mr. Chairman, Auburn has racially balanced schools because there is a single high school serving all students in grade 10 to 12, a single junior high serving grades 7 to 9, a single sixth grade school, a single fourth and fifth grade school, and only three elementary schools for first through third-grade children.

Bullock County, the next Alabama district on the list, is a rural school district which, because of the growth of private segregated academies now has a public school population of only some 3,000 students, 80 to 90 percent of whom are black. In this district also racial balance results from the simple fact that there is only one high school, two junior high schools, and four elementary schools. Racial balance, of course, also results from the fact that 80 to 90 percent of the students are of the same race.

Transportation of students is not an issue in Bullock County since in this rural area the great majority of students have always been bused.

The third Alabama district listed in the Justice Department press release is Lanett City. Lanett has roughly 3,000 students. About 30 percent of these students are black, and about 30 percent of the students in each of the district's schools are black. But here once again racial balance results because Lanett now has only one elementary school for grades 1 to 5, one school for all the district's sixth graders, one junior high for seventh- and eighth-grade students, and one senior high school. Lanett provided no transportation for its students before desegregation and it provides none now.

In Florida the Justice Department lists only Tampa. This is more accurately the Hillsborough County school district which includes both Tampa and the surrounding county. The district has a school population of 101,298 students of whom 19.5 percent are black. Full desegregation of the schools was accomplished in 1971 when the Federal district court after the *Swann* decision ordered the school district to come up with an effective desegregation plan. The school board proposed, under the court order, a plan which was accepted by the court which made use of clustering and rezoning. This school board proposed plan achieved racial balance in the the schools which necessitated some increase in student transportation.

In Georgia the press release lists six school districts as ones where desegregation plans have resulted in racial balance; Augusta, Chattooga County, Clarke County, Floyd County, Muscogee County and Savannah. In Augusta, or Richmond County, there is not even a court-ordered plan in effect for all schools. A three-stage plan for the desegregation of the city's elementary schools has had the first two stages put into effect this winter. The third stage, however, will not go into effect until the beginning of the next school year. A desegregation plan for the secondary schools has, as of now, not even been presented to the Court for its consideration.

In Chattooga County, HEW's own records list the school district as having completely eliminated the dual school system and fully complied with the 1964 Civil Rights Act prior to 1968. In fact, the district has been voluntarily desegregated since 1965. Approximately 12 percent of the district's 4,000 students are black. There is racial balance in grades 9–12 because there is only one high school. In some of the district's six other schools there is not racial balance—one school for grades 1–8 is predominantly white and another serving the same grades has about 26 percent black students.

Clarke County, which includes Athens, Ga., does have a desegregation plan which results in racial balance. It has this plan because the school board wanted it. Clarke County was not sued in Federal court to desegregate its schools. It voluntarily adopted a plan for racial balance because the school board wanted to desegregate once and for all, and because it believed that it was only fair to equally distribute the slight inconveniences of additional student transportation among all residents of the county.

In fact, the only litigation in this school district was a suit brought by white parents seeking to halt the school board plan. This suit eventually resulted in the Supreme Court's decision in *McDaniel* v. *Barresi*, a companion case to *Swann*. By placing the Clarke County School District on this list and releasing it to the press in the context in which it was placed, the Justice Department has undercut the efforts of a forward looking and responsible school board.

The Department of Health, Education and Welfare has considered Floyd County, Ga., totally desegregated since 1967 when the county submitted a satisfactory voluntary plan. The school district has some 10,300 students, of whom about 6 percent are black. Each of the district's 16 schools draws its students from geographical attendance zones. This desegregation plan has not resulted in racial balance. One school has no black children. The proportion of black students on the district's other schools ranges from about 2 percent to about 14 percent.

The Muscogee County School District includes the city of Columbus, Ga. The desegregation plan in this district was the result of a court order in a private suit brought by black parents. The plan, at least on paper, does achieve racial balance through a system of dual zones and busing of those students who live outside of the zones. The school board, itself, drew up this plan, however, and proposed racial balance as its response to the court's order that it come up with an effective desegregation plan.

In Savannah, the school board itself sought to have the city's desegregation plan modified following the *Swann* decision. The private plaintiffs in the case argued that the plan should achieve a 60–40 ratio in each school. Although the school board plan comes close to this ratio in many cases, the plan in no sense could be said to result in racial balance. For example, there is at least one school which still has an entirely black student body.

In Louisiana, the Department of Justice press release listed the Jefferson Parish School District. This district has a total enrollment of 64,203, of which 21 percent is black. Jefferson Parish is operating under a court ordered desegregation plan. Approximate racial balance has been to a large extent achieved under the plan within ranges permitted by the court for each side of the Mississippi River. This has been accomplished by merely adjusting contiguous geographical attendance zones. The parish has always bused a majority of its students. The court order has only required additional busing for about 3,000 black students who formerly attended all black schools in isolated black neighborhoods.

In Michigan the Justice Department lists the Pontiac School District. Pontiac has some 23,000 students of whom 37 percent are black. The school system operates 27 elementary schools, six junior high schools, and two high schools. It is incorrect to list Pontiac as a school district where a desegregation plan has resulted in a racial balance. Pontiac's elementary and junior high schools have been desegregated by a court order which clusters schools and has resulted in the transportation of some 6,000 more students than the previous year. Under the terms of the court order, however, the percentage of black students in these schools may vary from between 20 and 40 percent of the schools total enrollment. Moreover, the districts senior high schools are not covered by the court order since they were voluntarily desegregated a year before the order was issued.

The Justice Department press release lists three school districts in North Carolina: Charlotte-Mecklenburg; Salisbury City; and Winston-Salem. Charlotte-Mecklenburg is, of course, the school district involved in the *Swann* decision. It is strange indeed that the Justice Department should place this district on its list of desegregation plans which have resulted in racial balance. Chief Justice Burger specifically stated for the court in Swann that:

> If we were to read the holding of the district court to require, as a matter of substantive constitutional rights, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse.

The Supreme Court also specifically stated that racial balance had not in fact been achieved. The Court, not the Department of Justice, is correct. For example, in the District's elementary schools student bodies range from 9 percent to 38 percent black.

The Salisbury City School District, HEW reports, was voluntarily desegregated under an HEW plan. The school district has 3,800 students, of whom about 34 percent are black. Salisbury operates only seven schools; one special education center, four elementary schools for grades 1 through 6; one junior high for grades 7 through 9 and one high school for grades 10–12. The four elementary schools are racially balanced under the school district's voluntary plan.

Winston-Salem is the final North Carolina school district on the Justice Department's list. The Winston-Salem schools have been desegregated as the result of a private suit begun in 1968. Following the *Swann* decision the district court ordered that the desegregation plan be updated to conform with that decision. Racial balance has not resulted, however. The percentage of black students in the district's schools ranges from a high of 41 percent black to a low of 18.6 percent black.

In South Carolina the Justice Department press release listed five school districts: Allendale County; Florence No. 2; Greenville, Greenwood No. 50; and Newberry County. In the Allendale County School District currently has an enrollment of 2,508. Of this total 80 percent of the students are black. The county has one high school, two junior high schools, and four elementary schools. Since 1970 the Allendale schools have been desegregated by court order. The suit which resulted in that court order was brought by the Department of Justice, itself, under title IV of the 1964 Civil Rights Act. Students have always been bused from their homes in outlying areas to consolidated schools. In the past, however, they were bused past each other to segregated schools.

HEW records show that the Florence County School District No. 2 was also desegregated by a suit brought by the Department of Justice under title IV. Once again a poor, rural district with a very small number of students has been placed on the Department's list. Florence No. 2 has a total of only 1,750 students, of whom 51 percent are white and 49 percent are black. The district has one high school, one middle school, and two elementary schools.

In Greenville, S.C., the schools were desegregated by court order in a suit brought by private plaintiffs. Twenty-one percent of the district's 56,500 students are black. The district has always had substantial busing. The Greenville School District tries to maintain racial balance in its schools. Racial balance has not been achieved in all schools, however. Two elementary schools have student bodies which are 35 percent black and one rural mountainous area of the county has predominantly white schools.

Greenwood School District 50 desegregated its schools by voluntarily working out its own desegregation plan. The district has been considered fully desegregated by HEW since 1970. Greenwood No. 50 has some 10,000 students who attend 17 different schools. Thirty-seven percent of all the district's students are black. The Greenwood desegregation plan has not resulted in racial balance. Two of the district's nine elementary schools have a 50-percent black enrollment. In the remaining 15 schools blacks make up between 31 and 47 percent of each school's total student body.

The Newberry County School District was fully desegregated by 1970 as a result of a private suit. Forty-six percent of the district's 6,574 students are black. Newberry County does not have racial balance in its schools. The district operates 17 schools in which the percentage of black students ranges between a low of 29.7 percent to a high of 64.2 percent.

I have discussed each of the school districts on the list of the Department of Justice of purported "districts where desegregation plans have resulted in racial balance" individually and at some length. The conclusion is unavoidable that many of these districts are not racially balanced and that the appropriate Federal court has never ordered them to be so.

Of the 20 districts listed by Department of Justice as having desegregation plans, only 11 had racial balance in school enrollment. Of the 11 districts actually having plans which resulted in some form of racial balance which we would define as maintenance of racial proportion in the enrollment of each school which varies only slightly from racial proportion in the district total enrollment, six of those 11 plans resulted in racial balance because geographically, physically or demographically they limited themselves to racial balance when routings were developed on nondiscriminatory bases.

I mentioned the fact when you only have one high school you obviously get racial balance in the district. In summary only 20 of the districts listed as having desegregation plans have had to increase busing in order to implement the plan. The Commission on Civil Rights believes that six districts nationwide out of 18,000 school districts is not a sufficiently compelling number as to require the Congress to enact Student Transportation Moratorium Act of 1972 and so-called Equal Educational Opportunity Act of 1972.

I think the conclusion is unavoidable that many of these districts were not racially balanced and appropriate Federal court has never ordered them to be so.

Mr. Chairman, this subcommittee and the Congress are being asked to consider the Student Transportation Moratorium Act of 1972 because the administration has also submitted H.R. 13915 which seeks to establish permanent standards concerning school desegregation. It is relevant for this subcommittee to examine what it is that Congress is being asked to consider that requires you to take such drastic and extreme action as to declare a moratorium on the enforcement of constitutional rights.

H.R. 13915, the so-called Equal Educational Opoprtunities Act of 1972 attempts to limit the constitutional standard by which the illegality of school segregation ought to be judged. It does this by recognizing only an obligation to eliminate segregation compelled by State law or achieved purposely by school authorities. It excuses school segregation resulting from other forms of State action which have segregated persons on the basis of race, color or national origin—segregation which courts previously have declared violates the equal protection clause of the 14th amendment.

The racial character of neighborhoods has not been accidental. The evidence shows substantial Federal, State, and local government involvement in residential segregation. Thus, school attendance zones based solely on one's residence in a particular neighborhood are often in fact discriminatory and are not neutral devices for complying with the requirements of the 14th amendment. This proposition was succinctly stated by the fourth circuit in *Brewer* v. *School Board of Norfolk, Virginia.*

"Assignment of pupils to neighborhood schools is a sound concept, but it cannot be approved if residence in a neighborhood is denied to Negro pupils solely on the ground of color." 397 F. 2d 37, 92 4th Circuit 1968.

Neighborhoods may well be a convenient basis for pupil assignment to schools but they are just that and no more. They are not of such supremacy as to override fundamental constitutional rights. As Chief Justice Burger noted in the *Swann* v. *Charlotte-Mecklenburg* opinion, "Desegregation plans cannot be limited to the walkin school."

By placing undue reliance on neighborhood assignment plans, the proposed legislation seriously prevents courts from developing school pairing plans, grade clustering, and similar rearrangements which would achieve desegregation without substantial busing.

By limiting explicitly what may be done so remedy denials of equal protection of the laws in education, the proposed legislation would whittle away the scope of protection presently afforded by the 14th amendment. H.R. 13915 expressly limits—

Increased pupil transportation necessary to accomplish desegregation;

Desegregation plans which ignore school district boundary lines;

Desegregation plans which call for pupil assignment on a basis other than assignment to a neighborhood school; and

The affirmative obligation to remedy racial isolation in our schools.

The legislation that Congress is being asked to consider during the moratorium period proposed in H.R. 13916 is of such dubious constitutional validity and so unwise a matter of public policy as to warrant your rejection of H.R. 13916. It hardly makes commonsense to enact legislation stopping all progress in school desegregation in order to consider another measure which does not do credit to the better instincts then and long-run interests of our people.

CONCLUSION

Mr. Chairman, I wish to recapitulate briefly. H.R. 13916 purports to be based on findings of fact which allegedly demonstrate the necessity for congressional action—action which would override the protection of constitutional rights. There are seven statements of findings made in H.R. 13916. Essentially the findings state that school districts have been required to engage in excessive student transportation to desegregate and that this is costly, time consuming, and harmful to children and the educational process. There is no evidence to support these findings as facts. On the contrary, there is a great deal of evidence which not only disputes these purported findings of facts, but discredits them as well. Nor is there any evidence based on an analysis of school desegregation cases, which suggests that any school district has been required to sustain "a greater obligation than required by the 14th amendment."

Congress should legislate on the basis of real, not purported facts. The U.S. Commission on Civil Rights believes that it would be a serious mistake for Congress to incorporate in the Nation's body of law legislation based on such erroneous "findings."

H.R. 13916 and its supplementary measure, H.R. 13915, have been criticized by virtually every civil rights organization as well as by leading groups of educators such as the National Education Association because of the damage it does to the desegregation and the educational process everywhere. These bills and their questionable constitutional validity have also been criticized by the vast majority of legal scholars who have commented on their merits.

The legislation, if enacted, would erode the present level of desegregation we have achieved in the United States.

The disestablishment of the dual school system in the South would be slowed because of strict limitations on remedy with an eventual slideback to separate, but in reality, unequal, segregated schooling a very real possibility. Racial segregation in Northern and Western

States would continue to be unremedied, regardless of whether de jure segregation has been found by court, simply because the restrictions on busing and the preservation of the neighborhood school would make desegregation virtually impossible.

Those provisions of the legislation which cut back on constitutional rights or which are doubtful exercises of the constitutional authority of Congress to legislate would force an unfortunate confrontation with the Federal judiciary.

This situation we believe benefits no one.

The Commission believes that it would be a serious mistake for Congress to enact legislation which accepts the inevitability of school segregation, with its demonstrated denial of equal educational opportunity.

The passage of this legislation and any of the other measures which deal in any way or another with the subject of school desegregation, busing and student assignment policies will represent the first retrogressive legislative action in the field of civil rights by the Congress in this generation. From reconstruction until 1957 no general action was taken by the Congress to require the implementation of the 14th amendment. Only in 1957, during the Eisenhower-Nixon administration, just 15 short years ago, did the Congress decide to move toward enacting measures to grant full, first-class citizenship to all the citizens of the Nation regardless of their race, color, religion, or national origin.

This Commission along with the millions of Americans who have for the past decade and a half applauded the various civil rights acts overwhelmingly approved by a majority of both parties in Congress now have just cause to fear that if this and other similar legislation is passed, it will portend a new and fateful future for our Nation. If this legislation is successful in getting through this Congress, there is no reason to believe that attack will not shortly come along on the laws now applied to remedy discrimination in employment, housing, public accommodations, and indeed any other field in which discrimination and segregation had in the past been widely practiced.

None of us should react precipitously to repeal the progressive direction in which the Congress and this committee, the chairman in particular, the courts and each President has been moving for over three decades. There have been many times during this period when strident voices were raised against the implementation of the decisions of the courts and the laws of the Nation in the field of civil rights. A few have always stood in the doorways of schools, restaurants, and places of employment and public accommodation to defy those decisions and laws. Presidents and Congress did not then succumb to transitory emotions nor did they turn their faces away from their duty to make this Nation a whole nation—a nation hopefully where no man or woman would have cause to claim that he or she was being treated differently.

I appear before you today on behalf of the U.S. Commission on Civil Rights to urge that the record of the Congress since 1957 not be blighted by initiating a movement toward dismantling the progress of our generation, but rather to demonstrate to the Nation that the Congress is committed to strengthening the movement toward full and unquestioned equality for every citizen—a movement supported by the Constitution which you and I have sworn to uphold.

Thank you, Mr. Chairman.

Chairman CELLER. I find that a very thoughtful and fine statement.

Mr. HORN. Thank you.

Chairman CELLER. I hope there are not too many questions. We have some other witnesses and we want to conclude this morning.

Thank you very much, and your colleagues.

Mr. MCCULLOCH. Mr. Chairman, I have no questions but I do want to make this comment. It is of record that I am one of the cosponsors of H.R. 13916. My comment is in the nature of a plea of confession and avoidance. Since you are the able person you are, I am sure that you understand why I acted as I did.

I think that your statement is one of the best that this committee has had on this troublesome problem.

Mr. HORN. Thank you, Congressman McCulloch.

I knew, when your name went on it, that it was merely for putting it on to get a hearing and I knew what your commitment was because you have been a real leader in the Nation on this subject.

Mr. MCCLORY. Could I comment on the quality of the statement that we have heard?

It has been very reasonable and constructive. The only question I would ask is this. I judge from your statement that you are urging this committee to do nothing, that there is no legislation that we could develop which would promote the general welfare and help resolve the difficult problems that we have.

Mr. HORN. That is correct, Congressman McClory. I believe the courts have very cautiously and with great precision been attempting since 1954 *Brown* decision to work their path through the effects and practice of segregation since 1954. They have evolved over this period a series of formulas and trying to use commonsense looking at local conditions. I do not believe, and the Commission does not believe that you can legislate some national standards like the French civil code where you try to anticipate everything that might happen.

I think the courts who are charged with listening to evidence, finding facts, trying to be above the transitory emotions of the moment, are the proper body as was clearly made evident in the *Brown* decision and testimony of Attorney General Brownell, and as you know as lawyers, this is what the Court seeks to do, to look at a situation and try to hold that situation against the mandate of the Constitution and to do anything at this time when there is a clear pronouncement. Over two decades almost by the Federal courts from district to the Supreme Court of the United States, would do a disservice to the Constitution. I might add in terms of the transportation of students, the test of how much busing is permissible is essentially one of reasonableness and I know you are familiar with it because we have discussed it and that the objection to transportation of students may have validity when time or distance of travel is so great as to either risk the health of the children or significantly impinge on educational process.

Mr. MCCLORY. I think you are reading in part from Chief Justice Burger's opinion in the *Swann* case, which I think is a reasonable guideline.

Mr. HORN. The Supreme Court of the United States has never held to fulfill the mandate of the Constitution, you must have racial balance proportionately in every school but the courts rightly look at population statistics, boundary lines and other factors in making their decision as to what type of a good-faith effort has either a de jure or de facto and this is increasingly a very muddy area as you read the Court decision, has been made to overcome and to route out by branch, as the historic decision says, the vestiges and evils of segregation in this country.

Mr. McClory. I have been critical in times past of the clearinghouse publications. But I want to compliment you on the high quality of this clearinghouse publication entitled "Understanding School Desegregation."

Mr. Horn. Thank you very much.

Mr. Mikva. I want to follow up on the questions of my distinguished colleague from Illinois, Mr. McClory. Dr. Horn I find your statement very persuasive in terms of pointing out that the real problem has been grossly exaggerated both by the Department of Justice and others. But there is an unreasonable fear that my distinguished colleague referred to before, which is that large numbers of children are going to be bused from quality suburban schools to low quality inner-city schools.

It is unreasonable. It is not an existing threat of any kind. Is that an area where perhaps we might be able to quiet such fears?

Mr. Horn. There is no question about it, Congressman Mikva, that the key to overcoming inferior schools in this country is sufficient Federal support to upgrade those schools and, as you know, if you look at inner city, Chicago or Washington, D.C., or New York, you have school buildings that are in some case a century old. You have complete dilapidation of facilities.

Where once it was a quiet little neighborhood, it now consists of high-rise apartments. You have overcrowding and everything else. There is a need not only for physical plant but we as educators have a responsibility to turn out a better quality of product as a teacher who can cope with students of diverse background and culture in bilingual education and every other way.

I think the various efforts the Congress has made in the legislation before you is commendable. If this massive infusion was made to try and overcome the type of inferior schools we are familiar with.

Mr. Mikva. Let me try out something very specific on you. Suppose we had a proposal that provided that before any busing order would be effectuated, the receiving school had to be spending at least as much per capita as the sending school. Would that be entitled to consideration?

Mr. Horn. It would be an approach provided there was some fund they could immediately draw because the constitutional mandate is clear that whether the money is there or not, the Constitution says there shall not be segregated schools. There shall not be black schools and white schools. There shall be simply schools. That is a mandate of the Constitution and the Supreme Court of the United States. Whether the money is there or not, does not meet the test of the Constitution. But certainly if you had a formula that when a school district either voluntarily desegregated or HEW sought a particular court order or the Court imposed such an order, that Federal funds would be available to equalize the difference between the area that has the tax base and industry and offices and corporations and the high income middle class, upper middle class, versus the center city that is increasingly a desolate place in which to live and work, if there were some funded that could be drawn on automatically, and would not delay the enforcement of the Constitution, then that is fine.

That would be a very constructive piece of legislation.

Mr. Mikva. Thank you.

Mr. Polk. Mr. Chairman?

Chairman Celler. Yes.

Mr. Polk. Dr. Horn, I would like to clarify one point concerning your summarized statement of your findings regarding the 20 school districts listed by the Department of Justice. I noted that there were only 11 that actually had racial balance in school enrollment. The summary states that of those 11, six plans resulted in racial balance because of certain geographic and physical characteristics. Then the summary concludes that there are only six districts with desegregation plans which have resulted in some form of racial balance that have had to increase busing. I was wondering if those six districts with racial balance plans were prodded by litigation or not.

Mr. Horn. I am going to have to ask the staff on that because they made telephone calls. I am informed by Mr. Fleming that four involved litigation and two did not.

Mr. Polk. Thank you.

Chairman Celler. Thank you very much, Dr. Horn.

Mr. Horn. Thank you.

In conclusion, may I say, Mr. Chairman, this month of May we have two historic anniversaries. One is the *Brown I* decision on May 17, 1954. The other is *Plessy* vs. *Ferguson*, May 18, 1896. I suspect this would be a crucial month we might look back to in the year 2000 to decide which anniversary we are honoring. We appreciate what the committee has done.

Chairman Celler. Thank you. Our next witness is Mrs. Irene McCabe, President, National Action Group, Pontiac, Mich. Mrs. McCabe.

STATEMENT OF MRS. IRENE McCABE, PRESIDENT, NATIONAL ACTION GROUP, PONTIAC, MICH.

Mrs. McCabe. Good morning, Mr. Chairman and gentlemen. My name is Irene McCabe and I am the president of the National Action Group based in Pontiac, Mich. Before I begin my prepared remarks, I would like to make one comment on the previous testimony heard. If the statistics given from my city of Pontiac, Mich. are indicative of those given for the entire testimony, I think we have 27 pages of testimony that should be completely checked out before considered accountable.

Mr. Mikva. Mrs. McCabe, could I stop you there, regarding in your opinion which statistics are inaccurate?

Mrs. McCabe. For example, in our city of Pontiac the busing orders were to bus 8,700 students, not 6,000.

Mr. Mikva. I want to get to that point. If you will stop a moment. On pages 18 of Dr. Horn's statement——

Mrs. McCabe. That is to begin with. Before the busing order we had 29 percent of our student body comprised of black students. Now, we have 37.5 percent because of the white flight.

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We were under a Federal court order and we do have a racial balance. The very fact that there is a 20-degree leeway simply accounts for the fact that we have the white flight. Consequently, your racial ratio is in a continual state of change but within another year or so will not be, the racial ratio will change to the point where balance from the Court order will have to be 30 to 50 percent black. There are several other discrepancies in here that another gentleman from Alexandria found to be true in his city also.

Mr. Mikva. I am a little puzzled; 37 percent of the students are black. Are you saying that is an increase from the previous year?

Mrs. McCabe. Correct and it is because of the court ordered busing.

Mr. Mikva. Is Dr. Horn's statement inaccurate?

Mrs. McCabe. His statement of 6,000 students being bused is incorrect and inaccurate. It is 8,700.

Mr. Mikva. 6,000 more were transported than the previous year. Is that inaccurate?

Mrs. McCabe. 8,700 more than the previous year.

Mr. Mikva. What is the total being bused?

Mrs. McCabe. I do not know.

There is not that large a number, having been bused previously, another incorrect statement was—I do not have Dr. Horn's testimony, but something to the effect that it was not a racial balance. This is untrue, it was a racial balance.

Mr. Mikva. Mr. Hoffman is bringing Dr. Horn's statement over to you.

Mr. McClory. Mr. Chairman, is the witness the lady who came by foot all the way from Pontiac?

Mrs. McCabe. Yes, and I am still limping. I was tempted not to appear before the committee but I am glad that I did, and I hope that I will be able to respond to questions because I can tell you things of fact, not of statistics or not of studies.

There can be a study found for whatever position which substantiates your point of view. I want to address you as a mother and as a victim of a busing order and they are not unreal fears and unreal things that are taking place.

I come from a city which is presently under a federally-court-ordered busing program to achieve racial balance in the public schools. I come from a State, Michigan, which has been found guilty of "de jure" segregation and is facing a possible tri-county court-ordered busing plan involving up to 400,000 children at an estimated annual cost of $42 million a year.

I come to you as a spokesman for a group of homeowners, taxpayers, parents, grandparents and just plain bewildered citizens to ask that you do something to help us.

Let me hasten to add when I say "us" I mean all of the citizens of the State of Michigan and especially Pontiac and the tri-county area of Wayne, Oakland and Macomb.

When I say "help us," I mean give assistance to each and every citizen of these counties regardless of his race, color or creed. Help us avoid the destruction and loss of our public school system of education. Help us preserve our cherished right to be involved in our children's education. Help us maintain local influence and local control of our schools which have always been the strength of our public school system of education in this country. Help us avoid further polarization among our citizenry over the issue of busing. And yet, most of all, help us truly provide equal educational opportunities for all children, of all races and of all ethnic backgrounds.

It might surprise some of you to know that although I am opposed to court-ordered busing. I am equally, if not more so, opposed to denying any child an equal chance at an education. If I honestly thought the court-ordered busing had anything to do with improving the educational opportunities of those being bused, I would not be sitting here today. If I, for one minute thought that there was any proof that busing assisted the educational opportunities of the children back in Pontiac I would not be so vociferous in my opposition back in Pontiac through our NAG activities. Furthermore, if I thought that court-ordered busing improved the degree or caliber of integration as it exists in my city or in the tri-county area, again I would not be sitting here today protesting busing.

The terms "integration" and "desegregation" are confusingly interchanged. Integration is not the mixing of students for 6 hours a day under ill-conceived court-ordered busing plans. Integration by busing is a hypocritical, temporary, condescending form of artificial favoring for a few hours and then the "cargo" is taken back to its respective environment and dumped.

True integration is so much more than that. It is a working relationship between the people involved. It is a society in which we live and work together—choosing to be with one another.

I firmly believe there can be no such thing as instant integration. Where true integration exists it is because of love and understanding among fellow men, not because of force. You cannot adjudicate an attitude.

It takes acceptance on the part of the people involved. It is a voluntary concept and one that cannot be forced upon any person. A friend of mine wrote in a recent busing statement "Those who would use force to achieve integration are similar to those who would use rape to begin a love relationship." It is common experience to all of us that we react negatively whenever we are forced to do something.

Let me also remind you that any "instant solution" to a social problem has always been regretted. I cite the Prohibition Act as an instant solution but we find from history it was neither instant nor a solution.

Desegregation, as the court orders give life to that phrase is concerned with the mere mixing of people of different races. For instance, in Pontiac we were ordered to mix no less than 20 percent, nor more than 40 percent of the black students with the remaining percentage of white students in every school and we had "instant desegregation." The fact that there are incidents of violence in the schools, the fact that there is nonassociation on the playgrounds, the fact that classes themselves are educationally segregated for teaching purposes must indicate to you how shallow an approach these desegregation orders are.

Gentlemen, having been involved in this busing for well over a year now, I do confess one thing to you. I still do not know what the busing orders are trying to accomplish.

If they are trying to accomplish in Pontiac a better educational opportunity for the children, let me briefly point out the existence of recent authority to the contrary. I am sure that you are all aware of Frederick Mosteller and Daniel Moynihan's new study on equality of educational opportunity. Among other things this study confirms the findings that the achievement of black students placed in an integrated setting improves only slightly. The study further points out the importance of the socioeconomic gap which, unfortunately, is totally ignored by a busing program.

Christopher F. Jencks, one of the contributors to Mosteller-Moynihan publication concluded that "the most promising alternative would be to alter the way in which parents deal with the minor children at home."

To me that means one thing and that means teach discipline. Give discipline at home so they know how to function in a setting of discipline in school and can learn in an environment of discipline and order.

If the lower socio-economic child starts school already behind his white suburban counterpart, no amount of busing will close the black-white achievement gap.

Cannot the millions and millions of dollars squandered on the fuel and buses be more intelligently invested in proven educational programs? Cannot the millions be better spent on programs which tend to improve the socioeconomic conditions when the students must start their early school days?

In an article that I clipped from the Washington Post written by Lawrence Feinberg, the writer commented:

> In their analysis Moynihan and Mosteller wrote that because of the impact of social class on education, government programs that improve the jobs and incomes of the lower class blacks may, in the end, do more to raise the levels of their educational achievement than spending more on schools and integration.

There will be others who will say that even if a good argument can be raised that busing is not truly an educational tool, it is still a useful tool to desegregate. To those who choose to look at busing as strictly a desegregation tool I can cite Pontiac statistics, and I am aware that every other school district that is faced with court ordered busing has experienced the same phenomenons. When the Federal court ordered busing of Pontiac students, the black enrollment went from 29 percent to 37.5 percent; 2,500 white students, from a school population of 23,000 fled from the Federal court order. They fled either to private systems or beyond the reach of the court order.

Instead of the desired integration in Pontiac schools we now have a greater segregation. According to the president of the school board who testified here in Washington before the Mondale committee, by 1974 Pontiac will be a predominantly black system because of the continuation of the "white flight" phenomenon. Must then the Federal court expand its order to cover all adjacent suburban schools; must it take in a tricounty area similar to what is being proposed in Detroit or Richmond, Va.; must it go beyond that into a six-county area; must the Federal courts take over the control of the private schools; or must the Federal courts go to such unbelievable extremes never thought possible such as freezing home sales to lock in an unwilling population? Where will it all stop? Once these schools are delicately balanced by race, will we then begin to reintegrate by ethnic percentages? Religious percentages?

Gentlemen of this committee, you have heard many witnesses more eloquent than I come before this committe and plead their case from one side and then the other. On the one side I know there is legitimate complaint being raised from those forced to attend allegedly lower quality schools.

I add "allegedly" because I do not think there are lower quality schools. There are only lower quality teachers who are not able to motivate children. They should be made accountable for lower academic achievement.

They cry out for educational reform and educational opportunity. I sympathize with them—I truly do. On the other hand, there are the hundreds and thousands of good people who think as I do that, while there may be legitimate complaints that have brought about many of the lawsuits now pending in this country, the remedy being applied in response to those complaints is not the answer. It is not only the answer but it may be so counterproductive that it causes more severe damage in the long run.

We in NAG are so convinced that busing is not the answer, that we are planning right now an ambitious program to find a better remedy. Our able lawyer and adviser, L. Brooks Patterson, has just this week resigned from NAG to develop this project. We call it QEFAK—quality education for all kinds. Mr. Brooks Patterson, who originated the idea of QEFAK has sent me a draft of the proposal. The program that NAG will attempt to sponsor is this: To set up a blue ribbon committee of educators, parents, citizen group representatives, and so on, to establish quality education for all kids. QEFAK. It is proposed to be a nonprofit corporation, structured to oppose busing yet dedicated to the development of quality education in our tricounty area. It will be funded by donations, with $1 million as our goal—with the QEFAK. Committee, not NAG—controlling the funds. NAG will be instrumental in raising the money for this worthy project—and let it never be said again that we of NAG or of the antibusing forces in this country are not legitimately concerned about quality education for all children.

But gentlemen, let me return in closing to why I am here today. I want to add my voice to those who have testified before me that a constitutional amendment is necessary to stop this forced busing for racial balances.

Chairman Celler. I take it that you are in favor of the constitutional amendment now before the committee.

Mrs. McCabe. Yes. I would like to clarify this further by adding as I do in my testimony that I know there are many bills before this committee, many amendments that we would hope you would take the best of all, pull them together and give us a constitutional amendment to prohibit forced busing.

The Federal courts have taken the bit and you, the Congress, must now rein them in.

I have been in this fight better than a year now and never did I realize when I reacted to the court order and entered the arena that the fighting would be so dirty. I have been accused of playing on the fears of those involved in the antibusing movement while my very detractors wallow in the worst sort of scare tactics by crying from this very witness table that the civil rights movement will be turned back beyond *Brown* v. *Board of Education* should you consider a constitutional amendment.

I have been accused of being a racist and a bigot, when my only sin was to draw the line and demand that my civil rights be eroded no further. Such false and malicious accusactions by the other side only redoubles my efforts and those efforts of the people involved with me. I watched in horror a Pontiac father, Carl Merchant, face trial back home on a charge of child neglect rather than obey a Federal court order he knew to be unjust.

There are many good people on my side in this fight motivated by many good and noble reasons. They cannot just be ignored as being temporarily aroused, they cannot be frightened from the battlefield by falsely raising the trite banner charging "racism," and they will not be deprived of a precious right where their children are concerned just because they, unfortunately, make up the silent majority of this county—both black and white.

Eventually to come before this committee is the legislation proposed by the President of the United States. I sincerely feel that such legislation was drafted in response to the hue and cry of good citizens across this country for relief from what has to be an ill-conceived program of mass busing.

You will have the opportunity to examine in great detail the merits of the President's proposed legislation and I certainly hope that you give it your most prompt and serious consideration. But in addition to the President's legislation you have before you many constitutional amendments to prohibit the forced busing of schoolchildren for any reason. You have the authority to report out of this committee legislation and/or more importantly a constitutional amendment. I strongly suggest at this time the reporting of a constitutional amendment in answer to the pleas of those who feel as I do that busing could well ruin the public system of education as we know it today and could very well tear this country apart as no other domestic issue has ever threatened to do.

Thank you for your attention given to me this morning. I welcome your questions at this time.

Chairman CELLER. I want to say that this committee desires to hear all shades of opinion on this subject and you have made considerable sacrifice in coming here and we are aware of what you have done. I think great credit is due to you for your coming here and courageously expressing your views.

Mrs. McCabe, of course, we have testimony somewhat contrary to your own testimony with regard to Pontaic.

For example, the U.S. Commission on Civil Rights has reported to the committee on desegregation in Pontiac and additionally we have heard testimony from the president of the Pontiac PTA Council and a number of students from the Pontiac public schools including Central High School, Jefferson Junior High School, Lincoln Junior High and Eastern Junior High, all of Pontiac. The students' conclusions were as follows:

1. That integration is providing more equal educational opportunity.

2. That integration is succeeding in creating a better understanding among Pontiac students.

3. That the majority of students, teachers, and administers are working for the success of quality-integrated education.

Their conclusion was "Integration is working and we do not want to go back to the old way."

Do you care to comment on that, Mrs. McCabe?

Mrs. McCabe. Yes; I would like very much to make a few comments. Unfortunately, you are not hearing from the people, Mr. Chairman, whom we should be hearing from. These students, this trip was paid for by a special interest group for the handful of probusing students that existed to come here and testify before you.

If only I could have afforded to have brought the other 21,000 students in the school district who would tell you exactly what I tell you.

I would not have brought up again the incidents of violence but they are so great and are increasing at such a rapid rate they have now while I was walking the month of April had to close down in one junior high the cafeteria completely and this past week they had to close down the second cafeteria in another junior high because of what is happening in the school.

Academically, I received letters and phone calls from youngsters—if it is youngsters that you are going to listen to, I prefer to think that you and I as adults should make these decisions but if it were youngsters that you wanted to hear from, you could, Mr. Chairman, hear from 21,000 students who would tell you, "I fear to go to school. I am learning nothing. I am wasting my time. Why must I go, mother? Mrs. McCabe, will you tell my mom I should not have to go to school when all I do is hide all day long?"

This is what is going on. PTA represents no one. The PTA is nonexistent in Pontiac now. How can there be a PTA because there is no parent involvement when a parent may have youngsters in six different schools? They do not exist.

So who she spoke for I could not begin to guess. As far as teachers are concerned, unfortunately, PTA represents not the teachers, not the rank and file. They are the ones that stopped me in a supermarket and dentist office yesterday—wherever I might be: "Keep up the good work, Mrs. McCabe."

It is 99 percent of those who are members who oppose what their leadership has come here and testified to you. And yet because they fear for their job, they will not come and testify.

Because principals fear for their jobs, they will not come and testify. Because students fear for their safety, they cannot come and testify. I have no fear because I see an injustice and I will fight until I can no longer fight to see it rectified.

Chairman Celler. Any questions?

Mr. Hungate. Mrs. McCabe, in your testimony you refer to the trial of Carl Merchant. Child neglect by reason of what?

Mrs. McCabe. His youngster not attending school, being withheld from school because the youngster was supposed to have been bused.

As far as distance is concerned, I do not know if that was his deciding factor but bused away from the neighborhood school.

Mr. Hungate. Was that a State court or Federal court proceeding?

Mrs. McCabe. That was State court.

Mr. HUNGATE. The busing order is a Federal court order?

Mrs. McCABE. Yes.

Mr. HUNGATE. Do you think we would alleviate the problem if we did away with all busing?

Mrs. McCABE. I am not even suggesting doing away with all busing although there should be something to this effect because here again I have figures that are contrary to those given by testimony prior to mine and I do not know if you heard it but according to statistics in our State, this is from the secretary of state office, the accidents related to school busing are rising at such an alarming rate that some drastic measures should be taken. I am not suggesting that we do away with busing, busing of students who live beyond the mile or mile and a half from their nearest neighborhood school.

I am not suggesting that we stop busing the handicapped. I am suggesting that we stop needless, useless busing to achieve artificial racial balance which is a negative factor on education.

It is a negative factor on integration. It is a negative factor on race relations and negative factor on financial situations.

That is the busing I would like to stop.

Mr. HUNGATE. Then the criteria which you use in determining whether or not busing the distance from the school, would you have any other criteria as to when we should bus?

Mrs. McCABE. Only when absolutely necessary and to achieve racial balance is certainly not a necessity.

Mr. HUNGATE. Thank you.

Chairman CELLER. Mr. McClory.

Mr. McCLORY. Mr. Chairman, I want to make this observation. Undoubtedly, the situation in Pontiac and other parts of Michigan must be extremely critical; otherwise we would not have this great popular involvement that we appear to have. Also I have been struck by the fact that some of our well-known civil rights liberals have indicated support for a constitutional amendment to prohibit busing for racial purposes. This has surprised me. Their action must be impelled by this situation.

There is no pending litigation, is there, now in Pontiac?

Mrs. McCABE. Pontiac is busing.

Mr. McCLORY. I know that. But is there litigation still pending?

Mrs. McCABE. The Supreme Court refused to hear our case last November but what is pending is tricounty area, Judge Roth in Detroit, Wayne, Oakland, and McComb Counties, that will be a minimum of 400,000 students with maximum busing of a million minimum, $42 million annually.

Mr. McCLORY. That case could go to the Supreme Court, too.

Mrs. McCABE. We have no idea what will get to the Supreme Court.

Mr. McCLORY. Thank you very much.

Chairman CELLER. Thank you very much.

Mr. Polk?

Mr. POLK. Mrs. McCabe, what is your position regarding integration within a radius of a mile and a half? I assume that under State law if a child is assigned to a school that is within a distance of a mile and a half, there is no busing involved.

What is your position regarding integration in that context?

Mrs. McCabe. I live in an integrated city. I took, because I am going to somehow maintain my freedom of choice as a human being and citizen, two of my youngsters out of the public school and we could ill afford it and put them into a parochial integrated school. But I did it out of choice. If the neighborhood is integrated naturally, and this is a natural integrated situation and they are all in walking distance of the neighborhood school—fine. I have no problem with integration or I would have left Pontiac a long time ago. I have no problems with integration.

Mr. Polk. Suppose we find an area that is shaped like a circle and all the people on one side of the diameter are white and all on the other are black. Should we build a school on the line so that all might walk to it? Would you favor integration in that context?

Mrs. McCabe. If this school were structured there because of a necessity, because it was a populated area. I would say that you are compromising your principle if you are building a school in a given area that is not a well-populated area and that would not be in close proximity and safety for the youngsters to walk to school. Where there are integrated neighborhoods, integrated naturally, not by freezing home sales or integrating neighborhoods by legislation. I have no objection, no problems with integration, sir, but if you are saying let us no longer build schools where they are needed but let us build them for some other reason, I think here again we are off on the wrong track.

Mr. Polk. Let us suppose the school is needed and we have a situation where one-half of the pie-shaped area is black and one-half is white. Would you favor integration in that context?

Mrs. McCabe. Yes.

Mr. Polk. It is only when integration would require travel distances greater than a mile and a half that you would say no?

Mrs. McCabe. It is only when the youngster has to go beyond his nearest school. This is no different than in 1954 when the Supreme Court said in essence, I know what they said in reality, the little colored girl should not go beyond her neighborhood school just because of her race.

Now, why should any child go beyond his neighborhood school because of his race? We were asking to be color blind and all of a sudden we are asked to look at color.

Let the child go to the neighborhood school regardless of the color.

Mr. Polk. I understand your point of view. I am trying to determine whether your commitment to integration is limited to a radius of a mile and a half and whether beyond such a distance your commitment ends.

Mrs. McCabe. No, because there are youngsters both black and white that are bused to their neighborhood school—both black and white and they are bused to an integrated school because they live beyond the mile and a half. This is fine. One youngster went to junior high that way. There were both black and white youngsters being bused to go to their nearest school which was beyond the mile and a half but at least they attended the nearest neighborhood school.

Mr. Polk. When the children were bused to the nearest school, an integrated school, were there any racial outbreaks or fights?

Mrs. McCabe. No.

Mr. Polk. It is only when children were bused some distance that there were racial outbreaks?

Mrs. McCabe. It was only because of the denial of their freedoms. This is a constitutional question. It is a constitutional fight that I feel I am in, a fight to retain my rights to direct the future of my youngsters to be totally involved in the school that I choose for them to attend.

Mr. Polk. Was there any outcry in Pontiac before the Court order when the school board assigned children to neighborhood schools?

Mrs. McCabe. This has historically been true. Children have gone to their nearest neighborhood school and this is what has made this country's educational system great.

Mr. Polk. In Pontiac that might be true history, but it is not true history in other areas.

Regarding Pontiac, are you saying that the parents did not object to the neighborhood school principle under which the school board assigned children to a school close to where they lived and precluded the parents from exercising their own choice as to where their children should go to get the best schooling? Are you saying that there was no objection when the children were forced to go to the nearest school?

Mrs. McCabe. To the best of my knowledge Pontiac, Mich., has always had the neighborhood school concept. Why should there have been a hue and cry? I do not know. I cannot respond and say if a parent chose to have their youngster to go to another school. I do not know this. I cannot relate to it.

Mr. Polk. But there was no objection in the state of affairs in Pontiac before the court order?

Mrs. McCabe. Not that I know of. If a person did not care for that particular neighborhood, they had the freedom to move away from it into another neighborhood where they liked the school better.

They were able to have freedom of choice. What you are pointing out is that they did not have a choice because they had to attend that neighborhood school. They could move from that neighborhood and go to a school of their choice in a different neighborhood.

Under a forced court-ordered busing plan you can move anywhere in town, but your youngster will still attend the same school that the court decrees.

Mr. Polk. How free some Americans are—economically and otherwise—to move wherever they want is a matter of considerable controversy, and beyond our present scope of inquiry.

Thank you, Mr. Chairman.

Chairman Celler. Thank you, Mrs. McCabe. You are due a great deal of credit for coming here.

Mrs. McCabe. Thank you.

Chairman Celler. Our next witness is Mr. Albert E. Arent, chairman, National Jewish Community Relations Advisory Council, appearing for the American Jewish Committee, American Jewish Congress, B'nai B'rith Anti-Defamation League, Jewish Labor Committee, Jewish War Veterans of the U.S.A., National Council of Jewish Women, Union of American Hebrew Congregations, Union of Orthodox Jewish Congregations of America-United Synagogue of America; accompanied by Messrs. David Brody and Joseph B. Robison.

STATEMENT OF ALBERT E. ARENT, CHAIRMAN, NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL, ACCOMPANIED BY DAVID BRODY AND JOSEPH B. ROBISON

Chairman CELLER. You may file your statement and epitomize your remarks.

Mr. ARENT. Thank you, Mr. Chairman. I intend to merely summarize what is in that written statement and I hope I can be quite brief.

Chairman CELLER. The statement will be placed in the record.

(The statement follows:)

STATEMENT OF ALBERT E. ARENT, CHAIRMAN, NATIONAL JEWISH COMMUNITY RELATIONS ADVISORY COUNCIL

This statement is submitted for the following national Jewish organizations: American Jewish Committee; American Jewish Congress; B'nai B'rith—Anti Defamation League; Jewish Labor Committee; Jewish War Veterans of the U.S.A.; National Council of Jewish Women; Union of American Hebrew Congregations; Union of Orthodox Jewish Congregations of America; and United Synagogue of America.

They have asked me to represent them at this hearing to express their deep commitment to the goal of equality, their conviction based on experience that every group in our multi-cultural society—religious, racial and ethnic—is threatened when one is oppressed and their beliefs that the shame of racial segregation has already been tolerated too long and must be ended. They are convinced that enactment of any amendment to our Constitution curbing the power of courts to deal with racial segregation would be a betrayal of the principles which this country stands for in the eyes of oppressed people throughout the world.

In 1954, the United States Supreme Court issued its historic decision condmning racial segregation in public schools. The decision gave new life to the guarantee of "equal protection of the laws" contained in the Fourteenth Admendment. Yet, despite much progress, public school segregation still exists in this country—North and South. It takes various forms. In much of the South, it is a continuing legacy of official, state-imposed, enforced separation of the races. In much of the rest of the country, it is the product of informal and unavowed, but just as effective, action by school officials designed to keep the races apart. Finally, in all parts of the country, there is increasing segregation caused by a complex of factors, often including governmental action, that causes confinement of Negroes, Puerto Ricans and other minority groups to limited sections of our residential areas.

The courts have endeavored for nearly 20 years to devise effective ways of assuring enjoyment by all Americans of the rights affrmed by the Supreme Court in 1954. In doing so, they have recognized that correction of past discrimination cannot be achieved simply by ignoring race in school operations. A situation brought about by the past wrongful use of race as a factor in assigning children to schools or families to housing cannot be undone without considering race in designing corrective measures. The courts have also recognized that, in some cases, the situation brought about by past segregation cannot be undone by simply assigning children to the schools nearest to their homes. Just as transportation of children to more distant schools was used in the past to achieve segregation, so it must now be used to undo it.

BUSING IS NOT THE ISSUE

It has been pointed out often enough that the most vigorous proponents of so-called "anti-busing" amendments are not in fact talking about busing, since they supported that device without reservation when it was used to facilitate forced segregation under he old laws requiring "separation of the races." In fact, in the process of desegregation in recent years in Alabama and Mississippi, there has been less busing than was maintained in earlier years to perpetuate segregation.

In purported answer to this, it has been said that, if busing was wrong then, it is wrong now. But it was not *busing* that was wrong then, it was *segregation.*

In fact, no one can argue seriously that busing is wrong *per se*. Millions of children are being bussed today for reasons having nothing to do with desegregation. In fact, only a very small proportion (3%, according to earlier testimony at these hearings) of the total amount of busing is related to race.

In *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91 S. Ct. 1267 (1971), the Supreme Court upheld busing "as one tool of school desegregation" (91 S. Ct. at 1283). Speaking for the unanimous Court, Chief Justice Burger said (91 S. Ct. at 1282):

"Bus transportation has been an integral part of the public educational system for years, and was perhaps the single most important factor in the transition from the one-room schoolhouse to the consolidated school. Eighteen million of the nation's public school children, approximately 39%, were transported to their schools by bus in 1969–1970 in all parts of the country."

All this busing, of course, is "forced busing": that is, busing required by decisions of the school authorities. Obviously, therefore, the use of that term only in the case of busing for the purpose of desegregation is disingenuous, to say the least. It seems to be fashionable to attach the word "forced" to any government decision under attack. No one describes the laws requiring children to go to school as "forced school attendance laws." Is it not time to abandon use of the term "forced busing" as no more than a rhetorical trick?

I repeat—the evil is racial segregation. To the extent that a reasonable amount of busing is necessary to end that evil, it must be accepted. It then becomes, as in other cases, one of the techniques used to assure good education for all.

THE RESPONSIBILITY OF THE COURTS

The extent to which busing of students should be used to undo segregation is still under active consideration by the nation's courts. It may be assumed that the ultimate judicial resolution of that question will be consistent with the constitutional mandate of equality, while at the same time giving due weigh to practical considerations. It would be absurd to suggest that the nine men who constitute the United States Supreme Court, presently or in the future, are going to require of the nation's schools action at odds with their educational responsibilities.

On the other hand, it would be inexcusable to restrict the courts from ordering what must be done to assure to all children equal access to quality education. This Committee is familiar with the evidence that segregated schools are unsound and educationally harmful. It knows also that, while progress has been made toward ending public school segregation, we still have a long way to go. The question before this Committee today is whether further progress is to be halted. procedures for enforcing constitutional guarantees. And it is the obligation of the Federal, state and local governments to implement the courts' decisions. To whatever extent curbs are placed on what the courts may do to redeem the constitutional promise of equality, that promise is vitiated. That is precisely what is proposed by the resolutions for constitutional amendments now before this Committee.

Since we are here discussing only proposed constitutional amendments, it is not strictly relevant to comment on the various legislative proposals that have been put forth in this area. Nevertheless, we take this opportunity to comment on the "moratorium" proposal recently advanced by President Nixon. We believe that it would be tragic, and probably illegal, to require the courts to observe a "moratorium" on the issuance of orders designed to remedy past constitutional violations. Our whole system of law would be undermined if courts were compelled to tell persons applying for redress: "Yes, your constitutional rights have been invaded. But we are barred from giving you effective relief."

THE PENDING PROPOSALS

A number of proposals for amending the Constitution to curb or even block enforcement of the prohibition of segregation have been introduced in Congress. Perhaps the most widely discussed is H.J. Res. 620, which is the subject of a pending discharge petition in the House of Representatives. The operative provision of this Resolution provides: "No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school."[1]

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[1] The reference to "creed" in H.J. Res. 620 is meaningless. We know of no situation today in which students are being assigned to public schools in America on the grounds of religion. Hence there is no basis for suggesting that adoption of this proposed amendment would affect the status of religious groups.

It is one of the ironies of history that, if this language had been part of our Constitution during the first half of this century, the shame of enforced public school segregation would not have occurred and we would not now be struggling to overcome its dreadful results. This language would have prevented the cruel practice of dividing children along racial lines and sending them to separate schools, often on buses taking them far from their homes.

Why, then, is this proposal unsound and destructive now? Because, just as busing was formerly an effective device to preserve segregation, it is now, as Chief Justice Burger said in the *Swann* case cited above, "one tool of desegregation." Indeed, it is a particularly effective tool for that purpose—which may well be why it is so vigorously opposed by former supporters of separation of the races.

It should be recognized clearly that H.J. Res. 620 is not an "anti-busing" mendment at all. It is an "anti-desegregation" amendment. If race could not be considered in assignment of pupils to schools under any consideration, the present situation would be frozen.

We have examined other amendments proposed to the House of Representatives, including those contained in H.J. Res. 30, 43, 75, 79, 94, 150, 216, 561, 579, 587, 593, 600, 607, 628, 636, 854, 855, 983, 1039 and 1043 and H.R. 66. Some are identical with or similar to H.J. Res. 620. Some are more limited in scope. Others would go so far as to nullify the effect of the *Brown* decision by making public school authorities free of any obligation to comply with the guaranty of equality in the Fourteenth Amendment.[2] Most of them, like H.J. Res. 620, do not even refer to busing or transportation of pupils but deal rather with the desegregation process generally. All of them have the fundamental objective of using the constitutional amendment process to curb practices which have been found necessary to free American children from suffering educational deprivation because of their race.

NEIGHBORHOOD SCHOOLS

Another proposed amendment that has received attention is S.J. Res. 203 and its companion measure in the House, H.J. Res. 855. Section 1 of this proposed amendment reads as follows: "1. No person shall be denied the freedom of choice and the right to have his or her children attend their neighborhood public school."[3]

This language would embed in our Constitution the simplistic belief that the problems of our schools can be solved by having all children go to the schools nearest their homes. No such rule has ever prevailed in our schools and there is no reason to believe that it would work now. Aside from its vagueness,[4] this amendment would put an obstacle in the way of achieving many valid educational objectives. But its destructive effect on desegregation efforts, which is its chief purpose, is what we are concerned with here.

There are obvious advantages in having children attend schools in their neighborhoods. But those advantages have not been and should not be regarded as absolutes. Assignment of children to schools must take many factors into consideration. What system of values would put the convenience of neighborhood schools absolutely and irreversibly above the objective of erasing racial segregation and its attendant educational evils? The simple fact is that, in school systems that have been racially segregated, as in the district in the *Swann* case cited above, "assignment of children to the school nearest their home serving their grade would not produce an effective dismantling of the dual system" (91 S. Ct. at 1283).

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[2] For example, H.J. Res. 150 would have the Constitution say that the "power to establish and supervise schools . . . is reserved to the States respectively, or to the people." If this means anything, it is that no action by a state regarding its schools could be challenged under the Constitution. Thus, a state could restore forced segregation or even exclude Negroes, Jews or Italians from its schools altogether. H.J. Res. 216 would provide that the right to choose the school to which one's child is to go shall not be interfered with by any provision in the Constitution or by any Federal or state law. This, of course, would mean that a school board could not even enforce a neighborhood school zoning plan.

[3] The second section of S.J. Res. 203 would guarantee the right to equal educational opportunity against abridgment by economic discrimination in the allocation of school funds. While it would no doubt be desirable to end the present widespread inequality of educational opportunity due to unequal tax resources, it is doubtful whether the language of S.J. Res. 203 would add significantly to the guarantee of equality now in the Fourteenth Amendment. In any case, Section One of this Resolution must be judged on its own merits.

[4] Just what is the meaning of "neighborhood public school" as used in S.J. Res. 203? If it means the geographically nearest school to the child's residence, the amendment is unworkable. No zoning system operates that way. But if the phrase does not mean that, it has no clear meaning at all and thus constitutes an invitation to endless litigation. It could even be argued that continuation of the present large-scale trend to centralization of rural schools, replacing the "neighborhood" one-room school, would have to be halted.

School districts are not "neighborhoods." Their boundaries are fixed by school boards with a view to serving the best educational interests of children and are changed from time to time. The sizes and shapes of such areas, or districts, vary from community to community and even within communities, as do the procedures by which they are determined.

It must also be remembered that desegregation plans are now in effective operation in hundreds of school districts. Imposition of a rigid "neighborhood school" requirement on all public school districts throughout the nation would require termination of most of these plans. More broadly, it would mean virtual repudiation of the constitution mandate to dismantle the dual school system. Adoption of S.J. Res. 203 would be one way of telling the Negroes, Puerto Ricans, Mexicans and others who are today confined to ghettos that no further progress is to be made toward the goal of educating our children together rather than apart.

The vaules of the neighborhood school are not supreme. Like all other educational values, they are relative and must be weighed against others which may at times be deemed more important. Certainly, one of these is desegregation.

DESEGREGATION AND QUALITY

At the 1964 Plenary Session of the National Jewish Community Relations Advisory Council, a Joint Program Plan was adopted which included the following statement:

"The objective of our public education system is to lead children to develop their capacities to the highest and most satisfying degree and to prepare them to live effectively in our society and to contribute to its general well-being.

"One of the crucial criteria by which the adequacy of education for such democratic living must be evaluated is the criterion of its effectiveness in fostering among pupils attitudes and relationships based on mutual respect for difference. The fostering of such mutual respect among pupils of different races is promoted in a racially integrated setting. Racial integration in public schools thus is an essential component of good education in our society. It is not a substitute for quality. Neither is it an alternative to quality."

The national Jewish organization for which I speak here, all of them members of the National Jewish Community Relations Advisory Council, continue to support the twin objectives of integration and quality education. They regard these two concepts as indivisible. Quality education for all is not possible without integration.

The practical difficulties involved in integrating schools in some areas must be neither ignored nor minimized. One of the most serious objections to efforts to desegregate has been the understandable reluctance of parents to see their children transferred to schools that are substandard because of poor staff training, inferior or antiquated physical plant or lack of security in the school or its neighborhood. Experience indicates that it is difficult if not impossible to put into effect a desegregation plan that includes such transfers. But it is obviously not enough to say that children should not be *transferred* to bad schools. The children who are in bad schools now should not be left there either.

The answer is to end segregation *and* improve the schools. Plainly, this has nothing to do with busing. The problems I have just referred to would not be solved by enactment of any of the proposed amendments before this Committee. The solution lies, first, with Congress and the state legislature which control school financing. It lies, second, with the courts, moving flexibly toward both quality and equality in the public schools. Certainly, the courts can be relied on not to require "unnecessary busing," one of the pejorative phrases in wide use today. But they must not be hamstrung by constitutional amendments arbitrarily and rigidly barring busing, mandating neighborhood schools or giving parents power to veto administrative decisions.

Adoption of a constitutional amendment designed to halt busing or other desegregation measures would be a signal to the world that the American people had departed from the principles of freedom and equality. Our Constitution, based on those principles, has been a symbol of hope to the entire world. The mere fact that the drive to halt desegregation has resulted in a constitutional amendment would establish that the change was fundamental—a revision of our basic law, reflecting a revision in our basic attitudes.

The guarantees of freedom and equality in our Constitution stand as a monument by adoption of any of these proposed amendments.

Mr. Arent. I am chairman of the National Jewish Community Relations Advisory Council, which is composed of nine major national Jewish organizations having to do with community relations, religious and civic affairs, and 92 local Jewish community relations councils.

I am here today to present a statement in behalf of the nine national organizations which are listed in ou written statement. They have requested me to represent them at these hearings to express their deep commitment to the goal of equality, their conviction based on experience that every group in our multicultural society, religious, racial, and ethnic, is threatened when anyone is oppressed.

Also to express their belief that the shame of racial segregation has already been tolerated too long and must be ended. They are convinced that enactment of any amendment to our Constitution curbing the power of the courts to deal with segregation would be a betrayal in the eyes of oppressed people throughout the world of the principles for which this country stands.

After Dr. Horn's exhaustive and most admirable statement, I was inclined to think there was little left for me to say but after hearing Mrs. McCabe, I think I should go ahead with a summary of our position.

The courts have endeavored for nearly 20 years to devise effective ways of assuring enjoyment by all Americans of the rights affirmed by the Supreme Court in 1954 in its decision condemning racial segregation in the public schools. In doing so, the courts have recognized that correction of past discrimination cannot be achieved simply by ignoring race in school operations.

A situation brought about by the past wrongful use of race as a factor in assigning children to schools or families to housing cannot be undone without considering race in designing corrective measures.

The courts have also recognized that in some cases the situation brought about by past segregation cannot be undone by simply assigning children to the schools nearest their homes.

Just as transportation of children to more distant schools was used in the past to achieve segregation, so it must now be used to undo it.

Gentlemen, busing is not the real issue here. No one can argue seriously that busing is wrong per se. Millions of children are being bused today for reasons having nothing to do with desegregation.

In fact, only a very small proportion, 3 percent according to earlier testimony at these hearings, of the total amount of busing is related to race.

In *Swann* v. *Charlotte-Mecklenburg Board of Education*, to which Dr. Horn so frequently referred, the Supreme Court upheld busing as "one tool of school desegregation."

Speaking for the unanimous Court, Chief Justice Burger said:

> Bus transportation has been an integral part of the public education system for years, and was perhaps the single most important factor in the transition from the one-room school house to the consolidated school. Eighteen million of the nation's public school children, approximately 39 percent, were transported to their schools by bus in 1969–1970 in all parts of the country.

All this busing, of course, is "forced busing." That is, busing required by the decisions of the school authorities.

Obviously, therefore, the use of that term only in the case of busing for the purpose of desegregation, is disingenuous to say the least.

Chairman CELLER. Are you going to epitomize or are you going to read your statement?

Mr. ARENT. I have cut the 10 pages to 4 pages.

Chairman CELLER. The warning bells have rung already.

Mr. ARENT. I have cut the 10 down to 4 and I will try to cut them down to 3, sir.

I do want to make it clear, though, that it is time to abandon use of the term "forced busing" as no more than a rhetorical trick. The extent to which busing of students should be used to undo segregation is still under active consideration by the Nation's courts. Under our constitutional system it is the duty of the courts to determine the procedures for enforcing constitutional guarantees and it is the obligation of the Federal, State, and local governments to implement the courts' decisions. To whatever extent curbs are placed on what the courts may do to redeem the constitutional promise of equality, that promise is vitiated.

That is precisely what is proposed by the resolution for constitutional amendments now before this committee as well as by the proposed moratorium on issuance of orders designed to remedy past constitutional violations.

As you know, a large number of resolutions and amendments have been offered to the House of Representatives to deal with this subject: 22 of them are referred to in our statement. All of them have the fundamental objective of using the constitutional amendment process to curb practices which have been found necessary to free American children from suffering educational deprivation because of their race.

Another proposed amendment that has received attention is Senate Joint Resolution 203 and its companion measure in the House, House Joint Resolution 855. Section 1 of this proposed amendment reads as follows:

> No person shall be denied the freedom of choice and the right to have his or her children attend their neighborhood public school.

This language would imbed in our constitution the simplistic belief that the problems of our schools can be solved by having all children go to the schools nearest their home.

What system of values would put the convenience of neighborhood schools absolutely and irreversibly above the objective of erasing racial segregation and its attendant educational evils?

The simple fact is that in school systems that have been racially segregated, as in the district involved in the *Swann* case, assignment of children to the school nearest their home would not "produce an effective dismantling of the dual system."

The national Jewish organizations for which I speak here, all of them members of the National Jewish Community Relations Advisory Council, continue to support the twin objectives of integration and quality education. They regard these two concepts as indivisible. Quality education for all is not possible without integration.

Adoption of a constitutional amendment designed to halt busing or other desegregation measures would be a signal to the world that the American people had departed from the principles of freedom and equality.

Thank you, Mr. Chairman. I trust that I have given you the essence of our statement.

Chairman Celler. What are the views of your organization as to this moratorium bill?

Mr. Arent. Our statement on page 4 indicates that, while we are addressing ourselves primarily to proposals for a constitutional amendment, we are also opposed to the moratorium proposal recently advanced by President Nixon.

We believe it would be tragic and probably illegal to require the courts to observe a moratorium on the issuance of orders designed to remedy past constitutional violations.

Our whole system of law would be undermined if courts were compelled to tell persons applying for redress, "Yes, your constitutional rights have been invaded but we are barred from giving you effective relief."

Chairman Celler. You say "illegal." Will you explain what you mean by that.

Mr. Arent. We think unconstitutional. We think it is an improper encroachment upon the separation of powers to have the legislative branch try to deny the Supreme Court the power to deal with the protection of a fundamental constitutional right.

Chairman Celler. Mr. Hungate?

Mr. Hungate. In your statement you say: "All this busing, of course, is 'forced busing': that is, busing required by decisions of the school authorities." Do you think that perhaps part of the problem is that while decisions of local school authorities can be renewed by the voters when a school board stands for election, orders from the Federal courts come from bodies not answerable to the voters? Do you think that could be a reason that we have a problem here?

Mr. Arent. I do not think that is really the problem. I think you would have the same turmoil if it were fought out regularly in the school board elections.

Mr. Hungate. I think in the school board elections it does not happen in many cases, because of the voting power.

Mr. Arent. When you are dealing with a constitutional right, the courts are there to see that it is protected. Our Constitution cannot be overruled without constitutional amendments and in this the courts I would say have been unusually careful over the period since 1954 to treat this problem with perspective and with an eye to the needs of the community.

Mr. Hungate. And you are saying this is a constitutional right?

Mr. Arent. Yes.

Mr. Hungate. If this is a constitutional right, the fact that we had a poll that showed 80 percent of the people disapproved it——

Mr. Arent. No one can take away my free speech because 80 percent of the people think I ought to be shut up. Similarly, if the courts interpreting the Constitution say you have a constitutional right to be educated in a nonsegregated school, and that one of the means to bring about this condition involves a certain amount of busing, then I have a constitutional right not to have my privilege to go to that kind of school interfered with by the electorate.

Mr. Hungate. If 90 percent of the jurors think a man committed a murder but a unanimous verdict is required, he is acquitted constitutionally.

Mr. Arent. That is a provision made in the Constitution. However, the courts can protect him from improper applications of laws and legal principles.

Mr. Hungate. One other question. On page 7 you say, "What system of values would put the convenience of neighborhood schools absolutely and irreversibly above the objective of erasing racial segregation and its attendant educational evils?"

But are we imposing an undue burden on public schools when we call upon them to erase the evil of segregation, when shouldn't that burden also be borne by open housing, job opportunities and the churches?

Are we putting too much burden on the schools?

Mr. Arent. You will get no argument from me on the need to change our whole pattern of living to deal with the great crisis in this country of remedying the wrongs of many years but the schools can do the major part involved. And, where, as in the city of Tampa, desegregation plans have been put in, I have had reports from people there of how successfully they are working. There are difficult transition problems, but if we made up our minds we had to deal with these problems and could not run away from them and could not get involved in emotional outbursts and engage in violence because of them, these things can be corrected.

The children do not create these problems. The problems are created by their parents.

Mr. Hungate. Thank you very much.

I appreciate your statement.

Chairman Celler. Mr. Arent, I take it you believe that the right to attend an integrated school and the right to prevent a State from forcing a student to attend a segregated school are constitutional rights as announced by the *Brown* decision of 1954. Therefore, it would be not only improper but illegal and unconstitutional for Congress to prevent a court from remedying deprivations of those constitutional rights.

Mr. Arent. Exactly, Mr. Chairman.

Chairman Celler. Mr. Polk.

Mr. Polk. Thank you, Mr. Chairman.

Mr. Arent, you referred in your testimony to House Joint Resolution 855. We have not had too much testimony on that proposal.

I was wondering if the two rights asserted in the text of House Joint Resolution 855, freedom of choice and the right to attend a neighborhood school, are contradictory.

Mr. Arent. Yes; I will let Mr. Brody answer that.

Mr. Brody. There is a contradiction. If the child is compelled to attend the neighborhood school, then there is obviously a contradiction with the principle of freedom of choice.

Mr. Polk. In a nonracial context, I have found cases where plaintiffs have asserted under State law or local law that they had a right to attend a neighborhood school. The plaintiffs all lost, the courts holding that the school board and not the parents had the right to decide where the children would go to school. *Board of Education of Sycamore* v. *State ex rel. Wickham*, 80 Ohio St. 133, 88 N.W. 412 (1909); (*Isquith* v. *Levitt*, 285 App. Div. 833, 137 N.Y.S. 497 (1955); *Creyhow* v. *Board of Education*, 99 Kan. 824, 163 P. 145 (1917); *State ex rel. Lewis* v. *Board of Education of Wilmington School District*, 137 Ohio St. 145.

28 N.E. 2d 496 (1940). Before 1954 with one exception, *Knox* v. *Board of Education*, 45 Kansas 152 (1891), the same result was reached where the plaintiff asserted that he was denied access to the neighborhood school because of his race. *Lewis* v. *Board of Education of Cincinnati*, 7 Ohio Dec. Rep. 129 (1876); *People ex. rel. Dietz* v. *Easton*, 13 Abb. Pr. Rep. n.s. (N.Y.) 161 (1872); *People ex rel. Kink* v. *Gallagher*, 93 N.Y. 438 (1883); *Pierce* v. *Union District School Trustee*, 46 N.J. 26 (1884), affirmed 47 N.J.L. 384 (1885); *Lehew* v. *Brummel*, 103 Mo. 546 (1890); *Dameron* v. *Bayless*, 14 Ariz. 180 (1912); *McSwain* v. *County Board of Education*, 104 F.Supp. 861 (1952). The clear import of these decisions is to deny that there is a right to attend a neighborhood school.

In your study of the problem, have you come across any contrary authority?

Mr. ROBISON. There never was any such State and local law for the obvious reason it is almost impossible to define the term "neighborhood school," even in school systems that have no racial problems whatever and are simply thinking about the convenience of the children.

There never has been an absolute rule that you go to the school nearest to you. It cannot be worked that way. There are too many other factors. The size of the district. The thinness of the population in some areas. The avenues you have to cross. There has never been any such concept of the neighborhood school. I do not recall any discussion of neighborhood school until the question of racial segregation came up. It has been used only as a way of opposing desegregation measures.

Mr. POLK. Regarding freedom-of-choice plans, have you come across that kind of school plan in a context other than the Southern subterfuges to get around the *Brown* decision?

Mr. ARENT. That is the only context in which I have heard it and I think it is unworkable as an administrative solution to the problem.

Mr. BRODY. The neighborhood-school principle was ignored for a long period of years. It was never an inflexible concept and was virtually ignored until recent years.

Even today, to take the Richmond situation, it may be that, in the case of a child living in the city of Richmond, the school nearest him may be across the district line.

Mr. HUNGATE. Mr. Arent, I am certain you and your associates in ADL are critical of guilt by association but I think there is no harm in enhancement by association and I commend you, Mr. Brody and Mr. Robison. One last question.

Do you think that any child should be compelled to attend a school outside of his neighborhood because of race?

Mr. ARENT. Yes. I think that where that is the most feasible solution to the problems of providing balanced integrated schools, we will have to make him go to the inconvenience of adjusting to the situation. And as everybody says—it has become a truism but nobody is doing enough about it—we have to make those schools good and equal so that the argument cannot be made that you are depriving your child of a good education by sending him to an integrated school. We have got to make integration a universal rule in order to make that really true.

Mr. HUNGATE. You heard some of the earlier testimony, I take it, Mr. Arent?

Mr. ARENT. Yes.

Mr. HUNGATE. Unfortunately too often I suppose some of the criticism we heard can be with justice levied against inadequacy of the teacher, nevertheless it is still difficult to teach satisfactorily with a 10-year-old textbook or teach chemistry with no laboratory. Would you agree with that?

Mr. ARENT. Yes.

Mr. CELLER. Thank you very much for your statement, Mr. Arent. It has been very impressive.

I am sorry that I had to ask you to capsulate your statement. Your statement is the type of one we expect from a man of your excellent legal reputation and your colleagues, Mr. Brody and Mr. Robison, likewise are gentlemen not unknown to us because of their scholarly and exceptional attainments.

We are grateful to all of you.

Mr. BRODY. Mr. Chairman, I cannot leave this table without paying my respects to the ranking minority member of this committee, Mr. McCulloch, whose membership on this committee and good counsel and advice and leadership in the area of the fight for equal opportunity for all Americans will be sorely missed when the 93d Congress convenes.

Chairman CELLER. Thank you very much.

Our final witness this morning is Mr. Kaleel Ellison, president of Concerned Americans, Inc., of Jacksonville, Fla., accompanied by Representatives Earl Dixon, Joe Kennelly, and Ted Alvarez, members of the Florida State Legislature, and Roy M. Pooley, representing Citizens for Democracy.

STATEMENT OF KALEEL ELLISON, PRESIDENT, CONCERNED AMERICANS, INC., OF JACKSONVILLE, FLA., ACCOMPANIED BY REPRESENTATIVES EARL DIXON, JOE KENNELLY, AND TED ALVAREZ, MEMBERS OF STATE LEGISLATURE OF FLORIDA, AND ROY M. POOLEY, REPRESENTING CITIZENS FOR DEMOCRACY

Mr. BENNETT. Mr. Chairman, it is my pleasure to present to you Mr. Earl Dixon, Mr. Joe Kennelly and Mr. Ted Alvarez, who are members of the Florida State Legislature, and Mr. Roy M. Pooley, representing Citizens for Democracy, who are here today to present their views.

Congressman Chappell, Jr., is also here with me to present these gentlemen to you.

Chairman CELLER. Mr. Ellison.

Mr. ELLISON. We do appreciate their support on the State level as well as here in Washington.

Chairman Celler and distinguished members of the Committee on the Judiciary Subcommittee No. 5, we thank you for this opportunity to appear and to present our support for a constitutional amendment to preserve the long-recognized tradition of neighborhood schools.

Our delegation has already been introduced to you and we do appreciate your indulgence. As you are aware, Florida, through a straw ballot on March 14, 1972, spoke in favor of a constitutional amendment. The question on the ballot read: "Do you favor an amendment to the U.S. Constitution that would prohibit forced busing and guarantee the right of each student to attend the appropriate school nearest his home?" The results of this vote showed both black and white districts, rich and poor, northern and southern voted against forced busing and in favor of equal educational opportunity.

In my own Duval County, which consists of the consolidated city of Jacksonville, the citizenry voted on November 30, 1971, to amend its own charter under home rule to prohibit the use of State funds for forced busing. This vote was in favor by 4 to 1. Election night the results were certified at 10:23 and 10:24 U.S. District Court Judge Gerald B. Tjoflat, from his home and by phone, declared invalid the people's mandate citing the 14th amendment.

These ballot tabulations are proof that my own Duval County and State of Florida support me and Congressman Norman Lent of New York in our effort to seek a constitutional amendment as a permanent solution.

Mr. ZELENKO. Mr. Ellison, on that same Florida State ballot you referred to there was another question: "Do you favor providing an equal opportunity for quality education to all children regardless of race, creed, or color, or place of residence and oppose return to a dual system of public schools?

Do you know what the result of that referendum vote was?

Mr. ELLISON. The same as the preceding question. As I indicated.

Mr. ZELENKO. In fact, 78 percent of the vote cast was in favor, voting "yea" on that question.

Mr. ELLISON. Yes.

And this is the reason we say that the people of Florida do support equal opportunity because of the second question on the ballot.

In the following presentation I show cause as to why it is my feeling a constitutional amendment is the only way to go.

Phase 1 of our Federal court order has increased the number of students being transported from a normal 34,000 to 45,000 out of 117,000 public school students. This required 106 new bus contracts in addition to 49 required by a previous Federal court order, plus utilizing the 342 bus contracts already available to the Duval County School Board. Our school system leases its buses.

The court ordered eight city schools closed. These photographs show four of the newer schools now closed.

Gentlemen, as you can see, these pictures refute earlier testimony that the schools are 100 years old. They are not in Duval County.

Two of these schools are located in an area being redeveloped by the Housing and Urban Development (HUD). Millions of Federal dollars are going into this area, with additional millions already appropriated.

The other two schools are adjacent to this area. The students are being bused as long as 40 minutes each way. The cost of closing these schools amounted to $4,800,000. What a waste.

At the beginning of phase 1 the projected enrollment by the Duval County school administration was 123,000 students. As of our last school board meeting the enrollment was down to 117,000. I feel strongly this loss of capable students leaving the school system was due to parental rejection of phase 1.

This means a loss of much needed funds both on the State and local level since financial funding is based on average daily attendance. This, at the present time, is an approximately $2,500,000 loss for this year—based on $3 per day, per 180 schooldays, per child at the loss of 6,000 students. Let me remind you Duval County is classified as one of the pupil rich, property poor counties. Property taxes are at the limit.

When this presentation was mailed to you. I stated we had no definitive analysis of any educational advancement due to phase 1. However, yesterday I learned that 72 percent of our students scored below the national level. And it was stated that this is a worsening condition.

We have seen, however——

Mr. ZELENKO. How many scored below that level the last time the test was given?

Mr. ELLISON. He indicated 27 percent of the students at or above 50 percent in test of understanding meaning that in 1968 and 1969 26 percent, in 1969–70, 28 percent last year.

They give other statistics here that may be cumbersome but relate the same type of decline in educational achievement and this is a major concern of the parents in Duval County.

Mr. ZELENKO. Was that decline in evidence before the court order in 1971?

Mr. ELLISON. The figures they give date back to 1969. We have been in litigation for some 17 years and under Federal court orders in the last 3 years so these figures do date back during Federal court orders, yes.

Chairman CELLER. Are you complying with this court order now?

Mr. ELLISON. Yes.

We have one phase yet to comply with which is due to go into effect in the fall.

Mr. MCCLORY. I would interpret the earlier figure, 26 percent, which is the percentage of students above the average, to mean that 74 percent were below the average so that the later figure, 72 percent, would indicate an increase of 2 percent?

Mr. ELLISON. Yes. Well, they indicate here that the students in the metropolitan school system have been losing 3 months a year in comparison with national averages.

In our county, two high schools have been forced to close down. One has been closed down several times by U.S. District Judge Gerald Tjoflat who had to intervene at the request of the school board and he intervened quickly and enjoined the outside agitators as well as students in the school from any further unrest.

Since that order, arrests and convictions have resulted in five students and by yesterday's account two more students have been suspended from our educational system.

I am saying that education in a public school system is now at a loss. Other counties have experienced similar disruption including Tampa.

Notations were made in the last school board meeting of the need of $1,000,000 to be spent to cover teacher absenteeism next year. Teachers are working under undo stress and strain.

Because of the extra police activities they are required to perform, teacher organizations are requesting overdue pay considerations. I have stated phase 2. Phase 2 is yet to be complied with and in the fall we are due to watch out for phase 2.

Next year 22,000 more students will be bused, bringing total to 65,000 out of 117,000 and to the tune of $2,700,000.

This phase of the Federal court order will cause Duval County to be the most bused county in the United States.

Phase 2 will deal with smaller children as does phase 1.

Grades one through seven. It will establish sixth and seventh grade centers only in the core city.

Grades one through five from the core city will be bused in increasing numbers to the suburbs thus forcing sixth and seventh graders throughout the county to be bused into the city through unsafe travel routes.

To let you know a little bit about Jacksonville as the greatest shipping center in the Southeast, it has numerous railroad crossings which in the past and by one of the local TV stations proved to have many unsafe marked crossings.

These schoolbuses will criss-cross this route several times.

Another natural hazard to the busing of children is winding St. Johns River because the school board chose routes over two toll-free bridges but mostly over the bridges that required no charges.

Jacksonville City limits total over 800 square miles which makes it the largest city in land area in the United States.

Phase II will require busing students from outlying communities up to 31 miles each way, over these unsafe routes.

Phase II will again see a massive dropout of public school students to private education. Because of my position as president of the Concerned Americans, Inc., in contact with people daily, I know that many of these students due to attend sixth and seventh grade centers in inner core city will not do so.

Parents have indicated to me that, though it will prove an additional hardship, they will use private schools. The school superintendent stated in one school board meeting that those schools previously paired and clustered resulted in predominantly black schools.

This result indicates resegregation at a tremendous financial loss. Because of the added expenses of phase II we are faced with staggered starting hours.

Some schools will start at 7:30 in the morning. Others at 8 and 9:30. Although 411 buses will be used, many of these 411 buses will be making up to three trips as is indicated by the starting hours. This was to reduce the cost of requiring purchase of additional buses.

Students will be also waiting before dawn for this bus while others will get home after dark. This is an unthinkable hardship on mothers and small preschool children who may wait even in adverse weather conditions until the bus arrives.

In the case of asthmatic children or one susceptible to colds, this is an unfair hardship. One of the most fruitful times of a youngster's life is fulfillment of anticipation of going to a particular school. The tradition of where brother or sister or father earned his track level or led the prom. Last year both black and white high school seniors appeared before the school board and asked respectively that they be allowed to stay at their particular school because of tradition and plans that they had made for graduation class rings, year books, and so on.

How can these students look forward to extra curricular activities after school? How can education be a meaningful enrichment experience?

Because of undue hardships, unsafe conditions, and unrewarding activities, many teachers are leaving the school system, some for private schools where disruption is welcomely absent. This continual turnover of teachers throughout the school year is a traumatic experience for small children who find in the teachers security and a motherly relationship.

With enactment of Congressman Norman Lent's House Joint Resolution 620, all children will have the opportunity to attend the schools of their parents' choosing.

This guarantees each child freedom from being forcibly segregated or integrated and such freedom characterizes America.

Chairman Celler. Suppose the parents choice would result in racially segregated schools.

What is your answer to that?

Mr. Ellison. If their choice is to a segregated school?

Chairman Celler. You said each child should have an opportunity to attend the school of their parents choosing. Suppose that is the case. What would be the result?

Segregated schools in Jacksonville?

Mr. Ellison. I think not. I think this would guarantee the rights of all children to be able to attend a school that would certainly indicate what the courts have also handed down as far as trying to protect the rights of all of the children.

Chairman Celler. The court decision was to integrate the schools, am I right?

Mr. Ellison. Yes.

Chairman Celler. If you do not have any court decision, if you go back to the old system, would you still have the segregated schools?

Mr. Ellison. Not necessarily, because you would have the opportunity of each parent, if they wanted to move in a different locality, they could attend the neighborhood school of the neighborhood they are living in, so this would guarantee them the right to attend the school of their choice.

Chairman Celler. The parents would have to move, is that correct?

Mr. Ellison. I believe many of our schools, white as well as black, are serving their neighborhood or they are supposedly to serve their neighborhood.

They are not presently, but because of the local development, the schools have been built to service the suburban development the same as has happened throughout the Nation. This is no effort to maintain a segregated system. It is upon the principle that our education system has always been founded upon neighborhood schools.

The bill, H.R. 13916, as introduced by Congressmen William McCulloch and Gerald Ford, would be acceptable to us with amendments. We want equal treatment. We are already under Federal mandates and we feel that this present legislation in its present form would not really serve our county since we are already required to have our students bused back and forth across the county.

I would like to skip reading the amendments that we have given you on pages 6 and 7. I would like to comment that Senator Gurney has introduced an amendment in the Senate on this companion bill and we feel this amendment that he has offered would be apropos for the House version—H.R. 13916—and would bring us into consideration in Duval County and other counties where the courts have already ruled.

(The proposed amendments to H.R. 13916 are as follows:)

H.R. 13916 as introduced by Congressmen William M. McCulloch and Gerald R. Ford is acceptable with amendments. The following amendments, in layman's terms, are suggested:

AMENDMENT NO. 1

On page 4, line 24, add paragraph (d)

(d) Any court order entered up to thirty-six months prior to the date of this act shall be reviewed by the Justice Department as to its effect on the health and education of the student, and whether it conforms to a rational, national policy. Priority of such review shall be based on date of application of a local educational agency. If, after such review, to be performed within a reasonable time, it is determined that said order is not within a rational, national policy or is detrimental to the student, then the Justice Department shall seek relief from said court order.

AMENDMENT NO. 2

On page 4, line 24, add paragraph (d)

(d) Once a local educational agency implements a court order which involves transporting students, the Department of Justice shall review each such court order at least every twelve months to evaluate its effect and whether conditions in the local educational district warrant judicial review.

AMENDMENT NO. 3

On page 4, line 24, add paragraph (d)

(d) No Federal Court shall have jurisdiction over the expenditure of state or local funds, when such jurisdiction mandates the transporting of students to exclusively achieve racial balance, when such imbalance that exists has not been due to rules, regulations, or laws imposed in the local school district.

AMENDMENT NO. 4

On page 3, line 23, add paragraph (d) between the words "stayed" and "to"

(d) "and any such order entered prior to the enactment of this Act shall upon application of an educational agency be reopened and its implementation stayed".

The above suggested Amendment #4 is a companion to Senator Edward J. Gurney's Amendment #1086 to Senate Bill 3388.

H.R. 13916 with the above suggested amendments in addition to the President's 2.5 billion dollar compensatory funding would be good legislation to enact.

Congressmen, we have given you something of the happenings in our school. We are having a lot of racial discord. They speak of the experiences and the buses. We are running into fights on the buses. You spoke of accidents. We are talking about accidents that are not even being reported to the parents.

Mr. ZELENKO. What action is your organization Concerned Americans, Inc., taking to reduce these accidents and this violence? Are you cooperating with the school board and trying to curtail this violence?

What action has your group undertaken to make this desegregation plan work?

Mr. ELLISON. Our group is working to return to neighborhood schools, not to segregation but to neighborhood schools.

Mr. ZELENKO. Then you do not support the order of the district court?

Mr. ELLISON. We do not support the order of the district court.

Mr. ZELENKO. You are not working to make that district court order work?

Mr. ELLISON. We believe in neighborhood schools, the same principle that other States in our Nation are enjoying. We want equal rights under our Constitution. We want equal rights under the 14th amendment for all children.

Chairman CELLER. Has the court issued any decrees for failure to desegregate?

Mr. ELLISON. Yes, sir, this phase I and phase II are a result of the Fifth Circuit Court of Appeals having approved the plan that was submitted.

Chairman CELLER. Have you complied with the orders of the court with reference to desegregating?

Mr. ELLISON. Yes, sir, phase I was in compliance with court order and the courts have ruled that phase 2 will be implemented in the fall and the buses have been leased and plans have been launched to comply with phase 2 of the court order.

Chairman CELLER. You feel that the amendments offered by the distinguished Senator Gurney from Florida would help in this situation?

Mr. ELLISON. Yes.

Chairman CELLER. As far as I know, no bill of that kind has been offered in the House.

Mr. ELLISON. We would appreciate one of you gentlemen offering such a bill. Congressmen, we are having a lot of racial trouble. We feel that in the South and in Florida, we have made progress on race relations but presently we feel this progress is being turned down because of all of the racial violence that has taken place in the schools.

I am talking about students up to 40 and 50 in number racing around the halls yelling and screaming and knocking down anything that gets in their way.

I have sat in a courtroom and listened to a case brought before the court by a mother. In one school where they had rioting, they closed iron gates at either end of the hall and they were having rioting within those iron gates and white students were climbing over the iron bars and falling on the other side, trying to get out of that mess.

The school authorities were trying to curb a riot.

If this were happening in your district, as it is in mine, what would you do? How would you react if your sons and daughters were locked within these iron gates while students were rioting?

Would you be pleased to visit your son or daughter in a hospital having been beaten and disfigured through violence in the school? Can you conceive of what it must be like to attend a school fearful of being attacked?

Sorrow upon sorrow would be heaped upon you and your loved ones if it were your son lying in a casket killed by a blow on the head from a coke bottle. And it happened in Florida.

Congressmen, surely you want to promote representative government, but gentlemen, how can our elected Congressmen express themselves on legislation held in committees?

I would beg you, Congressmen, on behalf of my family of seven, on behalf of all of the children and parents of Duval County, of the State of Florida, and elsewhere in the South and North, release Congressman Norman Lent's bill, House Joint Resolution 620, and perhaps even the President's legislation H.R. 13916 with amendments for the immediate results.

Let us get on with representative government. This we are teaching in the schools and let us practice it throughout our Nation.

Thank you, gentlemen.

Chairman **Celler**. I am reading from the MIMS against Duval County School Board, two paragraphs are very significant:

> On December 6, 1960, this case commenced under the name of *Braxton, et al.* v. *The Board of Public instruction of Duval County, Florida, et al.*
>
> In this complaint the *Braxton* plaintiffs alleged that Duval County maintained 113 totally segregated schools, 89 white and 24 black, that the white schools were staffed by white principals and teachers, the black schools were staffed by Negroes. In comparison, the Court said, in September, 1965, five years later, approximately 118,000 students of which 30,000 Negroes were enrolled in the public schools of Duval County, Florida, approximately 137 Negro students, .0045 percent of the total number of Negro pupils in Duval County were attending 12 previously-all white schools. No white student attended any Negro school.

What is your comment on that?

Mr. **Ellison**. These again were statistics of 12 years ago prior to the recent Federal court orders and we have mentioned in testimony earlier, for instance, that in phase 2, all sixth and seventh graders from suburbia are going to have to be bused into the core city into these sixth and seventh grade centers and, of course, this is busing from suburbia into core city.

Presently, we are busing children trying to achieve 70–30 ratio in our city. They speak in testimony of no ruling on racial balance but that is what is being carried out.

We have already complied with 70–30 teacher ratio. This has been in effect. This has already been implemented and phase 2 is geared to achieve at 70–30 ratio throughout our educational system in addition to establishing sixth and seventh grade centers in the core city.

Mr. **Zelenko**. Mr. Chairman, 3 years ago, in 1969, HEW figures show that 22,500 students out of a minority population of 35,000—almost 63 percent, attended all minority schools, 100 percent minority schools in Jacksonville. That was in 1969, approximately 9 years after the beginning of court litigation. Now, the first decisions before *Swann* in 1970, that concentration of black students in all minority schools was reduced and it has continued to be reduced under court orders. Do you think it would have been reduced without those court orders?

Mr. **Ellison**. I believe the housing patterns are changing. The housing patterns are changing in Duval County. FHA 235 program has certainly enabled the people from minority races to go out and upgrade their standard of living, so, yes, the housing patterns themselves. There has been a certain amount of normal progression were it not for the court orders.

I would say yes by all means.

Chairman **Celler**. Any questions?

Mr. Hungate.

Mr. Hungate. Thank you, Mr. Chairman.

What is the membership of Concerned Americans, Inc?

Mr. Ellison. We have, on the basis of paid membership, approximately 1,200.

Mr. Hungate. Is it by dues?

Mr. Ellison. Yes, people contribute $5 as a family due.

Mr. Hungate. Are you on the school board?

Mr. Ellison. I am not. I am pastor of a church. I have been a school teacher. I know what goes on when racial tension gets high.

I know what happens when 600 students leave a school.

Mr. Hungate. What subject or where did you teach?

Mr. Ellison. I teach as substitute teacher and I teach all grades on secondary level. I am certified to teach and substitute in any of the 12 grades but my activities have been confined to junior high level 7 through 9.

Mr. Hungate. What is your church?

Mr. Ellison. I am pastor of Corinth Baptist Church.

Mr. Hungate. A very sound religion. And you have children?

Mr. Ellison. Yes; five children. I want to make this point. Next year I will have one young lady that will be destined to go to the sixth grade center but there is no way. There is no way for me to send my sixth grader down into that core city. I will not do it. My wife went to work week before last and that is another inequity in our Nation, the mothers are being drawn out of the home. They need to be with their children. They need to establish that motherly relationship in the home and the parents, both of which are having to go to work in order to achieve what they feel they must achieve for their offspring.

Mr. Hungate. What are the ages of your five children, all school age?

Mr. Ellison. Yes; I have one junior high presently in the eighth grade. I have one in the fifth grade. One in the second grade. I will have a first grader next year.

Mr. Hungate. Are any of these pupils bused at this time?

Mr. Ellison. No; but they are attending an integrated school with the balance as prescribed.

Mr. Hungate. At the present time none of them ride the bus?

Mr. Ellison. No, sir.

Mr. Hungate. Did you ride a bus when you went to school?

Mr. Ellison. No; I walked.

Mr. Hungate. You mentioned here on page 5 that one of the most fruitful times in a child's life is fulfillment of going to a particular school with tradition, but I think you recognize we are in a rootless society where everyone moves all of the time. It is not like it used to be.

Mr. Ellison. Our society is changing; yes.

Mr. Hungate. If I interpret your testimony, you might say that mistakes are going to be made in operating schools but you would prefer an elected school board to a Federal judge appointed for life to administer the schools.

Mr. Ellison. Yes.

Mr. Hungate. How are we going to solve the racial crisis in our country?

Mr. Ellison. By giving every child the right to attend a neighborhood school. I had a group of ministers come up and interview me as to the same question.

They said, "What would you do?"

I said "These black children are already grouped according to their achievements and learning abilities in their neighborhood schools. With the change that has taken place in 70–30 teacher ratio throughout our system and colorblind appropriation system, I feel indeed that the educational achievements of these slower learners or of these students who perhaps in the past have been denied better teaching, would certainly be increased. The level of achievement would be increased.

Mr. Hungate. Thank you very much.

I want you to know, and your associates to know, that Congressman Bennett and Congressman Chappell have been most active in bringing this point of view to the committee and they are both known to be energetic and busy Congressmen and the amount of time they have given you this morning indicates their concern with the problem.

Mr. Ellison. Yes, and we appreciate it.

Chairman Celler. Mr. Ellison, we are grateful to you and your associates for coming here this morning. You have certainly in most dramatic fashion given us the picture of conditions that exist in the Jacksonville, Fla., area. We will take those conditions into consideration when we fashion a bill, if any.

We thank you very much and we are appreciative to you Congressman Bennett, for having you before us.

Mr. Ellison. Thank you.

Chairman Celler. We will insert in the record at this point the following statements:

A statement of the Honorable William D. Broomfield, a U.S. Representative in Congress from the State of Michigan.

A statement of Prof. Charles Alan Wright and Charles T. McCormick, professor of law, University of Texas at Austin.

A statement of the Urban League of Rochester, N.Y., entitled "Response on Busing."

An article entitled "Busing Is Not the Issue," by the Honorable Reubin O'D. Askew, Governor of Florida.

(The statements referred to follow:)

Statement of Hon. William S. Broomfield, a U.S. Representative in Congress From the State of Michigan

Mr. Chairman. First of all, I would like to thank you and the distinguished members of this Committee for the opportunity to appear here today.

As you know, I am the author of an amendment to postpone court-ordered bussing until all appeals to that order have been exhausted. This amendment was approved by the House last November. The House recently reaffirmed its support by instructing the conferees on the Higher Education Act to insist on this language as opposed to the Mansfield-Scott version which passed in the Senate.

I sincerely hope that that conference will come to a speedy conclusion. The unprecendented outcry of the American people, both black and white, against forced busing makes action by this Congress imperative.

It is with deep conviction that I say that because I am convinced that the best way to solve the busing crisis in this country is through legislation. This legislation must to my mind move forward in two directions; for when we speak of busing we are really dealing with two very closely related issues.

The first is the question of preserving the integrity of the neighborhood school system. The phrase "neighborhood school" has been heard increasingly of late but all that really means is local control of the education, the destiny and the well-being of our children.

The desire to retain the neighborhood school system is shared in common by parents of all races. It is felt as strongly by Chinese parents in San Francisco, as it is by black parents in the inner city and suburban whites.

Secondly, once the neighborhood school system is preserved, and I think that the anti-busing amendments to the Higher Education Act will help do that, we must go one step further. We must enact legislation to insure that there really is quality education available in all of our neighborhood schools.

Mr. Chairman, I would like to see this Congress take steps not only to prevent forced busing to arrive at racial balances but also pass legislation to equalize educational opportunities in all the schools of this country.

Afterall, it was because the courts discovered differences between the quality of education in suburban versus inner city schools that they ordered bussing. In some cases, I would agree with their conclusion that there is a difference in the quality of education available, but I am absolutely opposed to the remedy that they propose.

Forced busing is not a unifying factor; on the contrary, forced busing has become an irritating factor which divides rather than unites. This so-called remedy is in fact self defeating. Busing does nothing to improve the quality of education in the schools. Busing is an expensive, time consuming, non-educational tax on our already overburdened school budgets.

Mr. Chairman, if I may, I would like to illustrate just how expensive a mass busing program, ordered in the name of quality education, can be. In the Metropolitan Detroit area, it is estimated that $3.5 million would be needed to purchase the necessary buses for cross district busing between the suburbs and the city. To that figure must be added the cost of hiring drivers, maintenance, insurance and garage facilities to store those buses.

It is apparent that the $3.5 million capital cost for buses will soar to many more millions. There is no doubt in my mind that those same funds, if applied toward educating our children rather than simply transporting them to one school or another, could serve to improve our school systems.

On the other hand, there are many ways in which Congress, through legislation and allocation of federal funds, can approach the problem of unequal educational opportunities.

There are a wealth of programs of educational reform that have been proposed by experts in this field. Indeed, the challenge that lies ahead is not so much to develop new programs as much as it is to sift through the many alternatives now available to select those approaches which are most effective.

Mr. Chairman, I lay no claim to being an expert in the field of education. However, I am aware, as I am sure the members of this Committee are, of new ideas which are worth the consideration and study of Congress. Some examples are the following:

(1) Specialized teacher training programs which would provide teachers with the latest educational skills and techniques designed to meet the special needs of inner city children.

(2) Increased federal or state aid for new schools and teaching equipment. Federal revenue sharing may prove to be valuable in this regard.

(3) Additional teaching assistants and aides to relieve teachers of mounting clerical work which reduces the amount of time a teacher can spend in the classroom.

I feel that Congress should focus its energy and time on the consideration of these and other equally challenging ideas. These are remedies which, unlike forced busing, are positive in nature and will improve all of our schools.

It should be remembered that busing is only a means to an end. I submit that it is only one of many possible means to reach that end and, further, that it is the one which is least desirable.

In light of this analysis, I think that Congress is faced with an important test. The American people, frustrated by court ordered busing, have turned to us for help. We have a duty, under the Constitution, to respond to the legitimate needs of our people. It is only natural and proper that Americans look to Congress for an answer to this problem.

Should we fail to meet that duty, should we ignore the crisis which busing has generated in this country, then the only remaining channel for relief would be a Constitutional Amendment to ban busing. As I have stated previously, I prefer a legislative response to the busing issue. If that should fail, those of us who oppose forced busing will have no other means to express our opposition except by amending the Constitution.

I am confident that Congress can resolve the problem of forced busing without a Constitutional Amendment and I am confident that Congress will soon take the necessary steps to do just that.

STATEMENT OF PROFESSOR CHARLES ALAN WRIGHT ON PRESIDENT'S PROGRAM CONCERNING SCHOOL DESEGREGATION REMEDIES

Mr. Chairman and Members of the Subcommittee, my name is Charles Alan Wright. I am Charles T. McCormick Professor of Law at The University of Texas. I come to support the constitutionality of the legislation proposed by President Nixon dealing with equal educational opportunity.

I am not qualified to express an opinion on what national policy should be in this sensitive area. Although I am a professional educator, I have no special competence in matters of educational policy. I hope that I do have a special competence on matters of constitutional law and on the power of Congress over the federal courts. I have taught law for more than twenty years, at the University of Minnesota from 1950 to 1955 and at The University of Texas since that time. I was a visiting professor at the University of Pennsylvania Law School in 1959–1960, at the Harvard Law School in 1964–65, and at the Yale Law School in 1968–69. I regularly teach courses in Federal Courts and in Constitutional Law, and, when my other university duties permit, also offer a seminar in Federal Courts and a seminar on the Supreme Court.

My writings include a multi-volume treatise on Federal Practice and Procedure, of which ten volumes, prepared by my collaborator, Professor Arthur R. Miller, and I have so far been published. I am the author of a one-volume hornbook, *Wright on Federal Courts*, the second edition of which was published in 1970, and, in collaboration with two others, of *Cases on Federal Courts*, the fifth edition of which was published in 1970. I have also written extensively, both on constitutional law and on the federal courts, in the law reviews.

I was consulted by the Cabinet Committee on Education in the course of the preparation of its recommendations to President Nixon on the present subject and have studied with care the bills that he ultimately presented for consideration by the Congress. Of course, the constitutional questions can be raised about portions of those bills, just as questions can and are raised about any action of Congress that is not in exact conformity with some prior action already authoritatively upheld. Should those bills be enacted and should they be challenged, the constitutional questions raised about them can only be finally determined by the courts. Contrary to some suggestions in the press, nothing in these bills purports to limit in any way judicial review of their constitutionality. The bills raise no question about the great principle announced in *Marbury v. Madison*, 1 Cranch 137 (1803).

Unless and until a final answer is given by the courts, all that any of us can do is form our best judgment, in the light of the Constitution and the cases construing it, about whether these bills are consistent with the Constitution. My own judgment on that question is very clear. I think the proposed legislation is so solidly buttressed by well-established principles of constitutional law that the doubts that have been expressed about it seem to me insubstantial. The authority of the Congress to adopt these bills is readily derived from § 5 of the Fourteenth Amendment and from Article III, § 2, of the Constitution.

It is well settled, for example, that the power of Congress under the enforcement provisions of the post-Civil War amendments—§ 5 of the Fourteenth Amendment and § 2 of the Fifteenth Amendment—is as broad as its power under the Necessary and Proper Clause and is a positive grant of power to Congress to determine, in its discretion, whether and what legislation is needed to secure the guarantees of those amendments. *South Carolina* v. *Katzenbach*, 383 U.S. 301 (1966); *Katzenbach* v. *Morgan*, 384 U.S. 641 (1966).

I do not read those enforcement provisions as authorizing the Congress to decide what substantive rights are protected by the Constitution. That is why I appeared in the Supreme Court as counsel for my state to challenge legislation in which Congress had determined that the Fourteenth Amendment requires that 18-year-olds be given the vote. To the extent that *Katzenbach* v. *Morgan* may have seemed to recognize a congressional power to perform the judicial function of interpreting the Constitution, I had hoped that it would have a deserved repose since the decision in the 18-year-old case, *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). But if the substantive constitutional right has been recognized, either by the words of the Constitution itself, as in *South Carolina* v. *Katzenbach*, or by authoritative judicial decisions, it seems to me that Congress has a very wide latitude in deciding what remedies are to be used to enforce the right.

Some of the critics of the President's proposals have pointed to the famous footnote 10 in *Katzenbach* v. *Morgan*, 384 U.S. at 651. The Court there said:

> We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be—as required by § 5—a measure "to enforce" the Equal Protection Clause since that clause of its own force prohibits such state laws.

There is a similar dictum in *Oregon* v. *Mitchell*, 400 U.S. at 128.

On my own view of § 5—that it does not give Congress power to decide what substantive rights are protected by the Constitution—this question would never arise, for I do not think Congress may either add to or abrogate substantive rights that the Constitution protects. Commentators who take a friendlier view of *Katzenbach* v. *Morgan* than I do, and who think Congress can create new substantive rights, disagree with footnote 10 and think Congress can also restrict substantive rights. Cox, *The Role of Congress in Constitutional Determinations*, 40 U. Cinc. L. Rev. 199, 247–261 (1971); Burt, *Miranda and Title II: A Morganatic Marriage*, 1969 Sup. Ct. Rev. 81, 118–134. Matters of this kind are an interesting subject for discussion by constitutional lawyers but would seem to have no relevance to the busing proposals. Those proposals do not modify in any way the guarantees of the Equal Protection Clause. Instead, they speak only to the remedial measures that courts may require of school districts that have formerly denied equal protection by segregation in the public schools.

The holding in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), was that segregation of children in public schools solely on the basis of race deprives the children of the minority group of equal educational opportunities and thus violates the Equal Protection Clause. This is the substantive right involved. The Court restated this, and distinguished very clearly between the substantive right, guaranteed by the Constitution, and the question of remedy, left to the equitable powers of the courts, in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 15 (1971).

> The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck down by *Brown I* as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measure of *Brown II*. * * * Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.

The distinction between constitutional violation and remedy was also clearly stated in the companion case of *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45 (1971).

The power of Congress to withdraw particular remedies from the federal courts, particularly when they are sitting as courts of equity, has been exercised throughout the history of the Republic and has rarely been challenged. Familiar examples are the Anti-Injunction Act of 1793, 28 U.S.C. § 2283, the Norris-LaGuardia Act, 28 U.S.C. §§ 101 et seq., upheld in *Lauf* v. *E. G. Shinner & Co., Inc.*, 303 U.S. 323 (1938), the Johnson Act of 1934, 28 U.S.C. § 1342, and the Tax Injunction Act of 1937, 28 U.S.C. § 1341. Many cases falling within these statutes involve plaintiffs who are claiming constitutional rights. Indeed, in the *Lauf* case itself the dissenters thought that the effect of barring the employer from obtaining an injunction was to deprive him of property without due process of law. 303 U.S. at 340. Nevertheless, it is always held that the power of Congress over remedies goes this far.

This power of Congress over remedies was discussed by the Court only last term. In the course of finding a right to bring suit for damages against federal agents who have violated the Fourth Amendment, the Court said, in *Bivens* v. *Six Unknown Agents*, 403 U.S. 388, 397 (1971), that:

> We have here no explicit congressional declaration that persons injured by a Federal officer's violation of the Fourth Amendment may not recover money damages from the agents, but must instead be remitted to another remedy, equally effective in the view of Congress. The question is merely whether petitioner, if he can demonstrate an injury consequent upon the violation by federal agents of his Fourth Amendment rights, is entitled to redress his injury through a particular remedial mechanism normally available in the federal courts.

The implication is clear that if Congress had decided, or should decide, that the "normally available" remedy should not lie for this kind of violation, the Court would honor this congressional judgment. Indeed, Justice Harlan, in his concurring opinion, saw the problem as whether the question of "a judicial remedy for the vindication of a federal constitutional right is placed by the Constitution itself exclusively in Congress' hands." 403 U.S. at 401–402. In his dissenting opinion in the same case, Chief Justice Burger argued that Congress could eliminate the Exclusionary Rule as a sanction for illegal searches if it "would provide some meaningful and effective remedy aaginst unlawful conduct by government officials." 403 U.S. at 421. Similarly, in *Miranda* v. *Arizona*, 384 U.S. 436, 467 (1966), the Court, speaking through Chief Justice Warren, spoke of the power of Congress to define remedies for the constitutional violations involved in that case, and emphasized that "our decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform * * *."

Neither *Swann* nor any other Supreme Court case holds that there is a constitutional right to attend a racially balanced school or a constitutional right to be taken to school by bus for that purpose. *Swann* explicitly rejected the notion that the Constitution requires racial balance, 402 U.S. at 24, and recognized that one-race schools may remain so long as they are not part of state-enforced segregation. 402 U.S. at 25–26. It would seem that the power of Congress to speak to the question of remedy and to say whether and under what circumstances a particular remedy is to be used, is no less for violation of the Equal Protection Clause than it is for violation of the Fourth Amendment, the Self Incrimination Clause, the Due Process Clause, or any other provision of the Constitution.

The analysis I have made here is consistent with that of other commentators. Former Solicitor General Archibald Cox has written that the Supreme Court's desegregation cases subsequent to *Brown I* "probably deal with remedies for constitutional violations rather than basic constitutional commands." Cox, *The Role of Congress in Constitutional Determinations*, 40 U. Cinc. L. Rev. 199, 258 (1971). He thinks Congress can properly legislate about remedies for past discrimination, and say :

> It seemed irrelevant whether the relief is greater or lesser than the courts would order. In either event, the relief is not part of the Constitution.

Id at 259. See also *Developments in the Law—Equal Protection*
82 Harv. L. Rev. 1065, 1157 (1969) where it is said :

> If Congress did face the issue directly and suspend jurisdiction to grant busing as a remedy, the Federal courts would seem to be bound to respect the limitation.

The conclusion is not inconsistent with what was said in *North Carolina State Board of Education* v. *Swann*. The Court there held unconstitutional a state statute that barred any use of busing to create racial balance. In its opinion, the Court said :

> But transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it.

402 U.S. at 46. The North Carolina statute was a complete ban on busing. The bill proposed by the President allows busing in circumstances where it is necessary. The North Carolina legislature, which adopted the statute held invalid in the case just cited, has no power under § 5 of the Fourteenth Amendment and no power over the jurisdiction of the federal courts. Congress has those powers. Finally, the structure of the opinion is quite interesting. Chief Justice Burger, for the Court, said that consideration of the race of students is "absolutely essential" in formulating a plan for desegregation, 402 U.S. at 46, and that a flat prohibition against assignments to create a racial balance "must inevitably conflict" with the constitutional duty to dis-establish dual school systems. *Ibid*. The contrast between "absolutely essential" and "inevitably" and the subsequent statement that it is "unlikely" that an effective remedy could be devised without some busing is illuminating.

The bill in question does not prohibit busing. It permits it to be used for high school students as a remedy of last resort. It permits it to be used for elementary school students to the extent that the district has previously provided transportation for those younger students. In *Swann* the Court recognized that "the scope of permissible transportation of students as an implement of a remedial decree * * * cannot be defined with precision." 402 US. at 29. It said that "no rigid guidelines" can be given, *ibid*., and that "the reconciliation of competing values" is required. 402 U.S. at 31. It said, quite significantly, that "it hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students." *Ibid.* In the light of that language, there is ample room for Congress to draw the line between the sixth and seventh grades and to restrict more narrowly busing of younger students than it does older students. Section 403(a) of the bill makes a district's prior use of busing for elementary students the criteria. In those districts where busing has been extensively used for younger students, the bill would continue to allow it, and the court would, of course, be free to route the bus in a way that will maximize desegregation. Those districts that have in the past followed a neighborhood school policy for the elementary schools and have thought that children this young should not be taken far from their homes to school would be free to continue those policies.

The distinction between elementary students and older students is consistent with what has been common practice in many schools, and should ameliorate the gravest problems that have been found in dismantling dual school systems. In the Charlotte-Mecklenburg district itself, the plan ultimately adopted for the junior high schools and high schools was essentially that proposed by the school board. 402 U.S. at 9. It was the elementary schools that created the greatest difficulty and provoked the greatest controversy. In the companion case from Mobile, it was found that a satisfactory plan could be drawn for the junior and senior high schools without bus transportation or split zoning. *Davis* v. *School Commissioners of Mobile County*, 402 U.S. 33, 35–36 (1971). Again, it was the elementary schools that caused difficulty.

There are some who say that the proposals under consideration are an attack on the federal courts. If I thought that to be true, I would not be supporting the proposals. In the Preface to a book I published in 1969 I said "I admire and respect the Supreme Court of the United States," 1 Wright, *Federal Practice and Procedure: Criminal* viii (1969). That feeling of mine has not changed, and it extends also to the lower federal courts. But, I think that those who perceive these proposals as an attack on the courts should ponder the wisdom of Justice Stone's famous remark in his dissent in *United States* v. *Butler*, 297 U.S. 1, 87 (1936), that "courts are not the only agency of government that must be assumed to have the capacity to govern."

I regard the proposed Equal Educational Opportunity Act of 1972 as a measure for the relief of the courts, rather than as an attack on them. I have long thought it unfortunate that the courts have been left to grapple with the extraordinarily difficult problem of dismantling the dual school system without any guidance from the Congress. The task was a hard one. As the Chief Justice wrote in *Swann*, "nothing in our national experience prior to 1955 prepared anyone for dealing with changes and adjustments of the magnitude and complexity encountered since then." 402 U.S. at 13. In the absence of action by Congress, "those courts had to improvise and experiment without detailed or specific guidelines." 402 U.S. at 6. The courts have special competence to decide, and acted wisely in deciding, that racial segregation in the schools is a violation of the Equal Protection Clause. They have no special competence to decide where a bus should run or how much racial balance is enough. Questions of this kind are much better resolved by legislation in Congress than by endeavoring to find judicial answers in the small print of the Fourteenth Amendment. The adoption by Congress of legislation defining the remedies for segregation in schools seems to me clearly within the power of Congress and this is a situation in which it is in the national interest that Congress responsibly exercise its power.

The Urban League of Rochester, New York—Response on Busing

As President of the Urban League of Rochester, I want to address myself to the speech delivered by President Nixon on Thursday, March 16, excerpts of which appeared in the *New York Times* on Saturday, March 18.

The Urban League of Rochester has serious reservations about President Nixon's proposal for a moratorium on what the President calls Federal Court ordered busing to achieve "racial intergration." The President said: . . . many lower court decisions have gone far beyond what most people would consider reasonable, and beyond what the Supreme Court has said is necessary in the requirements they have imposed for the reorganization of school districts and the transportation of school pupils."

No court in the nation, to my knowledge, has ordered busing to achieve "racial integration." What several courts have done, however, in appropriate cases, is to order busing as a remedy and as a legitimate means to dismantle a segregated school system. In 1954, the U.S. Supreme Court declared that state imposed segregated schools were inherently unequal and in violation of the Fourteenth Amendment. The Supreme Court required Federal Courts to fashion appropriate remedies to eliminate segregation in the public schools. Busing is only one remedy devised by Federal Courts to cope with the school segregation problem. Thus, the only issue in each school segregation case is whether students are deprived of equal protection of the laws under the Fourteenth Amendment by being required to attend a segregated school system. "Racial integration" is not an issue.

For Congress, by legislation, to deprive Federal Courts of the remedy of busing to achieve equal protection of the laws for victims of a segregated school system present at least two serious constitutional questions.

(a) Would the law constitute a violation of the Fifth Amendment's due process of law to countless victims of segregated schools?

(b) Would the law be an improper exercise of Congressional power over the Judiciary and, therefore, inconsistent with Article III of the Constitution?

It is ironic that since 1954 when the Supreme Court decided the Brown Case, neither the Executive nor the Legislative branches of Government has attempted to implement the constitutional right of black students to a non-segregated education in public schools. The task of implementing this basic constitutional right has fallen to the Judiciary by default and now comes Nixon's current proposal attacking the Judiciary for single-handedly attempting to make the Constitution a meaningful document for *all* United States citizens.

For reasons fundamentally different from those offered by President Nixon, the Urban League of Rochester supports that aspect of the President's proposal which would give intensive financial aid to inner city school systems. We do affirm, however, that such aid should not be contingent on giving up remedies, including busing, which Federal Courts have fashioned as a remedy for vindicating the rights of inner city children to a non-segregated education. Constitutional rights are too valuable to be bargained away in this manner. To accept financial aid in lieu of constitutional rights and remedies would be an unwise return to the separate but equal doctrine of 1896 which we had every reason to believe was rejected in the unanimous decision in Brown vs Board of Education in 1954. We will not, like Jacob in the Biblical myth, bargain away a precious birthright for a mess of pottage.

The Urban League of Rochester supports the President's aid plan only because it could *possibly* immediately strengthen existing inferior schools in the inner city. While we support this aspect of the President's proposal, the Urban League of Rochester reaffirms its support of numerous judicial remedies, including busing, as effective means to dismantle the dual system of public education which continues to exist in too many public education systems of the United States and which inflicts irreparable harm on the psyche of the children of minority groups.

I now remove from the objective and analytic to some comments on the situation before the nation and I admit subjectivity here. Once more the President has demonstrated his callousness to the needs of blacks, of other minorities and of the poor; once more he has acted purely for political gain; once more he has succumbed to the wishes of the majority, the silent majority, who are silent because they are morally bankrupt, and basically selfish; once more he has seized upon fears, on created fears, and exploited the achilles heel of American society.

What he has said in effect is that education is an instrument for the preservation of the *status quo:* Keep the blacks where they are, geographically and educationally, what we say is that education is an instrument, not only for preservation, but also for change: It should ameliorate the quality of life in the society, mediate differences among people, and expose youngsters to one another over a period of years. If this is done, many of the stereotype conceptions we have of each other would be removed, many of the false assumptions we make of each other would be corrected experientially; and many of the social confrontations which now exist would be avoided.

We must emphasize that we construe the President's moratorium on busing as an invitation to return to the 1896 doctrine of separate but equal. The 1954 decision of the Warren Court declared that any separate system of education is inherently unequal. To give the sanctity of law to an obviously flagitious system of education, even under the guise of response to the desires of the majority, is to abdicate moral leadership.

THE SILENT MAJORITY

The great Pericles said: "in Athens, we say silent men are useless." Mr. Nixon says, "the wishes of the great majority must be heeded," even when those wishes are demonstrably harmful to the body politic. Mr. Nixon very well knows that the majority has never been kindly disposed to the rights of the minority. Every inch of ground gained has been stubbornly fought for and stubbornly contested; every inch of ground gained has had to be tenaciously protected.

Whatever the posture of the Urban League of Rochester has been in the past, under my leadership it will be stubborn and tenacious.

We have said earlier that the move of the President at this time, in the wake of what the *New York Times* (editorial Saturday, March 18), calls "the muddy field of Florida politics," smacks of the political. Now, Aristotle tells us that man is a political animal: but some animals are domesticated and friendly; others are hostile, and are enemies of man. You may take your pick as to which political animal we consider the President to be when it comes to the interest of blacks. We have no hesitation in making up our minds.

Then we must consider the unwarranted attack on the courts and the gratuitous imputation of the "social planners." Minorities in this country look to the Federal Courts as the only institution in which they may receive full justice. The social planners are the ones who inveighed against slavery, fought for the rights of labor unions, urged social welfare, minimum wages and proper working conditions; it is they who are now fighting for proper medical attention for all Americans, for equal rights for women, and for the removal of all artificial obstacles which hinder minorities from participating fully in the life of the society.

Stripped of the powers of the Federal Courts and in the absence of the activities of the social planners, all hope would fade for achieving racial equality in the United States.

[Inequality in Education, Harvard Center for Law and Education; No. 11, March 1972]

Busing Is Not The Issue

by Reubin O'D. Askew*

Ralph Waldo Emerson once said that "This time, like all times, is a very good one, if we but know what to do with it." I am not sure what must be done to bring out the good in today's times. But I am convinced that sitting and waiting for the inevitable is not the answer.

For this reason, I want to say a few things with which many will disagree, things which are decidedly unpopular, but things which I feel must be said in the interest of the American people—all of them. In doing so I am not attempting in any way to judge nor place labels on anyone who disagrees.

Two questions with nationwide repercussions for school desegregation were added to our Florida Presidential primary ballot for March 14th. They were

> 1. Do you favor an amendment to the United States Constitution that would prohibit forced busing and guarantee the right of each student to attend the appropriate public school nearest his home?
>
> 2. Do you favor providing an equal opportunity for quality education for all children, regardless of race, creed, color or place of residence, and do you oppose a return to a dual system of public schools?

Many people feel strongly about these subjects, and rightly so. Many Floridians (and many throughout the nation who wish for a similar way to express their sentiments) feel that a constitutional amendment prohibiting busing is a wise and necessary measure. But I feel that it is wiser for people to vote "No" on the anti-busing amendment, and "Yes" on equal educational opportunity.

I strongly oppose a constitutional amendment to outlaw busing—but not because I like it or think it is a panacea for our problems. On the contrary, I recognize and regret the inconvenience, disruption and hardship it often creates for many parents and children. I am not without feeling for them, and I do not think anyone is. Busing is an artificial and inadequate instrument of change. It should be abandoned as soon as we can afford to do so.

Value of Busing

Yet, by the use of busing (and other methods), we have made real progress in dismantling a dual system of racially segregated public schools in this country. And I believe that until we find alternative ways of providing an equal opportunity for quality education for all, regardless of race, creed, color or *place of residence* (and that last part is important); until we are sure that ending busing will not bring a return to segregated public schools; until we have those assurances, we must not unduly limit ourselves—and certainly not constitutionally.

We must not risk seriously undermining the spirit of the Constitution, one of the noblest documents produced by man. We must not risk returning to the kind of segregation, fear and misunderstanding which produced the very problem that led to busing in the first place. Instead, we must all work together to find ways other than busing to guarantee that no American is denied an equal opportunity to grow and develop in a nonsegregated society.

That is what the present clamor is all about. Nobody is really committed to busing as an end in itself. It is the purpose for which we bus that is all-important. That goal is to put the divisive and self-defeating issue of race behind us once and for all. It is a goal worthy of vigorous pursuit by anyone who believes that all people should live together in peace, justice and harmony.

I believe we are closer to this goal now than ever before. I believe we are closer than any

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**Reuben Askew is the Governor of Florida.*

civilization in history to achieving a society in which all races, creeds and religions can not only live with their differences, but thrive upon them, and learn from them as well. I think we are well within reach of understanding one another, caring for one another, and affirming our commitment to the principles of justice and compassion which made this country what it is today. How sad it would be to turn back now, not only for minority children but for all of us.

Of course we do not want our children to suffer unnecessary hardships. That goes without saying. But neither do we want them to grow up in a world of continuing racial discord, racial hatred and, above all, racial violence. But I fear that this is what we will have if we do not work now to solve our racial problems. This is surely what we will have if we continue to thwart every attempt to bring us together.

Ignorance is the father of cruelty. But we are beginning at last to overcome the ignorance which has kept us divided for so long, the ignorance which has been responsible for so much cruelty between the races. This is true especially of the South.

The Busing Smokescreen

Because of our persistent preoccupation with race related issues, we have all too frequently neglected the real economic and environmental problems of the people, black and white alike. In this way, we have not been fair to ourselves. When people are divided against themselves on racial grounds, they have no time to demand a fair shake on taxes, utility bills, consumer protection, government services, environmental preservation, and other problems. In this session of the Florida legislature, for example, proposals for reform of education, environmental controls, and utility regulation have taken a back seat to a straw vote on busing which, in the final analysis, does not really accomplish anything. Believe me, while the legislature and news media were focusing attention on the busing debate, lobbyists and special interests were hard at work undermining programs that would put money into people's pockets, that would help protect people and the other living things which make Florida a worthwhile place in which to live.

This is probably the greatest reason why the South has been lagging behind other regions on issues such as wages, distribution of the tax burden, health, medical care, and aid to the elderly and others in need. So often when someone attempts to do something about people's basic needs, the race issue is resurrected in one form or another. Interestingly enough, I asked the legislature to put those other kinds of issues on the ballot along with busing. And they refused.

Political Maturity

I hope that we are moving beyond racial appeals here in Florida, throughout the South, and the rest of the nation as well. It is time to say that we are not caught up in the mania of stopping busing at any cost, that we are maturing politically, that we know the real issues when we see them, that we will no longer be fooled, frightened and divided against ourselves. This is how we gain a better understanding of what this country is all about.

For many years now, the rest of the nation has been saying to the South that it is morally wrong to deprive any citizen of an equal opportunity in life because of his color. I think most of us have come to agree with that. But now the time has come for the rest of the nation to live up to its own stated principles. Only now are the other regions themselves beginning to feel the effects of the movement to eliminate segregation.

I say that the rest of this nation should not abandon its principles when the going gets tough. I do not say this to be vindictive, I say it to be fair. The rest of the nation has sought to bring justice to the South by mandate and court order. Now perhaps it is time for the South to teach the same thing to other regions in a more effective way—by example. I certainly hope we will.

Regardless of how people feel about busing or segregation, a constitutional amendment to change things is neither necessary nor desirable. It is dangerous to tamper with the United States Constitution under emotional circumstances, and I have been heartened by the reports that President Nixon and Vice President Agnew have reservations about amending it in this way, that the Senate leaders in both parties are against a constitutional amendment. As one key member of the Nixon administration put it, these proposals "could have the effect of actually undercutting and rolling back the measures that have been taken to dismantle the dual school system."

I hope we can say to those who would keep us angry, confused and divided, that we are more concerned about justice than about transportation, and that while we are determined to solve both, we are going to take justice first.

It never has been my feeling that the majority of the people who oppose busing are racially motivated. On the contrary, I believe that most people who are disturbed by the inconvenience, disruption and hardship of busing, are nevertheless just as concerned that we put an end to segregation, and assure equal opportunity for all. Busing is one way of doing that. Perhaps it is the least desirable way, but it is effective nonetheless.

Other Desegregation Paths

Now is the time for Americans of good faith to search for other effective ways. One way, as I have said before, would be to work at the community level to overcome economic barriers and change our housing patterns—so that every neighborhood school would be a *desegregated* school (not necessarily one with an exact racial balance, but one in which the proper emphasis is on our real goal of quality education for all).

It is regrettable that education has had to shoulder a disproportionate share of the burdens of overcoming the effects of segregation. We can and should put greater emphasis on employment opportunities and fair housing practices as well as education. But we can also put greater emphasis on pre-school education for all children so that they start on an equal footing as early as possible. We can assure that no schools are so lacking in facilities, discipline and properly trained personnel that parents are legitimately fearful for their child's safety, health, development and well-being. For if such schools harm one child, they harm all children and should not be tolerated. School buildings can also be placed to ease the necessity of busing. There is much more we can do, I am sure, and I hope we will.

Then we can put an end to busing without setting the stage for a racial discord such as we have never before imagined. Then we can get on to those other problems which we've neglected for far too long.

In closing, let me say that we should be working together to free ourselves of the fears and divisions of yesterday, and to seek a better tomorrow. If I seem presumptuous in taking this opportunity to say so, I apologize. It is not my intention to impose my will on anyone. But it is my intention to give people cause for sober reflection, so that they are very sure of what they are doing before they encourage an amendment to the United States Constitution, one that would reverse our efforts to make that great document a living testimony to the pursuit of freedom, equality, and justice for all.

DOCUMENTARY PHOTO AIDS®

Chairman CELLER. We also insert in the record at this point further information submitted by HEW respecting extent of desegregation in a number of school districts in the 1971–72 school year.

We will adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:35 p.m., the subcommittee adjourned to reconvene at 10 a.m., Thursday, May 11, 1972.)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., May 8, 1972.

Mr. BENJAMIN L. ZELENKO,
General Counsel, Committee on the Judiciary,
Rayburn House Office Building, Washington, D.C.

DEAR MR. ZELENKO: This is in further regard to the Committee's request for data indicating the extent of desegregation achieved in 154 school districts which to our knowledge undertook new student reassignment measures in the 1971–72 (current) school year. Fifteen (15) copies of this data are enclosed, together with a summary sheet indicating both transportation and desegregation figures for 138 of the 154 districts, and a narrative pointing out major highlights.

As you will recall, printouts showing student transportation figures for the 154 school districts were transmitted to the Committee on April 12.

If the Department can be of further assistance, please let me know.

Sincerely yours,

WILLIAM H. VAN DEN TOORN,
Assistant to the Director, Office for Civil Rights.

SCHOOL DISTRICTS IMPLEMENTING STUDENT REASSESSMENT PLANS FOR THE 1971–72 SCHOOL YEAR

HIGHLIGHTS OF CHART SUMMARIZING TRANSPORTATION AND DESEGREGATION DATA

Of the 154 school districts with known student reassignment plans for the 1971–72 school year, 138 had comparative data for both 1970 and 1971 school years.

1. These districts showed an increase of only 205,000 pupils transported. This represents a little over 1% of the approximately 19 million pupils estimated as being transported at public expense in the United States.
2. There were almost ⅔ (108,000) less black pupils in 100% minority schools in 1971 than in 1970.
3. There were (229,000) less black pupils in 80–100% minority schools in 1971 than in 1970.
4. Conversely there were 61% (174,000) more black pupils attending predominantly white-Anglo (0–49% minority) schools in 1971 than in 1970.
5. The balance of black pupils is made up from 39% (6,000) more black pupils in 50–79% (Columns C minus D plus E) minority schools in 1971 than in 1970 as well as a 1% increase (5,000) of black pupils from 1970 to 1971.
6. It is interesting to note that whereas there was a 1% (5,000) increase in minority pupils from 1970 to 1971, there was a 5% (99,000) decrease in nonminority pupils in the same districts in the same period of time.

SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR (154 DISTRICTS)—138 DISTRICTS WHICH SUPPLIED TRANSPORTATION DATA FOR BOTH 1970-71 SCHOOL YEAR

[Data is unedited except for columns A and B, 1970]

	A	B		C		D		E		F		G	H		I	
						Black pupils attending schools which are (percent)—										
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority		Total pupils in in schools which answered transportation question	Pupils transported		Schools which answered transportation question	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C		Number	Percent of G	Number	Percent
Continental United States:																
1970	3,192,919	1,106,452	34.7	961,142	30.1	286,606	29.8	518,894	54.0	164,918	17.2	3,131,185	1,002,985	32.0	4,539	98.4
1971	3,100,361	1,113,140	35.9	965,720	31.2	460,237	47.7	289,789	30.0	57,106	5.9	3,062,364	1,208,361	39.5	4,478	98.6
Difference	−92,558	6,688	1.2	4,578	1.1	173,631	17.9	−229,105	−24.0	−107,812	−11.3	−68,821	205,376	7.5	−61	0.2

Note: 14 districts supplied no busing data for one of both years and 2 districts—Huntsville, Ala. and Rocky Mount, N.C. supplied insufficient data. The 14 districts supplying no data for 1 or both years were: Alabama—Bessemer, Butler County, Calhoun County, Hale County, Limestone County, Marengo County, Midfield, Oxford, Russell County, Wilcox County; Michigan—Kalamazoo, Pontiac; and Texas—Oakwood, San Felipe-Del Rio CSD.

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS

[1971 data is unedited]

District	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
ALABAMA											
Bessemer City:											
1968	8,595	5,359	62.4	5,359	62.4	184	3.4	5,175	96.6	5,175	96.6
1969	8,425	5,338	63.4	5,333	63.3	216	4.1	5,117	95.9	5,117	95.9
1970	7,481	4,949	66.2	4,949	66.2	681	13.8	3,227	65.2	1,307	26.4
1971	7,134	4,960	69.5	4,960	69.5	84	1.7	2,954	59.6	279	5.6
Butler County:											
1968	5,824	2,935	50.4	2,935	50.4	85	2.9	2,850	97.1	2,850	97.1
1969	5,465	2,772	50.7	2,772	50.7	303	10.9	2,095	75.6	1,304	47.0
1970	4,805	2,565	53.4	2,565	53.4	993	38.7	0	0	0	0
1971	4,498	2,797	62.2	2,796	62.2	180	6.4	0	0	0	0
Calhoun County:											
1968	12,753	1,592	12.5	1,592	12.5	143	9.0	1,449	91.0	1,449	91.0
1969	12,901	1,564	12.1	1,564	12.1	538	34.4	1,026	65.6	1,026	65.6
1970	10,463	1,484	14.2	1,484	14.2	673	45.4	811	54.6	811	54.6
1971	10,880	1,240	11.4	1,224	11.3	1,224	100.0	0	0	0	0
Hale County:											
1968	4,901	3,783	77.2	3,783	77.2	64	1.7	3,719	98.3	3,719	98.3
1969	5,001	3,850	77.0	3,850	77.0	63	1.6	3,787	98.4	3,787	98.4
1970	4,781	3,744	78.3	3,744	78.3	163	4.4	1,862	49.7	1,298	34.7
1971	4,516	3,579	79.3	3,577	79.2	286	8.0	2,900	81.1	2,900	81.1
Huntsville City:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	35,714	4,660	13.0	4,503	12.6	2,999	66.6	1,504	33.4	0	0
1970	36,241	4,994	13.8	4,849	13.4	3,699	76.3	682	14.1	0	0
1971	35,886	5,471	15.2	5,212	14.5	4,183	80.3	683	13.1	0	0
Jefferson County:											
1968	65,328	18,186	37.8	18,186	27.8	538	3.0	17,579	96.7	17,579	96.7
1969	62,024	14,463	23.3	14,463	23.3	2,905	20.1	11,115	76.9	10,210	70.6
1970	59,717	16,776	28.1	16,776	28.1	3,240	19.3	13,159	78.4	8,020	47.8
1971	56,573	15,160	26.8	15,110	36.7	5,952	39.4	8,563	56.7	4,528	30.0

Limestone County:											
1968	7,100	1,717	24.2	1,717	24.2	140	8.2	1,577	91.8	1,577	91.8
1969	7,305	1,740	23.8	1,740	23.8	431	24.8	1,309	75.2	1,309	75.2
1970	6,983	1,460	20.9	1,460	20.9	1,182	81.0	278	19.0	0	0
1971	6,975	1,379	19.8	1,379	19.8	1,379	100.0	0	0	0	0
Madison County:											
1968	11,965	3,578	29.9	3,570	29.8	666	18.7	2,904	81.3	2,904	81.3
1969	11,578	3,344	28.9	3,344	28.9	1,027	30.7	2,317	69.3	2,086	62.4
1970	11,227	3,124	27.8	3,124	27.8	3,124	100.0	0	0	0	0
1971	10,822	2,796	25.8	2,796	25.8	2,796	100.0	0	0	0	0
Marengo County:											
1968	3,889	3,128	80.4	3,128	80.4	20	.6	3,108	99.4	3,108	99.4
1969	3,782	3,046	80.5	3,046	80.5	179	5.9	2,867	94.1	2,867	94.1
1970	3,632	2,868	79.0	2,868	79.0	390	13.6	2,478	86.4	2,478	86.4
1971	3,670	2,828	77.1	2,828	77.1	375	13.3	2,453	86.7	2,453	86.7
Midfield City:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	1,574	18	1.1	18	1.1	18	100.0	0	0	0	0
1971	2,396	657	27.4	657	27.4	657	100.0	0	0	0	0
Mobile County:											
1968	75,464	31,441	41.7	31,441	41.7	3,442	10.9	27,519	87.5	18,832	59.9
1969	73,504	30,884	42.0	30,884	42.0	6,776	21.9	22,796	73.8	15,125	49.0
1970	69,791	31,114	44.6	31,034	44.5	5,658	18.2	16,888	54.4	3,141	10.1
1971	66,593	31,045	46.6	30,958	46.5	11,081	35.8	12,764	44.2	4,727	15.3
Oxford City:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	2,350	68	2.9	68	2.9	68	100.0	0	0	0	0
1971	2,249	333	14.8	333	14.8	333	100.0	0	0	0	0
Perry County:											
1968	3,314	2,730	82.4	2,730	82.4	48	1.8	2,682	98.2	2,682	98.2
1969	3,371	2,732	81.0	2,732	81.0	38	1.4	2,654	98.6	2,694	98.6
1970	3,158	2,666	84.4	2,666	84.4	55	9.6	2,411	90.4	2,411	90.4
1971	2,705	2,423	89.6	2,423	89.6	0	0	2,055	84.8	504	20.8
Russell County:											
1968	5,304	3,618	68.2	3,618	68.2	86	2.4	3,532	97.6	1,870	51.7
1969	5,223	3,667	70.2	3,667	70.2	469	12.8	3,198	87.2	3,198	87.2
1970	4,787	3,365	70.3	3,365	70.3	537	16.0	2,241	66.6	0	0
1971	4,513	3,193	70.8	3,193	70.8	66	2.1	2,049	64.2	0	0
Wilcox County:											
1968	5,001	3,878	77.5	3,878	77.5	65	1.7	3,813	98.3	3,813	98.3
1969	4,952	3,756	75.8	3,765	75.8	41	1.1	3,715	98.9	3,715	98.9
1970	4,785	3,877	81.0	3,877	81.0	32	.8	3,845	99.2	3,845	99.2
1971	4,740	3,865	81.5	3,865	81.5	52	1.3	3,813	98.7	3,813	98.7

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
District		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
ARKANSAS											
Blytheville:											
1968	6, 010	2, 504	41. 7	2, 479	41. 2	275	11. 1	2, 131	86. 0	2, 131	86. 0
1969	5, 951	2, 453	41. 2	2, 434	40. 9	387	15. 9	1, 990	81. 8	1, 990	81. 8
1970	5, 659	2, 401	42. 4	2, 376	42. 0	1, 238	52. 1	1, 023	43. 1	1, 023	43. 1
1971	5, 558	2, 542	45. 7	2, 520	45. 3	1, 353	53. 7	124	4. 9	0	0
Camden:											
1968	2, 917	1, 551	53. 2	1, 547	53. 0	123	8. 0	1, 424	92. 1	1, 424	92. 1
1969	2, 919	1, 552	53. 2	1, 552	53. 2	272	17. 5	1, 280	82. 5	1, 280	82. 5
1970	2, 827	1, 521	53. 8	1, 521	53. 8	236	115. 5	571	37. 5	0	0
1971	2, 701	1, 456	53. 9	1, 456	53. 9	0	0	0	0	0	0
El Dorado:											
1968	6, 850	2, 235	32. 6	2, 235	32. 6	461	20. 6	1, 774	79. 4	1, 774	79. 4
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	6, 423	2, 196	34. 2	2, 196	34. 2	1, 741	79. 3	455	20. 7	455	20. 7
1971	6, 225	2, 259	36. 3	2, 259	36. 3	2, 259	100. 0	0	0	0	0
Forrest City:											
1968	6, 724	3, 671	54. 6	3, 671	54. 6	275	7. 5	3, 396	92. 5	3, 396	92. 5
1969	6, 474	3, 617	55. 9	3, 584	55. 4	570	15. 9	3, 014	84. 1	3, 014	84. 1
1970	6, 013	3, 474	57. 8	3, 450	57. 4	359	10. 4	1, 039	30. 1	0	0
1971	5, 810	3, 467	59. 7	3, 423	58. 9	577	16. 9	853	24. 9	0	0
Little Rock:											
1968	24, 854	8, 959	36. 0	8, 955	36. 0	1, 460	16. 3	6, 632	74. 1	6, 295	70. 3
1969	24, 528	9, 364	38. 2	9, 293	37. 9	1, 993	21. 4	6, 407	68. 9	928	10. 0
1970	24, 454	9, 639	39. 4	9, 607	39. 3	2, 443	25. 4	6, 336	66. 0	2, 017	21. 0
1971	23, 306	10, 214	43. 8	10, 182	43. 7	5, 934	58. 3	3, 631	35. 7	1, 618	15. 9
North Little Rock:											
1968	12, 862	2, 937	22. 8	2, 876	22. 4	712	24. 8	2, 164	75. 2	2, 164	75. 2
1969	13, 011	3, 013	23. 2	2, 983	22. 9	960	67. 8	2, 023	67. 8	651	21. 8
1970	12, 979	3, 003	23. 1	2, 970	22. 9	1, 441	48. 5	1, 340	45. 1	203	6. 8
1971	12, 590	2, 891	23. 0	2, 852	22. 7	1, 524	54. 1	1, 328	46. 6	0	0
West Memphis:											
1968	7, 050	3, 315	47. 0	3, 315	47. 0	204	6. 1	3, 111	93. 6	3, 111	93. 6
1969	7, 363	3, 519	47. 8	3, 519	47. 8	251	7. 1	3, 268	92. 9	3, 268	92. 9
1970	7, 640	3, 580	46. 9	3, 580	46. 9	367	10. 3	3, 213	89. 7	2, 069	57. 8
1971	7, 049	3, 472	49. 3	3, 472	49. 3	1, 768	50. 9	0	0	0	0

CALIFORNIA											
Oxnard City Elementary:											
1968	9,139	5,196	56.9	1,144	12.5	243	21.2	400	35.0	0	0
1969	9,462	5,468	57.8	1,046	11.1	234	22.4	339	32.4	0	0
1970	9,458	5,539	58.6	1,027	10.9	123	12.0	326	31.7	0	0
1971	9,264	5,708	61.6	1,006	10.9	1,006	100.0	0	0	0	0
San Francisco City Unif:											
1968	94,154	55,330	58.8	25,923	27.5	4,024	15.5	12,079	46.6	110	.4
1969	93,139	58,813	63.1	26,037	28.0	2,893	11.1	13,891	53.4	175	.7
1970	91,150	57,549	63.1	25,988	28.5	3,681	14.2	14,417	55.5	281	1.1
1971	83,584	55,242	66.1	25,408	30.4	2,380	9.4	5,673	22.3	337	1.3
DELAWARE											
Milford:											
1968	3,269	728	22.3	720	22.0	720	100.0	0	0	0	0
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	4,157	1,175	28.3	1,163	28.0	1,003	86.2	0	0	0	0
1971	4,120	1,221	29.6	1,199	29.1	1,199	100.0	0	0	0	0
FLORIDA											
Broward County:											
1968	103,003	25,517	24.8	24,516	23.8	3,556	14.5	19,545	79.7	16,882	68.9
1969	112,400	27,662	24.6	26,131	23.2	4,135	15.8	20,916	80.0	13,967	53.4
1970	117,324	29,412	25.1	27,230	23.2	14,189	52.1	11,201	41.1	4,303	15.8
1971	122,376	30,849	25.2	28,554	23.3	22,467	78.7	2,291	8.0	650	2.3
Collier County:											
1968	6,554	1,403	21.4	799	12.2	487	61.0	84	10.5	0	0
1969	8,736	2,353	26.9	995	11.4	551	55.4	0	0	0	0
1970	8,961	2,039	22.8	954	10.6	439	46.0	0	0	0	0
1971	9,871	2,317	23.5	1,002	10.2	439	43.8	0	0	0	0
Duval County:											
1968	122,637	34,638	28.2	34,638	28.2	4,362	12.6	30,276	87.4	26,556	76.7
1969	124,901	35,601	28.5	35,601	28.5	7,150	20.1	28,451	79.9	22,515	63.2
1970	122,493	36,054	29.4	36,054	29.4	9,237	25.6	20,747	57.5	13,345	37.0
1971	117,576	36,769	31.3	36,769	31.3	13,229	36.0	14,042	38.2	8,549	23.3
Hendry County:											
1968	2,841	934	32.9	714	25.1	247	34.6	467	65.4	467	65.4
1969	3,094	1,105	35.7	782	25.3	334	42.7	448	57.3	448	57.3
1970	3,135	1,048	33.4	768	24.5	460	59.9	308	40.1	308	40.1
1971	3,928	1,137	34.5	767	23.3	767	100.0	0	0	0	0
Hillsborough County:											
1968	100,985	26,356	26.1	19,225	19.0	3,513	18.3	14,886	77.4	12,371	64.3
1969	103,795	27,463	26.5	19,867	19.1	4,472	22.5	13,888	69.9	6,637	33.4
1970	105,347	27,553	26.2	20,417	19.4	4,771	23.4	12,832	62.8	2,303	11.3
1971	101,298	25,904	25.6	19,769	19.5	19,335	97.8	90	0.5	0	0

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971–72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
District	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
FLORIDA—Continued											
Jackson County:											
1968	8, 527	3, 196	37. 5	3, 196	37. 5	564	17. 6	2, 501	72. 2	2, 501	78. 2
1969	8, 602	3, 227	37. 5	3, 227	37. 5	989	30. 6	2, 238	69. 4	1, 591	49. 3
1970	8, 312	3, 115	37. 5	3, 110	37. 4	2, 500	86. 4	394	12. 7	394	12. 7
1971	8, 107	3, 031	37. 4	3, 024	37. 3	2, 769	91. 6	0	0	0	0
Orange County:											
1968	76, 099	13. 055	17. 2	13, 055	17. 2	2, 627	20. 1	10, 064	77. 1	10, 064	77. 1
1969	83, 361	15, 235	18. 3	15, 235	18. 3	5, 097	33. 5	9, 156	60. 1	4, 397	28. 9
1970	85, 270	15, 398	18. 1	15, 398	18. 1	6, 265	40. 7	8, 005	52. 0	2, 553	16. 9
1971	84, 928	16, 880	19. 9	15, 638	18. 4	8, 173	52. 3	4, 428	28. 3	772	4. 9
Palm Beach County:											
1968	61, 715	18, 743	30. 4	17, 158	27. 8	3, 191	18. 6	13, 636	79. 5	12, 409	72. 3
1969	65, 866	19. 819	30. 2	17. 753	27. 0	3, 723	21. 0	13, 011	73. 3	7, 025	39. 6
1970	66, 760	20, 609	30. 9	18, 338	27. 5	4, 597	25. 1	7, 445	40. 6	0	0
1971	65, 609	21, 358	32. 6	18, 733	28. 6	11, 786	62. 9	2, 024	10. 8	0	0
Pinellas County:											
1968	78, 466	13, 170	16. 8	12, 715	16. 2	2, 762	21. 7	9, 303	73. 2	3, 298	25. 9
1969	81, 885	13, 603	16. 6	13, 153	16. 1	4, 029	30. 6	8, 238	62. 6	4, 257	32. 4
1970	85, 117	14, 192	16. 7	13, 766	16. 2	6, 264	45. 5	2, 881	20. 9	667	4. 8
1971	86, 878	14, 710	16. 9	14, 137	16. 3	13, 408	94. 8	0	0	0	0
St. Johns County:											
1968	6, 705	2, 165	32. 3	2, 162	32. 2	498	23. 0	1, 664	77. 0	1, 664	77. 0
1969	6, 901	2, 262	32. 8	2, 257	32. 7	570	25. 3	1, 687	74. 7	1, 687	74. 7
1970	6, 860	2, 130	31. 0	2, 120	30. 9	892	42. 1	430	20. 3	430	20. 3
1971	7, 072	2, 197	31. 1	2, 153	30. 4	1, 538	71. 4	0	0	0	0
Santa Rosa County:											
1968	8, 829	794	9. 0	746	8. 4	454	60. 9	292	39. 1	0	0
1969	9, 312	749	8. 0	720	7. 7	552	76. 7	0	0	0	0
1970	10, 046	791	7. 9	736	7. 3	558	75. 8	0	0	0	0
1971	10, 438	847	8. 1	746	7. 1	746	100. 0	0	0	0	0

GEORGIA											
Bulloch County:											
1968	6,931	2,952	42.6	2,952	42.6	156	5.3	2,796	94.7	2,796	94.7
1969	7,014	3,143	44.8	3,143	44.8	1,349	42.9	1,626	51.7	1,201	38.2
1970	6,921	2,940	42.5	2,938	42.5	1,399	47.6	1,539	52.4	1,539	52.4
1971	6,728	2,838	42.2	2,830	42.1	2,067	73.0	0	0	0	0
Chatham County:											
1968	42,416	17,499	41.1	17,449	41.1	1,620	9.3	15,102	86.5	13,460	77.1
1969	42,306	17,539	41.5	17,539	41.5	3,280	13.6	14,457	82.4	13,402	76.4
1970	40,897	18,115	44.3	17,963	43.9	3,499	19.5	12,058	967.1	2,804	15.6
1971	27,712	18,342	48.9	18,195	48.2	10,809	59.4	1,385	7.6	0	0
Clayton County:											
1968	23,476	1,733	7.4	1,694	7.2	657	38.8	1,037	61.2	1,037	61.2
1969	24,885	1,627	6.5	1,558	6.3	1,174	75.4	384	24.6	384	24.6
1970	26,896	1,595	5.9	1,509	5.6	1,197	79.3	312	20.7	312	20.7
1971	28,410	1,507	5.3	1,454	5.1	1,454	100.0	0	0	0	0
Dougherty County:											
1968	22,771	8,954	39.3	8,942	39.3	724	8.1	8,218	91.9	7,918	88.5
1969	22,965	9,101	39.6	9,101	39.6	728	8.0	8,154	89.6	7,996	87.9
1970	23,117	9,649	41.7	9,580	41.4	2,109	22.0	7,232	75.5	2,325	24.3
1971	22,632	9,841	43.5	9,756	43.1	2,756	28.2	6,128	62.8	0	0
Muscogee County:											
1968	42,373	12,804	30.2	12,517	29.5	884	7.1	10,951	87.5	8,768	70.0
1969	43,597	13,143	30.1	12,935	29.7	1,332	10.3	11,072	85.6	9,028	69.8
1970	42,010	13,359	31.8	13,074	31.1	1,564	12.0	11,214	85.8	8,093	61.9
1971	40,341	13,317	33.0	13,126	32.5	12,602	96.0	211	1.6	211	1.6
Stewart County:											
1968	1,840	1,403	76.3	1,403	76.3	67	4.8	1,336	95.2	1,336	95.2
1969	2,008	1,516	75.5	1,516	75.5	55	3.6	1,461	96.4	1,461	96.4
1970	1,949	1,493	76.6	1,493	76.6	15	1.0	1,478	99.0	1,478	99.0
1971	1,784	1,424	79.8	1,424	79.8	0	0	388	27.2	0	0
Upson County:											
1968	2,617	1,249	47.7	1,241	47.4	147	11.8	1,102	88.8	1,012	88.8
1969	2,490	1,102	44.3	1,102	44.3	411	37.3	691	62.7	221	62.7
1970	2,698	1,286	47.7	1,282	47.5	365	28.5	435	33.9	435	33.9
1971	2,661	1,135	42.7	1,133	42.6	850	75.0	0	0	0	0
Valdosta City:											
1968	8,065	3,400	42.2	3,391	42.0	362	10.7	3,029	89.3	2,238	66.0
1969	7,445	3,388	45.5	3,388	45.5	1,367	40.3	1,680	49.6	758	22.4
1970	7,803	3,577	45.8	3,575	45.8	1,444	40.4	1,800	50.3	0	0
1971	7,658	3,705	48.4	3,692	48.2	1,884	51.0	1,869	50.6	561	15.2
KANSAS											
Wichita:											
1968	68,391	10,331	15.1	8,913	13.0	4,058	45.5	4,757	53.4	0	0
1969	67,025	10,807	16.1	9,276	13.8	5,211	56.2	3,952	42.6	0	0
1970	63,811	10,943	17.1	9,362	14.7	6,025	64.4	2,950	31.5	371	4.0
1971	59,868	11,007	18.4	9,274	15.5	9,247	99.7	0	0	0	0

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
District		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
KENTUCKY											
Covington City:											
1968	8,314	815	9.8	803	9.7	568	70.7	0	0	0	0
1969	8,412	822	9.8	809	9.6	526	65.0	0	0	0	0
1970	8,460	839	9.9	825	9.8	583	70.7		0	0	0
1971	8,359	780	9.3	760	9.1	531	69.9	0	0	0	0
Elizabethtown City:											
1968	2,502	389	15.5	381	15.2	188	49.3	0	0	0	0
1969	2,551	369	14.5	364	14.3	207	56.9	0	0	0	0
1970	2,581	402	15.6	386	15.0	211	54.7	0	0	0	0
1971	2,608	386	14.8	379	14.5	379	100.0	0	0	0	0
Henderson City:											
1968	3,249	680	20.9	680	26.9	680	100.0	0	0	0	0
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	3,111	709	22.8	708	22.8	555	78.4	0	0	0	0
1971	3,036	697	23.0	696	22.9	696	100.0	0	0	0	0
Maysville City:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	1,312	368	28.0	367	28.0	305	83.1	0	0	0	0
1971	1,246	317	25.4	317	25.4	317	100.0	0	0	0	0
Paducah City:											
1968	6,259	1,448	23.1	1,443	23.1	971	67.3	0	0	0	0
1969	6,155	1,440	23.4	1,436	23.3	944	65.7	206	14.3	0	0
1970	6,038	1,477	24.5	1,472	24.4	968	65.8	201	13.7	0	0
1971	5,846	1,549	26.5	1,547	26.5	1,547	100.0	0	0	0	0
Ascension Parish:											
1968	9,360	3,104	33.2	3,104	33.2	101	3.2	3,003	96.8	3,003	96.8
1969	8,919	3,477	39.0	3,477	39.0	1,710	49.2	1,767	50.8	1,657	47.7
1970	9,565	3,559	37.2	3,549	37.1	1,684	47.4	34	1.0	0	0
1971	10,284	3,631	35.3	3,624	35.2	1,617	44.6	196	5.4	0	0
Caldwell Parish:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	2,438	810	33.2	766	31.4	0	0	766	100.0	766	100.0
1971	2,517	776	30.8	776	30.8	776	100.0	0	0	0	0

Grant Parish:											
1968	3,737	1,061	28.4	1,061	28.4	39	3.7	1,022	96.3	1,022	96.3
1969	3,786	1,014	26.8	1,014	26.8	124	12.2	890	87.8	890	87.8
1970	3,991	1,124	28.2	1,124	28.2	95	8.5	1,029	91.5	1,029	91.5
1971	3,371	1,018	30.2	1,018	30.2	748	73.5	270	26.5	270	26.5
Jefferson Parish:											
1968	59,485	12,812	21.5	12,812	21.5	2,632	20.5	10,180	79.5	10,180	79.5
1969	61,859	14,759	23.9	12,938	20.9	5,685	43.9	6,603	51.0	2,874	22.2
1970	63,572	14,264	22.4	13,201	20.8	6,425	48.7	4,791	36.3	2,577	19.5
1971	61,763	13,870	22.5	12,790	20.7	12,015	93.9	80	0.6	0	0
Lafayette Parish:											
1968	27,295	6,984	25.6	6,984	25.6	1,195	17.1	5,789	82.9	5,789	82.9
1969	28,155	6,983	24.8	6,983	24.8	2,890	41.4	4,093	58.6	4,093	58.6
1970	28,537	7,209	25.3	7,209	25.3	4,307	59.7	2,174	30.2	0	0
1971	28,638	7,150	25.0	7,150	25.0	6,352	88.8	253	3.5	0	0
LaSalle Parish:											
1968	3,351	512	15.3	512	15.3	0	0.0	512	100.0	512	100
1969	3,313	532	16.1	532	16.1	218	41.0	314	59.0	314	59
1970	3,498	541	15.5	541	15.5	248	45.8	293	54.2	293	54.2
1971	3,427	515	15.0	515	15.0	515	100.0	0	0.0	0	0
Lincoln Parish:											
1968	5,975	2,528	42.3	2,528	42.3	114	4.5	2,414	95.5	2,414	95.5
1969	5,726	2,446	42.7	2,446	42.7	674	27.6	1,772	72.4	1,772	72.4
1970	5,111	2,298	45.0	2,298	45.0	1,459	63.5	688	29.9	688	29.9
1971	4,851	2,195	45.2	2,195	45.2	1,415	64.5	0	0	0	0
Morehouse Parish:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	9,075	4,819	53.1	4,819	53.1	1,065	22.1	3,536	73.4	2,998	62.2
1970	8,351	4,698	56.3	4,698	56.3	1,649	35.1	1,721	36.6	0	0
1971	8,220	4,683	57.0	4,683	57.0	1,636	34.9	1,500	32.0	0	0
Rapides Parish:											
1968	28,443	9,670	34.0	9,670	34.0	400	4.1	9,270	95.9	9,270	95.9
1969	28,999	9,831	33.9	9,831	33.9	3,097	31.5	6,590	67.0	5,737	58.4
1970	28,038	9,767	34.8	9,767	34.8	2,651	27.1	6,765	69.3	2,604	26.7
1971	28,397	9,972	35.1	9,972	35.1	2,956	29.6	4,560	45.7	2,003	20.1
LOUISIANA											
St. Helena Parish:											
1968	3,027	1,954	64.6	1,954	64.6	71	3.6	1,883	96.4	1,883	96.4
1969	3,028	2,061	68.1	2,061	68.1	291	14.1	1,770	85.9	1,770	85.9
1970	2,753	2,018	73.3	2,018	73.3	366	18.1	1,227	60.8	1,227	60.8
1971	2,584	2,023	78.3	2,023	78.3	31	1.5	1,251	61.8	0	0
Tangipahoa Parish:											
1968	17,103	7,568	44.2	7,540	44.1	207	2.7	7,333	97.3	7,333	97.3
1969	15,570	7,702	49.5	7,694	49.4	2,116	27.5	588	7.6	0	0
1970	14,741	7,254	49.2	7,242	49.1	2,309	31.9	920	12.7	0	0
1971	14,977	7,327	48.9	7,298	48.7	2,161	29.6	1,440	19.7	392	5.4

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971–72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
District		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
MARYLAND											
Calvert County:											
1968	5, 466	3, 020	55. 3	3, 016	55. 2	949	31. 5	372	12. 3	0	0
1969	5, 606	3, 098	55. 3	3, 092	55. 2	387	12. 5	243	7. 9	0	0
1970	5, 891	3, 122	53. 0	3, 122	53. 0	433	13. 9	248	7. 9	0	0
1971	6, 117	3, 181	52. 0	3, 181	52. 0	383	12. 0	0	0	0	0
Dorchester County:											
1968	6, 568	2, 766	42. 1	2, 766	42. 1	668	24. 2	2, 098	75. 8	2, 098	75. 8
1969	6, 352	2, 599	40. 9	2, 589	40. 8	2, 104	81. 3	0	0	0	0
1970	6, 615	2, 791	42. 2	2, 778	42. 0	1, 382	49. 7	0	0	0	0
1971	6, 467	2, 656	41. 1	2, 642	40. 9	2, 180	82. 5	0	0	0	0
MICHIGAN											
Kalamazoo City:											
1968	19, 130	2, 998	15. 7	2, 786	14. 6	1, 477	53. 0	971	34. 9	0	0
1969	18, 842	3, 099	16. 4	2, 877	15. 3	1, 556	54. 1	969	33. 7	0	0
1970	17, 827	3, 149	17. 7	2, 947	16. 5	1, 720	58. 4	895	30. 4	0	0
1971	17, 462	3, 327	19. 1	3, 098	17. 7	3, 078	99. 4	0	0	0	0
Pontiac City:											
1968	23, 832	8, 043	33. 7	6, 990	29. 3	2, 515	36. 0	3, 536	50. 6	920	13. 2
1969	24, 632	8, 727	35. 4	7, 530	30. 6	2, 042	27. 1	3, 387	45. 0	923	12. 3
1970	24, 055	9, 100	37. 8	7, 970	33. 1	3, 054	38. 3	4, 185	52. 5	499	6. 3
1971	21, 286	9, 358	44. 0	8, 240	38. 7	5, 923	71. 9	0	0	0	0
MISSISSIPPI											
Biloxi MSSD:											
1968	9, 316	1, 738	18. 7	1, 611	17. 3	433	26. 9	876	54. 4	876	54. 4
1969	9, 280	1, 824	19. 7	1, 720	18. 5	504	29. 3	937	54. 5	937	54. 5
1970	9, 131	1, 795	19. 7	1, 701	18. 6	732	43. 0	436	25. 6	0	0
1971	8, 802	1, 803	20. 5	1, 725	19. 6	1, 725	100. 0	0	0	0	0

Clarksdale MSSD:											
1968	5,367	3,274	61.0	3,234	60.3	0	0	3,234	100.0	1,909	59.0
1969	5,245	3,171	60.5	3,139	59.8	0	0	3,139	100.0	1,374	43.8
1970	4,165	3,230	77.6	3,211	77.1	367	11.4	2,192	68.3	467	14.5
1971	4,348	3,477	80.0	3,468	79.8	373	10.8	2,665	76.8	0	0
East Tallahatchie Cons.:											
1968	3,409	2,212	64.9	2,201	64.6	16	.7	1,909	86.7	1,909	86.7
1969	2,923	1,866	63.8	1,856	63.5	22	1.2	1,334	71.9	275	14.8
1970	2,649	1,735	65.5	1,726	65.2	0	0	248	14.4	248	14.4
1971	2,403	1,676	69.7	1,668	69.4	0	0	214	12.8	214	12.8
Greenville MSSD:											
1968	12,345	6,739	54.6	6,669	54.0	693	10.4	5,976	89.6	5,976	89.6
1969	12,238	6,820	55.7	6,762	55.3	729	10.8	5,773	85.4	5,773	85.4
1970	11,386	6,991	61.4	6,958	61.1	745	10.7	3,762	54.1	0	0
1971	10,468	6,905	66.0	6,875	65.7	0	0	1,403	20.4	0	0
Greenwood MSSD:											
1968	5,931	3,111	52.5	3,053	51.5	26	.8	3,027	99.2	3,027	99.2
1969	5,628	3,285	58.4	3,239	57.6	323	10.0	2,916	90.0	2,916	90.0
1970	4,720	3,073	65.1	3,042	64.4	203	6.7	1,887	62.0	1,304	42.9
1971	4,640	2,827	60.9	2,790	60.1	783	28.1	1,391	49.9	1,391	49.9
Gulfport MSSD:											
1968	9,483	2,270	23.9	2,251	23.7	738	32.8	1,513	67.2	1,513	67.2
1969	9,170	2,174	23.7	2,122	23.1	1,362	64.2	760	35.8	443	20.9
1970	8,919	2,156	24.2	2,156	24.2	1,869	86.7	287	13.3	0	0
1971	8,549	2,199	25.7	2,178	25.5	1,968	90.4	0	0	0	0
Hattiesburg MSSD:											
1968	7,906	3,529	44.6	3,528	44.6	375	10.6	3,153	89.4	3,153	89.4
1969	7,940	3,527	44.4	3,527	44.4	453	12.8	3,074	87.2	3,074	87.2
1970	7,718	3,518	45.6	3,518	45.6	534	15.2	2,280	64.8	0	0
1971	7,323	3,543	48.4	3,543	48.4	1,091	30.8	1,429	40.3	0	0
Humphreys County:											
1968	4,597	3,550	77.2	3,550	77.2	35	1.0	3,515	99.0	3,515	99.0
1969	4,282	3,564	83.2	3,552	83.0	211	5.9	3,341	94.1	1,673	47.1
1970	4,294	3,660	85.2	3,649	85.0	0	0	3,649	100.0	0	0
1971	3,896	3,451	88.6	3,451	88.6	0	0	3,451	100.0	0	0
Jackson MSSD:											
1968	38,773	17,980	46.4	17,919	46.2	544	3.0	16,954	94.6	16,954	94.6
1969	39,193	18,381	46.9	18,227	46.5	708	3.9	17,075	93.7	16,803	92.2
1970	30,758	18,729	60.9	18,703	60.8	3,419	18.3	10,547	56.4	267	1.4
1971	29,627	19,075	64.4	19,066	64.4	2,834	14.9	8,005	42.0	0	0
Leflore County:											
1968	6,381	5,308	83.2	5,287	82.9	8	.2	5,279	99.8	5,279	99.8
1969	5,839	4,872	83.4	4,863	83.3	73	1.5	4,790	98.5	4,790	98.5
1970	5,809	4,943	85.1	4,933	84.9	75	1.5	4,138	83.9	3,666	74.3
1971	5,436	4,868	89.6	4,866	89.5	61	1.3	4,660	95.8	324	6.7
McComb MSSD:											
1968	4,282	2,179	50.9	2,179	50.9	191	8.8	1,967	90.3	1,967	90.3
1969	4,222	2,138	50.6	2,138	50.6	712	33.3	1,055	49.4	1,055	49.4
1970	3,901	2,049	52.5	2,049	52.5	192	9.4	703	34.3	426	20.8
1971	3,671	1,982	54.0	1,981	54.0	0	0	0	0	0	0

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
District	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
MISSISSIPPI—Continued											
Madison County:											
1968	4,605	3,392	73.7	3,392	73.7	30	.9	3,362	99.1	3,362	99.1
1969	4,370	3,448	78.9	3,448	78.9	422	12.2	3,026	87.8	2,323	67.4
1970	4,065	3,375	83.0	3,375	83.0	221	6.5	2,907	86.1	1,995	59.1
1971	4,076	3,367	82.6	3,367	82.6	0	0	2,309	68.6	1,864	55.4
Senatobia MSSD:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	1,225	693	56.6	693	56.6	0	0	0	0	0	0
1971	1,173	657	56.0	657	56.0	0	0	0	0	0	0
Simpson County:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	5,062	2,192	43.3	2,192	43.3	1,746	79.7	254	11.6	0	0
1971	4,878	2,032	41.7	2,032	41.7	1,903	93.7	0	0	0	0
NORTH CAROLINA											
Vicksburg MSSD:											
1968	6,326	3,924	62.0	3,924	62.0	280	7.1	3,644	92.9	3,644	92.9
1969	6,225	3,936	63.2	3,910	62.8	277	7.1	3,633	92.9	3,633	92.9
1970	5,460	3,564	65.3	3,548	65.0	415	11.7	337	9.5	0	0
1971	5,266	3,602	68.4	3,587	68.1	284	7.9	565	15.8	0	0
Alamance County:											
1968	12,849	2,870	22.3	2,864	22.3	1,722	60.1	1,142	39.9	1,142	39.9
1969	13,013	2,870	22.1	2,853	21.9	2,436	85.4	417	14.6	417	14.6
1970	13,165	2,940	22.3	2,925	22.2	2,452	83.8	0	0	0	0
1971	13,020	3,007	23.1	2,991	23.0	2,768	92.5	0	0	0	0
Bladen County:											
1968	7,519	3,868	51.4	3,868	51.4	733	19.0	3,135	81.0	3,135	81.0
1969	7,566	3,852	50.9	3,847	50.8	1,056	27.5	2,376	61.8	2,376	61.8
1970	7,238	3,665	50.6	3,660	50.6	637	17.4	484	13.2	0	0
1971	7,245	3,674	50.7	3,674	50.7	636	17.3	527	14.3	0	0

Burlington City:										
1968	9,789	2,052	21.0	2,052	21.0	873	42.5	1,179	57.5	1,179	57.5
1969	9,828	2,061	21.0	2,061	21.0	1,147	55.6	914	44.4	307	14.9
1970	9,476	2,000	21.1	1,998	21.1	1,417	70.9	581	29.1	0	0
1971	9,555	2,093	21.9	2,085	21.8	2,085	100.0	0	0	0	0
Fayetteville City:											
1968	13,366	6,566	49.1	6,384	47.8	609	9.5	5,417	84.9	2,102	32.9
1969	13,589	6,678	49.1	6,601	48.6	1,058	16.0	5,236	79.3	640	9.7
1970	13,214	6,586	49.8	6,470	49.0	1,490	23.0	3,416	52.8	602	9.3
1971	12,510	6,444	51.5	6,291	50.3	1,986	31.6	3,251	51.7	383	6.1
Forsyth County-Winston Salem City:											
1968	49,831	13,856	27.8	13,798	27.7	2,111	15.3	11,687	84.7	9,778	70.9
1969	50,462	13,941	27.6	13,886	27.5	2,025	14.6	11,675	84.1	8,641	62.2
1970	49,514	13,824	27.9	13,727	27.7	5,077	37.0	7,884	57.4	6,015	43.8
1971	47,937	14,193	29.6	14,097	29.4	13,494	95.7	383	2.7	0	0
Goldsboro City:											
1968	8,287	4,271	51.5	4,257	51.4	625	14.7	3,632	85.3	3,632	85.3
1969	7,739	4,257	55.0	4,253	55.0	339	8.0	1,553	36.5	1,553	36.5
1970	7,249	4,078	56.3	4,075	56.2	264	6.5	440	10.8	440	10.8
1971	6,909	4,032	58.4	4,031	58.3	0	0	0	0	0	0
Granville County:											
1968	8,201	4,308	52.5	4,307	52.5	723	16.8	3,584	83.2	3,584	83.2
1969	8,154	4,265	52.3	4,265	52.3	1,349	31.6	2,749	64.4	2,749	64.4
1970	7,819	4,225	54.0	4,217	53.9	709	16.8	206	4.9	206	4.9
1971	7,652	4,135	54.0	4,128	53.9	710	17.2	0	0	0	0
Greensboro City:											
1968	32,094	10,098	31.5	10,027	31.2	1,882	18.8	8,145	81.2	7,441	74.2
1969	32,289	10,368	32.1	10,221	31.7	2,026	19.8	7,957	77.8	6,166	60.3
1970	32,291	10,737	33.3	10,607	32.8	1,337	12.6	7,889	74.4	6,480	61.1
1971	30,007	10,528	35.1	10,385	34.6	6,985	67.3	0	0	0	0
Mechlenburg County-Charlotte City:											
1968	83,111	24,488	29.5	24,241	29.2	6,704	27.7	16,506	68.1	9,459	39.0
1969	84,518	24,988	29.6	24,690	29.2	8,269	33.5	14,384	58.3	8,160	33.0
1970	82,507	25,688	31.1	25,404	30.8	23,050	90.7	1,053	4.1	0	0
1971	81,042	26,116	32.2	25,796	31.8	25,253	97.9	399	1.5	0	0
Moore County:											
1968	9,897	3,220	32.5	3,175	32.1	1,444	45.5	1,731	54.5	1,731	54.5
1969	10,024	3,302	32.9	3,247	32.4	2,627	80.9	0	0	0	0
1970	9,857	3,246	32.9	3,184	32.3	2,577	80.9	0	0	0	0
1971	10,172	3,362	33.1	3,307	32.5	3,207	97.0	0	0	0	0
Nash County:											
1968	12,217	6,319	51.7	6,319	51.7	1,305	20.7	5,014	79.3	5,014	79.3
1969	12,308	6,614	53.7	6,614	53.7	3,198	48.4	2,760	41.7	2,298	34.7
1970	12,095	6,582	54.4	6,582	54.4	2,639	40.1	1,299	19.7	0	0
1971	11,752	6,344	54.0	6,344	54.0	1,579	24.9	733	11.6	369	5.8

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
District	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
NORTH CAROLINA—Con.											
New Bern City:											
1968	5,902	2,310	39.1	2,309	39.1	493	21.4	1,816	78.6	1,816	78.6
1969	5,900	2,210	37.5	2,210	37.5	831	37.6	1,379	62.4	735	33.3
1970	5,838	2,213	37.9	2,212	37.9	1,424	64.4	788	35.6	172	7.8
1971	5,600	2,301	41.1	2,301	41.1	2,031	88.3	0	0	0	0
New Hanover County:											
1968	19,210	5,501	28.6	5,430	28.3	1,503	27.7	3,927	72.3	3,131	57.7
1969	19,127	5,450	28.5	5,365	28.0	2,481	46.2	2,497	46.5	302	5.6
1970	19,600	5,466	27.9	5,398	27.5	2,262	41.9	2,428	45.0	0	0
1971	19,410	5,519	28.4	5,443	28.0	5,378	98.8	0	0	0	0
Pender County:											
1968	4,894	2,714	55.5	2,714	55.5	980	36.1	1,734	63.9	1,734	63.9
1969	4,745	2,678	56.4	2,678	56.4	973	36.3	249	9.3	0	0
1970	4,685	2,659	56.8	2,659	56.8	986	37.1	238	9.0	238	9.0
1971	4,598	2,566	55.8	2,566	55.8	993	38.7	225	8.8	225	8.8
Raleigh City:											
1968	22,993	6,327	27.5	6,245	27.2	1,341	21.5	4,904	78.5	2,248	36.0
1969	23,554	6,448	27.4	6,375	27.1	1,617	25.4	4,758	74.6	2,765	43.4
1970	23,469	6,785	28.9	6,670	28.4	1,805	27.1	4,414	66.2	1,029	15.4
1971	22,236	6,916	31.1	6,779	30.5	6,630	97.8	0	0	0	0
Rocky Mount City:											
1968	7,824	3,357	42.9	3,350	42.8	321	9.6	3,029	90.4	3,029	90.4
1969	7,456	3,538	45.0	3,355	45.0	1,050	31.3	2,173	64.8	2,173	64.8
1970	7,242	3,434	47.4	3,432	47.4	2,002	58.3	1,126	32.8	610	17.8
1971	6,932	3,345	48.3	3,344	48.2	2,366	70.8	0	0	0	0
Sanford City:											
1968	5,500	1,636	29.7	1,620	29.5	395	24.4	1,225	75.6	0	0
1969	5,488	1,612	29.4	1,609	29.3	1,155	71.8	0	0	0	0
1970	5,333	1,519	28.5	1,519	28.5	1,098	72.3	0	0	0	0
1971	5,269	1,499	28.4	1,494	28.4	1,494	100.0	0	0	0	0
Shelby City:											
1968	5,090	1,375	27.0	1,374	27.0	850	61.9	524	38.1	524	38.1
1969	3,196	1,382	26.6	1,378	26.5	960	69.7	418	30.3	418	30.3
1970	5,089	1,367	26.9	1,361	26.7	1,234	90.7	127	9.3	127	9.3
1971	5,091	1,425	28.0	1,419	27.9	1,361	95.9	0	0	0	0

Wake County:											
1968	25,562	7,325	28.7	7,274	28.5	1,710	23.5	5,564	76.5	5,163	71.0
1969	26,618	7,468	28.1	7,405	27.8	3,338	45.1	3,760	50.8	3,371	45.5
1970	27,381	7,491	27.4	7,426	27.1	4,676	63.0	329	4.4	0	0
1971	28,487	7,494	26.3	7,458	26.2	5,990	80.3	128	1.7	0	0
Wayne County:											
1968	13,715	4,460	32.5	4,460	32.5	1,533	34.4	2,927	65.6	2,927	65.6
1969	14,054	4,400	31.3	4,400	31.3	2,552	58.0	1,848	42.0	1,848	42.0
1970	14,246	4,368	30.7	4,368	30.7	2,987	68.4	0	0	0	0
1971	14,324	4,390	30.6	4,355	30.4	4,238	97.3	0	0	0	0
OKLAHOMA											
Crooked oak:											
1968	2,620	288	11.0	6	0.2	6	100.0	0	0	0	0
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	3,365	748	22.2	461	13.7	461	100.0	0	0	0	0
1971	3,047	806	26.5	611	20.1	611	100.0	0	0	0	0
Hugo City:											
1968	1,733	465	26.8	348	20.1	256	73.6	92	26.4	86	24.7
1969	1,780	466	26.2	346	19.4	261	75.4	80	23.1	0	0
1970	1,825	498	27.3	357	19.6	215	60.2	0	0	0	0
1971	1,942	603	31.1	337	17.4	321	95.3	0	0	0	0
Sapulpa City:											
1968	4,148	636	15.3	412	9.9	242	58.7	170	41.3	0	0
1969	4,240	662	15.6	407	9.6	255	62.6	152	37.4	0	0
1970	4,288	704	16.4	414	9.7	233	56.3	181	43.7	0	0
1971	4,217	608	14.4	352	8.3	352	100.0	0	100	0	0
Tulsa City:											
1968	79,990	13,577	17.0	9,728	12.2	1,518	15.6	7,493	77.0	4,447	45.7
1969	79,566	13,623	17.1	10,332	13.0	2,291	22.2	7,651	74.1	1,352	13.1
1970	77,822	13,745	17.7	10,672	13.7	2,933	27.5	7,332	68.7	1,887	17.7
1971	75,068	13,679	18.2	10,616	14.1	4,282	40.3	5,434	51.2	1,067	10.1
SOUTH CAROLINA											
Aiken County:											
1968	24,662	7,472	30.3	7,465	30.3	2,411	32.3	5,054	67.7	5,054	67.0
1969	24,740	7,449	30.1	7,435	30.1	3,865	52.0	31311	44.5	1,703	22.0
1970	24,465	7,507	30.7	7,492	30.6	5,591	74.6	117	1.6	0	0
1971	23,531	7,409	31.5	7,366	31.3	5,214	70.8	134	1.8	0	0
Chester County:											
1968	8,499	4,142	48.7	4,142	48.7	980	23.7	2,761	66.7	2,761	66.0
1969	7,926	3,891	49.1	3,891	49.1	445	11.4	2,681	68.9	2,681	68.0
1970	7,785	3,940	50.6	3,940	50.6	1,178	32.4	0	0	0	0
1971	7,911	4,185	52.9	4,185	52.9	826	19.7	0	0	0	0

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971–72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
District	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
SOUTH CAROLINA—Con.											
Florence County No. 1:											
1968	14,725	6,100	41.4	6,100	41.4	520	8.5	5,563	91.2	5,563	91.0
1969	14,796	6,092	41.2	6,091	41.2	1,206	19.8	4,873	80.0	4,837	80.0
1970	14,651	5,991	40.9	5,989	40.9	2,756	46.0	3,218	53.7	0	0
1971	14,445	5,982	41.4	5,979	41.4	3,453	57.8	1,272	21.3	0	0
Hampton County No. 2:											
1968	1,882	1,488	79.1	1,488	79.1	75	5.0	1,413	95.0	1,413	95.0
1969	1,916	1,542	80.5	1,542	80.5	86	5.6	1,456	94.4	1,456	94.4
1970	1,780	1,479	83.1	1,479	83.1	0	0	1,479	100.0	0	0
1971	1,767	1,446	81.8	1,446	81.8	0	0	1,466	100.0	0	0
Marlboro County:											
1968	7,861	4,123	52.4	4,123	52.4	218	5.3	3,905	94.7	3,905	94.7
1969	7,712	4,082	52.9	4,082	52.9	751	18.4	3,240	79.4	3,240	79.4
1970	7,566	4,046	53.5	4,046	53.5	2,032	50.2	505	12.5	0	0
1971	7,629	4,152	54.4	4,152	54.4	927	22.3	0	0	0	0
Orangeburg County No. 5:											
1968	7,478	4,234	56.6	4,234	56.6	262	6.2	3,972	93.8	3,972	93.8
1969	7,663	4,467	58.3	4,457	58.2	217	4.9	4,051	90.9	4,051	90.9
1970	7,380	4,486	60.8	4,485	60.8	1,261	28.1	2,730	60.9	718	16.0
1971	6,787	4,533	66.8	4,531	66.8	0	0	0	0	0	0
Richland County No. 1:											
1968	40,122	18,735	46.7	18,735	46.7	3,236	17.3	15,163	80.9	13,183	70.4
1969	40,166	19,027	47.4	19,027	47.4	3,702	19.5	14,708	77.3	12,228	64.3
1970	39,433	19,640	49.8	19,640	49.8	7,127	36.3	10,492	53.4	4,379	22.3
1971	37,699	20,188	53.6	20,163	53.5	6,963	34.5	4,331	21.5	1,463	7.3
Spartanburg County No. 7:											
1968	13,830	4,667	33.7	4,667	33.7	1,096	23.5	3,371	72.2	3,073	65.8
1969	13,705	4,697	34.3	4,697	34.3	1,770	37.7	2,688	57.2	2,688	57.2
1970	13,095	4,727	36.1	4,702	35.9	2,876	61.2	1,288	27.4	0	0
1971	12,837	4,791	37.3	4,774	37.2	3,753	78.6	0	0	0	0

Williamsburg County:											
1968	11, 581	8, 333	72. 0	8, 333	72. 0	293	3. 5	8, 040	96. 5	5, 217	62. 6
1969	11, 420	8, 300	72. 7	8, 300	72. 7	649	7. 8	7, 651	92. 2	5, 754	69. 3
1970	10, 406	8, 017	77. 0	8, 017	77. 0	548	6. 8	5, 511	68. 7	2, 369	29. 5
1971	9, 981	7, 875	78. 9	7, 875	78. 9	0	0	2, 567	32. 6	1, 557	19. 8
TENNESSEE											
Bedford County:											
1968	5, 514	755	13. 7	755	13. 7	586	77. 6	0	0	0	0
1969	5, 591	811	14. 5	811	14. 5	609	75. 1	0	0	0	0
1970	5, 589	802	14. 3	796	14. 2	614	77. 1	0	0	0	0
1971	5, 479	811	14. 8	809	14. 8	809	100. 0	0	0	0	0
Chattanooga City:											
1968	27, 266	13, 331	48. 9	13, 295	48. 8	1, 720	12. 9	11, 575	87. 1	5, 019	37. 8
1969	27, 556	13, 343	48. 4	13, 320	48. 3	1, 708	12. 8	11, 159	83. 8	7, 215	54. 2
1970	26, 506	13, 153	49. 6	13, 131	49. 5	1, 596	12. 2	10, 529	80. 2	4, 363	33. 2
1971	23, 382	12, 918	55. 2	12, 899	55. 2	2, 963	23. 0	8, 894	69. 0	2, 765	21. 4
Franklin City Elementary Spec.:											
1968	1, 718	618	36. 0	618	36. 0	136	22. 0	482	78. 0	482	78. 0
1969	1, 730	652	37. 7	652	37. 7	177	27. 2	475	72. 8	0	0
1970	1, 779	658	37. 0	65	37. 0	196	29. 8	462	70. 2	0	0
1971	1, 746	658	37. 7	658	37. 7	658	100. 0	0	0	0	0
Shelby County:											
1968	44, 133	14, 515	32. 9	14, 281	32. 4	950	6. 7	13, 331	93. 3	12, 667	88. 7
1969	36, 567	8, 780	24. 0	8, 551	23. 4	2, 853	33. 4	5, 698	66. 6	5, 333	62. 4
1970	22, 967	7, 776	33. 9	7, 625	33. 2	3, 772	49. 5	2, 356	30. 9	425	5. 6
1971	23, 454	7, 449	31. 8	7, 273	31. 0	3, 795	52. 2	1, 025	14. 1	0	0
Nashville—Davidson County:											
1968	93, 720	22, 681	24. 2	22, 561	24. 1	3, 794	16. 8	15, 656	69. 4	11, 696	51. 8
1969	95, 821	23, 258	24. 3	23, 101	24. 1	4, 782	20. 7	16, 233	70. 3	7, 432	32. 2
1970	95, 313	23, 710	24. 9	23, 473	24. 6	5, 877	25. 0	15, 727	67	4, 942	21. 1
1971	88, 190	24, 076	27. 3	23, 963	27. 2	19. 820	82, 7	0	0	0	0
Williamson County:											
1968	6, 234	978	15. 7	976	15. 7	878	90. 0	0	0	0	0
1969	6, 403	975	15. 2	975	15. 2	827	84. 8	0	0	0	0
1970	6, 624	961	14. 5	961	14. 5	857	89. 2	0	0	0	0
1971	6, 936	932	13. 4	921	13. 3	921	100. 0	0	0	0	0
TEXAS											
Amarillo ISD:											
1968	29, 821	3, 738	12. 5	2, 119	7. 1	986	46. 5	954	45. 0	0	0
1969	29, 157	3, 796	13. 0	2, 065	7. 1	849	41. 1	903	43. 7	511	24. 7
1970	28, 784	4, 101	14. 2	2, 185	7. 6	978	44. 8	658	30. 1	0	0
1971	28, 215	4, 300	15. 2	2, 245	8. 0	1, 126	50. 2	602	26. 8	0	0
Beeville ISD:											
1968	4, 587	2, 579	56. 2	129	2. 8	33	25. 6	26	20. 2	0	0
1969	4, 453	2, 578	57. 9	113	2. 5	26	23. 0	20	17. 7	0	0
1970	4, 534	2, 583	57. 0	142	3. 1	31	21. 8	23	16. 2	0	0
1971	4, 499	2, 639	58. 7	153	3. 4	153	100. 0	0	0	0	0

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971–72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

District	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
TEXAS—Continued											
Austin ISD:											
1968	51, 760	17, 826	34. 4	7, 783	15. 0	1, 022	13. 1	6, 691	86. 0	1, 728	22. 2
1969	52, 724	18, 370	34. 8	7, 822	14. 8	1, 050	13. 4	6, 387	81. 7	507	6. 5
1970	54, 974	19, 574	35. 6	8, 284	15. 1	1, 323	16. 0	6, 507	78. 5	1, 216	14. 7
1971	55, 565	19, 749	35. 5	8, 147	14. 7	2, 938	36. 1	4, 735	58. 1	697	8. 6
Bryan ISD:											
1968	8, 703	3, 367	38. 7	2, 312	26. 6	313	13. 5	1, 916	82. 9	1, 842	79. 7
1969	8, 965	3, 532	39. 4	2, 351	26. 2	388	16. 5	1, 896	80. 6	1, 828	77. 8
1970	9, 229	3, 712	40. 2	2, 423	26. 3	753	31. 1	1, 540	63. 6	1, 474	60. 8
1971	9, 324	3, 791	40. 7	2, 472	26. 5	2, 472	100. 0	0	0	0	0
Daingerfield ISD:											
1968	2, 081	536	25. 8	536	25. 8	536	100. 0	0	0	0	0
1969	2, 009	522	26. 0	515	25. 6	515	100. 0	0	0	0	0
1970	2, 083	556	26. 7	545	26. 2	545	100. 0	0	0	0	0
1971	2, 290	760	33. 2	757	33. 1	757	100. 0	0	0	0	0
Dallas ISD:											
1968	159, 924	62, 036	38. 8	49, 235	30. 8	1, 045	2. 1	45, 777	93. 0	15, 807	32. 1
1969	162, 490	66, 010	40. 6	51, 733	31. 8	1, 162	2. 2	47, 960	92. 7	18, 998	36. 7
1970	164, 736	70, 343	42. 7	55, 648	33. 8	1, 528	2. 7	52, 380	94. 1	12, 899	23. 2
1971	157, 799	72, 893	46. 2	57, 338	36. 3	8, 617	15. 0	47, 843	83. 4	6, 028	10. 5
Del Rio ISD (see page 50).											
Fairfield ISD:											
1968	898	386	43. 0	376	41. 9	214	56. 9	162	43. 1	162	43. 1
1969	926	371	40. 1	359	38. 8	359	100. 0	0	0	0	0
1970	1, 017	383	37. 7	370	36. 4	370	100. 0	0	0	0	0
1971	1, 268	557	43. 9	539	42. 5	539	100. 0	0	0	0	0
Fort Worth ISD:											
1968	86, 528	28, 517	33. 0	21, 398	24. 7	2, 065	9. 7	18, 283	85. 4	12, 991	60. 7
1969	88, 099	30, 670	34. 8	22, 796	25. 9	3, 127	13. 7	19, 180	84. 1	9, 199	40. 4
1970	88, 095	31, 956	36. 3	23, 542	26. 7	2, 309	9. 8	18, 845	80. 0	11, 399	48. 4
1971	82, 418	31, 725	38. 5	23, 311	28. 3	4, 993	21. 4	15, 623	67. 0	4, 767	20. 4

Henderson ISD:											
1968	3,242	1,182	36.5	1,175	36.2	354	30.1	821	69.9	821	69.9
1969	3,260	1,115	34.2	1,115	34.2	517	46.4	598	53.6	547	49.1
1970	3,285	1,203	36.6	1,197	36.4	1,134	94.7	63	5.3	0	0
1971	3,468	1,361	39.2	1,355	39.1	1,276	94.2	79	5.8	0	0
Hillsboro ISD:											
1968	1,648	463	28.1	377	22.9	185	49.1	0	0	0	0
1969	1,635	461	28.2	356	21.8	172	48.3	0	0	0	0
1970	1,636	473	28.9	340	20.8	171	50.3	0	0	0	0
1971	1,666	491	29.5	352	21.1	352	100.0	0	0	0	0
Houston ISD:											
1968	246,098	114,999	46.7	81,966	33.3	4,318	5.3	74,482	90.9	52,845	64.5
1969	256,220	111,769	47.3	79,058	33.5	4,324	5.5	71,659	90.6	47,724	60.4
1970	241,139	121,958	50.6	85,965	35.6	7,202	8.4	73,373	85.4	7,604	8.8
1971	225,681	122,002	54.1	85,276	37.8	7,398	8.7	73,351	86.0	7,391	8.7
Oakwood ISD:											
1968	250	123	49.2	117	46.8	117	100.0	0	0	0	0
1969	237	124	52.3	124	52.3	0	0	0	0	0	0
1970	259	143	55.2	138	53.3	0	0	0	0	0	0
1971	403	289	71.7	281	69.7	0	0	0	0	0	0
Del Rio ISD:											
1968	4,638	2,115	45.6	111	2.4	90	81.1	21	18.9	0	0
1969	4,802	2,345	48.8	136	2.8	114	83.8	22	16.2	0	0
1970	4,831	2,381	49.3	133	2.8	108	81.2	25	18.8	0	0
1971	Consolidated after 1970 school year.										
San Felipe ISD:											
1968	2,255	2,227	98.8	69	3.1	0	0	69	100.0	1	1.4
1969	2,353	2,317	98.5	50	2.1	0	0	50	100.0	0	0
1970	2,376	2,324	97.8	53	2.2	0	0	53	100.0	0	0
1971	Consolidated after 1970 school year.										
San Felipe-Del Rio CSD:											
1968	Consolidated—Operated as separate school district prior to 1971.										
1969											
1970											
1971	7,236	4,852	67.1	173	2.4	173	101.0	0	0	0	0
Waco ISD:											
1968	18,873	6,031	32.0	3,756	19.9	265	7.1	2,867	76.3	2,816	75.0
1969	18,530	6,024	32.5	3,639	19.6	268	7.4	2,585	71.0	645	17.7
1970	18,360	6,333	34.5	3,808	20.7	275	7.2	2,799	73.5	2,332	61.2
1971	19,244	7,809	40.6	5,282	27.4	2,458	46.5	2,226	42.1	0	0
Weslaco ISD:											
1968	4,443	3,544	79.8	16	0.4	0	0	8	50.0	0	0
1969	6,013	5,184	86.2	14	0.2	0	0	12	85.7	1	7.1
1970	5,703	4,900	85.9	11	0.2	0	0	11	100.0	1	9.1
1971	5,289	4,508	85.2	7	0.1	7	100.0	0	0	0	0
West Orange-Cove ISD:											
1968	7,129	1,912	26.8	1,862	26.1	1,037	55.7	825	44.3	825	44.3
1969	7,025	2,032	28.9	1,961	27.9	1,247	63.6	0	0	0	0
1970	7,284	2,139	29.4	2,012	27.6	1,231	61.2	0	0	0	0
1971	6,593	2,125	32.2	2,025	30.7	1,920	94.8	0	0	0	0

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
District	Total pupils in membership	Minority pupils		Black pupils		0 to 49.9 minority		80 to 100 minority		100 minority	
		Number	Percent of A	Number	Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
VIRGINIA											
Accomack County:											
1968	6,618	3,497	52.8	3,478	52.6	172	5.0	3,306	95.0	3,306	95.0
1969	6,646	3,478	52.3	3,463	52.1	192	5.5	3,271	94.5	3,271	94.5
1970	6,274	3,386	54.0	3,371	53.7	89	2.6	100	3.0	0	0
1971	6,164	3,331	54.0	3,308	53.7	311	9.4	100	3.0	0	0
Alexandria City:											
1968	17,640	4,480	25.4	4,171	23.6	1,937	46.4	1,300	31.2	0	0
1969	17,718	4,967	28.0	4,612	26.0	1,749	37.9	1,560	33.8	0	0
1970	17,555	5,284	30.1	4,888	27.8	1,999	40.9	1,326	27.1	0	0
1971	16,702	5,289	31.7	5,164	30.9	2,857	55.3	1,965	38.1	0	0
Charles City County:											
1968	1,871	1,685	90.1	1,530	81.8	78	5.1	1,452	94.9	566	37.0
1969	1,877	1,710	91.1	1,545	82.3	0	0	1,455	94.2	928	60.1
1970	1,887	1,739	92.2	1,578	83.6	0	0	1,434	90.9	1,426	90.4
1971	1,832	1,711	93.4	1,559	85.1	0	0	1,559	100.0	0	0
Chesapeake City:											
1968	23,760	6,812	28.7	6,778	28.5	1,812	26.7	4,944	72.9	4,944	72.9
1969	24,455	7,005	28.6	6,936	28.4	2,779	40.1	3,845	55.4	3,511	50.6
1970	24,835	6,964	28.0	6,837	27.5	4,697	68.7	1,805	26.4	1,121	16.4
1971	25,253	7,229	28.6	7,095	28.1	7,095	100.0	0	0	0	0
Chesterfield County:											
1968	29,603	2,565	8.7	2,513	8.5	1,233	49.1	1,280	50.9	1,202	47.8
1969	31,378	2,626	8.4	2,481	7.9	1,843	74.3	638	25.7	512	20.6
1970	24,063	2,370	9.8	2,267	9.4	2,176	96.0	91	4.0	0	0
1971	23,754	2,294	9.7	2,166	9.1	2,166	100.0	0	0	0	0
Culpeper County:											
1968	4,194	1,360	32.4	1,360	32.4	1,360	100.0	0	0	0	0
1969	4,355	1,403	32.2	1,403	32.4	1,403	100.0	0	0	0	0
1970	4,42[illegible]	1,435	32.4	1,432	32.4	1,319	92.1	0	0	0	0
1971	4,581	1,441	31.5	1,434	31.3	1,434	100.0	0	0	0	0

Hampton City:											
1968	31, 237	7, 877	25. 2	7, 681	24. 6	3, 685	48. 0	2, 879	37. 5	1, 884	24. 5
1969	32, 167	8, 815	27. 4	8, 516	26. 5	4, 673	54. 9	2, 783	32. 7	1, 349	15. 8
1970	31, 899	8, 948	28. 1	8, 652	27. 1	4, 316	49. 9	2, 539	29. 3	1, 679	19. 4
1971	32, 662	9, 859	30. 2	9, 581	29. 3	6, 932	72. 4	743	7. 8	0	0
Henrico County:											
1968	33, 077	2, 583	7. 8	2, 542	7. 7	814	32. 0	1, 728	68. 0	1, 206	47. 4
1969	33, 789	2, 801	8. 3	2, 679	7. 9	2, 077	77. 5	602	22. 5	0	0
1970	34, 274	2, 962	8. 6	2, 782	8. 1	2, 134	76. 7	648	23. 3	0	0
1971	34, 288	3, 231	9. 4	3, 044	8. 9	3, 044	100. 0	0	0	0	0
Henry County:											
1968	12, 652	3, 489	27. 6	3, 487	27. 6	1, 100	31. 5	2, 387	68. 5	2, 387	68. 5
1969	12, 948	3, 584	27. 7	3, 582	27. 7	2, 290	63. 9	1, 109	31. 0	1, 109	31. 0
1970	12, 939	3, 599	27. 8	3, 599	27. 8	2, 631	73. 1	778	21. 6	0	0
1971	13, 043	3, 656	28. 0	3, 654	28. 0	3, 303	90. 4	0	0	0	0
Hopewell City:											
1968	4, 654	908	19. 5	876	18. 8	258	29. 4	618	70. 6	618	70. 6
1969	5, 336	1, 020	19. 1	985	18. 5	326	33. 1	659	66. 9	258	26. 2
1970	5, 433	1, 008	18. 6	988	18. 2	311	31. 5	677	68. 5	677	68. 5
1971	5, 398	1, 044	19. 3	998	18. 5	998	100. 0	0	0	0	0
Nansemond County:											
1968	9, 636	6, 198	64. 3	6, 197	64. 3	357	5. 8	5, 840	94. 2	5, 840	94. 2
1969	9, 756	6, 206	63. 6	6, 206	63. 6	908	14. 6	5, 298	85. 4	5, 298	85. 4
1970	9, 272	6, 102	65. 8	6, 102	65. 8	920	15. 1	2, 822	46. 2	1, 530	25. 1
1971	9, 377	6, 071	64. 7	6, 071	64. 7	822	13. 5	1, 295	21. 3	1, 295	21. 3
Newport News City:											
1968	30, 304	11, 451	37. 8	11, 182	36. 9	1, 210	10. 8	9, 790	87. 6	9, 039	80. 8
1969	31, 177	11, 473	36. 8	11, 245	36. 1	1, 503	13. 4	9, 581	85. 2	6, 783	60. 3
1970	31, 581	11, 653	36. 9	11, 300	35. 8	1, 848	16. 4	9, 195	81. 4	5, 265	46. 6
1971	30, 891	11, 513	37. 3	11, 219	36. 3	7, 897	70. 4	95	0. 8	0	0
Norfolk City:											
1968	56, 029	24, 205	43. 2	23, 499	41. 9	2, 701	11. 5	19, 341	82. 3	11, 648	49. 6
1969	59, 429	25, 740	43. 3	24, 984	42. 0	2, 788	11. 2	19, 406	77. 7	10, 188	40. 8
1970	55, 117	25, 473	46. 2	24, 757	44. 9	8, 139	32. 9	13, 827	55. 9	6, 457	26. 1
1971	50, 791	24, 961	49. 1	24, 341	47. 9	12, 280	50. 4	285	1. 2	0	0
Northampton County:											
1968	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1969	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
1970	3, 521	2, 361	67. 1	2, 337	66. 4	130	5. 6	484	20. 7	484	20. 7
1971	3, 474	2, 308	66. 4	2, 278	65. 6	120	5. 3	457	20. 1	0	0
Petersburg City:											
1968	8, 704	5, 484	63. 0	5, 484	63. 0	412	7. 5	4, 785	87. 2	1, 996	36. 4
1969	8, 620	5, 531	64. 2	5, 531	64. 2	841	15. 2	3, 967	71. 7	1, 647	29. 8
1970	8, 431	5, 629	66. 8	5, 629	66. 8	516	9. 2	2, 461	43. 7	173	3. 1
1971	8, 032	5, 763	71. 8	5, 725	71. 3	0	0	407	7. 1	0	0

TABLE II.—SCHOOL DISTRICTS WHICH IMPLEMENTED STUDENT REASSIGNMENT PLANS FOR THE 1971-72 SCHOOL YEAR—TOTAL PUPILS, MINORITY PUPILS, AND BLACK PUPILS—Continued

[1971 data is unedited]

	A	B		C		D		E		F	
						Black pupils attending schools which are (percent)—					
						0 to 49.9 minority		80 to 100 minority		100 minority	
District	Total pupils in membership	Minority pupils Number	Minority pupils Percent of A	Black pupils Number	Black pupils Percent of A	Number	Percent of C	Number	Percent of C	Number	Percent of C
VIRGINIA—Con.											
Portsmouth City:											
1968	27,629	14,431	52.2	14,281	51.7	1,600	11.2	12,681	88.8	9,746	68.2
1969	27,422	14,568	53.1	14,455	52.7	1,860	12.9	10,314	71.4	0	0
1970	26,796	14,466	54.0	14,466	54.0	2,966	20.5	10,085	69.7	2,003	13.8
1971	25,844	14,556	56.3	14,533	56.3	4,168	28.6	3,717	25.5	184	1.3
Roanoke City:											
1968	20,065	4,818	24.0	4,818	24.0	1,211	25.1	3,607	74.9	2,838	58.9
1969	19,685	4,922	25.0	4,917	25.0	1,478	30.1	3,439	69.9	1,485	30.2
1970	18,976	4,854	25.6	4,844	25.5	2,916	60.2	1,391	28.7	836	17.3
1971	18,177	4,993	27.5	4,987	27.4	4,344	87.1	449	9.0	0	0
Virginia Beach City:											
1968	41,272	4,953	12.0	4,372	10.6	2,719	62.2	1,653	37.8	1,278	29.2
1969	43,637	5,115	11.7	4,586	10.5	3,958	86.3	628	13.7	0	0
1970	45,245	5,390	11.9	4,793	10.6	4,187	87.4	606	12.6	0	0
1971	46,802	5,437	11.6	4,793	10.2	4,793	100.0	0	0	0	0
WEST VIRGINIA											
Marion County:											
1968	12,080	686	5.7	680	5.6	300	44.1	286	42.1	0	0
1969	12,023	594	4.9	580	4.8	295	50.9	0	0	0	0
1970	11,878	590	5.0	578	4.9	272	47.1	0	0	0	0
1971	11,914	615	5.2	591	5.0	591	100.0	0	0	0	0

NA—Not available.

SCHOOL BUSING

THURSDAY, MAY 18, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler, chairman, presiding.

Present: Representatives Celler, Brooks, Jacobs, McCulloch, and McClory.

Staff present: Benjamin L. Zelenko, general counsel; Franklin G. Polk, associate counsel; and Herbert E. Hoffman, counsel.

Mr. Celler. The meeting will come to order.

The Chair wishes to announce that, after today's hearings, there will be one more session and then the hearing will be closed. The last session will be next Wednesday, when we will hear from Representative Waggonner of Louisiana, Representative Corman of California, and one or two other Members of the House. Then we will have concluded our hearings on the subject of school busing.

This morning, our first witness is Mr. John H. Ruffin, Jr., an attorney from Augusta, Ga. Mr. Ruffin.

STATEMENT OF JOHN H. RUFFIN, JR., ATTORNEY, AUGUSTA, GA.

Mr. Ruffin. Mr. Chairman, distinguished committee members, I have forwarded to this committee a prepared statement requested by the committee and there is a reference on page 3 of the statement that I would like to have deleted in light of the recent events surrounding Governor Wallace. With the committee's permission, I wish that deleted from the statement.

(The prepared statement follows:)

Statement of John H. Ruffin, Jr.

Mr. Chairman, Committee Members, my name is John H. Ruffin, Jr., and I am a practicing attorney in the City of Augusta, Georgia. I am the attorney for the plaintiffs in the nine-year-old desegregation suit against the County Board of Education of Richmond County, Georgia. I have represented the plaintiffs from the inception of this suit.

Please accept my thanks for permitting me to appear before you to express myself on behalf of citizens of Richmond County, Georgia, both black and white, on an issue which some seek to elevate to constitutional status by politicizing the basic right to an equal education and polarizing the fears and attitudes of the populace of this great Nation.

This entire matter has been exploited even beyond the rationality of some who once believed in equality of educational opportunity for all by an administration which either is not aware of the constitutional dichotomy of the branches of government, or does not care as long as it advances personal political ambitions; this is at best an exercise in Executive negativism. Blacks are unwilling to accept the resurrection of the "ghost of Plessy past" and sacrifice their future for thirty pieces of silver by accepting funds for ghetto schools through school boards which have already exhibited an obvious aloofness to their needs in the misuse of millions of dollars already. Indeed there is a lesson to be learned when attorneys in the administration on two different occasions within a three-year period resigned or protested the Chief Executive's effort to retard the judicial process and to nullify civil rights progress.

In 1954 with the advent of *Brown* v. *Board of Education*, the South said "Never!" Almost two decades later, it appears that this is a nation-wide cry masked through such phrases as "forced busing", "neighborhood schools", "ghetto schools" and "inner-city schools." Almost two decades after the legal death of *Brown* v. *Board of Education*, this country seems to be mired in the ugly abyss of Bunkerism. I humbly request of you that you reject this emotional and irrational frenzy, and re-affirm this Nation's commitment of providing equality of educational opportunity to all.

This Committee should not be unmindful of the fact that busing as a methodical tool to desegregate was approved unanimously by the United States Supreme Court in *Swann* v. *Charlotte-Mecklenburg Board of Education;* that three former United States Supreme Court Justices—Chief Justice Earl Warren, Justices Tom C. Clark and Arthur Goldberg—have publicly supported busing as a legitimate method to accomplish desegregation; that the Christian Methodist Episcopal Church and the United States Civil Rights Commission, among others, have approved this method of desegregating schools.

Millions of blacks and poor whites who are fortunate (or unfortunate as the case may be) to reach adulthood are conditioned to accept the inevitability of either prison or welfare rolls by virtue of a peculiar combination of status and discrimination. The inevitability of the alternatives looms as an unavoidable link in a chain sequence of countless humilitations. This Committee can give hope to the hopeless, the helpless and the humiliated by rejecting this proposed amendment.

Perhaps the black poet, Paul Lawrence Dunbar phrased it best in his poem, "Worn Out", when he wrote:

You bid me hold my peace
And dry my fruitless tears,
Forgetting that I bear
A pain beyond my years.

* * *

I used at first to hope,
But hope is past and gone;
And now without a ray
My cheerless life drags on.

Gentlemen, it would indeed be catastrophic to subject the right to secure an equal education of minorities to the popular vote of the majority. No one opposes busing, but a substantial number of this Nation's citizens opposes busing to desegregate. Homer C. Floyd, Executive Director, Pennsylvania Human Relations Commission, is reported to have said on August 4, 1971:

The safety of that daily [bus] trip [to school] is paramount. Pennsylvania's experience on this point in our [State] Department of Education's most recent "Summary of School Accidents for a Six-Year Period" which shows that pupils who were bused to school were three times safer than those who walked. Specifically, for the period of the summary, there was one accident for every 280 pupils who walked to school compared to one accident per every 898 pupils who rode to school on buses.

That yellow vehicle which transports over eighteen million students per day (or approximately 40% of this country's school children) cannot be that bad; that vehicle which transports children to school has proven to be the safest mode of travel to and from school, and it cannot be that bad; that vehicle which transports children to school has proven to be safer than some classrooms and it cannot be that bad; and that vehicle is used by private schools to transport white children who are avoiding desegregation, and it cannot be that bad. Busing in its present political and emotional context may be personally frustrating to some, economically precarious to others, and socially sterile to still others; but it may very well be the May sun to September school systems.

While it provides no comfort, and may be little perspective, the school desegregation controversy really mirrors or echoes the evil in this Nation. In the final analysis, it is not a question of segregation, desegregation or integration—but a question of determination. I implore you not to deflate the United States Constitution in general and the Fourteenth Amendment in particular; not to carpetsnatch the opportunity for poor whites and blacks whose hope for better life is anchored to equal educational opportunity; not to rug-jerk the progress made in civil rights; and not to stab honest and conscientious school superintendents in their weary and over-burdened backs, who realize that their school systems are retarded by the continued and debilitating divisiveness of racism.

When I see black and white children playing at the school bus stops while waiting for the bus to take them to school, I can envision no greater testimonial which convinces me that a constitutional amendment to prohibit busing is not only undesirable, but is really unnecessary.

This 15th day of May, 1972.

Respectfully submitted.

JOHN H. RUFFIN, Jr.

Mr. RUFFIN. Mr. Chairman, and distinguished committee members, I do not suppose there is really anything that I can say that this committee has not heard or will not hear.

I think it is essential that this committee recognize that the proposed constitutional amendment to prohibit busing really is an assault on the U.S. Constitution in general and the 14th Amendment particularly and this proposed amendment or this proposed legislation will certainly retard the progress that has been made in civil rights.

There is no one in this country who opposes busing but certainly there is a substantial segment of the citizenry of this Nation who oppose busing to achieve racial balance. In my own school district there has been no order by a court to bus to achieve a racial balance.

The district court in my district recognizes that such is not permitted by law in that the U.S. Supreme Court in the *Swann* case indicated that although busing is a permissible tool to bring about desegregation, it would be unlawful to require fixed mathematical ratios. That has not been the case and such terms as forced busing and such terms as a neighborhood school, busing to achieve racial balance—these are terms which really mislead the public.

In many instances in my own State of Georgia, busing really has improved the situation because in some instances school districts find that they are spending less money than they have spent previously.

In my native county of Burke which is a classic example, although it is a rural county, they have found that in desegregating the schools and in desegregating the transportation facilities, they are able to operate in a much more economical fashion.

There are some people in my own home town of Augusta now who would have this committee believe that busing to desegregate really is unwarranted, it is unnecessary, and it is illegal.

My school district in Augusta has been involved in litigation to desegregate the schools for some 9 years now and we have not succeeded in desegregating the schools.

White children have been encouraged by school officials to boycott schools and to attend private schools. I would certainly like to impress upon this committee that even those students who attend private schools are bused to private schools for the simple reason that there is not enough money to construct private schools in neighborhoods.

So nobody really opposes busing per se. People just oppose busing because they oppose desegregation and I would like for this committee to understand our position in this matter.

I would like to further indicate to the committee that black people are not impressed by the fact that this administration is offering some $2 billion for ghetto schools. We think that is rehabilitational genocide. We feel that people ought to be prepared to live in a pluralistic society. We feel that one of the main goals of education is to prepare people to get along with each other. As I observe whites and blacks who stand on the corners waiting for their schoolbuses to transport them to school, they get along and they play together and without any fanfare but it is only in instances where people oppose the desegregation process and where people of ill will attempt to impose their will on people who feel that race is really an irrelevant consideration when you have trouble.

Mr. McCULLOCH. Mr. Chairman, I have a question.

Might I properly conclude from what you have just said that if there are any difficulties arising from busing, they are not substantial for people of good will, that there is no ground for complaint, and there is little or no violence between the students?

Mr. RUFFIN. Not exactly that, sir. I do not want to mislead you. There are some problems which have been caused by students, well, for instance, when a school is "desegregated," and blacks are left out of some of their curricular activities—for instance, friction results from that.

But it results because there has been an unfair administration of the programs. But students can get along if——

Mr. McCULLOCH. If schoolteachers and administrators—that is very important—move swiftly and impartially, then many such problems would be eliminated.

Mr. ZELENKO. Mr. Ruffin, earlier in the hearing we had testimony from Mr. Fleming of the school board in Augusta. He was asked about the current court desegregation order, and whether in complying with the most recent court order, the school board had been transferring schoolchildren, the classes intact, so that white children and white classes and black classes were being moved intact to elementary schools. We asked Mr. Fleming whether that was in fact true and whether he considered that to be in compliance with the court order.

Could you tell the committee what is the fact in Augusta?

Mr. RUFFIN. Yes, sir.

First of all, correction, that was not in the local paper. It was in the Atlanta paper. It never would have been printed in the local paper.

To answer your question, sir, those classes were transferred intact and where there were all white classes, they remained all white classes. Where there were some classes with a few blacks in them, they remained that way.

The teachers and the classes were transferred intact.

Mr. ZELENKO. Mr. Ruffin, the Department of Justice has cited Augusta, Ga., to this committee in support of its moratorium legislation as one of those cases where there has been excessive or extensive busing.

We understand that approximately 5,000 or more elementary schoolchildren are now being transported pursuant to Judge Lawrence's order.

Can you give the subcommittee an indication of the distance or traveltime those children are experiencing in Augusta?

Mr. RUFFIN. I had someone specifically check out the longest travel distance for me and the longest travel distance was approximately 9.7 miles.

Mr. ZELENKO. What is the traveltime, do you know?

Mr. RUFFIN. In terms of time, I do not recall, sir, what that was but it was not an unusual amount of time but I do not recall exactly.

Mr. ZELENKO. One of the bills pending before this subcommittee would establish a moratorium on new or additional busing. It would stay implementation of any Federal court order requiring new or additional busing, during the moratorium period. As I understand the plan of Augusta, Ga., the final phase of school desegregation is to take effect in September 1972. Has the plan yet been devised showing which children will be assigned and to which schools in September 1972?

Mr. RUFFIN. Well——

Mr. ZELENKO. Can you describe the current status of desegregation to the subcommittee.

Mr. RUFFIN. Yes, sir.

The plan on the elementary level was developed in three implementing phases. Phase 1 went into effect on February 15. Plan 2, March 15, and phase 3 will go into effect in September 1972. The superintendent is now in the process of preparing reports for the Federal court to show how phase 3 will be implemented. There is no plan that has been approved on the high school level at this point.

Mr. ZELENKO. The high school busing plan or transfer plan will go into effect in September 1972; is that correct?

Mr. RUFFIN. That is correct, sir.

Mr. ZELENKO. If the school board—which has not shown itself to be willing to abide by these court orders—should in any way revise the third phase of this desegregation plan, would it be necessary for you as plaintiff to seek a court order to require that plan to go into effect in September?

Mr. RUFFIN. Yes. That is correct and I might indicate while I am on that point, sir, that the school board recently refused to devise a plan on the high school level for implementation in September and the district court has just entered another order on May 5 requesting the school board to come in with a plan by June 2 effective for September.

Mr. ZELENKO. If this busing moratorium bill were enacted, Mr. Ruffin, can you give the committee your opinion as to whether or not the third phase of a three-phase desegregation plan for Augusta, Ga., would, in fact, be permitted to go into effect?

Mr. RUFFIN. No, sir; definitely not. It would be decimated.

Mr. CELLER. Any questions, Mr. McClory?

Mr. MCCLORY. I have no questions.

I have read the testimony and heard the answers to these questions. I found it all very interesting and I would like to thank the witness.

Mr. POLK. Mr. Chairman.

Mr. CELLER. Yes, Mr. Polk.

Mr. POLK. Mr. Ruffin, I believe in the *Augusta* case, the court was required to issue an ancillary order against those seeking to obstruct the court order.

Mr. Ruffin. That is correct, sir.

Mr. Polk. Could you tell the subcommittee why the court was required to issue that order?

Mr. Ruffin. Yes, sir; incidentally, the court issued that order on its own motion. It did not issue that order as a result of any request that had been made by any party. The school board officials, including the superintendent, participated in a mass rally and they indicated what parents could do in order to get around the desegregation process and in the audience, unknown to everybody else, was a Federal marshal who made a report to a Federal judge and it was as a result of this Federal marshal's report in affidavit form, that the district court entered this order on its own motion.

Mr. Polk. Do you know some of the things that the members of the school board had indicated could be done to obstruct the desegregation order?

Mr. Ruffin. Well, the only thing that I could tell you is what was carried in the press and what is in the marshal's statement.

Mr. Polk. Did the marshal's statement indicate that some members of the school board were telling the parents not to send their children to school?

Mr. Ruffin. Yes.

Mr. Polk. Would that be a violation of Georgia law?

Mr. Ruffin. Yes, sir; we have a pupil compulsory attendance law.

Mr. Polk. I have one additional question. In your experience in Georgia have you found that desegregation has produced more busing or less busing?

Mr. Ruffin. I think it has produced less busing for the simple reason that we do not like to think of it as being such but Georgia is really a rural country or, as a matter of fact, everybody who lives outside of Atlanta is considered in a rural area and as a result busing really helped. In some of the urban areas or more urban areas, I should say, I think it is too early to tell because these plans really have not been implemented and they have not been carried out and there is no way of telling what effect this is going to have. In my county of Richmond County, which is where Augusta is located, a plan can be devised and implemented where busing will not be as extensive as some people would have it appear. You take, for instance, the superintendent has purposely staggered school hours to show the community that it ought to oppose the desegregation process.

I get reports from white teachers as to what is going on in white schools. I get reports from white principals who happened to have been up in the administration office and one reference was that they were going to have a bus picking up four students to take them to a school where the classes begin at 10 o'clock and this kind of ridiculous thing is what is going on in Augusta.

Mr. Polk. Thank you very much, sir.

Mr. Celler. Thank you very much. We appreciate your coming here.

Our next witness is Miss Rosemary R. Gunning, member, New York State Assembly and secretary, New York State Neighborhood School Council.

STATEMENT OF ROSEMARY R. GUNNING, MEMBER, NEW YORK STATE ASSEMBLY, AND SECRETARY, NEW YORK STATE NEIGHBORHOOD SCHOOL COUNCIL

Mr. Celler. Miss Gunning, we welcome you here. You are almost a neighbor of mine. You originally lived in Brooklyn?

Miss Gunning. I lived in the Bedford-Stuyvesant community when you were a Congressman for that area and you were my Congressman. You were very helpful in some of our problems then which were with the homeowners loans but that was a while ago.

Mr. Chairman and members of the committee, unlike the previous speaker, our State has, of course, for 100 years had a unitary system. We do not have the problem of turning into a unitary system such as the previous speaker has.

I might say at the outset our council and I believe practically no one in our State has any objection to any kind of voluntary plans for racial balance or any other method that would improve the integration of our schools.

Our objection is solely to compulsory assignment. We have, as representatives of the people of this State, our senate on three occasions passed laws to prohibit our board of regents and our commissioner, who are primarily the ones in our State.

On the few occasions when we have had court orders, it has been because there have been accepted gerrymandered districts. Our problem is not one of busing as a basic situation. A bus is a very valuable vehicle. It is used throughout the country to transport children and we would not see it otherwise.

However, many of the plans, and especially the Fleischman plan which has been introduced as a report so far, would increase the amount of busing to such an extent that throughout our State it would mean the diversion of our scarce educational dollars and they are becoming more scarce each year as costs go up and the tax revolts go on. And we find that this would mean that there would have to be considerably more busing and it would also present, especially in New York City, a traffic problem which would be tremendous.

We regret that we are here this morning to ask for a constitutional amendment but the fact is that throughout this Nation the courts have moved into the school areas where they overrule the elected representatives of the people and these gentlemen who have been appointed who are no longer close to the grassroots and the feeling of the people are, we feel, threatening the traditional checks and balances of our Constitution. We, therefore, feel that this amendment is a necessary one if we are to have the voice of the people recognized.

I am sure this committee is very familiar with the fact that the polls show that at least 85 percent of the people of this Nation, black and white, do not favor compulsory assignment of pupils. And we find that the parents of all races are absolutely unwilling that their students be moved to areas at a distance from their home neighborhoods. It has not only provoked expense and dissension, it has also limited the amount of activities that parents can take in their schools. We have in New York City some parents who have children in three different schools, some of them at a distance. Most of the movement in New York City has been of black students and we feel that some of the problems that we are having with them—truancy, absenteeism, which is as high as 58 percent in some of our high schools—is because these children are compelled to travel such long distances. In a city where we are having such serious problems with drugs and juvenile delinquency, it has cut down participation in religious instruction, in scouting, and in other activities.

Ten years ago I said to our board of education, if we are to assign chileren by race and color, we are going to raise a generation of race-conscious children.

I wish I had not been such a good prophet. Instead of producing integration as everyone has hoped, we see separatism. Therefore, gentlemen, for the good of the country, we hope that you will bring out of your committee House Joint Resolution 620 and let us have a vote on it so that the people of this country, the parents who are intimately concerned, may once again have that participation in how their children are to be educated and where.

We believe, and I think Congressman Celler is especially aware of the fact, that the New York City school system has a long record of the melting pot. We have been through generation after generation of newcomers to our city and what has happened is that as we have been able to educate our children, we have then seen the integration of the various national groups, the ethnic groups, which have come into our city.

We think this will happen also with our black and Puerto Rican population who are more or less newcomers to our city.

However, if we are going to spread around the problems of educating this group of children instead of meeting their special needs in their own neighborhoods, we reduce that hope that I think everyone of good will hopes to see accomplished within our generation.

Mr. CELLER. Mr. McClory.

Mr. McCLORY. No questions.

Mr. ZELENKO. As you know, Governor Rockefeller vetoed a bill recently passed by the New York State Legislature that would have imposed a moratorium on compulsory student assignments.

In his veto message the Governor cited a decision of the Federal court in *Lee* v. *Nyquist* decided in October 1970 which invalidated an earlier New York State antibusing statute known as the Lent statute which attempted to restrict involuntary pupil assignments designed to further racial balance.

Referring to the Lent statute the three-judge Federal district court held that it placed burdens on implementation of educational policies designed to deal with race on the local level. The court said:

> The statute, by prohibiting the implementation of plans designed to alleviate racial imbalance in the schools except with the approval of a local elected board or upon parental consent, creates a single exception to the broad supervisory powers the state Commissioner of Education exercises over local public education.

In other words, it singled out racial desegregation assignments. The court found that singling out those assignments created a burden that was unconstitutional. Apparently, you disagree. Why do you disagree?

Miss GUNNING. Because the statute did not place that burden upon the elected school board. The statute permitted elected school boards to set up any plans that they found suitable for their districts.

The only prohibition was on the Commissioner, himself, who, the legislature felt, was not exercising good judgment in the orders which he had issued and the plans he was demanding.

It placed also a prohibition upon appointed school boards and at the same time the legislature was trying to procure elected school boards in those areas like New York City and Buffalo.

In fact, we passed in our assembly an elected school board for Buffalo. We have a law in New York City for an elected school board, so what we were attempting to do was to have these plans decided by the people in their own districts.

It was not as a prohibition upon plans which could be worked out in their own areas and would be acceptable and workable because no matter how you try to do it, if you do not have a plan that is acceptable to the people—we have had plans, there were efforts to transfer pupils from Mount Vernon to Scarsdale. Scarsdale has probably one of the best reputations for education. The black parents in Mount Vernon refused to accept the plan. The desire to control their own schools and to keep the pupils nearer home in these times of violence and crime is almost universal through this country.

Mr. Zelenko. Mr. Chairman, I offer for the record an article from the New York Times, May 15, 1972, describing Governor Rockefeller's veto of the New York State Busing Moratorium bill.

Miss Gunning. Thank you.

Mr. Celler. Without objection, it will be placed in the record. Miss Gunning, we are very grateful to you for coming and appreciate your remarks. Your prepared statement will be inserted in the record in its entirety.

(Newspaper article and prepared statement of Rosemary R. Gunning follow:)

Governor Vetoes Antibusing Bill; Cites 1970 Ruling

THIRD MEASURE REJECTED—CRITICS SAY LEGISLATORS USED EMOTIONAL ISSUES TO DRAW ATTENTION FROM RECORD

(By William E. Farrell)

Albany, May 14—Governor Rockefeller today vetoed a bill, passed by wide margins in both houses of the Legislature, that would have imposed a moratorium on the compulsory assignment of schoolchildren for the sake of racial balance.

In a brief veto message, Mr. Rockefeller said that the bill enacted by the Legislature was similar to an antibusing bill it passed in 1969, which he signed. That law was declared unconstitutional by the Federal courts a year later.

Like the 1969 statute, the vetoed bill would have prohibited the State Education Commissioner and appointed school boards from ordering the busing of students to correct racial imbalance in schools.

THIRD VETO IN 2 DAYS

The Governor's action on the antibusing legislation was the third veto in two days of bills deemed major legislation by a majority of the state's 207 lawmakers—150 Assemblymen and 57 Senators.

Yesterday Mr. Rockefeller vetoed, as he had previously pledged, a bill that would have abolished the state's liberalized abortion law, which permits elective abortions up to the 24th week of pregnancy, and restored the old state statute permitting abortions only when a mother's life was endangered.

At the same time, he vetoed legislation that would have killed the controversial low-income housing project in Forest Hills, Queens.

POLITICAL TACTIC SEEN

Some politicians and legislative observers, noting that the 1972 Legislature was one of the most lackluster in years, said they felt that emotional issues such as abortion and antibusing had been dredged up in the last weeks of the session to seize the attention of voters in an election year and to divert them from the lack of accomplishments.

The legislative session—the state's 195th—was adjourned late Friday night.

The busing moratorium legislation was felt by many to be a spurious issue, since there is very little busing for integration in the state, and what little there is, is primarily voluntary.

While claiming to have no absolute figures, the State Education Department estimates that no more than no more than 35,000 students in the state are being bused to school for integration purposes.

In his veto message, Mr. Rockefeller referred to a letter from Attorney General Louis F. Lefkowitz recommending disapproval of the moratorium bill because of the 1970 Federal court ruling on the state's earlier busing ban.

SPECULATION ON APPROVAL

"There is no difference in either substance or effect between the statute . . . which was held to be unconstitutional and the present bill," the Attorney General said.

"This act would also be clearly in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States," he concluded.

When the moratorium bill passed the Senate by a vote of 40 to 16 and the Assembly by a vote of 99 to 44, there was speculation that the Governor might be receptive toward it.

This was based on a news conference Mr. Rockefeller held on March 21 in which he said that President Nixon's proposed national moratorium on court-ordered busing as a tool for desegregating schools was "an approach which seems to me is very constructive under the circumstances."

At the same conference, the Governor said that the State Board of Regents, the state's highest educational policy-making body, might "have to review" its commitment to busing as a means of achieving racial balance in the schools.

A short time afterward, a majority of the 15 Regents reaffirmed their support of the concept of busing.

POSITION ON NIXON PROPOSALS

Sources in the Rockefeller administration said today that the Governor's favorable remarks about the President's moratorium proposal had been made in the context of the deadlock on the issue that existed between the Senate and the House of Representatives.

The text of the Governor's March 21 news conference here carries the following response from Mr. Rockefeller when he was asked about his position on the President's two-year moratorium proposal:

"The President's proposal, it seems to me, could well be the key to unlocking the deadlock which existed between the Senate and the House in Washington. There was a very serious situation developing there with apparently no solution and what the President has proposed now looks as though it was the way to solving this deadlock between the two Houses of Congress."

In another veto action today, Mr. Rockefeller disapproved a bill that would have required each state agency to submit a statement to the Department of Environmental Conservation on the environmental impact of every program or project carried on by the agency.

Mr. Rockefeller said that he sympathized with the intent of the legislation, which was requested by Henry L. Diamond, the Commissioner of Environmental Conservation, but that there were four reasons why it was "ill-advised."

Mr. Rockefeller said that the bill's requirements overlapped existing state and Federal requirements, that it was drafted so that "marathon litigation" could ensue, that it blurred responsibility among state agencies and that "it would add costs at a time of protracted fiscal difficulty for the state."

Prepared Statement of Rosemary R. Gunning

My name is Rosemary R. Gunning; my address is 1867 Grove Street, Ridgewood, Queens County, New York.

I am secretary of the New York State Neighborhood School Council. This council is composed of the large neighborhood school organizations throughout the state of New York, especially from New York City, Mount Vernon, Long Island, Rochester, Utica and Buffalo, as well as some smaller groups throughout the state.

The New York state Assembly, of which I am a member, has on two occasions voted bills to prevent compulsory transfer and assignment orders for public school pupils for racial balance; and the New York state Senate has on three occasions voted such bills. Governor Rockefeller signed one of these bills into law. Unfortunately it was held unconstitutional by a Federal Court panel and the Supreme Court, by a divided vote, refused to consider it.

Regrettably, the measure passed this session by the New York state legislature for a one year moratorium on assignments for racial balance was vetoed by the Governor on the advice of the Attorney General that it was unconstitutional.

Regrettably, also, the Board of Regents of our state and its appointed Commissioner of Education, has reiterated its insistence upon promulgating orders and insisting upon plans for the compulsory assignment of pupils from their home neighborhoods to achieve racial balance.

We are especially distressed that only three Regents expressed their opposition to this statement although four other Regents, elected by Legislature since 1969, each indicated they supported the neighborhood school before their election.

Therefore the citizens of New York with the citizens of other states must turn to the Congress to achieve the desire of people of all races—85% the polls say—that pupils be admitted in the schools nearest their homes and not be directed by bureaucratic or court order to schools away from their home neigborhoods to achieve racial balance.

Let me say at the outset, we do not oppose voluntary assignments or plans; our opposition is directed solely to compulsory orders and plans.

New York as you know has a unitary school system. Our education law prohibits refusal of admission to any school, public or private, on the basis of race, color or national origin. We would not have it otherwise. All we seek is the provision of the proposed constitutional amendment that no pupil be *assigned* to any public school on account of race, religion, color or national origin.

The proponents of compulsory assignment to achieve racial balance maintain it is necessary for good education. This has not been borne out by the facts. Even the Coleman Report states it is impossible to determine, where there has been improvement of black students assigned to classes with white students, that it is the result of that admixture or whether it results from other factors such as better teachers, facilities, etc.

The fact is it is an undeserved condescension. While the idea of legal school segregation is abhorent since it denies full rights of citizenship and recognition to all citizens of this republic, the suggestion that black pupils need to be with white pupils for good education is equally abhorrent.

A good school, especially if geared to the special needs of its students, will produce good education. And a neighborhood school is best able to meet special student needs. Many factors enter into the lower achievement of many pupils in black areas; these factors were and are also evident among the disadvantaged whites of this and other generations. They present many problems which cannot be solved by such an easy answer as assigning them to a school with an admixture of races.

It was hoped by many of the original proponents of compulsory assignment by race that greater racial harmony would result from the children attending classes together.

Over ten years ago I told the New York City Board of Education if we assigned pupils on the basis of race and color, we would produce a generation of race conscious citizens. I wish I had not been such a good prophet. Instead of producing integration, it has developed separatism.

The reason for this, which I foresaw, was that, even as we did in by high school days in the 20s, pupils from one neighborhood or community tend to band together. The natural aggressiveness of young people tends to arouse competition and combativeness among the neighborhood groups. When we add to this widely different economic, educational and cultural backgrounds and resentment that they have been unwillingly forced to leave their traditionally local schools, we are emphasizing differences unfairly, and unwisely.

This moving about of pupils has interfered with parent participation which would have made them aware much sooner of some of our drug and disciplinary problems and delayed community efforts at correction. It has impeded student participation in those wholesome influences on the young—attendance at religious instruction, in scouting and other community youth activities.

As problems increased, withdrawals from the public schools increased by those able to do so. What is seldom commented upon is that the black middle class, as well as the white, have been withdrawing.

Compulsory assignment of pupils to achieve racial balance has not worked educationally or socially.

The time has come therefore to return to common sense. To return our scarce educational dollar from buses and public transportation to education. To retain pupils in their home communities where their parents can participate fully in school activities and keep a watchful eye on evolving school problems. To recognize that parents just will not accept pupils moving from the safety of their own neighborhoods in this time of violence and crime.

You will note I have not stressed busing. We are not opposed to busing. A bus is a useful vehicle widely used. However, their use has been expensively increased through many of the ordered plans. This is especially true in urban areas where pupils have customarily walked to school and where school buses and pupils traveling on public transportation have increased traffic and mass transportation problems. Also in our cities, compulsory assignments are not always accompanied by busing and pupils can be compelled to walk long distances through areas their parents do not consider safe.

For all these reasons we urge this sub-committee to bring the constitutional amendment to the floor for a vote. It appears to be the only means of preserving the constitutionally intended checks and balances and the only means for the Congress, representing the people, to overcome the taking over of that power by an unelected judiciary.

Respectfully submitted,

ROSEMARY R. GUNNING.

Mr. CELLER. Our next witness is Mr. William Taylor, director, Center for National Policy Review, School of Law, Catholic University and he is representing Americans for Democratic Action.

Mr. Taylor.

STATEMENT OF WILLIAM TAYLOR, DIRECTOR, CENTER FOR NATIONAL POLICY REVIEW, SCHOOL OF LAW, CATHOLIC UNIVERSITY, ON BEHALF OF AMERICANS FOR DEMOCRATIC ACTION

Mr. TAYLOR. Mr. Chairman and Mr. McCulloch and members of the subcommittee, with me today is Mrs. Lynn Pearle, who is the legislative representative for ADA. We are pleased to have the opportunity to testify on behalf of ADA on H.R. 13916 and the pending constitutional amendments affecting school desegregation.

Much of what I have to say on H.R. 13916 is equally applicable to the version of the Broomfield amendment that was reported yesterday by the Conference Committee on Higher Education.

While I have not seen the precise text of that amendment, I have read the detailed accounts of it in the newspapers. We are opposed to it for many of the same reasons that we oppose H.R. 13916 and would be glad to respond to questions you may have on that subject as well.

Mr. CELLER. The action taken was announced by the conferees. Since we have not seen the language we cannot comment on it.

Mr. TAYLOR. I am going on what I have read and what has been reported to me about the specific provisions and I would have to qualify by saying I have not seen the precise language either.

Yesterday was the 18th anniversary of the Supreme Court decision of *Brown* v. *Board of Education.* Today is a less noted landmark. It is the 76th birthday of the Supreme Court decision in *Plessy* v. *Fer-*

guson which propagated the doctrine of "separate but equal" in the first place.

Despite its explicit rejection in the *Brown* case, the systems of segregation authorized by *Plessy* as you know, has had remarkable staying power. Most of the years since *Brown* have been a period of pain and sacrifice for black parents and children struggling to overcome the barriers of massive resistance, delay, and evasion thrown up by State authorities.

It is really only in the past few years that significant progress in integrating schools has been made although we are far short of dismantling the dual school system, notwithstanding President Nixon's claim that the process has been "substantially completed."

Now, we have entered a new crisis in school desegregation in the form of efforts to delay and severely restrict the use of busing as a means of accomplishing integration. The action that Congress takes on these proposals may well determine whether *Brown* is finally implemented or whether it is consigned to the graveyard of history and the racist doctrine of *Plessy* v. *Ferguson* resurrected to govern our lives for the foreseeable future.

I do not believe that is an overstatement of the issue confronting this committee and the Congress. For, while it is asserted correctly that busing is only one instrument for accomplishing school integration, it is equally clear that in most areas of the Nation the public schools will remain segregated for many years unless transportation continues to be available as a remedy. It is in the cities of the Nation, particularly the large ones, that busing is an indispensable tool for integration because residential patterns are so highly segregated. Yet these are the same cities in which the bulk of the black population of the country now lives—according to the 1970 census, 37 percent of all black citizens now reside in the 25 largest cities of the Nation.

Mr. Zelenko. Mr. Taylor, in your opinion, what is the alternative to busing as a means of desegregating schools?

Mr. Taylor. The best alternative is to open up free choice in housing, to remove the restrictions which have governed the laws of black people and other minorities for so many years in finding access to housing. These restrictions are racial restrictions as well as economic restrictions.

Mr. Celler. What about building new schools that will be accessible to both races?

Mr. Taylor. That is a very important initiative. I think we have seen it being done.

It is workable. I think what we need to do is think about new kinds of educational facilities: parks, magnetic schools and the like, and we need to think about locating them in areas which are accessible, as you say, Mr. Chairman, to both black and white.

However, these new facilities may well require busing in order to get the children to school. One of the reasons for these new kinds of facilities is that there have been very useful developments in educational technology, for example, the use of television, teaching machines, and language labs as tools for individualized education and instruction.

Individual school districts often cannot afford them. What you are seeing in places like New York City is cooperation between suburban districts to establish these new kinds of facilities—and that involves busing children. Right now in many cases city schools are excluded from these kinds of new techniques.

I think we need to look at these facilities as cooperative devices between cities and suburbs and as tools for integration.

That will require some busing but, as you know, busing is not a problem when the school at the end of the line is one that is regarded as a good school for all children.

It really is in the cities that our major problems occur and it is the cities that contain the great bulk of black people and other minorities.

Mr. CELLER. I suggest that you might epitomize the balance of your statement.

We have been sitting here a long time and the testimony gets quite repetitive. It would help if you would epitomize your points.

Mr. TAYLOR. I shall be glad to do so, or if everybody has seen the statement, to throw myself open to questions.

Mr. CELLER. We will accept your statement for the record and you might continue.

(The statement referred to follows:)

STATEMENT OF WILLIAM L. TAYLOR ON BEHALF OF AMERICANS FOR DEMOCRATIC ACTION

Mr. Chairman and members of the subcommittee: My name is William L. Taylor. I am pleased to have the opportunity to testify on behalf of Americans for Democratic Action on H.R. 13916 and pending constitutional amendments affecting the desegregation of public schools.

Yesterday, as I am sure members of this committee noted, was the 18th anniversary of the Supreme Court's decision in *Brown v. Board of Education*, in which the Court held that "in the field of public education the doctrine of 'separate but equal' has no place" and commanded an end to the segregation of children by race in public schools. Today is a less noted landmark, the 76th birthday of the Supreme Court's decision in *Plessy v. Ferguson*, which propagated the doctrine of "separate but equal" in the first place. Despite its explicit rejection in *Brown*, the system of segregation authorized by *Plessy* has had remarkable staying power.

Most of the years since *Brown* have been a period of pain and sacrifice for black parents and children struggling to overcome the barriers of massive resistance, delay and evasion thrown up by state authorities. It is only in the past few years that significant progress in integrating the schools has been made although we are still far short of dismantling the dual school system, notwithstanding President Nixon's claim that the process has been "substantially completed." Now we have entered a new crisis in school desegregation in the form of efforts to delay and ultimately severely restrict the use of busing as a means of accomplishing integration. The action that Congress takes on these proposals may well determine whether *Brown* is finally implemented or whether it is consigned to the graveyard of history and the racist doctrine of *Plessy* resurrected to govern our lives for the forseeable future.

This last, I am convinced, is not an overstatement of the issue confronting this committee and the Congress. For, while it is asserted correctly that busing is only one instrument for accomplishing school integration, it is equally clear that in most areas of the nation the public schools will remain segregated for many years unless transportation continues to be available as a remedy. It is in the cities of the nation, particularly the large ones, that busing is an indispensable tool for integration because residential patterns are so highly segregated. Yet these are the same cities in which the bulk of the black population of the country now lives; (according to the 1970 census, 37% of all black citizens now reside in the 25 largest cities of the nation). Indeed, in many large cities, it will require not simply the availability of busing, but the application of the principles of metropolitan desegregation declared in the Richmond and Detroit cases for integration to be a meaningful possibility for any but a handful of students.

Accordingly, when the Nixon Administration seeks in H.R. 13916 to postpone the implementation of court orders requiring busing and in H.R. 13915 to ban permanently any increase in busing at the elementary school level, it is quite simply and directly seeking to foreclose the possibility of an integrated education for the mass of black and white students. This ban would apply to the most modest of desegregation plans—those involving the *voluntary* transfer of students from schools in which they are a majority to those in which they are a minority, wherever additional transportation was required. It would also inhibit the development of new facilities—education parks or magnet schools—designed both to foster integration and in other ways to improve the quality of education for all children, since these facilities also would require some degree of busing.

NO FACTUAL CASE HAS BEEN MADE FOR H.R. 13916

Since H.R. 13916 would clearly postpone the vindication of constitutional rights for large numbers of children, it can pass constitutional muster, if at all, only upon the most compelling demonstration of an overriding governmental interest in delay. It is in this area that the performance of the Nixon Administration has been so shockingly cynical and inadequate.

In the first instance the President has claimed that "many lower court decisions have gone far beyond what . . . the Supreme Court has said is necessary." But the Administration has failed to cite any cases and an examination of the decisions that have caused the greatest controversy does not provide support for its claim. To the contrary, the great bulk of recent decisions in both the North and South are fully consistent with the principles declared in *Brown* and elaborated upon in such cases as *Green* v. *New Kent County*, *Holmes* v. *Alexander*, and *Swann* v. *School Board of Charlotte Mecklenburg*.

What has happened is that as segregation laws and policies have fallen, courts have been impelled to examine the actions of school authorities and other governmental officials to determine the contribution they have made to the continuation of segregation. The conclusions reached by Federal courts have been remarkably consistent. They have found that in deciding where to locate new schools, where to place boundaries, what steps to take to relieve overcrowding, what kinds of transfer policies to adopt, school officials have frequently chosen a course of action which could not but produce racial separation in the schools. (I am submitting a check list of findings made in recent Northern cases on these points.)

Further, courts have found on the basis of extensive evidence that school authorities have based their attendance zones upon patterns of housing segregation that were fostered in large measure by government action. In Detroit and Pontiac as well as in Richmond, it was shown that black people do not live in central cities simply out of choice or only because they lack sufficient money to go elsewhere or even because of private practices of discrimination. The proof of government's role goes back to the 1930's and 1940's when the Federal Housing Administration in helping to create new suburbs told developers that you could not have a "stable" community or a good community unless it was a racially and economically homogeneous community. The Federal government made it clear in official pronouncements that not only must neighborhoods be segregated but schools as well and that if necessary restrictive convenants, zoning laws, and even busing must be used to keep them that way. The proof continues to the present day when the same FHA-assisted housing remains substantially segregated and when even new subsidized housing authorized by the Housing and Urban Development Act of 1968 is being built and operated on a segregated basis.

What is the Administration's response to this detailed proof? In a brief filed in the Richmond case, more than three weeks after the President had pointed an accusing finger at the Federal courts, the Department of Justice begins its argument with the incredible statement that "we have not had the opportunity to scrutinize the record."

If the Department had taken the trouble to examine the record in Richmond or other cases, it would have discovered that what the courts are dealing with, North and South, is not racial separation that is accidental or fortuitous or adventitious. It is a government policy of racial *containment*, which locks black people into lives of hopelessness and despair. And what is being sought is not "artificial racial balance." Rather it is a means for government to undo the damage it has done to little children and to give them at least a fighting chance to lead decent and rewarding lives.

If the Administration has been insensitive to the rights of black children and reckless in its characterization of court decisions, one might at least expect that it would be prepared to document its allegation that orders requiring busing have seriously disadvantaged large numbers of school children. After all, the proposed Congressional finding in Section 2(a) (2) of H.R. 13916 that busing orders have caused "substantial hardship" and "have impinged on the educational process" lies at the heart of the moratorium legislation. If it is not substantiated, there can be no basis at all for postponing the implementation of constitutional guarantees.

Yet, astonishingly, the Administration has not offered specific facts to document its claim of "substantial hardship." To the contrary, the record of these hearings is filled with evidence that transporting children to school by bus is a prevalent and traditional practice throughout the nation and that very little of it is done for purposes of desegregation; that transportation costs are a relatively small part of education budgets and that only a minute portion of recent increases in transportation costs are attributable to desegregation; that busing is the safest means of conveying children to school; and that the times and distances involved in desegregation orders are consonant with busing for other purposes.

I will not burden the committee further except to request permission to insert in the record a survey conducted by the Center for National Policy Review of busing in fourteen districts. These include the districts on which the Administration apparently places greatest reliance for its claims of "excessive busing." You will note that of these districts, six experienced no increase in the duration of average bus rides as a result of implementation of court ordered plans (Arlington, Jackson, Oxnard, Pontiac, San Francisco and Savannah). The greatest increase in time was from 20 to 45 minutes in Tampa. Three districts experienced an increase of between 10 and 20 minutes (Manhasset, Nashville and Norfolk).

In no district was the average ride more than 45 minutes after the implementation of a desegregation plan. The median average ride befor implementation was about 20 minutes. The median average ride after implementation was about 27 minutes.

Even in cases involving metropolitan relief, the logistics may be no more difficult than desegregation plans for a single district. *Bradley v. School Board of Richmond*, a case in which I am privileged to serve as co-counsel, is the one decision in which a plan has been worked out in detail. There, the court-approved plan would divide the metropolitan area of 104,000 public school children into six subdistricts. The maximum time for any trip would be 45 minutes in five of the six subdistricts and one hour in the sixth. The latter is a rural area of Chesterfield County where long distance rides of an hour or more are already common. Very few children would actually travel the maximum time—times which are well within limits set by the Virginia State Department of Education twenty-five years ago. And the number of children to be transported would increase by no more than 10,000 from 68,000 to 78,000.

REMEDY

Nor is there any basis in the record for Congress to conclude that court orders requiring busing "have impinged on the educational process." Again, the evidence shows quite the contrary: that school desegregation has been of significant educational benefit to black and other minority children and that where (as has been the case in almost all integration plans) schools are composed primarily of children of advantaged backgrounds the achievement of advantaged students has not been reduced by the presence of students of disadvantaged backgrounds. As a matter of fact, HEW's own report on the "Effectiveness of Compensatory Education," issued on April 20, makes substantially the same point. While putting the best face they can on the prospects that compensatory efforts can result in significant educational gains (against the largely discouraging experience with such efforts so far), the authors explicitly disavow the view that compensatory programs are an adequate substitute for integration. After reviewing the evidence that desegregation brings achievement gains, their repeated plea is that both remedies are needed. If a Federal agency under such strong political pressures to make contrary findings reaches these conclusions, what is left of the Administration's case?

In the furor over busing and particularly the metropolitan decisions, other important aspects of remedy have been generally overlooked. Let me note them briefly:

SWANN AND RICHMOND-TYPE PLANS OFFER THE PROSPECTS OF STABLE INTEGRATION

In the Richmond metropolitan area, where there is a minority population proportionately as large as any area in the nation, the consolidated school system would have an enrollment of 66 percent white and 34 percent black. Under the Richmond Board's plan, all schools would have an enrollment ranging from 18 to 40 percent black. The plan in the *Swann* case was similar except for the fact that the Court did not have to order the crossing of district lines, since they had been abolished some years ago.

Such an arrangement enhances prospects for stability. The flight of white people from an area sometimes may be based on racism and other times upon a judgment parents make that schools consisting of a majority of advantaged children offer the greatest educational benefits. In either case, the dangers of rapid resegregation would be decreased where the obligation to desegregate is systemwide and the racial and economic class composition of each school is within a defined range. When all public schools are integrated and when all consist of a majority of advantaged children, people will have an incentive to stay where they are and make integration work.

METROPOLITAN PLANS ALLOCATE THE BURDEN OF SOCIAL CHANGE MORE EQUITABLY

In Richmond, the city school board was a principal moving party in the law suit. In Detroit, a group of white city residents initially raised the metropolitan issues, and in Wilmington, Delaware, and other cities where metropolitan cases are pending there is also support from white city residents.

Whether these parties are truly convinced of the need for school integration may vary from situation to situation. But they do assert that whatever burdens are involved in change should be borne equally by the generally more affluent citizens of suburbia and by the white and black working people of the cities.

I think there is merit to this view and the fact that it is being asserted in the courts indicates that the potential support for metropolitan solutions is not limited to black people. It also suggests that if we do not allow ourselves to be panicked into hasty action, metropolitan remedies may ultimately help to defuse the conflict between blacks and whites in the inner city.

METROPOLITAN PLANS MAY INCREASE, NOT DECREASE, THE ACCOUNTABILITY OF SCHOOLS TO PARENTS AND THE OPPORTUNITIES FOR COMMUNITY PARTICIPATION

Under the plan adopted in Richmond, the new consolidated district is to be divided into six subareas consisting of 15–20,000 students in each. While the plan is not specific in apportioning responsibility between the central authority and the subdivisions, there is no reason why each subdivision cannot be delegated broad authority to determine the kind of educational program that best meets the needs of children in the area. This might well include the hiring of faculty and administrative personnel and decisions about curriculum and the allocation of budget. Thus, there is no basis for the suggestion that metropolitan school integration plans necessarily entail a loss of "local control."

Having a voice in educational policy is particularly important to black parents whose children often face a difficult struggle for equal treatment in physically desegregated schools. But here, too, the evidence suggests that community participation of minority and low income parents in school affairs will increase, not decrease, under metropolitan integration arrangements. Parents in Evanston, Rochester and Boston whose children have moved from racially isolated to integrated schools have reported feelings of greater participation and influence in their chidlren's education in the new situation than in the old.

I do not suggest in this discussion of remedies that there are not difficult problems or that there are any panaceas. Many white parents are afraid of sending their children to inner city schools. It will not do to label their concerns racist, because in many cases they are not. Nor is it a complete answer to say that in only a few cases has cross busing been required to accomplish integration or that even in these the fears of white parents have usually turned out to be unfounded. Even though it is true and relevant, it will not satisfy people to point out that where there has been racial conflict in the schools, it has usually occurred when black and white children meet for the first time at high school level, after spending their earlier years in racially isolated schools.

And although it may be feasible to integrate schools without cross busing, it will not meet the justifiable concerns of many black people who say that one-way plans are patronizing and unfair to their children.

But after all this is said, the issue before the Congress comes down to this: shall the effort be abandoned or postponed because it is difficult or shall solutions be devised to assure that integration will be part of an overall effort to improve the quality of education for all children?

There are such solutions at hand. One of the sections of the Emergency School Aid bill now pending in conference provides for the construction of new kinds of educational facilities—education parks or magnet schools—in new locations accessible to both the suburbs and central city. These new schools can be organized to accommodate programs to serve the gifted and handicapped, to improve teacher training, to use television and computers more widely as aids to individual instruction. It is ironic, to say the least, that the prospects for this legislation which would alleviate the problems of cross busing have been jeopardized by anti-integration amendments. The Federal government could also make an investment in early childhood education and in day care, and could assume a greater share of the burden of financing public education. Some of these measures, of course, have been passed by Congress but have not become the law.

Or we can take the other road and abandon the effort. If we do, I am sure that we will have an ample supply of rationalizations.

We white people will tell ourselves that black people really do not want integration and busing. But we know that what black people want is what all of us want—a good education for our children. We know that black parents have made great sacrifices to obtain a good education for their children in integrated schools and that they are still ready to make such sacrifices. And we will know in our hearts that if black people ultimately reject an integrated society it will be for one simple reason—because white society has rejected them.

We white people will also tell ourselves that the answer is really fiscal reform and the creation of "good" schools in the ghetto. But we will know when we say this that we are no more prepared to establish a financing system for public education based upon *need* than we are to integrate the schools. And we will know that whether we label it "fiscal reform," "compensatory education" or something else, what we are really advocating is separate but equal which has never worked and never will.

And those of us who are white, affluent, who live in the suburbs and who call ourselves liberal, will know something else as well. We will know that those charges that we are "limousine liberals" are true—that rather than make and sacrifices ourselves, we are ready to place the whole burden of social change upon the working class people, black and white, who live in the central city.

CONCLUSION

Mr. Chairman, I recognize that the pressures for passage of some form of "anti-busing" legislation are great. I understand, I think, the dilemma that a Congressman faces when he is asked to vote against the apparent wishes of large numbers of his constituents. The pressures may not be lessened by the knowledge that public passions have been stirred by demagogic appeals or that the legislation is of such dubious constitutionality that Congress may well be obliged to face the issue again. If the Administration bills express the temper of the times, they, or something like them, may be enacted into law.

Should that happen, life will go on. But there are certain things we as people should then be prepared to admit to ourselves. We will have to acknowledge that law is no longer a means of carrying out our highest goals and aspirations but of expressing our worst fears and prejudices.

We will have to concede that the purpose of our public education system is not to educate our young to full humanity, that it is not a moral as well as an intellectual enterprise.

We should also recognize that in the process of raising our children as flowers in a hot-house, shielding them from contact with children of other races and income groups, they may be ill-equipped to function in the racially hostile world we have created.

And finally, in candor we will have to admit to ourselves *and to our children* that as a people, we are mean spirited, not generous; fearful and cautious, not courageous; callous not compassionate.

This may be what the future holds, but I believe that before Congress passes final judgment, it ought to take into account other, more hopeful, political facts of life. It is a fact that major progress in school integration has been achieved in the South and in some places in the North even in the face of massive resistance. It is a fact that racism has been on the decline in this country. And it is a fact that people have been willing to support a new brand of political leadership, exemplified by Governor Askew of Florida, which encourages them to face their problems and solve them rather than to retreat into racism.

If Congress is prepared to act on *this* reality, there is no reason why we cannot redeem at last the promises of our Constitution and at the same time establish a system of public education that responds to the needs of *all* American citizens.

THE CENTER FOR NATIONAL POLICY REVIEW,
SCHOOL OF LAW, THE CATHOLIC UNIVERSITY OF AMERICA,
Washington, D.C., June 1, 1972.

Mr. BENJAMIN L. ZELENKO,
General Counsel, Subcommittee No. 5,
House Judiciary Committee, Washington, D.C.

DEAR MR. ZELENKO: In testimony before your subcommittee on May 18, 1972, William L. Taylor inserted into the record a report entitled "Types of Discrimination Found by Federal District Courts in Northern Desegregation Cases" (see page 3 of Mr. Taylor's prepared testimony). Subsequent to Mr. Taylor's testimony, we have learned that the Court of Appeals for the Ninth Circuit has written an opinion which clarifies the types of discrimination proved at trial in the Las Vegas desegregation case.

The appellate court's opinion shows that the Las Vegas case was not an instance in which busing had been ordered to remedy mere *de facto* segregation, as our report indicated. Rather, the types of discrimination proved by plaintiff at trial were similar to the types of *de jure* discrimination proved in other northern cases.

I am enclosing several corrected copies of the report referred to above. These copies reflect the clarifications contained in the Court of Appeals opinion.

Sincerely,

KENT L. OSBORNE, *Legal Intern.*

CHECKLIST OF TYPES OF DISCRIMINATION FOUND BY FEDERAL DISTRICT COURTS IN NORTHERN DESEGREGATION CASES [1]

Type of discrimination found by the court	Denver	Las Vegas	Manhasset	New Rochelle	Oxnard	Pasadena	Pontiac	San Francisco	South Holland
1. Discriminatory drawing or alteration of attendance zones	×		×	×		×	×	×	×
2. Discriminatory location of new schools	×	×			×	×	×	×	×
3. Discriminatory expansion of existing schools (e.g., enlarging minority schools rather than transferring minority students to nearby white schools with space available)	×	×			×	×		×	
4. School board's failure to relieve overcrowding at white schools by transferring white students to nearby minority schools where space was available[2]	×								×
5. Discriminatory hiring of teachers and administrators						×	×		×
6. Discriminatory assignment of teachers and administrators	×	×				×	×	×	×
7. Discriminatory promotion of teachers and administrators						×			
8. School board's perpetuation or exacerbation of segregation in schools by its strict adherence to neighborhood school policy after segregated school system had developed		×	×	×		×			
9. School board's failure to adopt a proposed integration plan, or to implement previously adopted plans	×				×				
10. School board's adoption of "open enrollment" or "free transfer" policies having the effect of allowing whites to transfer out of black schools without producing a significant movement of blacks to white schools or whites to black schools				×	×	×			
11. Court found segregation in schools to be de facto rather than the result of State action									

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[1] For a more detailed description of the types of discrimination found in each case, and the case names and citations, see pp. 2-5.

[2] Typically, the board would instead bus whites past nearby minority schools to attend more distant white schools.

Types of Discrimination Found by Federal District Courts in Northern Desegregation Cases

DENVER

Keyes v. *School Dist. No. 1*, 303 F. Supp. 279 (D. Colo. 1969), stay vacated, 396 U.S. 1215, on remand, 303 F. Supp. 289 (D. Colo. 1969), 313 F. Supp. 61 and 90 (D. Colo. 1970), aff'd in part and rev'd in part, 445 F. 2d 990 (10th Cir. 1971). Note: U.S. Supreme Court has granted cert.

1. School board failed to transfer students from overcrowded white schools to nearby black schools where space was available.
2. School board rescinded resolutions designed to effect desegregation and then promulgated a resolution designed to restore the old segregated order.
3. Discriminatory assignment of teachers.
4. Discriminatory alteration of attendance boundary lines.
5. Discriminatory construction site selection for new schools.
6. Expansion of black schools to avoid having to transfer black students to white schools with space available.

LAS VEGAS

Kelly v. *Guinn*, F.2d (9th Cir. 1972).

1. Discriminatory construction site selection for elementary schools.
2. Discriminatory expansion of existing school to accommodate additional black students, rather than location of new school in an area that would produce an integrated student body.
3. Discriminatory assignment of teachers.
4. School board's closing of two predominantly white schools located on the fringe of the minority residential area.
5. School board's decision to continue a neighborhood school policy at the elementary level, which "patently furthered racial segregation."

MANHASSET

Blocker v. *Bd. of Education of Manhasset*, 226 F. Supp. 208 (E.D.N.Y. 1964), 229 F. Supp. 709 and 714 (E.D.N.Y. 1964).

1. Discriminatory drawing of attendance boundary lines.
2. Discriminatory application of strict no transfer policy, designed to perpetuate segregated schools.

NEW ROCHELLE

Taylor v. *Bd. of Education*, 191 F. Supp. 181 (S.D.N.Y.), appeal dismissed as premature, 288 F.2d 600 (2nd Cir. 1961), 195 F. Supp. 231, 294 F.2d 36 (2nd Cir. 1961), cert. denied, 368 U.S. 940 (1961).

1. Discriminatory drawing of attendance boundary lines.
2. Discriminatory application of free transfer policy, which resulted in white students transferring out of black schools.
3. Period of flexible application of neighborhood school policy (permissive transfers allowed), followed by strict application of neighborhood school policy once segregated schools had developed.

OXNARD

Soria v. *Oxnard School Dist. Ed. of Trustees*, 328 F. Supp. 155 (C.D. Cal. 1971).

1. Discriminatory application of open enrollment policies.
2. Discriminatory application of busing policies.
3. Discriminatory location of new schools.
4. Discriminatory placement of portable classrooms, and rescission of resolutions to relocate the portables.
5. Failure of the school board to adopt proposed integration plans.

PASADENA

Spangler v. *Pasadena Bd. of Education*, 311 F. Supp. 501 (C.D. Cal. 1970), intervention denied, 427 F.2d 1352 (9th Cir. 1970), cert. denied 402 U.S. 943 (1971).

1. Discriminatory drawing of attendance zones.
2. Discriminatory construction site location for new schools.
3. Discriminatory construction of additions to existing schools, without adjusting school enrollments to fit school capacities.

4. Previous desegregation plan adopted by the board was inadequate to meet Fourteenth Amendment requirements.

5. Discrimination in teacher hiring, assignment, and promotion policy and practice.

6. School board's failure to attempt to overcome the effects of residential segregation on student assignments, by board's adherence to strict neighborhood school policy and policy against cross-town busing, after segregated schools had already developed.

PONTIAC

Davis v. *School Bd. of Pontiac*, 309 F. Supp. 734 (E.D. Mich. 1970), aff'd 443 F.2d 573 (6th Cir. 1971), cert. denied, 92 S.Ct. 233 (1971).

1. Discriminatory drawing of attendance zones.
2. Discriminatory construction site selection for new schools.
3. Discriminatory hiring of teachers and administrators.
4. Discriminatory assignment of teachers and administrators.

SAN FRANCISCO

Johnson v. *San Francisco Unified School Dist.*,——, F. Supp.—— (N.D. Cal. (1971).

1. Construction of new schools and expansion of old schools in a discriminatory manner.

2. Drawing attendance zones so that racial mixture has been minimized; modification and adjustment of attendance zones so that racial separation is maintained.

3. Discriminatory assignment of teachers.

SOUTH HOLLAND

United States v. *School District 151*, 286 F. Supp. 786 (N.D. Ill.), aff'd 404 F.2d 1125 (7th Cir. 1968), on remand, 301 F. Supp. 201 (N.D. Ill. 1969), aff'd as modified, 432 F.2d 1147, cert. denied, 402 U.S. 943, 91 S.Ct. 1610, 29 L.Ed. 2d 111 (1971).

1. Discriminatory alteration of attendance boundary lines.
2. Discriminatory assignment and hiring of teachers.
3. Discriminatory construction site selection for new schools.
4. Discriminatory purpose and effect of busing policies; e.g., busing white students past nearby black schools.
5. School board's failure to "take affirmative steps to overcome the effects of past racial discrimination in the operation of [the school district]."

Mr. TAYLOR. Transportation is going to be required for some years to come whatever kind of facilities you are talking about. And, in the larger cities of the land, where blacks now constitute a majority of the school enrollment, unless we have the principles of metropolitan desegregation that have been applied recently in Richmond and Detroit, there is not going to be a meaningful possibility of integration for some time to come.

And so when we talk about foreclosing the possibility of busing, we are delaying integration or severely restricting it on an elementary school level. We are also foreclosing the possibility of integration for many years to come. And it does not matter what kind of a plan we are talking about, from the most modest type where children have the option to go from a school in which they are the majority to a school where they are in the minority, to a more elaborate plan for construction of new educational facilities such as educational parks.

I think the most shocking thing about the legislation that is before you is that no factual case has been made for it or even for the findings that are presented in the legislation itself.

The claim is made that the district courts have gone far beyond the Supreme Court. That is simply not true. The great bulk of the recent decisions has followed the principles of *Brown* and of *Green* v. *New Kent County, Holmes* v. *Alexander* and the cases that have followed *Brown.*

What has happened is that as segregation laws and policies have fallen, the courts have been impelled to examine the actions of school authorities and other governmental officials to determine what they have done for the process of segregation.

Contrary to the last witness' statement, I think it is clear on the record that New York State does not have a unitarian system. There have been holdings in the *Blocker* case in Manhassett and in the *New Rochelle* case that New York State, particularly districts in New York State, has been guilty of de jure segregation and that school officials have taken a course of action in the location of boundaries, in transfer policies, and in decisions locating new schools which has produced racial segregation. That is as violative of the Constitution of the United States as are the segregation laws in the Southern States.

Further, the courts have found on the basis of extensive evidence that school authorities have based their attendance zones upon patterns of housing segregation to which government has contributed to a very large degree, and this is true in both the North and South. I will not rehearse all of the proof for you, but it goes back to the housing practices of the 1930's and 1940's where the Federal Housing Administration said that it was assisting new suburbs, that you must have a homogeneous community, that you have to use racially restrictive covenants, and that you have got to use racially restrictive zoning laws in order to get a homogeneous community. And it is true today. It is true with respect to housing that has been built under the Housing and Urban Development Act of 1968. What is the administration's response to this detailed proof?

Three weeks after the President had pointed his accusing finger at Federal courts, in a brief filed in the *Richmond* case, in which I am cocounsel, the Department of Justice began its argument with the incredible statement that "We have not had the opportunity to scrutinize the record in this case."

If they had taken the trouble to examine the record, they would have discovered that what lies at the heart of this case, and other cases, is not a racial imbalance but a policy of racial containment that affects black people and that contains them in the city and leads them to the hopelessness of despair.

Further, there is no finding, and no support at all in the record for the suggestion that busing has caused substantial hardship, which is the finding that the administration would have you make in section 2 (a) (2) of H.R. 13916.

I am not going to burden the record further with all of the things you have heard about the costs of busing and about the fact that busing is a safe means of transportation. I do want to include a survey that our center conducted of busing time and distances in 14 districts.

We selected these districts to include a good many that the administration has relied on, or apparently relied on, for its claim of excessive busing.

The survey shows that in the 14 districts as a whole, the median average ride before implementation of the court decree was 20 minutes and the median average ride after implementation was 27 minutes.

There were, therefore, very small increases in the time and distance in busing involved in most of the districts that we looked at in this survey.

Even in the cases involving metropolitan relief, the logistics may not be very much more difficult, or may even be less difficult, than in a single district. In the *Richmond* case, what you would have, if Judge Merhige's order is upheld, is a school district of 104,000 public school pupils. The maximum time for any trip in five subdistricts created would be 45 minutes; in the sixth subdistrict, which is a rural portion of Chesterfield, it would be an hour. In this area, bus rides of an hour or more are common right now.

Further, there is no factual support in the record for the proposed findings that court orders requiring busing "have impinged on the educational process."

Mr. Polk. Mr. Taylor, we have recently received a communication from the Department of Justice regarding the points you are discussing. You have stated how it was quite critical to any argument sustaining the moratorium bill to indicate that there was, in fact, substantial hardship or there has been "impingement on the educational process" as a result of busing. The subcommittee requested such supporting factual information from the Department of Justice. The Department responded by letter citing the busing status of Jacksonville, Fla., Tampa, Fla., Augusta, Ga., Savannah, Ga., Nashville, Tenn., Corpus Christi, Tex., and Norfolk, Va. In its argument to indicate substantial hardships in the educational process and so forth, reference is made in these areas to only one factor—that more buses are needed. I added up the number of buses that are said to be needed. It comes to around 900. Could you comment on the fact 900 buses are needed? Do you think that that factor alone can make the case?

Mr. Taylor. I think it fails to make the case again. The number of buses has nothing to do with the educational process and whether it is impeded. If that were the case, then a district that used a lot of buses would be thought to have a serious educational problem and a district that used very few buses, that had walk-in schools, would be thought to have a splendid educational process. Now, we know in New York City, where I grew up, there is a significant educational problem in walk-in schools. It would be very interesting to see how the administration proposes to relate the number of buses being used to the educational process.

Mr. Polk. It seems there is some irony in the fact that adoption of the Ashbrook amendment might, in turn, create the context which is said to justify the moratorium bill.

Mr. Celler. Since reference was made to a communication received from the office of the Attorney General, signed by the Acting Attorney General Mr. Kleindienst, in response to questions put to him when he appeared before us, I read a typical paragraph from his letter dated May 15, 1972:

> The Subcommittee also requested information which evidenced the hardship to students, the impingement on the educational process, or the extensive cost to school districts resulting from compliance with desegregation decrees. Again the access of the Department to such information is somewhat limited.

Now, if information is somewhat limited, it is difficult to understand how the Attorney General could support the conclusions and findings contained in the proposed moratorium legislation.

Mr. Taylor. If members of the Department would only do what they say they have not done. That is, if they would only go to these districts and see what is happening, and if they would only read the records of the cases which they say they have not read, perhaps their access to information would improve significantly.

Let's return to the question of metropolitan integration plans. The first thing to note is that *Swann-* and *Richmond*-type plans offer the prospect of stable integration. The remedy involves the whole community. There are smaller numbers of disadvantaged children in any one school. This really increases the prospects that people will stay and make integration work.

Second, I think that metropolitan plans allocate the burden of change more equitably. It does not fall just on the white and black people in the inner city, but upon the more affluent people of suburbia as well. Of course, that is what is creating a great deal of the political stir, but I do think it is significant that in Detroit, Richmond, and Wilmington and other places where cases are now pending, white people have either been the intervenors or, as in the *Richmond* case, the school board has been the initiator on specifically these grounds.

So, I think if we do not panic as a nation and if we begin to look at what makes sense as a solution, the metropolitan idea may be one that ultimately defuses the conflict that now exists between blacks and whites in the central city.

Third, I think that metropolitan plans can increase, not decrease, the accountability of schools to parents and opportunities for community participation. That is true for blacks as well as whites because community participation is very important for blacks and, contrary to what the previous witness said, we have found black parents in many communities saying that, even though they have to travel, when their children go from segregated schools in the inner city to schools in the suburbs, they actually participate more in school affairs.

They also find that they have a greater influence over the course of the education of their children than they did in the segregated school in the ghetto. Some parents in Rochester made that point very specifically to me when the U.S. Commission on Civil Rights held hearings there a number of years ago.

I do not suggest in this discussion of remedies that there are any panaceas or that the problems are about to be solved.

It is true that many white parents are afraid of sending their children to innercity schools.

Mr. Polk. Mr. Taylor, with regard to the metropolitan plans, is it not true that restrictions against such plans may often lead to more busing rather than less?

Mr. Taylor. That is true, Mr. Polk. Hartford is a good example, where a case has been pending and has survived a motion to dismiss. All of the black and Puerto Rican children in Hartford live in the north end. If you were to have a plan restricted to the central city and you wanted to integrate, there would have to be busing through the care of the center city, through the commercial and industrial areas. But those black and Puerto Rican children are right next door to some suburbs in Hartford where the schools are exclusively white. If that district line were not a barrier, you would be able to integrate some of those schools without busing. You could pair them and do other things. So in some cases, and I think it may be a good many cases, you are correct that there would be less busing on the metropolitan basis.

Mr. POLK. I think you would find the same thing true in my home town of Cleveland, Ohio.

Mr. TAYLOR. Yes; from my familiarity with Cleveland I would think that the east Cleveland area of Hough and Glenville might very well be able to have a plan, a good sensible plan, that would integrate some of those schools with schools in the suburbs.

The question of racial violence in the school has been raised by the previous witness. I think a contributing factor is that children for the first time are put in a situation of integration at the high school level, a difficult age and often against the wishes of their parents. If you started at a much earlier level, as has been done in Pasadena and elsewhere, the likelihood of conflict will be reduced. But I realize that will not be a complete answer to parents.

It may also be feasible to integrate schools in many places without cross-busing but that will not meet the justifiable concerns of black people who say that one-way plans are patronizing to them and unfair to their children.

But after all this is said, the issue before the Congress comes down to this: Shall the effort be abandoned or postponed because it is difficult, or shall solutions be devised to assure that integration will be part of an overall effort to improve the quality of education for all children?

I think there are some solutions at hand. As the chairman mentioned, a provision of the emergency school aid bill that was reported out of conference does contain provisions for new educational facilities—educational parks or magnet schools—which would be accessible both to the suburbs and the central city. I think they could be a tool to improve the education of all children. It is ironic that the prospects for this kind of constructive legislation are being jeopardized by the anti-integration amendments.

The Federal Government could also make an investment in day care and early childhood education at the earliest level at which children can learn profitably. It could assume a greater share of the burden of financing public education. I do not need to say this to the members of this committee because much of this legislation has already passed the Congress in one form or another but has not become the law. Or we could take the other course and abandon the effort and if we do I think we will have an ample supply of rationalizations. We white people will tell ourselves that black people do not want integration and busing. But we know that what black people want is what all of us want—a good education for our children. We know black parents have made great sacrifices to obtain a good education. We know in our hearts that if black people ultimately reject an integrated society, it will be for one simple reason—because white society has rejected them.

We will tell ourselves also that the answer is really fiscal reform and the creation of "good schools" in the ghetto. But we know when we say this that we are no more prepared to establish a financing system for public education based on need than we are to integrate the schools.

So whether we call it "compensatory education" or something else, what we are really talking about is separate but unequal which has never worked.

Those of us here who are white and affluent and live in the suburbs and call ourselves liberal will know something else as well. We will know that those charges that we are "limousine liberals" are true and rather than make any sacrifices ourselves, we are ready to place the whole burden of social change upon the working class people, black and white, who live in the central city.

Mr. Chairman, I recognize that there is great pressure for the passage of some form of "antibusing" legislation. I think I appreciate the dilemma that a Congressman faces when he is asked to vote against the apparent wishes of a large number of his constitutents. And these pressures may not be diminished by the fact that they are stirred by demagogic appeals or that the legislation is of such a dubious constitutionality that the issue is bound to be back before this body again. If these pressures are too great, if the administration bills or the Broomfield amendment represent the temper of the times, it may be enacted into law.

Should that happen, obviously, life will go on. But there are certain things that we as a people should then be prepared to admit to ourselves. We will have to acknowledge that law is no longer a means of carrying out our highest goals and aspirations, but of expressing our worst fears and prejudices.

We will have to concede that the purpose of our public education system is not to educate our young people to full humanity, that it is not a moral as well as intellectual concern. We should also recognize that in the process of raising our children as flowers in a hothouse, shielding them from contact with children of other races and income groups, they may turn out to be ill-equipped to function in the racially hostile world that we, the parents, have created for them.

Finally, in candor, I think we will have to admit to ourselves and to our children that, as a people, we are mean-spirited, not generous; fearful and cautious, not courageous; callous, not compassionate.

That may be what happens but I hope that before Congress ultimately acts on this proposed legislation, it will take into account other facts of political life that are somewhat more hopeful.

It is a fact that major progress in school integration has been achieved in the South and in some places in the North, even in the face of massive resistance. It is a fact that racism has been on the decline in this country. And it is a fact that people have been willing to support a new brand of political leadership, very well exemplified by Governor Askew, of Florida, which encourages them to face their problems and solve them rather than to retreat into racism.

If Congress is prepared to act on this reality, there is no reason why we cannot redeem at last the promises of our Constitution and at the same time establish a system of public education that responds to the needs of all American citizens.

Thank you. That is my statement. I will be glad to answer any questions.

Mr. Celler. Your statement reflects deep knowledge of the subject. That is what we would expect according to the reputation you have made as one connected with the civil rights struggle. We appreciate your coming.

Thank you very much, sir.

Mr. Polk.

Mr. POLK. In the 1964 Civil Rights Act distinction was made between desegregation and overcoming racial imbalance. In the Swann case, Chief Justice Burger wrote that achieving a racial balance is not constitutionally required. In this context there enters the Broomfield amendment which I understand would stay transfer or transportation orders to achieve a racial balance. Nearby the Ashbrook-Green amendment again distinguishes between desegregation and overcoming racial imbalance.

In this context, how do you view the Broomfield amendment?

Mr. TAYLOR. As we noted earlier, I am not certain that is the actual language that came out of conference but let us assume that it is. It is absolutely true and a review of the cases show that almost no cases command an end to racial imbalance. All of them are predicated upon findings of discriminatory acts in which the Government has been involved and then it becomes a question of remedy. I think you are suggesting that the Broomfield amendment will not have any real impact on what the courts do. However, we ought to take into account the psychological effect of passing this kind of amendment because it comes out with a legislative history that is entirely unclear.

The courts will be compelled to grapple with it. They do feel under pressure and it does open the way to further kinds of restrictions by a legislative body. So, I think it ought to be revised. Perhaps it is some help to codify what would be harmful to health and education. But if the courts have been clear on this, as they have been, I do not know why it is necessary for the legislative body to take that kind of action.

Mr. POLK. In any case, would not the amendment clearly affect a situation like that in Athens, Ga., where the school board, after having been ordered to come up with a plan, came up with a racial-balance plan because it was more politically acceptable to the community? Although the court did not order it, the school board wanted to achieve racial balance.

Mr. TAYLOR. I think that is an important point. Often these plans have been devised by the school board and they may themselves characterize them incorrectly as plans to correct racial imbalance.

And again I would be concerned about the impact of legislation on a plan that the school board came up with and characterized as a racial balance plan, even though I may not characterize it as a racial balance plan. I agree that is a concern.

Mr. CELLER. Thank you, sir. Our next witnesses are T. M. Martin, Walter McDaniel, and Arthur Lynch, representing black parents and children of Charlotte, N.C.

STATEMENT OF ARTHUR LYNCH, T. M. MARTIN, AND WALTER McDANIEL, REPRESENTING BLACK PARENTS AND CHILDREN OF CHARLOTTE, N.C.

Mr. MARTIN. Mr. Chairman and members of the committe, we are indeed happy that you have allowed us this opportunity.

Mr. Arthur Lynch will read the statement.

Mr. LYNCH. Mr. Chairman, we speak today for the thousands of black children and parents of our city who have been working together during the past 2 years to make the desegregation of the Charlotte-Mecklenburg schools work. We are here to report that in our school system of 80,000 youngsters, integration, achieved in part through busing, is in fact working. We are also here to request Congress to permit our schools to continue to operate on a desegregated basis.

We did not easily achieve school desegregation in our community. Opposition to desegregation, led by our school board, resulted in much anguish, resentment, and popular confusion over what would be required to desegregate. All of the myths associated with busing and desegregation were successfully employed by the school board to encourage fierce community resistance. Nevertheless, the courts, including the Supreme Court, held firm and 2 years ago we were "forced" to bus some students to eliminate the former racial identities of our schools. Today the community as a whole is again concerned with traditional questions of educational quality. Only now it is white parents and black parents working together for common goals in their schools. The myths used to stir up resistance never became realities. While the myths may have disappeared in our community, they continue in others and have recently received a veneer of dignity and new vitality when the President collected them all together in his March 17, 1972, message to Congress.

While it is important to show that the myths simply have no foundation in fact, it is even more important to clearly understand what effect on the hearts and minds of black and white Americans even a small step backward in school desegregation will have. For the first time in our national experience black and white children are learning that they are supposed to work, play, and get along with one another. Because desegregation has been so long delayed, relationships are still fragile and did not come about without much effort by the children. Parents are also being brought together for the first time and those who make the effort are gaining a better understanding of one another. What has been achieved thus far is a reduction in the mutual fear blacks and whites have of one another. However, this, too, is tentative. If Congress were to enact legislation which would, in any way, permit schools to be resegregated or slow the pace of desegregation, it would again be telling blacks that they are unworthy of association with whites and again telling whites that they occupy a superior position in our society. This is not an overstatement.

Ordinary folk in our country understand laws which affect race relations as being an expression of the Nation's will for the benefit of either blacks or whites, but not both. Thus, it is not so much what right a law grants or denies that is important, but rather it is the mere public process of enactment that determines what we think of ourselves and others. Blacks are particularly sensitive to the law as an indicator of one's place in the social order. This is true, of course, because for so many generations the law virtually excluded the entire black race from citizenship. The law was, and frequently still is, the principal method of sustaining white supremacy. Stated differently, it was the law with which whites sought to impress deep and endurng marks of inferiority and degradation upon black Americans.

Therefore, it should be understood that the Supreme Court's 1954 decision in *Brown* vs. *Board of Education* means more to blacks than simply a chance to attend better schools. We read *Brown* to be a promise made by the Nation to its black citizens to remove the marks of degradation and inferiority inflicted upon us since the founding of our country. The promise of *Brown* is to "dismantle," "eliminate," and "eradicate" the prevailing racially dual system, not merely the school system, but the whole American system. It has been 18 years since the Nation made its promise and we are only now beginning to achieve substantial school desegregation. Nevertheless, during the past few years as desegregation progressed more rapidly, black Americans began to see the promise become a reality, at least in public schools. As the possibility for equal treatment and equal opportunity has increased, so has black pride. We blacks are now aware of ourselves as a people and we are proud. The level of expectation and aspiration among blacks has never been higher than it is tody. To affront this pride and destroy the expectation of equality would result in a reaction that would know no bonds. Thus, it is within this context of the law as an oppressor and the law as a promise of freedom that we grasp the true meaning of the pending measures designed to prevent or retard school desegregation.

We know, and indeed the Nation knows, that the proposed laws are not racially neutral but rather clearly antiblack, a national call to return to white supremacy sustained by law, a break of *Brown's* promise of equality. The substantive provisions of the proposed laws are basically irrelevant. It is the motive and intent of these laws that is our principal concern. What more could the Nation do to arouse race hate, create a feeling of distrust among the races, then enact laws which in fact proceed on the ground that black children are so inferior and degraded that racial integration in the public schools must be restricted. The effect of such legislation upon the hearts and minds of the black and white children would be profound. The fragile relationships between black and white children and parents formed slowly over the past few years would be destroyed and again replaced with mutual fear and racial hate. Desegregation would cease to really work even in those schools in which blacks and whites attended together. The will and desire to get along together would be legislated out of existence.

Therefore, we urge Congress to enact no laws which in any way retards school desegregation. The courts must be left free to use all workable and feasible methods to direct effective desegregation in those school systems which have illegally set black and white children apart from one another.

The courts have not employed "extreme" measures in requiring school desegregation. This is merely one of the myths used by segregationists to cloud the issue. Other myths so employed include:

1. School districts are being subjected to massive busing.
2. Transporting elementary school children is unsafe and harmful to their health.
3. Some school districts are being required to bear an unequal burden.
4. Costs of busing prohibits school districts from adequately funding their instructional programs.

5. Children must be transported substantially longer distances requiring additional hours of travel.

From our experience in Charlotte-eMcklenburg we know that none of these myths have any foundation in fact.

In our school system seven-tenths of 1 percent of the school budget is devoted to paying transportation costs incurred as a result of desegregation. It is impossible to believe that if this sum were added to the instructional program we would obtain a substantially better program than we now have. In our school system, transporting elementary school children has not proved unsafe or harmful to their health. Indeed, the accident rate for children transported to school is less than one-half of the accident rate for children who walk to school. In our school system desegregation has resulted in a substantial reduction of the average distances children are bused and the time spent in transit. Finally, our community has not been subjected to massive busing. Admittedly the number of children being transported to school has increased, but our system transports approximately 20 percent less than the State average. Incidentally, our school board has chosen to transport more children than necessary to accomplish desegregation. It has chosen to abandon the plan directed by the court and has adopted a plan of school organization designed to minimize the effect of desegregation on affluent white suburbs.

As a result several hundred additional children in the poorer white and black neighborhoods must be transported. Even so, the extent of busing in our community cannot fairly be characterized as "massive."

We do not say that because desegregation, achieved in part through busing, has worked in our community that it will work everywhere. The fact that busing may prove to be infeasible in other more complex school systems, however, is no reason to resegregate the black children of Charlotte-Mecklenburg. One of the more frequent segregationist myths in our community was that Charlotte-Mecklenburg was being singled out to bear an unfair and unequal burden. This was and is nonsense. Today, it is the obligation of all school boards, North and South, who have been operating illegally segregated schools to eradicate all vestiges of the dual school system. This is the promise of *Brown* and it applies nationwide. The promise cannot be broken merely because different techniques are needed in different school systems in order to desegregate.

Because different school districts do require different techniques in order to dismantle the prevailing dual systems, it is crucial that the courts and local school boards continue to have the power to use all workable and feasible methods to desegregate. Any limitation on this power would be completely arbitrary and patently racially motivated.

In our community and similar communities elsewhere, it is clearly feasible and workable to desegregate and to use busing as one tool to accomplish this goal. Give this basic fact, the only reasonable inference we can draw from all of the proposed laws is that the Nation is once again seeking to effectively prohibit black children from attending school with white children and to impress anew the historical marks of desegregation and inferiority upon yet another generation of black children.

Thus, the question before this Congress is simply: Shall the Nation keep its promise in *Brown*, shall we blacks at last be made free and equal to our countrymen?

Thank you.

Mr. CELLER. That is an excellent statement.

What is your position, Mr. Martin?

Mr. MARTIN. I am with Project Hope, a community grant program but now associated with EEO. Mr. McDaniel, on my right, is a civil engineer. Mr. Arthur Lynch, of course, you heard him.

Mr. CELLER. Mr. Lynch, what is your calling?

Mr. LYNCH. I am a community specialist for Progress for Economic Development.

Mr. CELLER. Thank you very much, gentlemen. We appreciate your coming.

Mr. LYNCH. Thank you.

Mr. MARTIN. Thank you.

Mr. CELLER. Our next witness this morning is Mr. Casey Jenkins, Concerned Parents Association, Nashville, Tenn.

STATEMENT OF CASEY JENKINS, CONCERNED PARENTS ASSOCIATION, ACCOMPANIED BY PAT NICHOL, ESQ.

Mr. JENKINS. This is Mr. Pat Nichol, who is attorney for Concerned Parents Association, with me today.

Mr. Chairman and members of the committee, we are here to say that court-ordered busing does not work. We are from Nashville, Tenn., which has a unified government, a metropolitan form of government, a county-city. It is one of the first of this type of governments in America. We do not have the old county-city lines as has some of the cities today.

It being a unified form of government, when the HEW came to Nashville, they did not find one segregated facility and they could not find one line, one school line that was drawn for the purpose of creating segregation.

Since court-ordered busing has passed there and since it is a big part of our everyday living at this point, it has adversely affected the lives of almost every person in the city and is risking the lives of almost 50,000 students daily.

Eight thousand students have left our school system this year.

From the projected number that we had at the beginning of the year, some 12,000 students have left the school system. Absenteeism is unbelievable in Nashville. Classes have been cut short and recently our local board of education had a waiver from the State because of the number of hours spent in the classroom. Court-ordered busing has completely destroyed our PTA in that city. I mentioned earlier that it is a unified form of government. You might make a note that the longest distance for a child to be bused is 27 miles. Some children spend as many as 3 hours per day on a bus. PTA groups, as I mentioned, had literally been destroyed. Some 48 PTAs did not even function this year in the city of Nashville, metropolitan Davidson County.

Men's clubs no longer exist. Boy Scout troops are on the decline. Parents no longer consult with teachers about problems of their children. After-school activities are a thing of the past because some people are 13 or 14 miles from home and they have no other way to get there.

Of course, we were not prepared for the court-ordered busing and even if we had been, we would still have many of the problems.

We have staggered bus schedules. Some children leave home at 5:45 a.m. for the 7 a.m. first session of school. Others leave home at 9 in the morning for the 10 a.m. session and those who leave early, an hour's time being the difference between Washington and Nashville—those children leave in the dark.

They stand on the corners in the dark waiting for busing. They will arrive home in the evening after dark from the 10 a.m. session of schools.

We have as many as five or six buses on the busy expressways many times just waiting in the afternoon and morning traffic which you are familiar with in Washington.

Sometimes buses never come. One morning—which is a matter of record and I hope you have the newspaper clipping as reference—15,000 children—15,000—were left standing waiting for buses for some 3 extra hours.

Mothers in Nashville have quit their jobs because, in some cases they have four children and those children leave at staggered times during the morning for four different schools so you can understand why PTAs are on the decline now.

Welfare rolls have increased because many of these mothers have gone on welfare because they can no longer work. People are being bused. Children are being bused, 6 more million per year in Nashville, Tenn., as I mentioned earlier.

There are no after-school activities. Less time for study, no instruction and spending more time on the bus that they should spend in the classroom.

The money being spent for buses we feel should be spent for education—hundreds of teachers this year were laid off. Parents have withdrawn their support and only 8,000 who did not show this year and some 12,000 as projected would be some 24,000 parents who are no longer associated with the school system there.

Teachers have become babysitters and they are more involved in trying to keep order there now than teaching.

And discipline, the discipline problems are unbelievable. There is cursing, fighting, property destruction, molesting, thievery, and general disorder in the school. Before this year we did not have one policeman in the schools in Nashville, Tenn.

Almost every school in Nashville today has policemen and the girls who have been dressing as ladies in the past can no longer dress as ladies. They have been advised by the board of education to wear pants because of what happens in the halls. Violence is unbelievable there and we have affidavits that we will make part of the record and I would like to cite two or three of those cases to you at this time.

To show you the effects that this has had on the board of education which has tried to make it work and has tried to keep all of the incidents a secret and it is impossible to do that.

In one particular instance at Glen Cliff High School a young lady—that high school being one of the high schools in the predominantly white community—was molested in the hallway by seven blacks. She was molested and when she finally broke loose from the blacks, she being the only one and it happened on the stairway when they got to the teacher and told the teacher what had happened, the teacher told her it would do no good to report it to the principal or to the board of education because these incidents were happening daily.

We instituted a suit against the general disorders there. The Concerned Parents Association, and Better Education Association of Tennessee, of which I also have the privilege of serving as president. The suit was stopped by the Federal courts because it was going to involve and bring to light many of these instances and general disorders in the schools there.

We hope we will have our day in court in time to come. If the goal was to allow unruly and undisciplined children to observe and associate with the higher standards and imitate them, it has completely failed there.

One other instance I might mention to show you how the school board feels. There was a boy with a nose broken three times. The teacher, the principal, was threatened and he was asked not to report the incident and the people threatened the boy and asked him not to report the incident.

But the boy could not call his parents at home. When he got home, his parents took him to the doctor and his nose was broken three times and they could not even set the nose until the boy was 18 years old but they tried to hide these things and we have a composite school there.

We were written up as one of the schools that had done very much as far as desegregation is concerned in the city.

We had a new composite school built for 3,000 students this year and until all of the incidents came to light at that school, many of the parents would not sign affidavits and we could not do anything because the school board would not release any statements and would not talk about any of the incidents that had happened there.

Busing has completely polarized the races there. In the past I do not think a person there noticed whether a man was black or white or whether the child was black or whether he was white. But today because 50,000 students have been forced to go somewhere against their will, then people are more conscious than ever about the color of a person's skin.

They resent big government from taking over and coming in and telling their children what they can do and what they cannot do.

The rich escape from this. The poor really do not become concerned enough. I think they really cannot but the middle class is trapped and, of course, we support the constitutional amendment.

Ninety percent of Nashville and Tennessee went to the polls on May 4 and expressed their desire for the passage of the constitutional amendment. Eighty percent of the people have said it is wrong, and those are black and white.

We feel that the constitutional amendment could be the answer. I think Florida voted some 70 percent—other cases, I think Texas voted 70 or 80 percent. People all over America are concerned about this problem. I hope you will give us an opportunity and give our legislators an opportunity to cast their votes whether or not we should have court ordered busing.

Thank you.

(The prepared statement of Mr. Jenkins follows:)

STATEMENT FROM CASEY JENKINS—NASHVILLE, TENN.

(Submitted on behalf of the Concerned Parents Association)

Court ordered busing is destroying our school system in Nashville, Tennessee. It has adversely affected the lives of almost every citizen in our community and is unnecessarily risking the lives of almost 50,000 students daily.

What have been the results?

1. *Destruction of the family structure.*—Because of geographic distances involved and fear of physical harm the school is no longer the social and interest center for the family. Social events have been completely terminated in the public schools of Nashville. Athletic events have been seriously hampered and ultimately will be at an end. Many P.T.A.'s have disbanded and others are on the brink of collapse. Men's groups, who used to provide thousands of dollars of extra equipment for schools, no longer exist. Because of bus schedules, after school activities have been cut out by thousands of children. Scout troops are on the decrease. Parents no longer consult with teachers about the problems of their children. The children and parents are growing apart. The list is endless.

2. *Staggered bus schedules create hardships.*—We operate on staggered school hours. The first school open at 7:00 A.M. which means some children are standing on street corners at 5:45 A.M. or 1½ hours before daylight. The last group of school children begin the school day at 10:00 A.M. and finish at 5:00 P.M. This is after sundown. These are elementary school children who are (1) walking home after dark if they do not live in excess of 1½ miles from the school grounds, and (2) riding buses half way across town after dark and being let out on a street corner no further than 1½ miles from their homes, and (3) in some instances, waiting in vain at a school, far from home, in the darkness, for a school bus which never arrives. The first cold spell in Nashville this year resulted in some 60 school buses breaking down. Over 15,000 children were left standing at bus stops for three extra hours. For the working mothers who are the sole support of their families and whose elementary school child starts the school day at 10:30 A.M. is indeed in an insoluble plight of momentous proportions. She can leave her young child (children) alone, unattended for hours after she leaves for work in the morning. This is not only dangerous, it is, of course, illegal; or she can quit her job and go on welfare. She can resign as a taxpayer and join the ranks of those on the receiving end. These are her choices. Is this where we want middle-class America, the backbone of our economy and our Country? On the receiving end of a welfare check?

3. *Children have lost interest in learning.*—There has been an immense decrease in available courses, qualified instructors, time spent in instruction, time actually spent in class rooms, field trips, home work and motivation for superior or even average achievement. This has produced lethargy in the children.

4. *The goal of quality education for all, rather than being achieved, has resulted in mediocrity for all.*—Money that is needed for education is now being used for transportation. The better teachers and students are leaving the public school system. Approximately 8,000 students left the Nashville School System at the beginning of the 1971 school year. It is undisputed that practically without exception these were the maximum achievers. This has, of course, resulted in approximately 16,000 parents withdrawing their support of public education. It is also undisputed that these are the parents that had the most interest in their children and the ability and means of helping the schools the most. Hundreds of teachers have left the system for private schools or other employment. These are the teachers who taught for the love of teaching and have been willing to sacrifice financially in order to enjoy a proper teaching environment. Ask any teacher in the Nashville public school system, black or white, about class room conditions and you will be told "we are no longer teachers, we are high paid babysitters more involved in trying to keep order than in teaching. We cannot teach and thus the children cannot learn."

5. *A complete breakdown of discipline in the schools.*—Regardless of the history of the situation, it is a fact that there is a vast difference in the mores, morals, interests, behavior patterns, physical appetites, language, family structure and aptitudes of not only the races but of different economic classes. Forcing children with these differences into close association has produced chaos in the

public schools. Cursing, fighting, property destruction, molesting, thievery and general disorder has become a daily occurance in the public schools of Nashville. If the goal was to allow the unruly and undisciplined child to observe and associate with those of higher standards and thus imitate them, it has been a total failure. Just the opposite has occured. The heretofore disciplined child in the public schools is now contributing to the problems. The instances of the police having to be called to the schools and stationed at the schools are too numerous to detail. This was unheard of in Nashville in any schools prior to this school year.

6. *Busing has increased the belief that the minority race is inferior.*—The court order requiring forced association of the races is itself a message to the people, black and white, that the blacks cannot learn to achieve if left isolated in their own culture. It says to the blacks, "your teachers are inferior, your parents are inferior and you are inferior and you can only learn if you are forced into white schools with white teachers." It says to the whites, "your teachers are superior, your parents are superior, and the blacks can only learn from association with you." That is the only logical reason that can be deduced from such an order. But the facts do not support the theory. The only equalization that has occured has been to bring those with the ability to achieve down to the lower level, with the attendant knowledge that there is a vast difference. There is no evidence that forced association has improved the learning ability or desire of the minority child. If anything, it has produced a heightened degree of bitterness and frustration.

7. *Busing has further separated the people from the government.*—If members of Congress think that the American people believe that their government is working in their best interest, then they are sadly mistaken. So-called middle class people of this Country have always been its backbone. Destroy their motivations or their support of the government and this Country is through. They produce, pay taxes, raise their families and heretofore have supported governmental actions even when those actions were wrong. Their inherent motivation has always been to provide order and well being for their children. Forced busing robs them of this motivation. It says to them, "why work, your children are not going to be allowed to enjoy the fruits of your labor" and it says to the child, "why learn, your increased earnings will not benefit you anyway." The middle class feels trapped. The poor don't care and the rich escape. The middle class feels bitter and frustrated and it is only an engrained spirit of law and order that is keeping them from erupting. No one knows how long this restraint will prevail. Big government has now reached into their homes and taken their children away from them. They will soon realize that to effect a change, they will have to do away with big government, one way or the other. They will soon return to the belief of our founding fathers that "the essence of freedom is the limitation of government."

These are but some of the reasons why I support a constitutional amendment or any other form of legislation which would prohibit the government from forcibly busing our children out of their neighborhood schools for any reason. Not being a lawyer, I will leave the discussion of law and the constitution to others. Frankly, I do not believe that Congress or the Federal Courts are any longer interested in the legality of their actions. I do believe that, if you are made aware that forced busing may well be the extra pound that broke the government's back, you would stop it. The middle class is being hurt by inflation, high taxes and other actions by their government which takes the fruits of their labor. If you take their children by forced busing, you will have destroyed them and the greatest system of government in the history of civilization.

Mr. CELLER. Thank you very much, Mr. Jenkins.

We will include in the record at this point the following statements:

A statement of Catholic Interracial Council of Detroit, Mich.

A statement of Concerned Citizens of Harrisburg, Pa., affiliated with Unified Concerned Citizens of America.

A statement of religious leaders on Anti-Integration Proposals submitted by the National Council of the Churches of Christ.

(The statements referred to follow:)

CATHOLIC INTERRACIAL COUNCIL OF DETROIT,
Detroit, Mich., May 10, 1972.

DEAR CONGRESSMAN CELLER: At the Communion Breakfast of the Catholic Interracial Council, Sunday, April 30, at Our Lady Queen of Peace, Harper Woods, members of the Council signed a petition "opposing any constitutional amendment to prohibit busing for the reason that it would demean and diminish the Constitution and publicly declare a retreat from constitutional principles."

The Council represents a cross section of people living in the city and the suburbs of Detroit. We feel that it is significant that so many would want to sign this petition at this time. Since a neighboring Detroit suburb, Warren, has received so much publicity, we would like to call your attention to the action taken by other people in the Detroit area.

Sincerely,

MARIE ORESTI, *President.*

(Note: Names of signers of petition are retained in Committee files.)

HOW FORCED BUSING HAS DESTROYED HARRSISBURG

Submitted by: Concerned Citizens of Harrisburg, Harrisburg, Pennsylvania (Affiliated with Unified Concerned Citizens of America).

We want this report to be made part of the testimony which has been gathered by this Committee during hearings which were scheduled to begin March 1, 1972 regarding H.J. Res. 620, the Constitutional Amendment introduced by Norman F. Lent, Representative from New York.

It is imperative that this Bill be released from Committee, as we, and millions of other citizens, believe that only through this Amendment (to prohibit the Forced Busing of children to achieve racial balance)—can we preserve the educational system of the public schools. Forced busing is dictatorship—usurping the rights of parents to decide where their children shall go to school. Freedom of choice is the American way, and this what we must fight to preserve.

Since we did request an opportunity to testify before your Committee at these hearings and we have not been called to do so, we are submitting this report as our testimony. Therefore, please do give our report your most thoughtful consideration—as it is our testimony that—forced busing has destroyed Harrisburg.

BACKGROUND INFORMATION

Until September, 1970, Harrisburg Public Schools were Neighborhood Schools—a Unitary system, never segregated. In 1968, the Pennsylvania Human Relations Commission mandated our School District to "desegregate". After submitting several plans for approximately two years to the Human Relations Commission, they accepted the present Plan. In May, 1970, our School District officials adopted the Plan to be implemented in September, 1970. We are in the second year of its existence—and these have been two years of horrible experiences for most of the school children, parents, teachers, and concerned citizens.

The plan now in operation involved a complete re-organization of all the schools—wiping out all possibility of Neighborhood Schools—requiring massive, cross-city busing of children (approximately 60%). Description of the chaos and monumental problems it created is in the main body of this report.

PURPOSE OF OUR TESTIMONY

Although it might be too late to save Harrisburg, Pennsylvania, we want to try to save other school districts from facing the same disaster, to keep little children from being uprooted from the security of their Neighborhoods.

OPPOSITION TO THE FORCED BUSING

The opposition was massive. It was made up of blacks and whites, students and teachers, parents and citizens. This was shown by approximately 10,000 signatures on petitions opposing Forced Busing.

The opposition began 4 years ago—resulting in stormy sessions with the Human Relations Commission first, and then with the School Board. Neither Governor Shafer nor Governor Shapp would let us talk to them. Our State Representative listened to our pleas for help several times, agreed with much of our opposition, but said he could not support us publicly. We informed Senator Schweiker and Herman Schneebeli of the conditions in Harrisburg.

Concerned Citizens of Harrisburg asked the Dauphin County Court for an Injunction against the Plan so that a full hearing could be held to present all the facts to the Court. The Court denied us this hearing; we appealed to the Pennsylvania Supreme Court who also denied us the right to a hearing. (Decision handed down 4/21/72—Case was argued before them in January, 1971.) Justice delayed is justice denied. We intend to appeal to the U.S. Supreme Court.

RESULTS OF THE FORCED BUSING

THE TAX BASE IS DESTROYED

From June, 1970 to the present time, parents have been putting their children in other schools. Those who could afford to move out of Harrisburg did. This is still going on and it will continue until Harrisburg will have left only the very poor—black and white who are financially trapped and can't get out.

When the highest taxpayers moved out, many businesses soon followed them and they will continue to leave. Many businesses are only waiting for their present leases to run out and then they will be gone, too.

When we told the School Board this would happen, James Rowland, Sr., then President of the School Board said, "Right or wrong, good or bad, this (forced busing) is the way it is going to be." Benjamin Lowengard, now President of the School Board, said that maybe it would mean an exodus of the taxpayers, but . . . . (and he just shrugged his shoulders). Even while the decision was still pending in the State Supreme Court, Mr. Rowland said repeatedly that no matter what we said or did, busing was here to stay and there was nothing we could do about it.

FORCED BUSING DID NOT ACHIEVE RACIAL BALANCE

Before Forced Busing, the ratio of whites to blacks was approximately 60% white to 40% black. Now the ratio is approximately 65% to 35% white. It is estimated that by September, 1972, the ratio will be at least 70% black to 30% white.

Examples of lack of Racial Balance in Classrooms: (1) In one homeroom, there are 2 whites and 28 blacks. (2) In one gym class—made up of 5 regular classes, there are 5 whites and the rest are black. (3) Many parents tell of 3 or 4 whites in classes otherwise all black; of 3 or 4 blacks in classes otherwise all white.

DETERIORATION IN QUALITY EDUCATION

Before Forced Busing began, the quality of education was only fair at best. Children who transferred to other areas had to receive special help to catch up to their grade level in their new school. Now the quality of education has deteriorated even further.

Example: One family who moved out of Harrisburg found that all the children were at least a grade behind the same grade level of the new school as the grade level they had left. This same family then had to move back to Harrisburg and the children were bored in school because they had already learned what they were now being taught in Harrisburg a year later.

SOME SPECIFIC INSTANCES OF THE EFFECT OF FORCED BUSING ON EDUCATION

1. Between June, 1970 and September, 1970, many of the best teachers left the Harrisburg Schools and they told the students it was due to their opposition to the new plan.

2. Many of the teachers who remained begged Concerned Citizens of Harrisburg to visit all the schools and see for themselves the deterioration. They also begged us not to reveal their names.

3. Many of our older good teachers still here are those who have just a few years left before retiring, and due to the over-supply of teacher now, they are afraid to compete for the jobs with the younger, "just graduated" teacher.

4. Some teachers are visibly nervous—even having nervous breakdowns and being told by doctors not to return to these schools. Due to their emotional condi-

tion, they are using poor judgment in disciplining children, such as brute force in situations not requiring it; unfairness in settling disputes between students, such as punishing the innocent or punishing only one student when both are obviously guilty

5. Now many of the teachers are young, inexperienced—unable to cope with beginning teaching plus the chaos and problems of the busing program. Even with the help of aides in their rooms, they need more help—are seeking the help of parents even those who have little education themselves and no training or experience.

6. Students' schedules are very unbalanced—numerous study periods, more art, music, gym than academic subjects; even watching cartoons a couple periods each morning.

7. Teachers have told parents they were told that if they somehow just get through the year, that will be an accomplishment in itself even if the students did not learn much.

8. Standards have been lowered. One teacher was told not to be so tough on her typing students. As long as they know where the keys are, pass them. An aide told a parent the children did not have to do anything they did not want to do.

9. Some High School students have been told by their teachers that they have been undertaught in general.

10. The heterogeneous groupings have resulted in frustrated teachers and students. The fast and average learners are bored because they must listen to so much repetition and must advance so slowly for the sake of the slow learners. Or the slow and average learners are frustrated and give up because they cannot grasp the material at such a fast pace as the fast learners—resulting in little or no learning for anyone—and in the development of behaviour problems. It is always the majority of students—the average learners—who are cheated of any education because they are always caught in the middle.

Example: Fast learner was criticized by a teacher in the third quarter of the year for not participating in class. When asked by his parents for the reason, he said, "Why should I? We're going over the same problems we had in the first quarter." That student is now in a private school at a great financial sacrifice to his family.

11. Students cut classes at will, roam the halls, the streets, or go home. Parents are not informed until as long as 43 days of such absences, if at all. One teacher asked a parent, "How can you teach them if you can't get them in the classroom?"

12. Dr. Porter, Superintendent, was asked if he could get a quality education in the Harrisburg Schools as they existed today. He said, "No", and walked away.

NOTE: School District has come up with a special testing program. (Cost—approximately $50,000, to Research for Better Schools.) Testing is to measure the students in some way only as it applies to the Harrisburg situation. Why? Will these students be given any special test "in a Harrisburg situation *only*" when they apply for jobs?

Urgent need.—Evaluate the Harrisburg Public Schools now. Test *all* the pupils in the School District (not just some pre-arranged sampling of the best students). Testing should be by national standardized tests.

This testing and evaluation should be done by no one even vaguely connected with the School District, Education Department, Human Relations Commission, etc. Parents should know just where these schools stand—how they are rated nationally.

FORCED BUSING IS DETRIMENTAL TO THE HEALTH, WELFARE AND SAFETY OF THE CHILDREN

This is the largest single factor for opposition to Forced Busing. Items enumerated under this category are like a malignant cancer that keeps growing larger every time you look at it. They are so many in number and so far-reaching that it is a horrible monstrosity.

Even if this were the only reason for opposition to Forced Busing, it would be reason enough to stop all Forced Busing now. Not even one child should have to suffer these consequences just to satisfy some pre-conceived quota of skin colors, which has been proved to be artificial and meaningless.

Just the major factors in this category include the following:

1. Many children suffer emotionally from being uprooted from the security of their neighborhoods, big brothers and sisters, friends. Children do need the emotional security of being close to home, etc. This is one of the most simple

and fundamental facts of psychology. It is a criminal offense to deprive children of this need.

2. Many children are now taking nerve medicine, receiving mental and emotional counseling, having recurrent nightmares due to the traumatic experience of being torn from their closest friends, etc., as indicated in #1 above.

3. Even the very strong children and those who always loved school before are becoming sick in the morning—when they know it is a school day. Now they plead not to have to go to school—whereas they used to beg to go to school even when really sick.

4. Some small children have been lost for hours because they were left off at the wrong stop even though they wore identification tags. Parents waiting for them at the correct stop have been frantic.

5. Some little children have been seriously hurt by being struck by cars—5 year olds walking alone at dangerous intersections with no crossing guard. One 5 year old was horribly cut open from the top of the chest to the mouth when struck by a car—in the presence of her 4 year old sister. Just imagine that traumatic experience for your 2 little girls—the agony that family endured. Even after that, a crossing guard was not immediately stationed at that intersection.

A 5 year old boy (under similar circumstances) suffered a severe head injury, which kept him unconscious for several days. The outcome of this case is not known because the mother did not want to talk to us about it.

One bystander pulled a very small child out from in front of the back wheels of a bus that was just pulling out. What if that bystander had not been there? There was no monitor there as so faithfully promised by the School District officials.

Others hit by cars enroute to or from school under similar circumstances have suffered broken legs. We know of a few others; surely there must be others we don't know of.

6. Some children with special medical problems (epilepsy, heart conditions, asthma, etc.) have been refused admission to the school closest to their homes, even on their Dr's recommendation—causing special hazard to these children and undue anguish to the parents who had to work, but who could arrange for a neighbor to fill in for them if the school were not so far away.

7. Children are suffering from chronic fatigue due to their longer days on buses and on foot.

8. In all kinds of inclement weather, children must wait for long periods of time at bus stops—sometimes up to 2 hrs—and then, sometimes the buses don't come at all.

9. In our last heavy snow (Feb.), many bus stop areas were not cleared. Children arrived at school soaked, and stayed that way. With Neighborhood Schools, they would not have been so soaked, and if they had, the teacher could have sent them home to change.

10. Parents cannot get to children quickly in case of emergencies. In a family with one child in 1st grade, one in 4th grade, and one in 6th grade, these children may be in 3 different sections of the city—quite removed from each other. Many parents don't have cars, do have to work, or have smaller children at home.

Promise by School District "to care for children as if they were their own" has not been kept. This is true of injured children and children who become sick during the day.

11. Morals and standards have deteriorated. Little children come home with vocabularies beneath the dignity of their home background.

12. Family conflicts are increasing. Children are bringing into the home the disruptive behaviour by which they are surrounded all day, accepting it as normal, making it more difficult for the parents to control them.

13. Family unity and Neighborhood unity is being destroyed. The older brothers and sisters cannot look out for the little ones going to and from school in the morning, for lunch, and after school. Children within the neighborhood can no longer feel the unity of belonging to the same school, sharing experiences they had with the same teacher, etc. These are stabilizing influences in the lives of children which have been wiped out.

14. Bus drivers have been assaulted by the older children.

15. There have been many accidents with buses, sometimes loaded with children. Some of the drivers are not competent—they take chances in traffic, they drift through stop signs. Bus drivers are becoming harder to find, making it neces-

sary to hire almost anyone they can get. Bus drivers tell us that next year it will be even worse.

16. Children must walk up to 1½ miles, each way, through unfamiliar neighborhoods (and many times, not as safe as their own) ALONE—without brothers or sisters, or friends. They are cut off from this companionship and this security. Yet, some school officials have refused to walk these same routes alone.

17. School district officials definitely are not providing protection promised to children—bus monitors, crossing guards, care in case of illness. Monitors are seen sitting in the first seat behind the bus driver, facing front. In this way, they can ALWAYS say truthfully that they didn't see anything happen on the buses.

18. Lunches have been unfit and inadequate. Elementary children never have hot lunches. Lunches have been served to children spoiled, frozen, with roaches in them. So, more and more children take their lunches.

With neighborhood schools, at least some children could have hot appetizing lunches, and a welcome break in the day. Many parents even enjoyed having their children come home for lunch.

With this plan, children are kept away from the stabilizing influence of their homes and families for longer periods of time. Children and parents do not like this.

19. Racial polarization has been increased due to this "plan". (a) The resentment and hostility of the children at being forced out of their neighborhoods into strange ones "for a set number of hours each day"—determined by only offiicals—is released on the children around them. One Negro mother said of a school in a predominantly white neighborhood that it was like a powder keg ready to explode at any minute. (This school is now predominantly black because the white children are bused out, and the black bused in.)

(b) There are so many physical attacks, harassment, initimidataing, etc., that children are beginning to accept this type of thing as the "normal".

Some children are learning to carry rocks in their pockets, hat pins under their lapels, and how to use them most effectively, if attacked—especially little girls.

Long friendship between blacks and whites have been destroyed because of the harrassment of some black children toward other black children. Example: One child had to beat up her best friend, or be beaten by those doing the harrassing.

20. Sports, bands, extra-curricular activities have been greatly curtailed. Since the two high schools have been consolidated and the two junior high schools consolidated, this has decreased the number of students who could participate. In the Junior High School (now called Middle School) competitive sports has been eliminated and the two marching bands have been cut out. In the Sr. H.S., of course there is only one band. (School Dist. story is much different, but they whitewash the truth—even with incorrect figures.)

21. Parent-school contracts have been destroyed. When it is possible that one family may have children in six (6) different schools—all in different sections of the city, it is humanly impossible for a parent to have close interaction with each of those schools. The rift between the home and the school is now like a chasm.

In neighborhood schools, this was not so. There was a close bond between the homes and the schools. Teachers knew brothers and sisters which made them feel closer to them, more concerned about the family problems. There was a strong binding continuity that overnight was wiped out—probably never to be regained. What a loss!

22. It has created undue hardships and extra burdens on parents. Many parents had too many burdens before Forced Busing, without creating more such as the following:

a. Without the protection promised by the School District, many parents now have the responsibility of getting their children to and from school.

b. Due to the above, they arrive at their jobs overwhelmingly frustrated, worried, overly tired—and thus less effective on their jobs than they should be.

c. Due to the above, parents are suffering from over-fatigue, nervous exhaustion—becoming more irritable and impatient—at a time when their children need their understanding more than ever.

d. Sometimes fathers work 2 and even 3 jobs now—to pay for the "unseen" costs of Forced Busing—the warmer clothing, extra medical bills due to the children's illnesses caused by the long walks and the long waits in the most inclement weather, the school supplies which are no longer provided by the School Dist.

e. Some parents have even almost gone "beserk" and physically attacked monitors, etc., due to the constant, never ending problems or due to being given the "run-around" by the school officials repeatedly. It is more than any human mind and body can take.

f. Some parents have had to pay heavy fines because their children were not in school even though parents did not know they were not in school due to negligence on the part of the schools. (More about this under "Gestapo Tactics".

FINANCIAL COST OF THE FORCED BUSING

It is doubtful that the people in Harrisburg will ever know the actual cost in dollars and cents. When the School District officials have been asked for the cost of such items as the printing of their fabulous publicity concerning the success of this plan, the lack of opposition by the public, etc., no one knew who did the printing or how much it cost.

For the first year (1970–71) the cost was at least $1,200,000. (At our first hearing requesting an injunction against this plan, the Supt. said the cost would be approximately $158,000.) The cost for this year will be about the same as for the first year.

Some of the items included are: $90.000 for the Consultants who came up with the Plan; $40,000 for the building used to house the vo-tech taken out of one of the High Schools; $80.000 for renovation of one school; $48.475 for the renovation of 2 other schools; $400.000 for the closed school lunch program; $450,000 for the buses, monitors, crossing guards; unknowns are: cost of publicity, computers, mailing (postage), legal fees, extra clerical help, a large number of new administrative positions at very high salaries, consultants fees for studies at extremely high costs, etc., etc., etc.

FALSE INFORMATION RELEASED BY DISTRICT OFFICIALS

The favorable publicity released by the School District, the Dept. of Education, the Human Relations Commission, the Governor, or anyone else—concerning the successful implementation of the Reorganization of the Harrisburg schools—is made up of half truths, twisted truths, and/or lies.

In every instance of this publicity that we have found out about we have followed up by contacting each source of publicity, requesting them to listen to what the parents and citizens had to say. In every instance, we have been turned down.

Just a few examples include our local newspaper, TV Channel 33 in Hershey, McCall's Magazine, several newspapers outside our city, the Chairman of our State House Education Committee, Senator Mondale, Chairman of the Select Committee on Equal Education Opportunity. Our contacts with just these few examples took much time and hard work. None of them would listen to the testimony of the public.

School board use what we call "Gestapo-like tactics". This is seen in the following ways:

1. Portion of School-Board Meetings Open to the Public.

Refusal to hold meetings in the evenings so that more citizens could attend.

For those who want to ask questions or make statements, they are required to speak in the order in which they are called, or risk losing their chance to speak at all.

In general, abiding by the rule that after a citizen has spoken once, he may not speak again—no matter how relevant his sudden idea may be to the subject at hand.

Interrupting citizens to make remarks they want to make.

Lashing out verbally at citizens who ask questions or request information concerning expenditures, operations of some Dept., etc., it worked. Citizens don't go to school board meetings any more.

2. A short time before implementation of the Plan, a front page news article indicated what would happen to parents who kept their children home from school—even for their own protection—fines or jail. (Exceptions were illness, death in the family, etc.)

3. Parents were charged unfairly with keeping their children out of school, and they had no way out except to pay the fines or go to jail. Parents did not know their children were not in school and in many cases, they were not informed until children were out up to 43 days.

In at least one case in an Alderman's office, one mother simply made the statement that she was not guilty because she did not know her child was out of school. In an instant, she was whisked off in a sheriff's car and placed in a jail cell.

It is for these reasons and many, many more that we give this evidence which shows clearly that forced busing did destroy Harrisburg, Pennsylvania.

Because of all the foregoing information, those who are left in Harrisburg—for the most part—are filled with hopeless resignation.

Even if it is too late to save Harrisburg, we urge you to act swiftly to take drastic steps to stop forced busing now—to prevent other School Districts from facing the same disaster that has come to Harrisburg. Take this action now before one more child suffers as millions have already suffered.

Give every child an equal opportunity to get a top quality education—in his own neighborhood school.

Finally, we urge you again to bring H.J. Res. 620 out of committee.

Respectfully submitted,

PLANNING COMMITTEE FOR CONCERNED CITIZENS OF HARRISBURG, PA.
Paul Fraver, Virginia Williams, Martha Ettinger, Charles Eisenacher, Dorothy Eisenacher, Phyllis Meadath, Ronald Solomon, Reba Holmes, Marilyn May, John May, Grace Remsberg.

STATEMENT OF RELIGIOUS LEADERS ON ANTI-INTEGRATION PROPOSALS SUBMITTED BY THE NATIONAL COUNCIL OF CHURCHES IN CHRIST

As religious men and women from many traditions, holding a common belief in the dignity and worth of every human being, we have rejoiced over the advances made in human and civil rights in the United States over the past two decades.

Men and women of church and synagogue played significant roles in the Civil Rights Movement of the 1960's, and some of our number were martyred to the cause, most notably, of course, Martin Luther King, Jr.

Now, a new situation has arisen in which the hard-won gains of the past few years are threatened by fear and hysteria in large segments of our citizenry over the issue of desegregation of the public schools. The cry of those who oppose further desegregation of the schools is characterized by opposition to "busing." "Busing" has become a code word for integration; "neighborhood schools," a cover for segregation.

In the public furore which has arisen over bus transportation to achieve desegregation, the country has a right to expect moral leadership from the President. At a time of general misunderstanding and confusion, the President has a responsibility to speak clearly about the facts and the law. We are dismayed that, instead of educating the public to the constitutional and moral imperatives of integration, the President has chosen to compound the confusion by his Message on Busing and his proposals for a Student Transportation Moratorium and program of compensatory education.

The proposed Moratorium on Busing is of doubtful constitutonality. It represents a serious challenge to the independence of the federal judiciary and would result in a significant erosion of the courts' powers of judicial review.

Respect for law and order cannot be built upon selective enforcement of the law. This is a nation governed by the rule of law, not the whims of men. No man, not even the President, can suspend the Constitution or the rights and protections which it provides. Several years ago the country was appalled by a Governor who barred the schoolhouse door; should we be less appalled today by a President who stands in the courthouse door?

The Busing Moratorium would discriminate against school districts which have in good faith, complied with court or HEW directives or which have desegregated voluntarily. It would make it difficult for school districts to voluntarily desegregate in the future, because bus transportation is often the best tool to effect significant desegregation efforts.

Any attempts by the President or Congress to curtail use of the busing tool can only mean continued segregation of the schools. All must be clear on that.

We support quality education for all children. With regard to the President's compensatory education program, it is by no means demonstrable that additional monies made available to schools where there are heavy concentrations of disadvantaged children will measurably benefit those children, without the added ingredient of racial and socio-economic integration. Moreover, the President's program is largely a reshuffling of funds already allocated. In fact, the Administration has been unwilling to seek the full appropriation of funds authorized for Title I of the Elementary and Secondary Education Act.

The thrust of the Busing Moratorium, coupled with the compensatory program, is to encourage a return to the separate but equal doctrine, found unconstitutional by the Supreme Court Decision of 1954 in Brown v. Board of Education of Topeka.

Desegregation—indeed, integration—of the public schools holds the key to improved educational opportunity for minority citizens and is a prerequisite for economic opportunity and the development of more natural relationships between black and white. It may even hold the key to that change of heart and attitude which will finally make an integrated society a matter of natural choice rather than law.

If America is ever to overcome its race problem, it will come when generations of young people have been raised to appreciate, need, and understand, rather than fear, racial and ethnic differences. The best way we know for this to happen is to give our youngsters the opportunity to learn together—black and white together.

That is why we oppose with all our vigor any attempts to reverse progress toward equal educational opportunity and public school integration, whether they come from the White House or the Congress; whether in the form of so-called "anti-busing" legislation or constitutional amendment.

May 16, 1972.

Rabbi Maurice N. Eisendrath, President, Union of American Hebrew Congregations; Dr. David E. Engel, Professor of Education, University of Pittsburg and Chairman, United Ministries for Public Education; Rabbi Joseph B. Glaser, Executive Vice President, Central Conference of American Rabbis; Ms. Eunice Harrington, Omaha, Nebraska, President, Women's Division, Board of Missions, United Methodist Church; Mrs. Clarie Collins Harvey, Jackson, Mississippi, National President, Church Women United; Mr. Steven Jacobs, President, American Ethical Union, New York, New York; Rabbi Irving Lehrman, President of the Synagogue Council of America; Rabbi Eugene J. Lipman, Chairman, Committee on Justice and Peace, Central Conference of American Rabbis; Mary Jane Patterson, Associate Director for National Affairs, United Presbyterian Church in the U.S.A.; Rabbi Henry Siegman, Executive Vice-President, Synagogue Council of America; Dr. Ernest Smith, Associate General Secretary, Board of Christian Social Concerns, United Methodist Church, Washington, D.C.; Dr. Douglas M. Still, Executive Director, United Ministries for Public Education, Washington, D.C.; Rev. Joel K. Thompson, Associate General Secretary of the Church of the Brethren and Executive Secretary of the World Ministries Commission of the Church of the Brethren, Elgin, Illinois; Dr. A. Dudley Ward, General Secretary, United Methodist Church Board of Christian Social Concerns, Washington, D.C.; Dr. Cynthia Wedel, Alexandria, Va., President of the National Council of Churches; Dr. Robert Nelson West, President, Unitarian Universalist Association, Boston, Massachusetts.

Mr. CELLER. This will terminate the hearings this morning and we will reassemble next Wednesday.

(Whereupon, at 11:35 a.m. the subcommittee adjourned to reconvene at 10 a.m. Wednesday, May 24, 1972.)

SCHOOL BUSING

WEDNESDAY, MAY 24, 1972

House of Representatives,
Subcommittee No. 5 of the
Committee on the Judiciary,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to adjournment, in room 2237 Rayburn House Office Building, the Honorable Emanuel Celler, chairman, presiding.

Present: Representatives Celler, Brooks, Hungate, McCulloch, Hutchinson, and McClory.

Staff present: Benjamin L. Zelenko, general counsel, Franklin G. Polk, associate counsel, and Daniel Cohen, counsel.

Chairman Celler. The committee will come to order.

The Chair would like to read a brief statement.

The subcommittee today completes 20 days of hearings in which testimony from approximately 130 witnesses has been received on House Joint Resolution 620, other proposed amendments to the Constitution, on H.R. 13916, and other legislation relating to pupil assignment and transportation.

The public hearings will recess today subject to the call of the Chair.

Members will want to study the hearing record, including the submissions of the Department of Justice and Department of Health, Education, and Welfare.

It may be necessary to recall some witnesses for additional testimony. A number of requests to be heard from individuals and organizations still are pending before the subcommittee.

Members also may want to consider the conference report on the higher education bill in connection with the proposals which have been the subject of these hearings.

We have with us this morning the very distinguished lady from Massachusetts, the Honorable Louise Day Hicks.

Mrs. Hicks we are glad to hear from you.

STATEMENT OF HON. LOUISE DAY HICKS, A REPRESENTATIVE CONGRESS FROM THE STATE OF MASSACHUSETTS

Mrs. Hicks. Thank you, Mr. Chairman, and members of the House Committee on the Judiciary.

May I first commend all of you for the lengthy hearings that you have had on this particular matter and also the time that you have given to all people to be heard before your committee. I certainly am most grateful to you.

I am pleased to appear before you as the Representative from the Ninth Congressional District in Massachusetts. I support House Joint Resolution 620 and have sponsored similar legislation which is now before your committee.

The proposal for a constitutional amendment to prohibit forcible school busing is a lengthy process—but one that is required if we are to guarantee that the future of our children will remain in the hands of their parents, where it belongs, and not under the arbitrary decrees of judges and bureaucrats. Forcible busing to achieve racial balance is opposed by the overwhelming majority of my constituents, for reasons which I hope to explain here today.

Our country is the land of the free—a government of the people, for the people, and by the people. There are constitutional limitations on the amount of coercion that the Government can exercise over the citizens.

Throughout our history, the judicial branch has served as the guardian of the people, seeking to guarantee that the other two branches did not exceed these limitations.

Today, however, we are threatened by the judicial branch itself. The recent examples of court-ordered busing have placed fear in the hearts of all parents of young children, regardless of race.

If under a court order a child can be forcibly taken from his parents and his neighborhood and bused miles and hours away into unfamiliar, often hostile, neighborhoods, then we shall have opened a Pandora's box of new, unlimited government powers.

Then the Government and the courts shall have all powers to decide all things that are best for these children. The erosion of parental control is the erosion of fundamental human freedoms.

Have we forgotten our objective—quality education? The goal of educating each child to his fullest potential? Quality education should remain the motivating factor in making any educational decision.

Twenty years ago, this Nation committed itself to removing discrimination from its educational systems—and I support that commitment. Yet, busing is itself an example of discrimination—the conscious assignment of a certain student to a certain school, solely because of his social or racial background.

It is a poor educational decision that is made solely on the basis of color. When will there again be a time when educational standards of excellence will be the criteria for educational decisions, rather than the artificial, mathematical balancing of races?

Recent court decisions, which order children to be forcibly transported over separate, well-defined county or city geographic and political boundaries to be educated in a city or county that is foreign to them, have created chaos and disorder in the community and traumatic experiences for the children.

In Massachusetts, parents and communities affected by the so-called racial imbalance law are experiencing the same hardships and fears as those communities under court-ordered busing.

A change in a district boundary line for the purpose of racial balance in the schools in Boston, Mass. is tantamount to a forcible busing edict.

The Massachusetts racial imbalance law states that no school may have more than 50 percent nonwhite children in attendance. In 1965, the time of the enactment of the law, there were 70,703 white students enrolled in the Boston public school system—and 21,097 nonwhite students or 23 percent nonwhite students.

In 1972, there are 63,798 white students enrolled and 33,429 nonwhite students enrolled, or 33.4 percent nonwhite students enrolled. The nonwhite student population increased 12,332 students from 1965 to 1972, or a 58-percent increase.

The white student population decreased 6,605 in that same period. In 1965, there were 46 racially imbalanced schools. In 1972, there are 66 racially imbalanced schools.

Because of these recent court decisions and the racial imbalance law, the very future of public education is at stake. School districts are becoming more black, as the white flight takes place and troubled white parents place their children in private schools.

White parents refuse to put quality education in second place after racial balancing, the creation of some artificial, numerical ratio determined by a court order or a racial imbalance law. "White flight" has thus led to a decline of the inner city, as tax resources undergo radical shifts. If the money now being demanded for massive busing were instead used to improve the inner city schools, then "white flight" might stop or even reverse itself.

Chairman CELLER. Mrs. Hicks, are you aware of the present law of your own State? Massachusetts law reads:

> It is hereby declared to be the policy of the Commonwealth to encourage all school committees to adopt as educational objectives the promotion of racial balance and the correction of existing racial imbalance in the public schools. The prevention or elimination of racial imbalance shall be an objective in all decisions involving the drawing or altering of school attendance lines and the selection of any new school sites.

Mrs. HICKS. I am very familiar with it, Mr. Chairman. In fact, I have filed for repeal of the law since 1965 when the racial imbalance law came into effect and this general law of education in the State has stated that they must not use forcible busing in order to achieve racial balance.

That is part of the racial imbalance law, but they can change the district boundary lines in order to comply with the law, which would mean that children have to travel long distances to school crossing very dangerous street crossings in the new plans that were submitted by the Boston School Committee to the board of education in compliance with the law.

And they then offer busing for the children to be taken to these districts and this is what has caused in our State and particularly in the city of Boston the "white flight."

In the construction of schools, Mr. Chairman, we have tried to construct schools, when I was chairman of the Boston School Committee, on peripheral areas, but as a school would be built the peripheral area would change and the school then would be a neighborhood school that would have an entirely black population surrounding the school.

We have done many things in order to implement the racial imbalance law. At the present time the State of Massachusetts is withholding from the city of Boston over $56 million for failure to come up with a plan to racially balance the schools.

It is an impossibility within the confines of the city of Boston to racially balance the schools of Boston without a forcible busing program.

Mr. Zelenko. Mrs. Hicks, the chairman read the racial balance law of the Commonwealth of Massachusetts. In your statement you point to both court decisions and the racial balance law as causing problems.

Mrs. Hicks. I am not talking of court decisions in Massachusetts but rather court decisions of the United States and the racial imbalance law of the State of Massachusetts.

Mr. Zelenko. Let me read an excerpt from the recent decision of the Supreme Court in *Swann v. Board of Education*.

This is Justice Burger speaking for a unanimous Court:

> If we were to read the holding of the District Court to require, as matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse. The constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school systems as a whole.

Is your complaint in fact directed more toward the law of the Commonwealth of Massachusetts rather than toward Supreme Court decisions?

Mrs. Hicks. My argument is with the interpretation of the Supreme Court decisions by the local courts such as you have had here in Maryland and particularly of course I have quarreled with the law in the State of Massachusetts stating that it was unconstitutional and I have appeared before the legislative body since 1965 for repeal of that law but the legislature has not seen fit to repeal it.

Mr. Zelenko. Mrs. Hicks, the Supreme Court decision I read was rendered in April 1971.

Mrs. Hicks. I have referred to that decision also when I have appeared before the legislature in Massachusetts.

Mr. Zelenko. I don't know how more clear the Supreme Court could express its views than by declaring that racial balance is not a constitutional requirement.

Mrs. Hicks. I certainly wish that you would then try to tell this to the Legislature in Massachusetts; certainly I have tried for 7 years to tell them that this law was unconstitutional and it should be repealed.

I think that our quarrel here is with the interpretation of the Supreme Court law by our district courts such as in Maryland where we are having the decisions and the forcible busing edict. And of course we have also been faced with the idea of metropolitanization, but this is another problem that we are starting to face in Massachusetts.

Busing itself destroys the neighborhood school concept, which is more than a mere tradition. Neighborhood schools are a time honored and meaningful force for community wellbeing. Schools are an integral part of the community, a center for cultural enrichment, a meeting place for parents, children, and teachers—an environment for extracurricular activities.

It is unfair to parents who have bought homes in a good school neighborhood to suddenly find that their children are to be bused out of that neighborhood—often into the worst areas of a city, with the highest rates of crime.

Such a situation was certainly never intended by the Bill of Rights. What moral or legal justification could there possibly be for forcing any parents to send their children into the grim world of the ghetto? Would not the better answer be the elimination of the ghettos, and the equalization of all educational facilities?

We cannot ignore the fact that for those children who are victims of poverty, the sense of security developed by living in a community with a happy home situation is often lacking—and school for them often becomes especially important as the only place to gain an awareness of their problems and to develop the skills needed for them to better themselves.

They do not need the traumas brought on by busing to a new district and being segregated in the new area by being singled out as "different" or inferior to their other classmates. What a senseless indictment has been placed on a single race—the implication that because one is black, one can learn only through the process of osmosis sitting next to a white child.

What these disadvantaged children really need is a quality education in their neighborhood schools. Busing would cost millions of dollars and hours of time, and it still will not bring us our real goal—good quality education.

If we are to reach that goal, why not direct that money and time into compensatory programs in the schools now? The schools need new equipment, more teachers, and professional and paraprofessional personnel to offer guidance to disadvantaged school children in the form of practical instruction of how to survive in today's mass industrial society.

Let us give complete funding to the title I program and leave education of children in the hands of the educators. Let us invite self-help to clean up the inner city, so it will be safe and more inviting. Let us give higher per pupil expenditures in city ghetto schools, where children begin life with so many handicaps. Let us finally face the problem realistically, rather than indulging in social experiments that risk the safety and rights of our children. Let us bring the resources where the children are.

Busing advocates often say that busing will mean an easing of racial tensions between the black and white communities. Sadly, this is not so. The controversy, itself, has caused immeasurable bitterness and strife already between black and white—to say nothing of the physical violence that has occurred in such towns as Lamar, S.C., and Pontiac, Mich.

Again, advocates of busing may quote statistics of how small-scale programs may be effective—but frequently those bused children were selected beforehand as those who showed the most promise of success and advancement.

Forced massive busing, however, would occur in the real world, not the world of theories. It would have to deal with thousands of children of all levels of ability.

What disadvantaged children really need is to learn such basics as reading, writing, how to find a job, how to go upward in the educational process. With a better educational background, minorities of all types can achieve a higher standard of living, and thereby integrate society as participating residents—not as children bused in and out of the white community for 8 hours of a school day—bused away from deprivation for a fleeting, frustrating glance at affluence; and bused back again to deprivation.

Parents, black and white, do not want their children forcibly taken by bus from their neighborhood schools. They want their children under their control.

School administrators do not want the children forcibly taken by bus from the neighborhood schools. They know the cost of busing will be reflected in the school budget.

Traffic engineers do not want the children forcibly taken by bus from their neighborhood school. They take a dim view of more vehicles jamming the highways, endangering the lives of the children being bused.

Environmentalists do not want the children forcibly taken by bus from the neighborhood schools.

Taxpayers do not want the children forcibly taken by bus from the neighborhood school. They want educational tax money spent on education, not transportation.

School children do not want to be forcibly taken by bus from their neighborhood schools. They want to go to school with the children with whom they live and play.

I believe in quality integrated education, but it can never be achieved by forced measures. I have never supported inferior education. Quality education is what is at stake in this controversy. We cannot let "antibusing" become a disguise for racial prejudice or intolerance; but neither can we let the plans for busing endanger the rights or safety of our children.

We cannot let the concept of racial balance dominate the picture if quality education is thereby sacrificed. Busing means the end of the neighborhood school, and it is this institution which provides the best hope of achieving quality education for both black and white children. Don't use busing as a smokescreen to hide deficiences in an inferior school where some children are left behind.

As Members of Congress, representing the people of this Nation, we must respect the will of our constituents, and they do not want forced busing. According to the latest Gallup poll, three out of four people in all areas of the country were opposed to forcible busing—that is, 76 percent of the American public are against forcible busing, and 47 percent of those people are black.

It is unfair to say, therefore, that forced busing is opposed only by whites who want to prevent their children from attending frequently poorer, predominantly black schools.

We must turn our efforts away from developing massive busing schemes and toward developing better programs in the schools which will provide our children with the tools for creating a better society for us all. Confront that one directly and busing becomes what it should have been all along—merely a means of voluntary transportation.

Thank you very much, Mr. Chairman and members.

Chairman CELLER. Mr. McCulloch?

Mr. MCCULLOCH. No. questions.

Chairman CELLER. Mr. Hutchinson?

Mr. HUTCHINSON. No questions. But I would like to compliment Mrs. Hicks upon her statement. I think she has very ably stated very persuasive arguments on the side of the question which she presents.

Mrs. HICKS. Thank you very much, Mr. Hutchinson.

Chairman CELLER. Mr. McClory?

Mr. MCCLORY. No questions, Mr. Chairman.

Chairman CELLER. Mr. Hungate?

Mr. HUNGATE. Thank you, Mr. Chairman.

I would like to commend our colleague on her statement. She is well known as having great experience in the field of education and I think sometimes we suffer from abundance of theory and not enough experience.

We appreciate your remarks.

I have one or two questions.

On page 10 of your statement you state: "As Members of Congress, representing the people of the Nation, we must respect the will of our constituents and they do not want forced busing."

I think it is hard for anyone to disagree with that statement.

But in considering a constitutional right the Judiciary Committee must proceed with great care.

If there is a constitutional right to attend a desegregated school and busing is an essential means of implementing that right then isn't it perhaps beside the point whether 76 percent of the people agree with busing?

Mrs. HICKS. Let's put it in reverse, before you have the right to take away that constitutional provision, that it would have to be a 100-percent vote of the Representatives here in the Congress.

Mr. HUNGATE. And in the surveys the Gallup Poll would seem to indicate 76 percent opposed forcible busing, and 47 percent of those are black. Would that mean that 53 percent of blacks favor busing?

Mrs. HICKS. It would seem so from the poll, or that some of them are not committed as we very often have seen that very often people in a poll will not commit themselves at all.

Mr. HUNGATE. There could be a large percentage of no opinion?

Mrs. HICKS. That is right.

Mr. HUNGATE. Thank you.

Chairman CELLER. We are grateful to you, Mrs. Hicks, for coming and giving us your views.

Mrs. HICKS. Thank you very much, Mr. Chairman.

Chairman CELLER. The next witness today was to be the Honorable Joe D. Waggonner of Louisiana, but he tells us that he will not be present.

So our next witness will be the distinguished representative from California, the Honorable James C. Corman.

We welcome you, Mr. Corman and we are glad to hear your testimony.

Mr. MCCULLOCH. Mr. Chairman could I make one brief comment.

I am very pleased too that Jim Corman is a witness today. He has made many important contributions to the improvement of government in America.

STATEMENT OF HON. JAMES C. CORMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CORMAN. Thank you, sir.

Mr. HUNGATE. Mr. Chairman, I think he has made only one mistake in judgment and that was leaving this committee.

Mr. CORMAN. I would say Mr. Hungate that I concede that error. I have had to live with it for 3 years now and it has been painful.

I have a rather lengthy statement, Mr. Chairman. I would prefer to summarize it and just have it submitted for the record if I might do that.

Chairman CELLER. Yes; we will accept your statement for the record.

(The statement referred to follows:)

STATEMENT BY HON. JAMES C. CORMAN, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman and Members of this Committee, I am always pleased and a little nostalgic when I return to this great Committee. The most useful and satisfying years of my public life were spent in this Committee during the middle sixties when we were "hammering out" civil rights legislation, which substantially changed this nation for the better.

I bring to the two giants of the House, Chairman Celler and Congressman McCulloch, my deep respect and affection. Whatever contribution toward true equality for all Americans was made by the legislative branch of the government during the 1950's and 60's was accomplished in large part by the efforts of these wise, gentle, and compassionate men.

Mr. Chairman, appalled by the events which bring me before your Committee today, I urge opposition to a proposal by the President of the United States concerning civil rights. It was not long ago, in the exciting days of the middle sixties, when President Johnson and his Administration worked closely with this Committee and the Congress to remove the terrible vestiges of slavery which had so plagued this country throughout its history.

Yet, like visions of the past returning to haunt us, President Nixon and his Administration have sought to undermine and impede the progress made in the earlier years of the decade. Even when I was most pessimistic about President Nixon's actions in 1970 and 1971, when his Administration began to dismantle the Federal apparatus so painstakingly constructed to begin to solve the problems of racial separation in the public schools, it was beyond my imagination that a President would urge the Congress to exercise its awesome power to destroy the Constitutional rights of children who happened to be black.

One might reasonably observe that much has been done over the past two decades to expand what we think of as civil rights for all Americans. Just a short time ago in some parts of the country, black Americans were required to shuffle around to the kitchen door to buy a meal at a restaurant. They were required to find "colored" drinking fountains before they could quench their thirst. To exercise the right to vote in local or State elections was to risk one's very life. How far we have come and how proud this Committee and the Congress can be of our progress are a matter of record. Yet, Mr. Chairman, America is still a dual society. People still suffer discrimination because of their color. Large numbers of children are still segregated in school. This is so, even though the Constitutional right of every American to equality has been reaffirmed and reinforced by Federal civil rights statutes since 1964.

Mr. Chairman, racism in this nation is not based on logic, nor is it a matter of malice. It is a matter of tradition and perhaps worse—of habit. It is a habit rooted in the greatest tragedy of this nation—the tragedy that we permitted human slavery for the first 76 years of America's existence and for the next 89 years tolerated a dual society enforced by the exercise of judicial and police power by those State and local officials who willed it. Only a short time ago in some parts of this country, what appeared to the outsider to be the cruelest kind of racial discrimination was considered normal by a society which was accustomed to that way of life—a society that made a habit of living with discrimination. But, Mr. Chairman, racism is a habit that must be given up.

In no area of activity has the blatant exercise of the habit of racism been more apparent than in the area of school segregation. Thomas Jefferson, in his wisdom, established in his native Virginia the first public school system in the young nation—a system intended to reach all children. Each State, as it became part of the Republic, followed the same course, recognizing that education was the strongest pillar of a free society—that it was essential to the future of such a society. Unfortunately, the young nation indulged itself in slavery as a way of life, and black children were not counted in the Jeffersonian principle of "education for all children." When freedom came to the slaves, the Jeffersonian principle became the victim of the "separate but equal doctrine." Thus was the principle abused when it should have become a reality for "all children." Now, 107 years later, the principle is still abused, and if continued will undermine and eventually destroy this society as we know it.

A child, at kindergarten age, leaves home for several hours a week to go into a new environment—the school house. This experience normally lasts for 13 years—the most formative years of a person's development. If State and local school districts which control public schools insist that this experience should be in a racially segregated environment, then the child is conditioned, and may be condemned for life, to believe in a racially segregated society.

Separation of children in school is not one by malicious intent. It is the consequence of almost two centuries of ignorance, myth, and prejudice. In testimony before the National Advisory Commission on Civil Disorders in 1968, Dr. Dan W. Dodson, Director for Human Relations and Community Studies of New York University, with deep understanding stated: "The problems of this society will not be solved unless and until our children are brought into a common encounter and encouraged to forge a new and more viable design of life." Thus, if for no other reason, segregated public education must end, absolutely and now.

Presidential leadership, essential to achieve this goal, has declined to a dismal low since 1969. Permit me to make some observations about President Nixon's contributions.

On March 17, on nationwide television, the President proposed a strategy, translated by request into the moratorium bill now before you, that would have the effect of restricting the right of minority children to attend desegregated schools now and in the foreseeable future. I cannot emphasize enough that enactment of this legislation would be a severe blow to the progress already made in school desegregation and would certainly be a deterrent to any school district's attempt to establish an integrated system. It would most assuredly retain the existing inequality of educational opportunity for minority children.

The President's promise, reiterated again in his March 17 television appearance, that every American child should have equal education opportunity is firmly rooted in the spurious doctrine of "separate but equal." To take us back to *Plessy* vs. *Ferguson* is not the quality of leadership that America needs today as it attempts to solve the problems of education for all Americans.

The curious leadership that has come from the White House since 1969 is staggering in its ambivalence. In 1968, President-elect Nixon, apparently floundering for a campaign standard, found one in Deshler, Ohio, a white school child's placard, "Bring Us Together." Early in the Administration's vacillation on civil rights, his Attorney General stated: "Watch what we do, not what we say" (in itself a curious statement). We cannot give the President or his Administration high marks either for what they have done or for what they have said. Obviously, black school children are not part of the President's stated "bring us together" doctrine. We can hardly congratulate him on what he has done—the proposed busing moratorium.

Experts in the field have done a far better job than could I in pointing out the constitutional invalidity of the moratorium proposal. I would only add that, just as it is unconstitutional as a matter of law, it is cowardly as a matter of politics, and absurd as a matter of public policy. It is an effort to handcuff school boards, State school authorities and the judiciary in their efforts to protect the constitutional rights of children and to rid this nation of the destructive habit of segregated schooling.

I urge this Committee to give this proposal its just reward—a quick, quiet burial.

Now, Mr. Chairman, I would like to turn to H.R. 14461, the bill introduced by Mr. Waggonner of Louisiana.

Mr. Waggonner in developing his definition of a unitary school system for purposes of his bill has borrowed language from a recent decision of the Supreme Court. He has taken it out of context, however, and would now use it in a limited, narrow way the Court clearly did not intend. Before analyzing our colleague's bill further, however, I should like to comment briefly on the "findings" contained in the resolution he asked the Democratic Caucus to consider last week.

The resolution would have put the Caucus on record endorsing four negative findings about "busing of students to overcome racial imbalance"—to quote the words of the resolution. The findings, in my judgment, were questionable statements of fact and would have placed the Caucus in the position of adding further confusion to an already confused situation. We would have added the voice of the majority party in the House of Representatives to the chorus of misinformation directed at the American people during this election year on the subject of busing and desegregation. Fortunately for the Democratic Party and the nation, the proposal was soundly defeated in the Caucus.

Mr. Chairman, I am confident that Mr. Waggonner is well aware that the courts of our nation and the Federal government in administering Title V of the Civil Rights Act of 1964 have not been ordering the "busing of students to overcome racial imbalance." What the courts and the Federal government have in fact done is to require the elimination of segregation where it has been found. Sometimes this has required busing—sometimes less busing than was previously the case in order to maintain segregation. Where the courts have found official action involved in the development of segregation, they have ordered it eliminated. It is my hope that the Congress would not take any action now which would impede the courts and the Federal government from their obligation to see that unconstitutional segregation and discrimination are eliminated.

In the United States today, 18,975,939 public school pupils—43.5 percent of the total—ride 256,000 school buses (public transit is excluded), 2.2 billion miles each day. Only 3 percent, or 570,000 of the transported public school pupils, ride buses as a result of school desegregation plans. And more than 95 percent of those 570,000 students are riding buses to meet the constitutionally mandated requirements breaking down dual school structures and discriminatorily segregated schools. In only a handful of districts—Berkeley, California, and Evanston, Illinois, to name two—have elected school officials acknowledged the educational inequality and destruction brought about by racially segregated schools of whatever origin, and initiated a racial balance assignment plan to correct these evils. These actions were taken voluntarily.

Mr. Waggonner's first "finding" is that busing of students, "has not promoted the health, welfare and safety of our school age children." I really do not know whether busing has promoted the health, welfare, and safety of children, but it is certainly clear that it has not harmed them. I should like to call your attention to a conclusion of Robert Coles, a psychiatrist at the Harvard University Health Service, who has devoted considerable research to this subject and has ridden with children on school buses as they went from their homes to newly integrated schools:

"I never saw children get sick because they were being bused; I never saw children become emotionally disturbed because they were bused; I never saw children's work suffer because they were bused. Physically, psychologically, educationally, the experience was, in fact, neutral".[1]

Furthermore data on student accident rates from the National Safety Council show that it is safer to ride a bus to school than to walk. Based on reports of more than 35,000 school jurisdiction accidents for the 1968–69 school year, the National Safety Council found that the accident rates for both boys and girls riding a bus were .03 per 100,000 student days compared with .09 for boys when walking and .07 for girls when walking.

Mr. Waggonner's second finding—that busing "has not provided for the achieving of equal educational opportunities for all students"—is not true. As Robert Coles concluded, busing is neutral; it is a tool in implementing almost any method of student assignment whether desegregation is involved or not. In his resolution, I presume our colleague is referring to busing to carry out desegregation (rather than his term, racial balance). But in fact such busing has contributed to better educational opportunities.

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[1] "Perspectives on Busing," *Inequality in Education*, Center for Law and Education, Harvard University, p. 25.

In the 1954 *Brown* decision, the Supreme Court said: "Does segregation of children in public schools solely on the basis of race, even though the physical facilities and other "tangible" factors may be equal, deprive the children of the minority group of equal educational opportunities? We believe it does. . . . We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal."

These findings were reaffirmed by the Coleman Report authorized by the Civil Rights Act of 1964. While admittedly there is some confusion and contradictory evidence about the performance of minority students in integrated schools, it is clear that minority students do no worse, and white students progress no less rapidly in integrated than segregated schools. What the confusing test results show is that integration alone may not repair and erase the damage of generations of school segregation for minority children. It does, however, create conditions for improvement of educational opportunities for young people.

With respect to Mr. Waggonner's third finding, I presume again that he means "busing for desegregation" when he says "busing of students to overcome racial imbalances is not in the best interests of providing quality education for all students." I can only say that "quality education for all students"—if it means anything—must mean equal access to superior teachers, the best facilities, the most innovative curriculums, and the most comprehensive educational experience possible. It has been demonstrated that the traditional dual school organization in the rural South even under free choice, prohibited such equal access. And today, in urban areas both north and south equal access is still denied. In addition, the concept of "quality education for all students" means to me, if not Mr. Waggonner, the bringing together of children from different racial and economic backgrounds to prepare them for living together as adults in a pluralistic society on the basis of mutual respect and understanding.

Mr. Waggonner's last statement that "busing of students to overcome racial imbalances is in direct contravention of the laws of the land" is simply a misstatement of fact. As I pointed out earlier, no court, north or south, has ordered racial balance per se, only the desegregation of illegally segregated schools. In those few places—and I personally wish there were more—where there is busing to overcome racial imbalance, it has been undertaken voluntarily. The Supreme Court in the 1968 *Green* case formulated the ultimate constitutional objective: "A unitary, nonracial system of public education, a system without a 'white' school and a 'Negro' school, but just schools." (*Green* v. *County School Board of New Kent County*, 391 U.S. 436, 442.)

From his list of findings, Mr. Waggonner, moves on to his definition of unitary school system from H.R. 14461: "A unitary school system is one within which no person is to be effectively excluded from any school because of race, color, or national origin, and this shall be so, whether or not such school system was in the past segregated *de jure* or *de facto*."

Under the guise of enforcing the 14th Amendment right to desegregated education, H.R. 14461 instead attempts an end run around the decision of the Supreme Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). The bill borrows a phrase, "within which no person is to be effectively excluded from any school because of race or color" from the Supreme Court's 1969 decision in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19. The context of this phrase in *Alexander* makes it clear that it was used to describe only *one aspect* of a unitary school system.

The paragraph from which the phrase was borrowed reads: "The Court of Appeals' order of August 28, 1969, is vacated, and the case is remanded to that court to issue its decree and order, effective immediately, declaring that each of the school districts here involved may no longer operate a dual school system based on race or color, and directing that they begin immediately to operate as unitary school systems within which no person is to be effectively excluded from any school because of race or color." (396 U.S. at 20)

H.R. 14461 attempts to make this the *sole* definition of a unitary school system. To appreciate the level of nonsense to which the Congress is asked to subscribe, it is only necessary to list some of the features a school system would possess and still be a "unitary school system" under H.R. 14461:

It could have a freedom-of-choice plan which resulted in every black student in an all-black school. (Held illegal by *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968));

Both black and white students could attend the same school, but be assigned to totally segregated classes, *i.e.*, an all-white fourth grade class and an all-black fourth grade class in the same school;

There could be complete racial segregation of teachers. (Held illegal by *Green* and by *United States* v. *Montgomery County Board of Education*, 305 U.S. 225 (1969));

Black students could be required to share textbooks while white students each had their own. (Held illegal by *Green*);

Black and white children could be forced to ride completely segregated school buses on their way to the same school. (Held illegal by *Green*);

Black students be barred from use of the school library, from membership in school organizations, from participating in field trips, and on and on. (Held illegal by *Green*).

Any school district discriminating against black children in all of these ways would still be acceptable under Mr. Waggonner's definition of a "unitary school system."

A second result of H.R. 14461 would be to eliminate the possibility of any meaningful remedy for State-imposed segregation. It does this by wiping out the distinction between *de facto* segregation and *de jure* segregation, and providing that no student in either of those situations shall be assigned to or barred from a school because of his or her race. This ignores the fact that states and school boards in the past have forced segregated school assignments on black children. Now they have a constitutional duty to undo those forced assignments. H.R. 14461 asks Congress to simply ignore a century of forced segregation.

As a matter of fact, I think the distinction has not been in the educational interests of young Americans. Racial isolation is unhealthy for children regardless of how it has came about. We as a nation should be eliminating separation of the races in all aspects of life, including most importantly education.

The distinction between *de jure* and *de facto* segregation is blurring now because the distinction, in many cases, has been non-existent in fact. Certainly, the damage done to the child by racial isolation is just as great no matter how the segregation has developed. As the courts and the Federal government examine the factors which have led to so-called *de facto* segregation in education, they have discovered that official action or acquiescence often has been involved. And the court decisions outside the South have underscored the fact that school segregation is not after all just a Southern phenomenon; it is, as many civil rights lawyers have always contended, a national problem urging national attention.

In contrast to the findings of the courts that much of the previously-assumed *de facto* segregation is in reality *de jure* segregation, Mr. Waggonner in his bill would like to fold *de jure* segregation in with the older definition of *de facto* segregation as accidental racial isolation.

Having blurred the distinction, H.R. 14461 then would say, in effect, that no student assignment shall take race into account. But unless race is taken into account, said the Supreme Court in *Swann*, the system of illegal, forced segregation *cannot* be dismantled:

"All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation.

"The objective is to dismantle the dual school sytem. 'Racially neutral' assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation. When school authorities present a district court with a 'loaded game board,' affirmative action in the form of remedial altering of attendance zones is proper to achieve truly nondiscriminatory assignments."

H.R. 14461 is clearly unconstitutional. But it cannot be disregarded on the assumption that, since it is so patently unconstitutional, Congress can pass it and let the courts strike it down. Such an idea takes no account of the lengths to which segregationist school boards will go to delay desegregation, even if only for a year or two. If passed, school boards will litigate about H.R. 14461 for years before its coffin is finally nailed shut. Meanwhile, they will use the pending of the litigation as an excuse for seeking stays and otherwise avoiding desegregation.

In *Alexander* the Supreme Court disavowed the phrase "all deliberate speed" because it had proved too handy a device for school boards fighting to delay integration. That ploy lasted for fifteen years. The definition of "desegregation" contained in Title IV of the Civil Rights Act of 1964, that "desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance," clearly made no attempt to limit the remedial power of Federal courts. But for seven years, school boards used it to confuse the issues and win yet more time for segregation. Finally, the Supreme Court choked off this escape route in *Swann.*

Mr. Chairman, enactment of H.R. 14461 would be an invitation for a similar abuse of the judicial process. It would invite, again, a delay of years in achieving compliance with *Brown*, and 18-year-old promise we still have not redeemed.

The issues to which I have addressed myself today relate to the very basic and fundamental question of whether our nation is to continue or fail to meet its commitment to see that every child in America has an equal opportunity to a quality education. In a larger sense, the way we deal with these issues will tell more than words about our commitment to the objective of an integrated society based upon equal justice for all.

I regret to say, Mr. Chairman, if this Committee and the Congress acts favorably on the anti-busing measures pending before it, America will embark on the disastrous course described more than four years ago by the National Advisory Commission on Civil Disorders, of which I was a member. It concluded that "our nation is moving toward two societies, one black, one white—separate and unequal." With your help, Mr. Chairman, we can stem the progress of this perilous course.

Mr. CORMAN. Let me make a brief comment on Congresswoman Hicks' observations about the constitutionality of the Massachusetts racial balance law, because California has a similar one which the Los Angeles City Board of Education continues to ignore. I would assume that the State has, under the Constitution, authority to integrate its schools, however it decides best to do that. And it might well go beyond the basic constitutional requirements as spelled out in the U.S. Supreme Court cases.

I would not think that those constitutional interpretations at the Federal level constitute the ceiling to which the State can be integrated but merely the floor which it must be. It is regrettable that some local school districts, including my own, have taken it upon themselves to ignore the law so long.

I wonder what they would do if the students over whom they have some degree of supervision were as prone to disobey the law.

Mr. Chairman, the whole history of our country has been one of bringing into reality the promise of equality made by the Founding Fathers when they drafted the Bill of Rights. We know it was far from a reality at the time it was born. We had human slavery and we counted some human beings as three-fifths instead of whole.

But that great document has been the foundation for this Nation moving toward a realization of freedom and equality.

Sometimes it has been very painful. Obviously the Civil War almost destroyed this country but we survived it. We found we could live better without slavery than with it. The great tragedy of the post Civil War years was that we evolved into a dual society. We really created two Americas.

But during all of that time, between 1865 and 1954, we saw a gradual breakdown of that dual society.

Again it was slow and painful. The course we have come—from segregated trains and buses and lynch mobs to Federal laws opposing such actions—was a great breakthrough.

Another great breakthrough occurred in 1954 when the U.S. Supreme Court eliminated the legal foundation for that dual society.

The Court said we could no longer use the power of the Government to impose on the American people two separate societies.

When the Congress addressed itself to a variety of vestiges of slavery, this committee made the greatest single step forward with the 1964 Civil Rights Act. We changed the habits and the living patterns of people in some parts of this country.

The Voting Rights Act, which was passed initially in 1965 and amended in 1970, was in the long run even more important to the people who lived in that part of the country which had preserved more strictly that dual society. But the dual society is not limited just to some parts of the country. It exists all over.

Mr. McCulloch and myself, who had the privilege of serving on the President's Advisory Commission of Civil Disorders, saw the result of that dual society throughout the land in such cities as Detroit, Los Angeles, Chicago, and New York.

That dual society now is founded on the dual school system, the fact that the child's first experience out of the home is in a segregated society. This is true almost throughout the country. It is certainly true in my own district. I represent a suburb of Los Angeles where we have segregated schools in violation of the State law.

We have compulsory schooling in this country. Children are forced to go to school. They are forced to go to a particular school. In some school districts, there is some modest freedom of choice but very little really, and there is no freedom of choice whether a child goes to school or not. That is where the force is.

Now, what kind of a society are we going to force them into during their formative years from age 5 to age 18? Unless we expose them to an integrated society at that point in their life, particularly at age 5, and then continue through that experience, we are preserving a dual society. We are condemning children to learn the habit of a dual society. It seems to me we have demonstrated so many times that we can't force them into that segregated mold for the first 12 or 13 years of their public experience and then throw them together with any degree of understanding and brotherhood.

Thus, we ought to get on with dismantling the dual school system. We talked a little about busing and its role in desegregation.

Incidentally, we all know from our friends on Madison Avenue that good words and bad words may mean the same thing. I like to use the term "racial justice" which, I think, means the same thing as "racial balance" or "race mixing" but they do give a different feeling as we listen to them.

We can't beg the question. We are either going to have segregated societies and schools or we are going to have integrated societies and schools. We can't desegregate without integrating. We can't desegregate without moving toward racial balance. We ought not be misled by terms of "racial balance" and "racial mixing" and all of those ugly words.

Today in the United States 18,975,000 public school children are bused every day. That is 43 percent of the total. They ride 256,000 school buses. That is excluding public transportation. They ride 2.2 billion miles each day. Three percent, or 570,000, of those students are transported to public schools for the purpose of desegregating the schools.

There is really nothing fundamentally wrong with busing children. I once had the privilege of serving on the Los Angeles City Council. There was no one more irate than the parent who found out he lived on the wrong side of the school to have his child bused to school.

If a parent lived beyond the 2 mile limit, the child could ride on the bus. But if the parent lived on the wrong side of the school, he had to drive his child to school.

Of course, we radically changed the quality of education in rural areas of the country when we transported children over many miles to get them to unified school system and quality education.

We are not talking about busing as good or bad. We are trying to decide whether or not we want to preserve what we have. It is most difficult for me to understand how people can look at what we have today and want to keep it. It is so destructive and so wasteful of human resources to continue to preserve racially segregated schools where youngsters grow up fearing, distrusting, and hating each other. Many of them are going to schools so inferior that, of course, we get violently angry if someone suggests our child go there. I don't want my children or grandchildren, if I am lucky enough to have them, to be bused to an inferior school, but I don't want any other child to walk to that inferior school either.

Most of all, I don't want future generations to grow up in a segregated America. So long as we persist in segregating our children for the first 13 years, we just can't get on with the other things we need to do, such as improved housing and employment opportunities.

We all remember that it wasn't the members from Mississippi or Alabama who insisted we pass the voting rights bill. It is difficult for people to change their way of doing things. But I suggest to you there aren't many politicians in Mississippi today who would be running on a platform of repealing the Voting Rights Act. Nor are there many restaurateurs in Atlanta who would like to see the "whites only" signs return.

I am certain that if we lived through one generation of integrated schools, we could not talk parents of this country into going back to what we had in this country in 1972.

I urge you to defeat all of the proposals before you to alter our Constitution or to diminish the rights of the court to protect the constitutional rights of the children of this Nation.

Thank you, sir.

Chairman **Celler**. Any questions?

Mr. Hungate?

Mr. **Hungate**. Mr. Corman, you state that we can't desegregate without integrating. We have had various discussions with witnesses about that question. I think there is a considerable body of opinion which would take the position you do, and a few others who think it might be possible to desegregate, without integrating. They distinguish between "desegregate" and "integrate."

Let me give you an example. We know in times past we had theaters where blacks were required to sit in the balcony. That was segregation.

Now, under the 1964 Civil Rights Act that such separation became illegal, and I don't believe that is going on anywhere any more. I would suggest that has accomplished desegregation of theaters.

But if we turn to the orchestra section of a theater we might find that price differentials have resulted in a smaller percentage of blacks in the orchestra section than you would find in the population of the community.

Mr. Corman. I don't think the analogy holds regarding free public education.

Let me tell you the reason I don't think we can desegregate without integrating. I think Mr. McCulloch will remember the day the man from Omaha, Nebr., testified about what happened to their schools. They were under court order to bus black youngsters to white schools. At noon they bused them back to the black school to have lunch, because they didn't want to mix the children at lunchtime.

The court said, "No, they could not do that," so they let them eat lunch in the cafeteria but they assigned tables to them. The court said, "No, that really was not what the court meant by integrating the school."

That is one of the reasons I hate to see us try to give any guidelines to the court. They take it on a case-by-case basis. But I think getting all of youngsters to the same school grounds isn't compliance if we do other things to segregate, discriminate, and demean the students.

We have to go all the way. We have to be colorblind to the point that we give reality to that promise of no discrimination or no demeaning. The court might very well find that if, for instance, we took a fifth or sixth grade class to a different school, for a variety of reasons the students might all fall into the same category academically.

I doubt we could separate them out and say, OK, the black; that is, dumb kids, go to room A and the white kids; that is, bright kids, go to room E. That doesn't comply with the court's orders.

Mr. Hungate. I agree with the examples you cite. But can we have desegregation without integration?

That is what I think the theater case illustrates.

Let me carry it into the school field. For example, in North Carolina we have an island, such as Ocracoke, and suppose there are no blacks on that island. Across the bay prior to 1954 there was a school system which was segregated. After the decision if the laws are followed, and they should be, we would integrate the school system on the mainland.

What about the schools on the island? To integrate the island school system, you would have to put people on boats and get them over there.

Mr. Corman. Yes, sir. I have great confidence in the court's ability to use reason and judgment in specific cases on a case-by-case basis. I am sure, for instance, that they would never go to the length that the South used to go to keep their schools segregated. They would send a college student by train to the North. I don't believe they are going to be transporting students from Mississippi to Wyoming to integrate a school. I have confidence in our courts to maintain reason and good judgment.

Mr. Hungate. You don't think they should?

Mr. Corman. I said probably not.

Mr. Hungate. Let's take the island case.

Mr. Corman. I have to know how far the island was away and what the travel situation was.

Mr. Hungate. Let me suggest an example of a county consisting of 250 square miles with no black population.

Mr. Corman. That would be a hard one to integrate.

Mr. Hungate. I see. What would you think if the court made such an order? Would you think that would be in line or would that be an error?

Mr. Corman. If I knew all of the facts in the case and how they had accomplished that degree of segregation in the first place, it might have some effect.

For instance, if you have got 2,500 square miles?

Mr. Hungate. 250.

Mr. Corman. What is that, 10 by 25 miles? If we had a little island and had used the power of the State to keep it segregated, then the court might say, we ought not leave that segregated. Let's go across the boundary and integrate those schools as best we can with some reasonable amount of movement of students.

If that county is surrounded by nothing, obviously we are not going to move a child 200 miles to get him into integrated schools.

Mr. Hungate. Won't that carry you into a shifting of county lines? In other words, you are going to say we won't observe county lines. It resembles the *Richmond* case in a way.

Mr. Corman. If constitutional rights have to be preserved at the expense of county lines, I would sacrifice the county line.

Mr. Hungate. In order to desegregate, would there be a burden to show that the exclusive white population of the island resulted from State supported rather than accident?

Mr. Corman. That gets to the point of de facto and de jure. I have never felt that was in the court's mind in the *Brown* case. They were not looking at mental attitudes of the school board, but rather at the impact on the schoolchild. I doubt if a 5-year-old youngster can tell whether he is sitting in a segregated school because of de jure or de facto circumstances.

Beyond that just by our whole pattern of our national living, I am not sure that segregation is totally de facto. We have had laws against desegregation.

Mr. Hungate. One further question.

If we attack this problem in that way, and have to go beyond county boundaries as in *Richmond*, that may also carry over into the taxing area. You say we will have to face it because you have different jurisdictions at present with different tax rates?

Mr. Corman. Apparently we are about to make breakthroughs in that local funding of schools. California, which leads the Nation in so many progressive things, has a Supreme Court decision requiring statewide financing of education. I think it is a good law and I hope other States follow it. But it seems to me that the overriding principle is one of what kind of society we want to create for ourselves.

Looking at the tremendous impact on the ultimate results of public education, we just can't let any artificial things prevent us from integrating those schools at the kindergarten level. That is why, as I say, I have confidence that the courts are going to be reasonable in their interpretations.

I am confident there are many areas of the country that could not be reasonably integrated and that would be areas where there is a uniform or monolithic race for a very large geographic area.

Mr. Hungate. Do you think when the court enters this taxing field arrangement they will take over part of the jurisdiction of the legislature?

Mr. Corman. No; that is always the kind of question raised any time the court, in a specific case, spells out what seems to many of us a new right, but I don't believe so.

Mr. Hungate. Thank you very much.

Chairman Celler. May I ask this? The tenor of some of your remarks was to the effect that time is a mighty healer. We have had testimony that although there was some commitment to desegregation in the beginning where busing was required, that commitment somewhat died down.

Don't you think that, if we had compliance with principles of desegregation the whole inflammatory issue would simmer off by the next generation as if nothing really had happened?

Mr. Corman. Yes, sir; Mr. Chairman, the only really encouraging thing about this whole problem is that we never go back. We never readopt our bad habits.

We are reluctant to give up the ones we have. But if somebody in the Los Angeles City Council promised folks that he was going to separate blacks and whites when they went to the restroom or got a drink of water, they would laugh him out of town.

But 15 years ago, that is the way 20 percent of the Nation lived. If anyone had come in and run for city council in the part of the country where this was the practice, on the basis they were going to change the system he would have been laughed out of town.

I think the tragedy of this administration is the terrible lack of leadership in this area. It is difficult, as I say. What we are addressing ourselves to now is much harder than what we addressed ourselves to in the 1960's, because we were not trying to break all people's habits. Not all of the Nation had the habits we were changing.

We have all got the habit of segregated schools. That is why it takes reason and compassion and I wish we had more of it.

Chairman Celler. Without boasting, I think this committee has done its share to change the status quo. And you remember when you were on the committee we kept rubbing and rubbing until we rubbed it into a needle. It takes an awful lot of rubbing and we need men like you to help us. We are happy to have you with us this morning because I want to say that just as you were a tower of strength when you were on our committee, you are likewise a monument of excellence on your Ways and Means Committee, I am told.

We are always happy to hear your very cogent and brilliant remarks. Mr. McCulloch?

Mr. McCulloch. I could not agree more with what the chairman has just said.

As I look back over the history of this great country, there have been leaders and spokesmen for the common good all down through the years who, like the witness, have made this country the great country that it is.

I hope you are here long, long after I am gone.

Mr. Corman. It will not be as pleasant being here then, Mr. McCulloch, but I will be here a while longer.

Chairman Celler. Mr. Hutchinson?

Mr. HUTCHINSON. No questions.

Chairman CELLER. Mr. McClory?

Mr. McCLORY. Yes, Mr. Chairman, I want to ask a few questions and make a few comments because I am particularly concerned about that part of the statement which puts this subject in a purely partisan context. I think that is unfortunate.

I don't think the issue is partisan in the Congress. I don't think that it is a fair presentation, notwithstanding the fact that I agree substantially with the gentleman's position with regard to the proposed moratorium bill and with respect to his other observations with regard to the need for continuing progress.

I have noted the tremendous progress which we made in the area of school desegregation under the leadership and the truly aggressive action of this administration in 1969 and in 1970 and in 1971.

It seems to me that the action that the President has taken and the controversy that is going on in the Congress concerning the conference report on S. 659 are responses to a problem that has occurred in carrying out the desegregation policy of this country.

Would the gentleman disagree with the fact that progress was made with regard to desegregation in 1969, 1970, and 1971 in virtually all parts of the country?

Mr. CORMAN. No, I do not disagree. I would suggest that I have deep feelings about the President's role in this whole matter. But as to partisanship, I would point out that in my remarks I commended one Democrat and one Republican and criticized one Democrat so far as the House Members are concerned. So I do not in any way imply that there is partisanship.

I had a feeling as I watched the President talking to the whole Nation on television that he was undermining people's confidence in what has been happening in 1969, 1970, and 1971 and saying we must stop this.

I believe that is why he wants a moratorium—to stop the progress the courts have made—and that is the reason I am so distressed with what has happened.

Chairman CELLER. Will the gentleman yield?

Mr. McCLORY. Yes.

Chairman CELLER. I have before me the contents of a report that appeared in the New York Times this morning under the heading, "Rights Units See Integration Lag."

The headline is in Washington. Six civil rights organizations said today that despite widespread school integration in recent years, "at least a dozen major school systems in the urban South are operating under shockingly inadequate and outdated court orders and desegregation plans."

The organizations based their findings on a study of 43 southern cities. The findings contained in the 130 page report entitled, "It is not over in the South," take issue with the Nixon administration and others who contend that the dual school system has been virtually dismantled. The study was sponsored by the NAACP Legal Defense and Educational Fund Inc., the American Friends Service Committee, the Washington Research Project, the Southern Regional Council, Delta Ministry of the National Council of Churches, and Alabama Council of Human Relations.

Its purpose was to measure the extension of segregation remaining in the South and the current influence of Federal Government and the nature of new problems. The 43 cities were selected as a representative sample of southern urban areas. The report said that extensive segregation remained in Beaumont, Tex., Charleston, S.C., and New Orleans, because no desegregation activity had occurred for the last 3 to 5 years as a result of a lack of initiative by Federal or private civil rights agencies.

In New Orleans, for example, there were 39 schools with total black student population and 26 that are at least 90 percent black. The following were listed as among those operating with racially isolated schools because they had not yet been brought in line with the latest Supreme Court desegregation guidelines: Birmingham, Montgomery, Huntsville, Ala. Little Rock, Ark., Orlando, Fla., Atlanta and Rome, Ga.

If Mr. Waggonner was here, I would emphasize, Baton Rouge, Monroe and Shreveport, La., Durham, N.C., Knoxville and Memphis, Tenn., Houston and Austin, Tex., and so on.

I shall place this article in the record.

(The article referred to follows:)

Rights Units See Integration Lag

CALL SCHOOL PLANS IN PARTS OF THE SOUTH "INADEQUATE"

(By John Herbers, Special to the New York Times)

Washington, May 23—Six civil rights organizations said today that, despite widespread school integration in recent years, "at least a dozen major school systems in the urban South are operating under shockingly inadequate and outdated court orders and desegregation plans."

The organizations based their findings on a study of 43 Southern cities. The findings, contained in a 130-page report entitled "It's Not Over in the South," take issue with the Nixon Administration and other who contend that the dual school system has been virtually dismantled.

Resegregation in urban centers is occurring at a rapid rate, with the assistance of the Federal Government, the report said. It found that there was a trend toward suspension of a disproportionate percentage of black pupils under disciplinary action and toward use of policemen in the schools when they were not needed.

LACK OF INITIATIVES SEEN

The study was sponsored by the N.A.A.C.P. Legal Defense and Educational Fund, Inc., the American Friends Service Committee, the Washington Research Project, the Southern Regional Council, the Delta Ministry of the National Council of Churches, and the Alabama Council on Human relations.

Its purpose was to measure the extension of segregation remaining in the South, the current influence of the Federal Government and the nature of new problems. The 43 cities were selected as a representative sample of Southern urban areas.

The report said that extensive segregation remained in Beaumont, Tex., Charleston, S.C., and New Orleans because no desegregation activity had occurred for the last three to five years as a result of a lack of initiatives by Federal or private civil rights agencies. In New Orleans, for example, there are 39 schools with totally black student populations and 26 that are at least 90 per cent black.

The following were listed as among those operating with "racially isolated" schools because they had not been brought in line with the latest Supreme Court desegregation guidelines: Birmingham, Montgomery and Huntsville, Ala.; Little Rock, Ark.; Orlando, Fla.; Atlanta and Rome, Ga.: East Baton Rouge, Monroe and Shreveport, La.; Durham, N.C.; Knoxville and Memphis, Tenn.; Houston and Austin, Tex.

PROSPECTS ARE UNCLEAR

In Atlanta, 47 schools are 100 per cent black, 29 are more than 93 per cent black and 12 are more than 91 per cent black, the report found. Atlanta and other cities are before the courts but lawyers say it is unclear whether further desegregation will be ordered for next fall.

In many urban areas, the report said, there is a trend toward resegregation of schools because of the flight of whites from the central cities, poor desegregation plans and changing housing patterns encouraged by the Federal Government.

Nineteen schools in Atlanta went from white to black between the fall of 1969 and the fall of 1971; 13 schools in Nashville are in the process of resegregating, in part because of attendance policies permitted by the authorities, and three of 16 schools in Memphis that have shifted from white majorities to black majorities did so because black housing projects were built near the schools.

CONSPIRACY IS DISCERNED

"Our monitors concluded that the power structure in most Southern cities they surveyed has conspired to maintain black neighborhoods with one-race schools," the report said. "The Federal Housing Administration, local planning commissions and housing authorities, urban renewal, school boards, highway departments, realtors and even transit companies received credit for contributing, consciously, to racial impaction."

Federally sponsored housing projects "in city after city have almost always been built in segregated or transitional neighborhoods," the report said. It added, "The effect is to drive out the remaining whites, leaving the neighborhood schools all black. School authorities have generally cooperated by building schools in the impacted areas. Escape for minority groups is impossible, thanks to real estate and finance policies of private business."

The study found that school administrators were increasingly using the police and security guards in schools but said that this "does not seem to have eliminated or significantly decreased the number of disciplinary problems."

"Indeed, there are some districts in which their use has escalated tensions and resentment in the black community," it said.

Mr. McClory. Mr. Chairman, I am not finding fault with what the article says. That was not the point of my questioning.

As an aside, I note that the references in the article were to Democrat-controlled areas, not Republican controlled. However, my main purpose was to emphasize the tremendous progress that occurred during these years under the Republican administration. I think that that progress has, in part, created the problem. The really strong positions taken with regard to desegregation, especially on busing, have exasperated the issue in a number of areas. Furthermore, I would point out that it appears to me, listening to the hearings that we have had so far, that it is not so much the busing of black students into largely white schools but the reverse—the busing of white children from the suburban or outlying areas into the poorer quality ghetto schools—that is clearly the fear, at least in the Detroit area and the Richmond area.

Chairman Celler. Will the gentleman yield on that score? Also, some of those white parents don't want to integrate their children.

Mr. McClory. I think I would interpret the testimony, including that of a number of civil rights proponents in the House of Representatives before this committee, that the busing of children from the white neighborhoods into the ghetto schools does provide a poorer quality education, does make the parents apprehensive and, of course, does result in some disorders and occurrences that does, in turn, produce this tremendous growth of opposition to the whole subject of busing.

I am quite familiar with the Berkeley situation to which the gentleman made reference as one of the successful examples. I would disagree with the fact that it takes a generation for integration to be accepted.

I think that it takes a year. At least, it is the first year that is the hardest. Michigan is experiencing these early stages. That's the reason for the clamor there.

Chairman CELLER. You have had a number of cases where there has been wonderful progress made within a year or so. In Pontiac, for example, we have testimony to that effect.

Mr. McCLORY. I don't doubt it, but I would say that right now Michigan is the one State in the Union that is raising such a furor on the subject of busing as to transform it into a national issue.

I might say that this has not been an issue as far as I know. In Republican primaries, but it appears to have been a major issue in most of the Democratic primaries.

Mr. HUNGATE. I see a sense of agreement between Mr. McClory and Mr. Corman as to the speed with which people adjust to the new situations. I suppose you would each disagree with the statement that the South lost the Civil War.

Mr. CORMAN. From the time involved it takes a school generation before we eliminate the problem. If we leave children in segregated schools, and they are, as the *Brown* case stated, they can't be equal if they are segregated. It is very difficult to then integrate them at 9th, 10th, or 11th grade.

It should be done, but it is difficult. It leads to violence on the part of students and more often on the part of parents. That is why I say if we get the children at kindergarten, by the time those youngsters get in high school they are not going to have the same problem they would have if they had been segregated up to age 14 and then moved together.

There is reason to integrate the schools at all levels, but it will be more painless when they have been used to it all their lives.

Mr. HUNGATE. You feel the worst thing that could be done would be to recommend a constitutional amendment?

Mr. CORMAN. We have had assaults on the Constitution even in this Congress, but we never in all of our history moved backward. I think it would be tragic if we ever did.

Mr. McCLORY. Do you think, in light of the language in the *Swann* case, that this committee or the Education and Labor Committee which also has jurisdiction in this area might provide some guidelines with regard to health and safety, distance traveled, time involved, or other factors that enter into the whole subject of busing? Might such legislation help resolve the issue?

Mr. CORMAN. The thing that worries me about that and the thing that disturbs me about the President's action is that, as you pointed out awhile ago, the great progress we have made is what the President says caused the problem. I do not believe progress is a problem. I believe the problem is a failure of leadership to show the value to this Nation of the progress we have made. That was my terrible disappointment in the President's report to the Nation.

Chairman CELLER. Isn't there a danger also, considering what the House has done in the last few months on this subject, that if some bill is offered, mild as it may be along the lines that was suggested in the question of the distinguished gentleman from Illinois, that it might be amended in a very substantial way on the floor?

Mr. CORMAN. Yes, sir: I am a little apprehensive about what the House may do outside of this committee.

For instance, if we talked about guidelines for busing, what would we want to do? Would we say we can't bus a child more than 10 miles? In my district we could move youngsters 10 miles. Are we going to say a child cannot be moved more than 10 miles from a farmhouse to a school 25 miles away?

We get in this trap when we try to separate busing and legislate as to this. We have to tie race in it and then we are conceding there would be something wrong with integrating schools.

I am not convinced that the courts have been unreasonable in what they have done. If we look case by case at what the courts were confronted with, they are not concerned about social problems. They are concerned about a child who stands before a bar of justice and asks for justice.

I don't believe they have been unreasonable and that is why I see no reason to restrict them.

Mr. McCLORY. You made reference to Evanston, Ill., and to Berkeley and pointed out that those were voluntary programs developed by the school boards. I agree.

It seems to me that in the *Swann* case there were three different groups—the grammer school students, the junior-high students and high school students. Two aspects of the plan which the court adopted were developed by the school board. It was only with repect to the grammar school students that the court, using its own expert, ordered the plan. That's where, it seems to me, we ran into trouble.

I would not want to agree that the courts have been right in every instance. I think that the courts have sometimes interfered with the better judgment which has been expressed by the school boards themselves. This has created the division in the community. I feel in some instances that busing orders have produced the exact thing that you and I want to avoid—racial tension.

We are trying to heal old wounds. We are trying to eliminate racial tension. That is why I am convinced that we are confronted with a very fundamental and serious problem.

If we could do something to help resolve this problem, I think it would be a great contribution. I am fearful that doing nothing is not going to help bring us to the answer.

Mr. CORMAN. Mr. McClory, let me point out something about the moratorium bill, because it is an effort to freeze busing where it is. Let's look at Los Angeles and at my own school district which is almost totally segregated. The case, known as the *Gitelson* case, was filed in 1965. The case was decided in 1970. The youngster had been deprived for 5 years of his right to an integrated education before a decision was finally handed down by the court. Judge Gitelson decided the case under very simple State law. He found that the pattern of segregation over the years by the Los Angeles School Board was their refusal to comply with the law. Their excuse was that they could not afford to comply with the law. Judge Gitelson handed down a decision saying that the Los Angeles School Board had no choice. If they suggested a plan, that was fine. If they didn't, the Judge would appoint a master. They could not afford to comply with the law, but they could afford to appeal the case.

Speaking of national leadership, the President of the United States condemned the judge for that decision, which I thought was tragic.

Chairman **Celler.** I take it that you are opposed to the proposed busing moratorium?

Mr. **Corman.** Yes, sir.

Mr. **McClory.** I don't want to suggest that I am in favor of the moratorium bill, because I am not.

Mr. **Corman.** If the schools in California complied with the State law regardless of any cases or any decisions by the Supreme Court, then they would not be affected by any kind of moratorium.

Our schools would be integrated and some of the students would be bused and some of the schools probably would be closed down and others built.

In my district, which is a suburb, we have a black community called the Joe Louis Tract when it was built. We let them know that was where they were to live so they could escape the ghetto downtown.

The school in the center of that community is a temporary wooden structure. It has been there since 1946. Within 5 miles there is a new, carpeted, air-conditioned school. All of the whites go to the carpeted, air-conditioned school and the blacks go to the frame school. That is a violation of State law and is a violation of the U.S. Constitution.

But the State has appealed it and the Los Angeles City School Board is not going to comply with it until they get a final Supreme Court order. I suppose then they will try something else.

Chairman **Celler.** Counsel?

Mr. **Zelenko.** Congressman, many of the witnesses who have appeared before the subcommittee seem perplexed that color should be a legitimate basis for assigning children to schools to overcome segregation. Their argument to the committee has been that the *Brown* case outlawed segregated schools and racial assignments.

They ask how can proponents of desegregation favor color or race as a basis for undoing segregation? In addition to Berkeley and Evanston, which you cite on page 9 of your statement, I think we should add the case of Clarke County, Ga. It, too, voluntarily desegregated its school system. The Supreme Court upheld its desegregation order and said:

> The Clarke County Board of Education as part of its affirmative duty to disestablish the dual school system properly took into account the race of its elementary school children in drawing attendance lines. To have done otherwise would have severely hampered the Board's ability to deal effectively with the task at hand. Any other approach would freeze the status quo that is the very target of all desegregation processes. (*McDaniel* v. *Barresi*, 402 U.S. 39, 41 (1971).)

My question is: How do you rationalize or explain to those who oppose busing the use of racial assignments as a means of undoing segregation?

They say this is the very kind of racial conscious practice that the Court struck down.

Mr. **Corman.** We went through this when we said first of all we must not require color on records and then we said we have to require color on records.

What we need to look at is the reason we are looking at color, not that we look at it or that we do not look at it.

If we didn't have the history we have, we would not need these artificial means to tear down the artificial barriers. It is the same thing in employment. We say there are nine black plumbers in New York and there are two black electricians in Hollywood but we ignore color.

We don't really. We haven't ignored color in all of our history. So we can't ignore color completely as we try to eliminate the result we have had for many, many years in making color a condition for certain other things.

I think that in a sense the whole civil rights battle is artificiality.

But it is artificiality in destroying those barriers and that is why I don't think we can desegregate without integrating. I don't think we can desegregate without getting racial mix and all of the other things.

It is just that we have done it for so long that I remember a common saying we used to hear about segregation.

It is quite different in different parts of the country. The southerners used to say, "We don't care how close you get if you don't get too big."

And the northerner would say, "We don't care how big you get as long as you don't get too close." And that was true. It is the reason that sometimes in the South we would get total integration with neighborhood schools.

It is the reason there was a great battle cry for freedom of choice. They didn't want neighborhood schools in those neighborhoods where blacks and whites lived close together. In the North our policy has been integration; we don't mind if an individual gets his Ph. D. at Berkeley, we don't mind that, but don't move into Van Nuys, Calif.

We have changed, but only recently. It is the reason that we get different kinds of remedies to destroy that segregated school system.

Mr. Polk. Mr. Corman, in your statement you indicated that some words are used in our busing discussions for special purposes. Quite often during this hearing witnesses have used the phrase "poor inner city schools" meaning "the place where the whites don't want to go." Why in your estimation, is it that those inner city schools are "poor"?

Mr. Corman. For a variety of reason. I don't buy the theory that we can upgrade segregated schools and solve the problem. Our own inner city schools are poor for unique reasons. The Los Angeles City School District is a tremendously large one and we get the same per capita student expenditures in ghetto areas and nonghetto areas.

But it is harder to teach a 5- or 6-year-old child who has very little family support. The mother who hops on the bus and travels 20 miles to scrub floors all day does not have as much time to teach her child to read as a mother who spends most of the day with her child.

The neglected child has not got as much to start.

Mr. Polk. For that person education is more important, isn't it?

Mr. Corman. Yes. At least as important. In many instances, our system has led to a different family life for blacks than for whites.

In some school districts it is probably just the difference in the money they spend. That is the reason for the California case saying we have to spend the same amount of money statewide. We found that Beverly Hills had a large expenditure. But in some areas outside the city of Los Angeles large and small expenditures occurred in the same community.

Mr. McClory. The pupil educational programs of the Office of Education recognize the need for parental and family involvement in the educational process of the young. It is perhaps the most critical element in raising the educational level of the disadvantaged or the poor child.

I know that in the Berkeley school system, this is particularly clear. The oriental student and his family maintain a very close relationship which gives him generally a higher educational level than the white student and, of course, the black student.

The real need for parental involvement, the most critical need, is in the black home. Conscious efforts should be made to try to involve the parents more in the educational process. That is perhaps one of the most important things we can do in helping to equalize educational opportunity.

Chairman Celler. We heard Mrs. Hicks state that she is for integration. She wants what she calls racial balance according to the Massachusetts legislature, and the law of the State of Massachusetts, but she does not want busing.

She implied that the only other way you could create integration would be building peripheral schools, and so forth. But those schools are not built.

In New York when we start to build peripheral schools we get tremendous opposition from the residents of the area of these peripheral schools. So there is no choice, and in addition, building all of the schools would cost a tremendous amount of money. It would take years and years to build these schools to create integration.

Meanwhile, we have another generation of the status quo and particularly in the South where we have so many of the schools which are wholly 100-percent segregated and or 90-percent segregated, we would make no advance at all.

Mr. Corman. Mr. Chairman, I agree and it seems to me we ought to leave the courts and local school boards with every tool they can devise to accomplish this purpose.

It seems to me utterly ridiculous to take away from them some tools they have found to be useful. I am particularly concerned about H.R. 14461 which would undo everything that has been done so far.

Mr. Polk. Mr. Corman, if *Serrano* v. *Priest* were applied everywhere so that education expenditures in each State were equalized, do you believe that the opposition to busing children to the "poor inner city school" would diminish?

Mr. Corman. I think it would not. Somebody is going to have to point out to the people what we do to ourselves by segregating our schools and what the potential is for improving our total society if we integrate our schools.

The *Gitelson* case was a classic. It was a very simple case from the point of view of the law. The only thing the judge said was that complying with the law is not the objective of the school board. Yet, before the sun was down the judge had been atacked by the mayor, the Governor and the President. He was subsequently defeated at the next election. It is not just a lack of leadership but a kind of Ku Klux

Klanism that we hear from some national leaders that causes the real problem.

There is no question it would be easier to get parents to permit their child to be bused to a school that has better quality teachers and buildings than to walk to one that is inferior.

I can't imagine any white parent who would say, "yes, I would rather have my child walk to the ghetto school than to ride 10 miles to the suburban school." The parent would rather have his child ride to the suburban school.

I think that case is good tax reform but it will not solve the problem of making people understand what racial discrimination does to us.

Mr. POLK. Then the reason, as I understand your testimony, that the white parents don't want to send their children into "poor inner city schools" is not that the schools don't have air conditioning or good paint on the walls. The reason invalues something else. Is that correct?

Mr. CORMAN. Yes, with some justification there are some real physical dangers with children who are half grown. Why do we preserve what created those physical dangers? That is what we ought to be undoing.

Mr. POLK. Might the answer to the problem be, ironically, more busing rather than less? If a racial balance reflective of community composition were in fact the goal of court decisions, if every school in a community—even inner city schools—were integrated majority white, would not the fear of white parents be stilled?

Mr. CORMAN. It might be and I guess each case is different. I don't really know. I am just thinking about my own district which is half a million people and is a tiny piece of the whole Los Angeles school system. If in just that area the school board decided to comply with State law, they might decide to close up that little old "ding bat" frame elementary school and build a few extra classrooms on the others and solve the problem that way.

In almost every case, as Mr. McClory mentioned, when the school boards come up with something that is reasonable, the courts adopt it. It is only when they propose, as the court has said, "a loaded game plan," that the courts don't accept it. It has been our experience in California, many of the desegregation orders have been from the Federal courts. It has worked very smoothly in Oxnard, Calif., where the school board proposed a plan and the Federal court approved it and a lot of effort went into explaining to the community what it was all about.

Regrettably they decided to appeal it. They are complying with it, but they are also appealing it. If we had the moratorium bill, it would be stopped in its tracks.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt the witness, if I may. Would not the moratorium bill deny all of the children the gain that they might have in quality education for a year or a year and a half?

Mr. CORMAN. Yes, sir. It seems to me that it does. It certainly, at least at a minimum, stops us in our tracks. And so whatever youngsters would have their rights implemented in that year and a half, they would be denied.

When we were discussing the voting rights bill, we approved Federal registration because it is a perishable right. If we do not vote in this election we never have a chance to vote in this election again.

This youngster's right to integrated education is a very perishable right. Eighteen years of it has already perished for most youngsters but every day there is delay and that youngster goes to a segregated, inferior school, that day in his life will never be repeated again.

Chairman CELLER. You also oppose the proposed moratorium on the grounds that it would be unconstitutional?

Mr. CORMAN. Yes, sir. You had much better constitutional lawyers and I would not want to pit myself against them. But I agree with them as to constitutionality.

Of course, the dilemma is that it means further delay. But the most terrible danger is trying to convince the American people that we should not bother with it, that we should stop where we are. That is the terrible tragedy.

I remember one time a President addressing the joint session said, "we shall overcome." That rankled a few people but it really excited me. I wish we could hear those words again.

Chairman CELLER. Any further questions?

Mr. HUNGATE. Mr. Chairman.

Chairman CELLER. Yes.

Mr. HUNGATE. As I understood your concern it was that the Congress not take action that would withdraw any power from the courts or the school boards to proceed with progress in integration and desegregation.

Do you think that the busing moratorium bill proposed by the President would withdraw such authority from the school boards?

Mr. CORMAN. No; except of course school boards are subject to whatever the political power is in the community. If the U.S. Congress and U.S. President say we should not integrate our schools, it is going to be very difficult for school boards, even if some of the members want to, to move forward.

It would be more the indirect impact on them if some of the legal tools they have are taken away.

Mr. HUNGATE. Thank you.

Chairman CELLER. We are very much in your debt for your lucid statement and I assure you that it is a comfort to have you before us.

Mr. CORMAN. Thank you, sir.

Chairman CELLER. Our next and final witness today is Mr. John R. Cobau, member of the Steering Committee, Grosse Pointe Study and Action Committee for Education, Grosse Pointe, Mich.

STATEMENT OF JOHN R. COBAU, MEMBER OF THE STEERING COMMITTEE, GROSSE POINTE STUDY AND ACTION COMMITTEE FOR EDUCATION, GROSSE POINTE, MICH.

Mr. COBAU. It is a pleasure to be here. It is always difficult to follow a very articulate witness such as Representative Corman, particularly one who is a tower of strength and monument of excellence. I shall try. It is particularly hard because I have to disagree with some of his contentions.

Many of us hoped and thought after the *Brown* case that we were heading toward a condition of color blindness. This point has been touched upon in Mr. Corman's testimony. We are now hearing the cry in the area of public education that the law cannot be colorblind, that the courts not only may, but must, look to race in terms of composition of faculty and public schools.

We submit, despite Representative Corman's testimony, that this is a step backward and a monumental step. Genuine social integration, as opposed to merely integration as mandated by the courts or legislatures, will never in fact be achieved so long as our law is construed and applied on the basis of racial percentages. House Joint Resolution 620 is, we believe, a necessary corrective to the movement of the courts in that direction.

There has been much talk, and I regret to say rather loose talk, about the obvious benefits of integration. We in our group have long supported the concept of desegregation which we feel is easily distinguished from integration of the type that is contemplated by the courts in the school integration suits.

We believe in desegregation. We think that the country is on that road, and we think it should stay on that road. We do not believe that integration on the basis of mathematical percentages is proper. We think that our position in this is vindicated to some extent by various analyses of the Coleman report, and by the subsequent analysis by Dr. Armor. The former are published in the Mosteller-Moynihan volume, which you may be familiar with, and have been buttressed also, we believe, by subsequent studies by Dr. Armor which have received publicity in the last few days.

These findings, which you may be aware of, are basically to the effect that there is very little or no educational gain from integration, from integration that is mandated by a court. For this purpose we distinguish between integration which is voluntary on the part of a school board and that which comes about under quite different circumstances.

Mr. **Zelenko.** Why does it matter to educational gain whether it is voluntary or by court order? How does that affect the learning of a black child?

Mr. **Cobau.** Mr. Zelenko, I think it is because when the community is behind this type of thing, you get quite different test results. As far as the legal principle involved is concerned, I am not sure there is any. But for purposes of testing, I think there is a different psychological atmosphere which surrounds it. I think that is probably behind the favorable results in Berkeley, for example. This was a community effort. Where it is not a community effort, where you have substantial community opposition, I think the effect upon white children probably is so-so, perhaps good, perhaps not. On black children, the current results seem to indicate it is most unfavorable.

Chairman **Celler.** May I strike an analogy there? Suppose you lived in a labor town where the bulk of employment was under the protection of a labor union, and an injunction was issued by a court against the labor union. The community might be opposed to that court order. Does that mean that court order should be rendered ineffectual because the community does not agree with it?

Mr. COBAU. I am not suggesting that for a moment. That is why I am speaking in favor of the constitutional amendment.

Chairman CELLER. If the court issues an order to desegregate, you say that is "forced" integration. If the community is not in sympathy with that order, does that mean that the community should not abide by the court order?

Mr. COBAU. No, Mr. Chairman, it merely goes to whether the factual conclusion upon which the court order is based is one which may be relied on by the courts—and here I am talking about integration to which the community as a whole is opposed. Just now there is such integration in the South. We think that is very proper. It is necessary in order to dismantle an artificial type of segregation. But when the segregation is not of an artificial type, there is no dual school system, but instead it is a process which has developed largely or entirely from residence. To some extent from exclusionary practices, but by and large through choice of residence on the part of whites and on the part of others. When this has happened, and you try to amalgamate contrary to the community's wishes, the results, Mr. Chairman, I submit, are going to be most unfavorable, and this has been buttressed by studies.

I am not aware of any studies which show to the contrary in a convincing manner. I qualify that because of situations like Berkeley, where the community is for the event, for integration. Where there is reinforcement for the students who are involved, I think you may get good results there. The Armor study I think was a controlled experiment and the results were most unfavorable, particularly for the blacks.

Mr. ZELENKO. Excuse me. The Armor study did not include any southern school districts, did it?

Mr. COBAU. I can't answer that. I believe it was northern districts.

Mr. POLK. Mr. Chairman.

I would like to ask the witness if he is suggesting to the subcommittee that in those communities where there is opposition to integration continued segregation would improve race relations?

Mr. COBAU. Continued segregation? I am against segregation and for desegregation.

Mr. POLK. I am not seeking to establish your guide for your own conduct, but whether as a matter of national policy continued segregation, in your opinion, would ameliorate race relation.

Mr. COBAU. As I understand, the *Brown* case was premised on the fact that the court found as a matter of fact that where there was a dual school system, one school for blacks and one for whites, that invariably there were educational differentials that crept in. I think the *Brown* case felt they were from two sources: One: disparity of economic resources applied to the schools and, two: just the invidious effect of being classified by race for purposes of education.

I think that the Coleman report, at least as analyzed by Moynihan and Mosteller in their volume, indicates that educational input, that is, dollars applied to schools, actually has very little effect upon educational output at least as measured by tests such as scores. As far as the invidiousness of being characterized by race, we object very much to this and agree with the desegregation decisions. We think that that does not apply in the northern cities and where it does apply in the southern cities, it should be rectified, and, hopefully, is being rectified.

Mr. Polk. Which is the better policy for further ameliorating race relations, a policy of desegregation or a policy of segregation?

Mr. Cobau. Desegregation.

Mr. Hungate. Mr. Cobau, do you suggest that between a desegregation program that is voluntary and one which is involuntarily imposed through non-elected court, there is a different rate of educational progress.

Mr. Cobau. I am suggesting the test results would be different.

Mr. Hungate. Do you think that the enthusiasm would be different in the two communities for the task?

Mr. Cobau. Yes, I agree.

Chairman Celler. You may proceed.

Mr. Cobau. We recognize the many problems that beset schools and we are part of the Detroit furor that Representative McClory has mentioned. In our concern for this, we try not to adopt a totally negative attitude. We try to adopt a very affirmative attitude. We think first that there must be a certain lowering of the rhetoric by the political powers calling the attention of the country insofar as they are able that the educational millenium is not yet here and is not apt soon to occur. It is most unlikely, based on any studies that have come to our attention, that this millenium is going to come any earlier because children of different background and races are put together on a proportionate basis. Indeed, the problems which Dr. Armor sets forth in his report and which are reported almost every day in the press of large cities, indicate that the many psychological and other problems that occur in big city integration situations may mean that education is going to be promoted by better differentiation of children, not along racial lines, something which we deplore.

Second, while we as I have indicated agree with the study of Drs. Moynihan and Mosteller that the input of educational resources probably has very little to do with actual academic achievement level, we nonetheless support efforts by Federal and State authorities to encourage and stimulate some rough parity of educational expenditures per child.

Our motive here is that some schools are actually unable to operate on a full schedule. Second, these major disparities are often reported by those who don't participate in them or benefit from them as cause and effect. Probably more often than not they are due to social and family background of the students, but the feeling that this relationship exists, however mistakenly, has a very invidious effect on social relationships. Even though we believe that this effect is more on the parents than the children, we feel it is important that society avoid not only the fact but the appearance of unequal educational opportunity.

Finally, we urge the State legislatures and Congress to direct their attention and energies on continued basis to methods through which equal educational opportunities at public school level can become a reality rather than an ideal. If, for example, later studies show that under certain circumstances it is necessary and advisable for the education either of disadvantaged or advantaged children to go to school one with the other, we think this is a proper activity or area of activity for the Congress and the legislatures, so long as that assignment of pupils is not on the basis of race but is on the basis of disadvantage.

In summary, our group supports House Joint Resolution 620 as an application of the finest American political tradition to a subject of particular concern which this tradition is threatened with tragic erosion.

If I may depart a little bit from my prepared statement, we were not aware at the time we were invited to appear that this subcommittee was also studying H.R. 13916, the Student Transportation Moratorium Act. We agree, contrary to the point of view taken by the last speaker, that guidelines set by the Congress, not necessarily those set or recommended by the President, would be preferable to the confusion which results from ad hoc court rulings.

We support H.R. 13916 with the qualification that we think that the standards should be carefully considered by this committee, and by the Congress as a whole, and that it should further include as the period for the moratorium any orders subsequent to the introduction of the bill.

We say this because we in Detroit anticipate that there would be a busing order come down within the next month, perhaps within this week, and we feel that it will create massive disruption and a great deal of wasted effort if it is necessary to reverse that after the Supreme Court has come down with its ruling or after this Congress has prescribed different standards.

Chairman CELLER. Any questions?

Mr. MCCULLOCH. Mr. Chairman, I would like to ask a few questions about your biography.

Are you a native of Michigan?

Mr. COBAU. I am not.

Mr. MCCULLOCH. Where were you born?

Mr. COBAU. I was born in Pennsylvania and educated in Massachusetts, New Jersey, and Ohio.

Mr. MCCULLOCH. Where were you educated in Massachusetts, New Jersey, and Ohio?

Mr. COBAU. Cambridge, Mass., Harvard Law School.

Mr. MCCULLOCH. Where did you receive your elementary education?

Mr. COBAU. In the public schools in New Castle, Pa.

Mr. MCCULLOCH. Where did you go to school in New Jersey?

Mr. COBAU. Princeton University for 2 years.

Mr. MCCULLOCH. What are you doing now?

Mr. COBAU. I am in private practice. I live in Grosse Pointe, Mich., and I practice law in Detroit, Mich.

Mr. MCCULLOCH. What is the population of Grosse Pointe, Mich.?

Mr. COBAU. I understand it is about 80,000. I believe it is about 70,000.

Mr. MCCULLOCH. About what proportion is black and what proportion is white?

Mr. COBAU. There are negligible blacks. There are a few other minorities, I understand.

Mr. MCCULLOCH. Then, may I properly conclude that you haven't been living with these rough, hard questions from day to day?

Mr. COBAU. Living with which tough, hard questions? We are concerned with busing.

Mr. McCulloch. The problem of racial harmony and integrated schools—the problems that have been talked about here today.

Mr. Cobau. No, we have not been living with blacks and whites in our schools, that is right.

Mr. McCulloch. Have you made a detailed deep study of these problems other than as the spokesman for your committee?

Mr. Cobau. I think our committee has made several studies and I have participated in those. I can't say that they have approached the level of the Mosteller-Moynihan study, if that is what you have in mind.

Mr. McCulloch. I would not expect that they would have reached that level.

Are you married?

Mr. Cobau. Yes, and I have three children in the public schools and will have four next year.

Mr. McCulloch. In Grosse Pointe?

Mr. Cobau. Yes.

Mr. McCulloch. The proportions you gave me refer to the whole of that city, do I understand correctly?

Mr. Cobau. When you say city, Mr. McCulloch——

Mr. McCulloch. Whatever you want to call it, suburb.

Mr. Cobau. School district. It actually encompasses five municipalities and part of a sixth.

Mr. McCulloch. What is your program for bringing quality education to the disadvantaged schoolchildren in America such as you have in Detroit, Mich., for instance, and in some parts of Ohio?

Mr. Cobau. We believe that integration won't accomplish that. We feel it is a false goal. We feel the Moynihan-Mosteller studies indicate that it is a false hope, that the school will be integrated but that educational level will not rise.

Mr. McCulloch. You are firmly convinced of that, are you?

Mr. Cobau. I am convinced as I am by any study objectively undertaken by professionals. Until I see a better study, I will believe it, Mr. McCulloch.

Mr. McCulloch. I see. I don't quite agree with the conclusions reached by those two very able, experienced gentlemen, if you have correctly stated those conclusions here.

Mr. Zelenko. Mr. Cobau, do you have a copy of House Joint Resolution 620 before you?

Mr. Cobau. Yes.

Mr. Zelenko. Do you believe that the language of the proposed constitutional amendment, would insure neighborhood school assignments?

Mr. Cobau. I don't believe that neighborhood schools are necessarily the only way that you can assign pupils, Mr. Zelenko. I think, as we indicate in our statement, that you might take into consideration backgrounds. Nonracial backgrounds. You might take into consideration educational level, or educational achievement. It might be determined by educational authorities, aided and abetted by Congress of the United States that it be to the advantage of children that they be educated with more advantaged or less advantaged students and to give grants to school districts accomplishing this form of integration.

Mr. Zelenko. Looking at the prepared amendment that your group supports, do you believe that it would prohibit assignment of children from Detroit area to Grosse Pointe schools?

Mr. Cobau. I don't think so.

Mr. Zelenko. Do you think it would prohibit assignment of children from Grosse Pointe to Detroit schools?

Mr. Cobau. When you say assignment, I have to ask by whom. If you mean by the courts under the present suit, I would say yes, because that present suit is based on racial factors. If you say would it prevent it in the future, if the legislature in its wisdom decided that some of the other factors were relevant, I would say it would not prevent that.

Mr. Zelenko. You testify that you support voluntary desegregation, such as in Berkeley or in other cities where elected officials voluntarily have agreed to desegregate, is that correct?

Mr. Cobau. Yes. I believe in court-ordered desegregation also.

Mr. Zelenko. But insofar as voluntary efforts are concerned, will you tell the committee how you believe such efforts could continue under the language of House Joint Resolution 620 which you support?

Mr. Cobau. Insofar as you are talking about segregation based on race, it can be either voluntary or under court order, and this would not prevent that.

Mr. Zelenko. The language of the proposed amendment provides that no public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

I have given you the case of Berkeley, Calif. or Clarke County, Ga., where there was racial assignment of pupils to undo a segregated school system. Would that be permitted under House Joint Resolution 620?

Mr. Cobau. No; some other method of integration would have to be attempted.

Mr. Zelenko. Then voluntary efforts to desegregate would not be permitted under House Joint Resolution 620?

Mr. Cobau. I won't go that far. I would say voluntary efforts to desegregate in which you look to the race of the children would no longer be adequate.

Mr. Zelenko. The Supreme Court has said assignment based on race are essential tools to undo segregation school systems. What other system would you suggest be used to undo a segregated school system?

Mr. Cobau. There are other alternatives. There are alternatives of neighborhood schools. There are other alternatives that are available.

Mr. Zelenko. How would desegregation be achieved, sir?

Mr. Cobau. Again I would have to see the particular situation. I would have to know the particular resources available before I could comment on that. I have never quite understood why shifting to a neighborhood school system is not feasible, even in the South. I think that is what we have in the North and I am not clear why the South should necessarily be discriminated against at this stage in its legislative flexibility because it practiced a dual school system 5, 10, or 20 years ago.

Mr. Zelenko. Mr. Cobau, if a court found that a residential area was racially segregated because of State action, and the local school board wanted to make assignments on the basis of residence, would neighborhood school assignments be permitted under the language of House Joint Resolution 620?

Mr. COBAU. No assignment on the basis of residential area would be prohibited under the language.

Mr. ZELENKO. May I pose the question again. If a court found that residential patterns or residential areas were racially segregated due to State action, could a school board make neighborhood school assignments in such circumstances under the language of the proposed amendment?

Mr. COBAU. Mr. Zelenko, I would have to leave that to the courts. My own judgment of it would be that it could continue to assign on the basis of neighborhood schools.

Mr. ZELENKO. Thank you.

Mr. POLK. I have one last question.

Mr. Coban, you indicated before that you thought desegregation was a better national policy than segregation.

Mr. COBAU. Not a better policy, an absolute must.

Mr. POLK. In that case, don't you believe there are situations where the only method for desegregating a particular school district is to assign children—to unassign children, actually—so as to produce integrated schools? And if it should be that the school to which a child is assigned is farther than a mile and a half from his home, the State often provides transportation by schoolbus. Thus, can't you envision situations like that where the only way we can achieve desegregation is through court ordered busing?

Mr. COBAU. Through court-ordered busing on the basis of race?

Mr. POLK. Yes.

Mr. COBAU. I find it wrong to correct one wrong by another wrong. I feel it wrong to label any person and classify him legislatively or administratively on the basis of race. I don't feel that the proper remedy for segregation is another administrative classification on the basis of race.

Mr. POLK. Then the courts should not take race into account in fashioning the remedy?

Mr. COBAU. Neither the courts nor legislators nor administrators.

Mr. POLK. That raises an interesting problem. If House Joint Resolution 620 were adopted and a school board were to violate it by assigning pupils on the basis of race to a particular school, could the courts take race into account in unassigning those children? Or would House Joint Resolution 620 declare constitutional rights for which there could never be a remedy?

Mr. COBAU. If there is a right, I don't conceive that you have to have a remedy. You only need remedies, as I conceive them, for a wrong.

Mr. POLK. Excuse me for being so obscure. If House Joint Resolution 620 were adopted and a school board assigned public school students on the basis of race to particular schools, could a Federal court, petitioned by a plaintiff who was assigned to a particular school on the basis of race, grant to that plaintiff a remedy, and in granting the remedy could the court look to the race of the plaintiff?

Mr. COBAU. Obviously, whenever you find a violation of assignment on the basis of race, this finding is predicated on the fact that someone is of a particular race. So for purposes of enforcing this amendment, it would obviously be necessary to look for the courts to make a finding of race of the child and that he has been assigned to a school on basis of that race.

Mr. Polk. And in undoing the wrong also would the court have to look to race and not be color blind?

Mr. Cobau. In undoing the wrong they merely prohibit that particular assignment or that series of assignments.

Mr. Polk. By unassigning whom?

Mr. Cobau. By requiring the court, administrative authorities to do so or by entering the order itself which is based on some other factor.

Mr. Polk. It seems to me that you are saying that in remedying wrongs under House Joint Resolution 620 the court could take race into account but in remedying wrongs under the 14th amendment the court could not take race into account.

Mr. Cobau. I don't feel that it is taking race into account when you enforce House Joint Resolution 620 by determining that somebody has been discriminated against in violation of it on the basis of his race. I would have to say I don't think that to enforce this on that basis is any more taking race into account than it was in the *Brown* case, which merely held that you cannot have a school system based upon two school systems in effect based upon race.

Mr. Polk. Then you feel that House Joint Resolution 620 is simply a restatement of the *Brown* case?

Mr. Cobau. I feel it is an amplification of what the *Brown* case should have decided and what a lot of us thought it did decide.

Mr. Polk. Do you feel that the *Swann* case is a contradiction of the *Brown* case?

Mr. Cobau. I feel the *Swann* case is headed off on a tangent and should not go on that tangent in that particular respect. The *Swann* case held a lot of other things.

Mr. Polk. Would the *Swann* decision be overruled by this constitutional amendment?

Mr. Cobau. I can't answer that in its entirety.

Mr. Polk. Thank you.

Chairman Celler. Thank you very much. We appreciate your coming this morning. We will insert your prepared statement in the record at this point.

Mr. Cobau. Thank you.

(The statement referred to follows:)

Statement to Committee on the Judiciary, United States House of Representatives, by Grosse Pointe Study and Action Committee for Education, Grosse Pointe, Michigan

Almost since this country was settled by Europeans, the goal of bringing persons of differing ethnic or religious backgrounds into full political and economic participation has been a cherished one, admittedly honored in many instances only by lip service but very often commanding the respect and efforts of a broad spectrum of political and social leaders and groups. We share this goal, and suggest that rules requiring racial balance, whether in the schools or elsewhere, whether ordered by courts or by other authorities, will seriously undermine this goal. We support H.J.R. 620.

Many of us thought and hoped, in the aftermath of *Brown vs. Board of Education of Topeka*, that this country was heading for a universal principle whereby the law is color-blind and will not accept racial characteristics (or religious or ethnic background) in lieu of substantive differences, as proper bases for legislative classification. The dismantling of dual school systems was a necessary and proper corollary of this principle, and we applaud successes achieved in this area. However, we now hear the cry that we not only may but must look to race in determining the composition of students and faculty in public schools. We submit that this is a step backward, a drastic step, and that genuine social integration (as opposed to integration mandated by courts or legislatures) will never be achieved so long as our law is so construed and so applied. H.J.R. 620 is a necessary corrective to the movement of certain courts in this direction.

Apart from the invidious long term effect of allowing our social rules to be fixed on the basis of race, it is far from clear that mandatory racial balance in schools will have any beneficial effect. Analyses of the Coleman report have demonstrated (on the basis of data presently available) that educational benefits to disadvantaged children from association with children of more fortunate backgrounds are negligible. The other factors involved, which we may refer to as social benefits as opposed to those which may be measured by customary educational techniques, are harder to define or to balance. It has been argued that children will be more tolerant if exposed to other races at early age; it is just as possible to conclude that this is one of the great myths of our society, that constant exposure to those of other backgrounds is just as likely to generate conflict and permanent antagonism as to alleviate them. It has been argued that neighborhood schools without racial balance must inflict some psychological damage; it is just as reasonable to deduce that education with others of similar cultural background is psychologically healthy for children by reinforcing ties with family and community, and that disruption of such ties will create many more problems than it could reasonably be expected to resolve.

We accordingly support H.J.R. 620 as applying one of the noblest principles of the American ideal to one major area of activity, and also as blocking an imprudent and futile attempt by some courts to achieve certain ill-defined social goals at a very real and very substantial personal cost to the millions of children involved.

Recognizing that our schools are beset by many problems, we have the following suggestions:

First, all communities within the nation must come to realize the enormous complexity of the problem. They must also acknowledge: (1) The educational millennium is not here, and is not imminent, for any of our children, whether disadvantaged or not; (2) It is most unlikely that this millennium will come one moment earlier because children of different backgrounds or races are put together on a proportionate basis. Indeed, progress is arguably more apt to come through better differentiation of children on the basis of educational level and potential (but never race) so that the level of instruction is more accurately geared to the needs of each child.

Second, while the correlation of school resources with academic achievement is far from clear, we nonetheless support efforts by federal and state authorities to encourage and stimulate at least a rough parity of educational expenditures per child. Our motives are twofold: (1) Many schools are not only poor, but actually unable to operate on a full schedule; (2) Major disparities of expenditure, when seen in relation to superior academic achievement, are regarded by those who don't participate in either as cause and effect. Probably more often than not, both are the product of the social and family background of the students, but the feeling that the relationship exists, however mistaken, has undesirable effects on society, albeit more on parents than on children, and we feel it important that society avoid not only the fact, but the appearance, of unequal educational opportunity.

Finally, we urge the state legislatures and the Congress to direct their attentions and energies on a continuing basis to methods through which equal educational opportunity at the public school level can become a reality rather than an ideal. If later studies show (contrary to present indications) that disadvantaged students will learn better in association with those not disadvantaged, this could and should be considered as a social policy; the proposed amendment would not bar pupil assignment for such purposes unless based on the discredited and invidious classification of race.

In summary, we support proposed H.J.R. 620 as an application of the finest American political tradition to a subject of particular concern in which this tradition is threatened with a tragic erosion. We further support continuing efforts by the Congress and by state legislators to find effective methods to provide actual equality of educational opportunity.

JOHN R. COBAU,
Chairman, Resolutions Committee.

Chairman CELLER. The committee will now recess subject to the call of the Chair.

(Whereupon, at 12 o'clock noon the committee was recessed subject to the call of the Chair.)

(Subsequently, the following statements were received:)

STATEMENT OF HON. JACK KEMP, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman and Members of the Subcommittee: There have been few issues in our history that have been of deeper concern to our citizens than court and bureaucrat-ordered busing to alter the racial mixture of public schools.

At the outset, I would like to say that I am not here just as a spokesman for the people of my district but as a legislator who is deeply concerned about forced busing imposed not for the sake of quality education but to achieve a hypothetical racial quota in schools. I am concerned by what I have seen it do to Pontiac, Michigan and Richmond, Virginia, and by what I fear such orders could do to my district, my State and our Nation.

I am concerned about the present and future quality of public education and the adverse effect of forced busing on educational excellence. I am concerned about the threat that forced busing poses to a parent's right to send his child to the neighborhood school. I am also concerned about the possible Constitutional crisis that these orders may have engendered.

The type of busing about which I am speaking today is the busing of children by force, pursuant to judicial or bureaucratic order, for the purpose of achieving a racial balance.

I have heard it said, primarily in an effort to mitigate the gravity of the busing issue, that busing is a historic institution in America, having been used over the years to transport millions of children to school and back again. But there is a grave difference between this type of busing and the kind of which I speak today. The difference can be put in one word—compulsion.

LOCAL CONTROL

Court ordered busing plans transfer students, not as a matter of convenience, but to achieve some arbitrarily established formula of racial mix. One tragic result is that the courts and government officials have replaced the parent in determining what school his child shall attend and how.

We have heard a great deal of discussion of "parental control" and "community control." There were reasons for them long before this busing issue exploded. However, this new line of recent cases on busing makes the school even more distant from the parents who send their children to it.

In effect, these cases have given great control to the central school bureaucracies. Clearly, they have reduced the influence of people over their own environment and their own fate.

This is particularly disturbing, especially in view of the fact that people, already reduced to severe frustration by their inability to affect a complex society and government that often moves in ways that are incomprehensible and undesirable to them, must now see one of their last areas of local influence taken from them to achieve the single goal of racial balance.

I firmly believe that all people, black and white, have the right to control as much of their lives as is possible in a complex society, and the schools are a major function of government which would not suffer and might even benefit from a great measure of local control.

CONSOLIDATION AND POLITICAL BOUNDARIES

Some courts have recently stated that school districts are no more than lines drawn for "political convenience." That might be, but they also signify much more. School districts across this Nation represent one kind of organization that a democratic society has chosen for its schools. In this context, decisions that ignore or consolidate them are threats to our power to organize our society in democratic fashion.

CONSTITUTIONAL ASPECTS

As a straight legal issue, there is considerable room for doubt as to whether the Constitution actually mandates a system whereby every school shall have a black minority and no school shall have a black majority. Nevertheless, present day judges, with whom the doctrine of judicial restraint is not popular, seem able to find constitutional warrant for whatever policies they feel are best for society. This has become a particular source of rancor in many communities since the decision to bus was not made by them or their elected representatives, but was forced on them by judicial and bureaucratic fiat.

One understands that the people do not vote on what the Constitution means. Our judges decide. But it is clearly one thing for the Constitution to say that it must allow black children into the public schools in their neighborhoods. But, it's quite another for it to say, at the hands of its interpreters, that some children may not be allowed to attend the public school nearest their home due to their race or color. When one begins with the first proposition and ends with the second, one truly wonders if the Constitution is being interpreted correctly.

In fact, an analysis of what the lower courts have been doing in the area of busing since the latest Supreme Court decision in the area (the *Swann* decision) reveals a significant aspect of the problem. Lower court judges have been going far beyond anything the Supreme Court has mandated; indeed, they have been ordering precisely the things that the *Swann* decisions told them the Constitution did not require. The lower court judges have not been waiting for the legislature or even the Supreme Caurt itself; they have simply been writing their own social opinions into the Constitution.

I realize that there have been instances in the past where a black child was bused past his neighborhood school to attend a black school or a white child bused past his neighborhood school to attend a white school. That was morally wrong.

But it is by no means clear that today it is morally right to bus a black or white child past his neighborhood school so that he will become part of an artificial racial balance in a school miles away. This is why there is no deep moral passion in favor of busing for racial balance, whether on the Supreme Court, in Congress, from the President, or from the black community.

It is important to recall that in 1954, the Supreme Court in the *Brown* case clearly held that the states shall not designate where a child shall attend public school on the basis of his color or race. To do so, said the Court, violated the 14th Amendment which guarantees everyone "equal protection of the laws." In essence, the high court stated that government must be color-blind in its dealing with its citizens. It may not grant favors nor impose penalties on the basis of race or color without violating the equal protection clause of the Constitution.

Mr. Chairman, I am certain that the vast majority of Americans accept and revere this color-blind principle of government, for this principle has been incorporated in many other areas of our law, such as in laws used to outlaw discrimination in housing and employment.

However, since it is obvious that in the area of school assignment some of our courts have ignored the color-blind mandate of *Brown*, I firmly believe that this principle should be written into our highest law by a Constitutional amendment.

I realize that many judges think they are in accord with *Brown* by ordering compulsory busing, but something very disturbing and alien to our system of government has happened when the import of the argument changes from an effort to expand freedom—no Negro child shall be excluded from public school because of his race—to a distant effort to restrict it.

QUALITY EDUCATION

It used to be thought that the academic performance of black children would improve in schools integrated through transportation, but there is no evidence to confirm this idea. What the evidence actually suggests is that integration has little or no effect on academic performance.

Hence, if the elaborate reorganization of the schools that the lower court judges are ordering all over the country is being undertaken so that the presumed achievement-raising effect of socio-economic integration can occur, we are likely to be cruelly disappointed. There is little if any encouragement to be derived from studies, published and unpublished, of voluntary busing programs even though such busing takes place under the most favorable circumstances (with motivated volunteers, from motivated families, and with schools acting freely and enthusiastically.)

Against this background, one can understand the furor generated by a remark such as the one made recently by Judge Merhige in the so-called Richmond decision that "desegregation may not be subordinate. A remark such as this is fairly typical of the attitude of our lower court judges. They have arbitrarily concluded that nothing should stand in the way of ending desegregation—neither cost, nor educational benefit, nor housing patterns, nor neighborhood schools, nor convenience, nor the parents' nor children's desires. Indeed, nothing at all should prevent them from placing children of varying colors in special mathematical arrangements and distributing them neatly throughout the cities and suburbs.

Herein lies my main objection to compulsory busing. As one of the newspapers in my district, the *Courier Express*, articulately stated: "The pursuit of excellence in education seems to be suddenly frozen in favor of the pursuit of an overly-idealistic 'body-count' formula of exact racial balance."

Professor Charles V. Hamilton, a Negro scholar, has written in the Harvard Educational Review that segregationists must be fought at every turn. Then he added: "But in our determination to defeat them, let us not devise plans that are dysfunctional in other serious ways."

His comment goes to the heart of the great dilemma surrounding busing and quality education. Let's not continue in the mistakes of past policy that has demanded so much of our schools. They have been expected not only to educate, but also to accomplish a huge social transformation that the adult community has been unable to achieve for itself.

To bring about the goal of an integrated society is going to take time—it cannot be done overnight. And any attempt to place the major responsibility for social reform on one institution—the school—is doomed to failure. We must re-establish the primacy of educational objectives that underlie the original *Brown* decision and stop transporting children without any regard to any set of rational educational values.

One of these rational values is the question of money and priorities. Many of the school systems in the country are either chronically broke or facing very austere budgets. In this context, I find it outrageous to be spending huge sums on busing. There is much evidence to show that busing decreases the quality of education because it siphons off funds that might better be spent for reading specialists, remedial reading courses and extra-enrichment courses for the youngsters.

I think that all parties concerned will benefit the most if we again make the test of our schools solely what they are supposed to do—educate our children. For, if our schools fail to educate, what they might achieve in integrating the races will indeed be a hollow victory.

IMPROVING EDUCATIONAL QUALITY

Before discussing constructive ways to improve the quality of education for all, I must state at the outset that I firmly disagree that race has much to do with educational performance. It has been aptly demonstrated that black and other minority youngsters who come from middle-class homes perform academically on a par with white children from the same background. White children of impoverished Appalachian families tend to perform poorly.

All this points up the fact that we are facing a complex social problem, not a racial problem. I think we have done much to polarize the races by referring to the problem of improving the quality of education for all children as a racial issue. It clearly is not.

In a report prepared by the National Committee for the Furtherance of Jewish Education, Executive Vice President Jacob Hecht explained that the busing concept stemmed from research studies conducted a decade ago which indicated that Negro children attending schools in white neighborhoods did better educationally than Negro children who went to school in black neighborhoods, and he went on to report: "It is now thought that the Negro children in the original studies improved educationally because of other factors, and not the busing. We are beginning to realize that these Negro children were not representative of all Negro children, but were from middle-class Negro families who were aggressively trying to upgrade their status. It is not surprising that in those American cities where busing programs have been carried out, Negro children have not done better, and that indications are, that busing rather than improving their educational levels, may have had adverse effects."

Providing quality education for all is not an easy task; certainly merely denouncing compulsory busing will not bring it about. However, bringing to the surface the serious shortcomings of forced busing as a means to improve academic performance makes one thing clear. We must downgrade our reliance on the transportation of students between schools or school systems to achieve equal educational opportunity. Transportation can never do the whole job.

It is difficult to see how the solution can come from busing children from good schools to areas with inferior schools and vice versa. While this may raise the educational opportunities for some, it downgrades them for others. Since it penalizes some students and favors others, it guarantees neither equality nor quality-education.

I think that a large part of the answer is spending more of our resources for children of all races who have been caught in the cycle of poverty, cultural blight and instability. In accordance with this reasoning, I cosponsored the Special Education Revenue Sharing Bill and the Occupational Education Act, and I voted for the Education Appropriation bill for FY-73 which made available the largest amount of federal funding in the history of our schools.

I cite these examples not as the final answer to the question of what we can do to solve the educational problems of disadvantaged children, but as an indication of my thinking. I think that the federal government has a crucial role to play in helping finance education, because it can focus attention on the really critical problems. One of my concerns is that we should be doing a much more effective job of research and development in education and in translating results into practice. Of course, we need to provide them with programs that will produce educational results. I think that the expenditure of less than one percent of our educational dollar on research and development is a tragic error.

Also, I believe we must explore alternatives to our present system of relying so heavily on the property tax for educational revenues. Although full state funding has been the recommendation of several recent reports on school financing, I feel there is no adequate justification for abandoning the long-established state-local partnership in school finance and believe the influence of communities and parents in the governing of school affairs should be strengthened.

One proposal which I am investigating would keep control of our schools at the local level and relieve the overburdened taxpayer without entirely disrupting or destroying our present methods of raising and distributing school monies.

In tackling these problems, we may have to spend more rather than less public tax money—but I think we first should have some reasonable assurance that we are spending it for things that will work. Virtually the entire welfare system, and too much of the educational system, is vivid evidence of the folly of simply spending vast sums for programs which do not in fact improve the quality of life for the individuals who most need help.

I wish to commend the President for his approach which seeks federal funds to upgrade the school systems in deprived areas. I think this concept deserves approval by the Congress, although I think the job will require more money than the President has requested.

However, with regard to his proposal for a moratorium on new busing, my analysis with legal experts reveals that it is not an all-inclusive remedy. Although such a freeze would clearly prevent new busing ordered by either courts or HEW, it would not stop bureaucrat-ordered busing. Let me cite a current example that threatens my own district.

New York State Education Commissioner, E. B. Nyquist, has issued an order to Buffalo school authorities to submit a plan for racially balanced schools due April 1. Any such plan will entail massive and costly busing, for which, by Nyquist's own admission, the state lacks funds. The dilemma that people in my district, the City of Buffalo, and Erie County face is that the President's proposed freeze would not effect Commissioner Nyquist's bureaucratic order.

Mr. Nyquist's order betrays an arrogant and dictatorial abuse of authority because this non-elected official not only is defying the wishes of the vast majority of parents but his ultimatum is, I believe, in conflict with the 1964 Civil Rights Act which states "desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance."

The same Act also states "nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance."

From my point of view, Mr. Nyquist has arbitrarily taken it upon himself to disregard the historic 1964 Act by ordering the Buffalo School System to map a plan to artificially balance our community's schools.

His bureaucratic fiat is even more presumptuous when we consider his past statement. "In no way," he testified, "should the schools be restricted by federal action, either by constraints on student assignment or on transportation." And he was quoted in the Buffalo Courier-Express as saying that neither the federal law nor Constitution "should restrict local and state decisions regarding transportation for education."

As a direct result of the commissioner's order, the people in my district, in the City of Buffalo and Erie County, New York, are confronted with an acute problem that the President's proposed freeze will not solve. This is unacceptable.

I think that any solution that Congress gives serious consideration to must be comprehensive in its effect so that it will stop busing whether imposed by courts, government agencies or bureaucrats. This is why I still maintain that a Constitutional amendment is the only remedy that can effectively meet these ends, and thus I urge favorable consideration for the amendment that I have proposed.

STATEMENT OF HON. MILLS E. GODWIN, JR., FORMER GOVERNOR OF VIRGINIA, ON HIS BEHALF PERSONALLY AND ON BEHALF OF THE U.S. CITIZENS FOR NEIGHBORHOOD SCHOOLS, CHESTERFIELD COUNTY, VIRGINIA

I am Mills E. Godwin, Jr. of Suffolk, Virginia, an attorney and businessman and a member of the House of Delegates and the State Senate of Virginia from 1948 to 1961, Lt. Governor of Virginia from 1961 to 1965, and Governor of Virginia from 1966 to 1970, and this statement is filed on my behalf personally and on behalf of the U.S. Citizens for Neighborhood Schools, Chesterfield County, Virginia.

This Committee and the Congress have the opportunity and perhaps the responsibility to take action to prohibit forced busing of public school children by either legislative action or by initiating an appropriate amendment to the Constitution of the United States.

In my own mind, I have about reached the conclusion there is little likelihood that Congress can pass any law which the Federal Courts will sustain that prohibits forced busing to achieve an artificial racial balance; thus, I support an appropriate amendment to our Federal Constitution for that purpose.

Every poll and referendum tell us that the American people are overwhelmingly opposed to forced busing of public school children, and these citizens are looking to Congress to show that they are responsive to the will of the people and that in a great representative democracy, the voice of reason from the majority of our people must be heard. In the final analysis, popular sovereignty still rules in this country, and surely the people of this Nation are not devoid of the ability to have their majority view on this matter written into the basic law of our land.

An amendment to our Constitution stating that "no public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school" seems so simple and elementary in its fundamental fairness and justice that one finds it difficult to oppose unless the view is adopted that a public school student shall be assigned to a particular school because of his race, creed, or color.

Our purpose should be to assign pupils to schools where quality education can be obtained and race, and the mathematical precision of race, should be irrelevant to that assignment. How wrong it is from every viewpoint to say to a student that you must be bused to a particular school in order to achieve a racial balance. Such action is contrary to the goal of effective education and detrimental to the best interests of every student concerned. If it is unjust and unconstitutional to bus students to promote segregation, it should be equally unjust and unconstitutional to bus students to achieve a precise degree of racial integration.

The neighborhood public school concept is valid and sound where that school is adequately equipped and maintains the proper facilities with qualified teachers and has a reasonable level of financial support. In such a school, regardless of race, each student has the chance to learn as much as quickly as he can. I fail to see where discrimination is involved under such circumstances, and it would appear that quality education would follow. However, quality education will not occur where discrimination is allowed and children of one race are prevented from the same educational opportunities as those given to children of another race, and the Courts have been right in not condoning such practices.

On the other hand, it is disturbing and indeed tragic when the Courts decide that a policy must be followed which sets up an arbitrary racial balance in pupil assignment and forced busing is required to implement it. This is predicated on the faulty premise that unless such racial balances are reached, educational quality will be impaired or impossible regardless of other considerations. This policy involves programs of massive busing to achieve the arbitrary racial balances. The Courts then are in effect preserving a system that says a black child must be with a white child and vice versa in order to learn, or that a white teacher is automatically more effective than a black teacher and vice versa. This is naked racism which is being fostered by some of the Courts today. In order to implement this program, public school children are being involuntarily bused from their neighborhood schools to distant neighborhoods entirely unfamiliar to them. This is wrong in principle and in practice.

I urge you to report a resolution providing for an amendment to our Federal Constitution whereby no public school student, because of race, creed, or color, shall be assigned to or required to attend a particular school. If adopted, this would establish a Constitutional foundation for effective and valid legislative enactments to deal with this perplexing problem now threatening the quality of our educational opportunity throughout our public schools in every part of our country.

The final arbiter of this problem should be the people of the United States. Those who support and those who oppose the amendment should let the people speak and render their judgment through their elected representatives.

THE ETHICAL CULTURE SCHOOLS,
New York, N.Y., May 31, 1972.

To: Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
Washington, D.C.

This testimony is rendered on behalf of the American Ethical Union, American Humanist Association, and the Unitarian Universalist Association.

My name is Nathan Brown and I have been Director of the Ethical Culture Schools in New York City since July 1. 1971. In September, 1970, I retired from the position of Acting Superintendent and Executive Deputy Superintendent of Schools for the City of New York.

As an Assistant Superintendent of Schools from 1960 to 1966 and Executive Deputy from 1966 to 1969, I had many opportunities to arrange for, observe and study the effects of, transporting children from one area of the City to another.

The Board of Education of the City of New York has for some 15 years followed a policy of transporting children from overutilized schools to underutilized schools. In doing so, the integration factor was a major consideration. For example: When I was the District Superintendent in the Bronx, administering the schools in an area which was more than 80% Black and Puerto Rican, we were confronted with severely overcrowded conditions—in some cases 8 and 9 year old children attending school for only half a day. About two to three miles away we had underutilized schools in an all-white neighborhood. We arranged for the transportaiton of children at all grade levels but kept in mind the need to provide a truly integrated setting—no more than 25% Black or Puerto Rican children in any one of the receiving schools. In advance of the movement, we met with parents of both sending and receiving neighborhoods. As a result there was understanding and receptivity on the part of both groups. From time to time I visited the schools receiving these youngsters—some 10 different elementary schools in the Bronx. I saw as many as 10 buses arrive within a 15 minute period. I then visited the classes (approximately 15 minutes after arrival) and was pleased to see how quickly children just merged together working as a group. When I compared the atmosphere in these schools with those in my own area of 90%+ Black and Puerto Rican pupil population, I noted the following:

1. In the receiving schools the teachers were on the whole more experienced, because teachers tend to go to, and remain in, schools which have children with fewer socio-economic difficulties. Also, teachers tend to go to, and stay in, neighborhoods which are in higher income areas.

2. Teachers generally accepted the new incoming youngsters because they were not overwhelmed with a great number from problem families—such as is the case in so-called "ghetto" schools.

3. The atmosphere was conducive to learning—pupils concentrated, no overcrowding, little movement and disturbance so characteristic of the ghetto schools because of neighborhoods vagrants.

4. Teachers confirmed the fact that the white middle class pupils were not learning less—a finding similar to that of the Hartford, Connecticut and Denver, Colorado projects involving a similar movement of children.

The above situation is duplicated in many areas of New York City, most of which I visited as Executive Deputy and Acting Superintendent of Schools from 1966 to 1970; District 10 in the West Bronx, Districts 23, 24, 25, 27, 28 and 29 in Queens, District 22 in Brooklyn.

I agree fully with the Coleman Report in which it was clearly demonstrated (and a recent Harvard review of this study confirmed the major findings) that deprived pupils benefit more from association with children from middle class homes with educational motivation, than they do from either better facilities or more highly paid teachers.

While I believe that compensatory education is necessary because we cannot achieve the kind of integration I described above in every situation (25% poor and/or minority), to date it has not produced the kind of results obtained in our integrated situations.

We need massive educational support—parent child centers, nursery classes, tutoring, education indoctrination of parents, basic socio-economic changes—for poverty children if they are to benefit from schooling. However, providing an integrated setting can achieve results, including motivation of poverty parents, which are more significant, more permanent and more naturally come by than compensatory education.

It should be noted that in New York City, the travelling is done by Black and Puerto Rican children and then mostly on a voluntary basis. Yet thousands of such families have volunteered filling generally every seat available to them.

It should also be noted that the public schools will be strengthened to the extent that parents are interested in them. Such interest will come from parents who have the leisure and educational background. In the integrated school, Black parents quickly learn the techniques of such interest and participation both of which are vital to the program.

In my present position I administer schools which draw their populations from the highest socio-economic groups in the City. Many of the children travel from ½ to 1½ hours daily. Here, too, we have probably the largest group of children from poverty areas—mostly Black and Puerto Rican—of any similar independent private school. Many of these children come from ghetto public schools. It is clear that in this integrated atmosphere they are making normal, and in some cases, above average progress.

Until we can have truly integrated housing in both urban and suburban communities, it is essential that we continue to transport children to those schools which can provide an environment most conducive to their educational progress. There should be no legislation which would in any way interfere with this educational goal.

WASHINGTON RESEARCH PROJECT,
Washington, D.C., May 25, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Because of changes in the schedule of Subcommittee No. 5 during its current hearings, I was unable to testify as planned on May 18. I would, however, appreciate it if the testimony I had planned to present, together with the backup materials, could be filed for the hearing record.

My statement and accompanying memoranda opposing the proposed Student Transportation Moratorium Act (H.R. 13916) and H.J. Res. 620, are enclosed.

Sincerely,

MARIAN WRIGHT EDELMAN.

STATEMENT OF MARIAN WRIGHT EDELMAN, DIRECTOR, HARVARD CENTER FOR LAW AND EDUCATION AND PARTNER, WASHINGTON RESEARCH PROJECT

Mr. Chairman, my name is Marian Wright Edelman; I am the Director of the Harvard University Center for Law and Education and a partner in the Washington Research Project. I appreciate your invitation to testify on the proposed Student Transportation Moratorium Act, H.R. 13916, and H.J. Res. 620, a proposed Constituitonal Amendment.

The Nixon moratorium proposal and H.J. Res. 620 are essentially segregatory in purpose and effect. Their serious consideration represent a psychological blow to the forces of decency and law in this country. They must be rejected by this Congress emphatically and unequivocally.

The President attempts in H.R. 13916 to temporarily suspend rights under the Equal Protection clause of the Constitution in order to permanently dilute those rights by enactment of a misnamed Equal Education Opportunities Act that provides no new real authority and no new money to improve the quality of education.

Adding to President Nixon's challenge to equal justice is the petition to discharge the Committee on the Judiciary from further consideration of a proposed constitutional amendment—advertised as an "anti-busing" amendment. Mr. Chairman, we find it difficult to believe that in the year 1972 the Congress would go to such lengths to deny established rights of children and remedies to correct illegal, discriminatory acts.

The proposed Student Transportation Moratorium Act is more than a busing bill. It would put a freeze on desegregation ordered by the courts to equalize educational opportunities. The moratorium, a blatantly unconstitutional proposal, would give the Congress time to enact the President's second request, the Equal Educational Opportunities Act, an equally unconstitutional proposal. These two bills represent a retreat from responsibility and a failure of moral and political leadership. They would, if enacted, further compromise rights of children already too long denied. They would also consign untold numbers of children to separate and unequal educations with the tragic national consequences in social and educational terms that such separation inevitably would mean.

Administration proponents claim their proposals are simply an attempt to refocus attention on education instead of busing and that they are in reality for integration *and* compensatory education. If so, why have they not used the tools already available to maximize desegregation and increase spending for disadvantaged minority children? When an Administration's record is spotted with vetoes of education appropriations bills and when it has failed to enforce, or half-heartedly enforced, civil rights laws, its claims of great concern for the educational opportunities of minorities and disadvantaged children ring hollow. We are constrained to look elsewhere for the real reasons behind their proposals.

The American people are not opposed to busing. Its long established history, its widespread use and the polls all attest to this fact. What Americans are opposed to is busing white children to previously black schools or busing "too many" black children to previously white schools.

A recent Harris poll asked: "Are you satisfied or dissatisfied with busing your children to school?" 83% said yes, 15% said no, 2% said not sure.

But when asked: "Would you favor or oppose busing school children to achieve racial balance?" 20% said yes, 73% said no and 7% said not sure.

Now if the factor provoking the shift is not race, what is it? This opposition to desegregation has increased over the past year.

Last year, 1971, a sampling of a cross-section of American households found that 47% favored busing to integrate schools compared with 41% opposed. Now, in 1972, that positive percentage is down to 25% with 60% against. Such rapid, dramatic decline of 22% can only have come from lack of national leadership compounded by irresponsible and determined efforts to undermine past progress toward providing an equal opportunity to quality education.

That the issue involved is segregation is reinforced by the lack of any factual case produced by the Nixon Administration showing a real need for the Congress to take such drastic steps as are proposed. The Administration bears a heavy burden to show that its proposals serve a legitimate end—not segregation—and I submit that they can not.

Question. Have they proved that busing is harmful either physically, psychologically, emotionally or educationally?

Answer. No. The available evidence in fact shows that busing per se is none of these things. In fact, the opposite seems to be true. Its widespread use attests to this.

Question. Have they proved that courts are ordering massive/excessive busing in desegregation cases?

Answer. No. No substantial national increase in busing as a result of desegregation has been shown. Busing that has been ordered to achieve desegregation has been well within limits of state guidelines and practice.

Question. As any substantial increase in the amount of busing needed to achieve desegregation?

Answer. No. An HEW-commissioned study concludes that complete desegregation on a national basis can be achieved with "minimal" to "moderate" increases in transportation.

Question. Has it been shown that even if a few courts, unmanned, may have ordered "excessive" (undefined) busing, that such orders cannot be corrected by a simple appeal to a higher court?

Answer. No. The fact is that the U.S. Supreme Court has made clear that "the affirmative duty to employ busing as a desegregation device ceases when the time or distance involved jeopardizes the health or education of young children." (*Swann* at 1283)

Question. President Nixon indicated that some courts have gone too far in ordering racial balance. Have courts been ordering racial balance in school desegregation cases?

Answer. No. Courts have issued busing orders only after a finding of legally imposed or sanctioned segregation. The U.S. Supreme Court has said:

"If we were to read the holding of the District Courts to require as a matter of substantive constitutional right, any particular degree of racial balance or mixing, that approach would be disapproved and we would be obliged to reverse." (*Swann* at 1280.)

There is no need for the Nixon proposals. They seek illegitimate ends—i.e., segregation, and they do so by illegitimate—i.e., unconstitutional—means. The Washington Research Project has prepared three legal memoranda dealing with the various constitutional issues raised by the Nixon bills. With your permission, I request that they be inserted in the hearing record.

Mr. Chairman, I would in addition, like to clarify the record on several points made by Acting Attorney General Kleindienst in his testimony. First, he told this Subcommittee that both of these bills would be constitutional even if they did cut into the powers of Federal courts to enforce constitutional rights, since black people could still bring school suits in State courts. He said, and I quote:

"Both Acts apply only to courts, departments, or agencies of the United States, thus leaving the state courts and state agencies completely free to deal with any violations of the right to education in a desegregated school system."

Mr. Kleindienst said that this was "one of the most significant features of the President's program," and went on to say:

"The bills do affect the priority of remedies, but if any aggrieved party feels that he cannot get satisfactory relief in the federal courts he can pursue the matter in the state courts. The availability of these forums clearly precludes any argument that Congress has recognized the right but cut off the remedy."

Mr. Chairman, there has been a general removal statute for Federal-question cases since 1875. Any school board could have a State court desegregation suit automatically transferred to a Federal court where these bills would then bar relief.[1] Yet Mr. Kleindienst did not see fit to inform this Subcommittee that the real effect of this legislation is to prevent any court—Federal or State—from enforcing a constitutional right through the only means that may be available.

Second, the Administration insists that it is necessary to suspend the power of Federal courts to order changes in student transportation, or even new school assignments for children already taking the bus, so that Congress can have time to consider establishing a schedule of remedies. Under this "logic," we have a right to suggest that the war in Viet Nam be suspended while Congress debates the War Powers Bill.

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[1] The Federal court doesn't have any discretion to reject the transfer; under 28 U.S.C. § 1441(b) the transfer is automatic as soon as the school board files the necessary papers.

Third, Mr. Kleindienst has represented to this Subcommittee that suspension of Fourteenth Amendment rights can be achieved by the Congressional power under Article III of the Constitution to "ordain and establish" inferior Federal courts and to make "Exceptions" and "Regulations" to the appellate jurisdiction of the Supreme Court.

Our memoranda discuss the cases cited by Mr. Kleindienst, discuss those Mr. Kleindienst fails to mention, and conclude as does Prof. Bernard Schwartz, in the first volume of his "Commentary on the Constitution" that:

"To push the Congressional power to withhold jurisdiction to the extreme of permitting constitutional rights to be made completely unenforceable would be to read the basic document as authorizing its own destruction." [2]

Mr. Chairman, we submit that Mr. Kleindienst's testimony greatly oversimplifies and distorts the Supreme Court's pronouncements upon the scope of this Congressional power. The memoranda which we have submitted for the record discuss the actual holdings of the cases he cited, and of those he ignored in his testimony. For example, Mr. Kleindienst discussed the Supreme Court's decision in *Glidden Co.* v. *Zdanok*, 370 U.S. 520 (1962) and quoted Justice Harlan at length. Yet nowhere did he allude to Justice Harlan's comment on the power of Congress to make exceptions to the Court's appellate jurisdiction, at p. 568: "The authority is not, of course, unlimited."

Mr. Chairman, the Acting Attorney General's prepared testimony appeared to assert unlimited Congressional power to cut back the jurisdiction of the Federal courts. His greatest problem was the incredible breadth of the proposition he stated. For once he admitted that there were any constitutional limits to this power, he could not escape the conclusion that Congress is barred from exercising the power whenever the result is to prevent enforcement of constitutional rights.

What are the consequences of asserting such an unlimited power? It seems to me the person making this assertion logically must conclude that Congress could, lawfully under the Constitution:

Provide that the Federal courts could not hear a suit brought by a black person:

Provide that Federal courts could not grant any relief that anybody might seek against the governmental defendants; and

Provide that only Democrats or only Republicans could bring suits in Federal courts, or that no Socialists or Communists could.

If the Congress and this Subcommittee are not prepared to accept such sweeping assertions of arbitrary Congressional power, we must admit then that there are limits, and that encroachments on the enforcement of constitutional rights step beyond those limits. Even Mr. Kleindienst was moved by questioning to admit that there are limits on the power of Congress. When asked about the constitutionality of this legislation if it applies to cases where the only effective remedy is busing, he responded lamely, "That's a good question."

The question that stumped the Acting Attorney General is one of the easiest questions in the field of constitutional law. Plainly, Congress cannot legislate to defeat the enforcement of constitutional rights. A right with no effective remedy is a nullity, and Congress has no power to pass laws which make the Fourteenth Amendment a pointless rhetorical exercise.

Moreover, the administration position on the constitutionality of these bills is totally deceptive. Briefs filed just last year in the Supreme Court, by the Solicitor General on behalf of the government, flatly contradict the Administration's grounds for claiming that its anti-busing bills are constitutional. We have prepared a memorandum on these briefs and I would like to submit it for the record.* In one case, *Bivens* v. *Six Unknown Agents*, the issue before the Supreme Court concerned remedies for violation of Fourth Amendment rights. In that case the present Solicitor General, former dean of the Harvard Law School, specifically argued that once any constitutional remedy has been created by the courts, Congress would probably be powerless to take it away.

"At the least there would be a substantial doubt whether Congress could simply reject a judicially created remedy bottomed on the Constitution; a constitutional amendment might be needed for such an end." Brief for the U.S., p. 21–22.

On another case, *North Carolina* v. *Swann*, the question was the constitutionality of North Carolina's anti-busing law—that is, whether a legislative body has the power to take away necessary remedies in school desegregation cases. In the North Carolina case the United States was not a party, but appeared to advise the Court as *amicus curiae*. The Solicitor General told the Supreme Court that "the inconsistency between the provisions of the North Carolina statute and the Equal Protection clause is . . . apparent"—so apparent that any argument in support of the anti-busing law would be "frivolous."

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[2] B. Schwartz, "I. A Commentary on the Constitution of the United States: The Powers of Government" at p. 361 (1963).

*The material referred to is retained in the committee files.

"Since it is beyond the power of state legislatures to prevent implementation of constitutionally required desegregation plans, . . . and since the North Carolina statute does just that by forbidding a means of achieving desegregation . . ., the statute is contrary to the Constitution, as the District court held."

Memorandum for the United States as *Amicus Curiae*, p. 4–6. The Government's position in the North Carolina case was adopted by a unanimous Supreme Court.

Neither of the President's bills withdraws jurisdiction of Federal courts to hear claims of segregated schooling. But, both put a ceiling on relief and authorize the courts to remedy some degree—but only that degree—of segregation. This would force Federal courts to affirmatively authorize the continuation of all segregation beyond that defined degree. In *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), *Reitman* v. *Mulkey*, 387 U.S. 369 (1967) and *Hunter* v. *Erickson*, 383 U.S. 385 (1969), the Supreme Court invalidated far weaker governmental authorizations of discrimination. Federal judges, too, take an oath of office to support and defend the Constitution, and this Congress should not tell them that they no longer have the power to observe their oaths.

Mr. Chairman, the strongest evidence that these bills are consciously designed to preserve segregation lies in an examination of how they would actually operate. They have been discussed as if they actually had something to do with "excessive busing"—but the way they would operate in practice demonstrates that nothing could be farther from the truth.

First, the moratorium bill not only prohibits the transportation of any child who was not being transported prior to its effective date, but also prohibits assigning to a different school any child who is presently being transported for any reason. The bill thus immunizes from new pupil assignment orders more than 40% of the students in the country—those who have to take a school bus in order to get to school anyway.

Let us examine several examples of how this bill would work in practice:

1. School District A has never made any efforts to desegregate but could be completely desegregated by a pairing or other plan that would require some busing. It has never bused anyone. Even if no student would have to ride for more than ten minutes, both Administration bills would prohibit the court from issuing the order.[3]

2. School District B has been attempting to comply with *Brown* v. *Board of Education* for years and has just one final step to take in order to be in full compliance, but this step involves a restructuring of the existing student transportation. The average time of travel will be decreased and the average ride will be shorter but the new plan involves busing some different students than those now being bused. The moratorium bill prohibits a court from ordering the final step, even if the court found that the new plan would be *better* for the health and well-being of the children involved than the existing plan. Under the Equal Educational Opportunities bill, the school district could refuse to take the final step if doing so would increase the average daily number of students transported.[4]

3. School District C, run by segregationist diehards, has only two schools, a block from each other. Since it's a rural district, it has always had a fair amont of busing. But it has never allowed black children to ride on the same school bus with whites. Even though all whites needing transportation are bused, a fair number of black children are forced to walk miles to school each day, while they're passed by half-empty "white" school buses. The moratorium bill would

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[3] The sole exception is that, if the children involved were in the seventh grade or above, a court could order them transported if it was established by *clear and convincing evidence*—the standard of proof commonly required for proof of civil wrongs amounting to moral turpitude, such as fraud, etc.—that "no other method . . . will provide an adequate remedy for the denial of equal educational opportunity or equal protection of the laws. . . ." Equal Educational Opportunities Bill, § 403(b).

Even then, the transportation order can "only be ordered in conjunction with the development of a long term plan involving one or more of the remedies set out in clauses (a) through (g) of section 402." If the school district appeals, it's entitled to an automatic stay of the order regardless of any considerations of relative harm. *Id.*, § 403(b). The order would have a five-year limit, after which conditions could return to their pre-order status. *Id.*, § 407.

[4] Same as note 3.

prohibit a court from ordering the school district to pick up these black children. Under the Equal Educational Opportunities bill, the school district could refuse to pick up the children if doing so would increase the average daily number of students transported.[5] Naturally, it would.

4. School District D, which is operating under a final desegregation plan involving some busing, finds that a new black family has moved into the district. Under the moratorium bill, it could refuse to pick up the new black family's children pursuant to the existing plan, and a United States court would be powerless to do anything about it. Under the Equal Educational Opportunities bill, the school district could refuse to pick up the new family's children if doing so would increase the average daily number of students transported.[6]

5. School District E, operating under a plan that allows students to transfer from a school in which their race is a majority to one in which their race is in a minority, refuses to allow such majority-to-minority transfers after the effective date of the legislation. Even if a student trying to volunteer to transfer was already being bused, the moratorium bill deprives the Federal court of the power to order compliance with the existing transfer provision. Under the Equal Educational Opportunities bill, the school district could refuse to pick up the student if doing so would increase the average daily number of students transported.[7]

6. School board F, desiring to return to the halcyon days before *Brown* v. *Board of Education*, learns of § 404 of the Equal Educational Opportunities bill and realizes that the black population in its school district lives in different areas than whites. It releases a set of "findings" on the benefits of community control of schools, and how this promotes between parent-teacher relations and furthers the interests of education. It then asks the appropriate State authorities to split the school district into smaller parts. So long as the lines it suggests are not blatantly gerrymandered, and so long as there was some remaining integration, the result could be several school districts in which most whites would face only minimal integration and a couple with large black majorities. Under § 404 of the bill, the redrawing of lines would not be challenged in court unless it could be established "that the lines were drawn for the purpose . . . of segregating children . . . on the basis of race. . . ."[8] The impossibility of providing an actual intent to discriminate, it must be remembered, is what led Congress to enact § 5 of the Voting Rights Act of 1965, requiring covered States and subdivisions to submit changes in voting practices to the Attorney General for approval before being placed in effect. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328, 335 (1966).

Each one of these results represents a direct clash with the Constitution. Take the fifth example: The Supreme Court has called a voluntary majority-to-minority transfer provision an "indispensable" element of "every" desegregation plan. Mr. Kleindienst agreed in his testimony that the bills would bar implementation of such provisions. But what possible purpose could justify a ban on the busing of students who volunteer to be transported in order to enjoy an integrated education?

The proposed legislation does not attempt to define "harmful" levels of busing, and it does not attempt in any way to restrict its prohibitions to "harmful" busing—assuming such levels have ever been ordered. The practical effect of the two bills before Congress would be to eliminate, at least temporarily, virtually every effective remedy of desegregating schools—school consolidation, redrawing attendance zones, use of educational parks or magnet schools, even free choice. All of these remedies, in the average school district, necessarily involve some pupil transportation; to the extent that the President's proposal would prohibit busing, they would also preclude the use of these remedies. The only conclusion available from all the facts is that the purpose and effect of this legislation is to perpetuate segregation and nothing more.

Mr. Chairman, there are two further aspects of this legislation that are dangerous in principle and insulting to black citizens. One is the idea that the constitutional rights of black children to a nondiscriminatory education are exchangeable for money. And inadequate money at that. Do not those black children not in need of compensatory education but who remain segregated have an enforceable equal protection clause right? In fact, can we say that black children in need of compensatory education because of prior violations of equal protection rights must have the prior violations corrected through new violations of their right not to be segregated? This is immorality and injustice squared. Whatever, this Administration proposes by way of "substantive" legislation, this in no way can or ought to affect legal enforcement of individual rights under *Brown*.

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[5] Same as note 3.

[6] Same as note 3.

[7] Same as note 3. The "direct or indirect" language of § 402 indicates that § 402(c) reference to majority-to-minority transfers carries no exemption from the strict student transportation requirements of § 403.

[8] Separate school districts for each race were one of the most prevalent forms of segregation in the Border States before *Brown*. In 1959, Texas had 125 all-black school districts, Arkansas had 12, and Delaware had 59. Missouri and Oklahoma still had them, but the number is unknown. Report of the United States Commission on Civil Rights.

The second insulting aspect of this legislation is that both bills make the availability of a fully desegregated education depend on the choice of the school board—almost invariably a white school board. If the board decides to disobey, the bills allow that too. Neither bill establishes any standards for a school board to follow in deciding how to exercise its choice; a decision based upon whim or based upon the assumption that black children are inherently inferior is fully acceptable under the Nixon plan. Any legislative scheme that conditions the enjoyment of constitutional rights on so unprincipaled a pivot must fall. The Supreme Court's language in *Yick Wo* v. *Hopkins*, 118 U.S. 336 (1886) is fully appropriate here:

> ". . . [T]he very idea that one may be compelled to hold . . . any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

The President's proposals are the opposite of an honest and effective effort to deal with the real issues of fear and racism in this country. While he should be counseling compliance with the law and respect for legal processes, he instead joins those who would retreat from the law's requirements. Instead of calming fears, he exploits them, scapegoats the courts and settles nothing. This is a tragic disservice to the nation. I believe the American people want to be decent; they want to be law abiding. They want their leaders to challenge the best in them, not appeal to the worst in them. More importantly, they are entitled to be finished with the divisive forces of racism in the country. These proposals reopen old sores; threaten relitigation of old issues and confuse our children, black and white, about their educational futures.

Mr. Nixon has done great harm to those who seek quality integrated education for the children of America. The challenge is underscored by the lopsided votes by which the House of Representatives first adopted and then insisted upon extremely harsh anti-civil rights amendments to the higher education bill and the razor-thin margins by which the Senate rejected the equally harsh Griffin amendment.

We have urged Senators who are conferees to insist upon the language of the Senate bill, since that is the best they can do and since that language represents a much more responsible attempt to deal with the question of busing. We and other civil rights organizations would rather have no bill at all than a higher education measure with the anti-busing, anti-court, anti-equal educational opportunity amendments contained in the House bill.

Finally, Mr. Chairman, I want to comment briefly upon the proposed constitutional amendment resolution (H.J. Res. 620), on which the discharge petition has been filed.

The Acting Attorney General concluded his prepared testimony last week with a veiled threat that, if the Congress does not work the Administration's will, the Administration will reconsider its position and, perhaps endorse H.J. Res. 620. We do not believe such a threat should cause the Congress to shrink from its constitutional duty to reject the Administration bills. Congress never saw fit to withdraw jurisdiction of the Federal courts over governmentally-coerced prayers in public schools, despite the introduction of a constitutional amendment and the success of the discharge petition maneuver. Congress never saw fit to authorize State legislatures to give greater representation to some classes of people than to others, and immunize such acts from the scrutiny of Federal courts, despite proposals for amending the Constitution. Nor should this Congress be intimidated.

On its own merits, Mr. Chairman, we strongly oppose H.J. Res. 620. Its proponents have labelled it an "anti-busing" amendment because they believe that this is the way to generate public support for its passage. But it doesn't even mention student transportaton, and its primary effect will be to bar all desegregation, whether or not busing is involved. Its language would bar even a redrawing of neighborhood school attendance zones, if the purpose were to desegregate the schools involved. It would give "freedom of choice" a constitutional dimension, and constitutionalize all the effects of past segregation which are reflected in school assignments today. Where the Federal government has created segregated neighborhoods by FHA's insistence on residential segregation as a condition of mortgage assistance, where school boards have gerrymandered school attendance zone lines to segregate the schools, and even where schools have been formally segregated, all of these past, clearly unconstitutional actions which forced children into segregated schools would now be confirmed in the Constitution itself. The amendment, which claims to oppose forced assignment of school children, would maintain these already-forced assignments for all time.

Mr. Chairman, there has been much testimony to the effect that this amendment would "trivialize" the Constitution. That is putting it far too mildly. There's nothing trivial about it or about its effect. It would degrade the Constitution.

The constitutional ideal must continue to be that of equal protection of the laws. The moral and constitutional duty of Congress is to reject all proposals that would return the nation to segregation. And the business of Congress must be to use all necessary inventivness to ensure that the nation's schools are finally brought into compliance with the post-Civil War amendments. True and complete fulfillment of the promise of equal protection remains the only hopeful course for this country.

WASHINGTON RESEARCH PROJECT: CONGRESS HAS NO POWER UNDER THE CONSTITUTION TO ENACT THE ADMINISTRATION PROPOSALS

(By Lewis D. Sargentich and Richard T. Seymour)

I. THE ADMINISTRATION'S PROPOSALS WOULD DENY RIGHTS GUARANTEED BY THE FOURTEENTH AMENDMENT

A. *The Administration's Right-Remedy Distinction Is Barren*

The core of the Administration's argument for the legality of its proposals is that its bills affect only the remedies for school desegregation, and leave the basic right intact. Under this view, the first *Brown* decision, 347 U.S. 483 (1954), declared a Fourteenth Amendment right which Congress cannot repeal. All subsequent decisions attempting to disestablish the dual school system, the argument runs, are merely a matter of remedy and are therefore subject to any action Congress may take.

We believe that this argument is simplistic, and that the Administration's wooden distinction between right and remedy flies in the face of both common sense and the clear decisions of the court.

1. The Administration's Distinction Violates Common Sense

Under even the most elementary reasoning, any action which removes the means by which a person can enforce a right leaves that right " 'a mere paper guarantee' ", *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 434, 443 (1968). The *Jones* Court quoted Rep. Thayer of Pennsylvania on the importance of remedies to effectuate Thirteenth Amendment rights:

> "The practical question now to be decided is whether they shall be in fact free men. It is whether they shall have the benefit of this great charter of liberty given to them by the American people."[1]

Speaking to the point of what happens to a Thirteenth Amendment right if there's no remedy, the Court concluded: If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep.—392 U.S. at 443.

Similarly, if the courts cannot say that they can enforce the rights declared by *Brown I*, then the Fourteenth Amendment "made a promise the Nation cannot keep." Pressed to its logical conclusion, the Administration's argument would justify a Congressional bar of any relief in a school desegregation case and a legislative repeal of every decision after *Brown I*, since they involved only questions of "remedies" and not a question of "right". A black child could march into court and obtain a declaratory judgment that a school system was segregated, and that would be the end of the matter. The Administration proposals do not go this far, but the strained reasoning on which it is forced to rely to justify its own proposals would open the door just as widely for more ultimate proposals. What, then, is the worth of the "right" assertedly left intact?

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[1] Cong. Globe, 39th Cong., 1st Sess. (1866) at 1151, quoted by the *Jones* Court, 392 U.S. at 434 (emphasis added by the Court.)

No legal analysis is required to demonstrate the falsity of such a wooden right-remedy distinction. Shylock made the same appeal to common sense long ago:

> You take away my house when you do take the prop that doth sustain my house; you take my life when you take the means whereby I live.—*The Merchant of Venice*, Act IV, Scene 1 (abt. 1596).

2. The Administration's Narrow View of the Content of the 14th Amendment Right Involved In School Desegregation Cases Demonstrates a Basic Ignorance of the Supreme Court's Decisions Since Brown II.

The Administration's right-remedy distinction assumes that the Fourteenth Amendment "right" of a black schoolchild—defined as the irreducible minimum beyond the reach of Congress—is limited to the *Brown I* declaration that racial discrimination in his or her school district is invalid. It is not possible to explain the Court's decision in *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968) in those terms. A freedom of choice pupil assignment plan, by allowing each black child to transfer to a white school, would have satisfied each child's Fourteenth Amendment right, if that right were as crabbed as the Administration proclaims. But such a plan may leave the black child alone in an all-white class; it may leave most black children back in their pre-*Brown I* schools.

The Court held in Green that the Fourteenth Amendment right proclaimed by *Brown I* swept far beyond the narrow confines urged then by the school board and now by the Administration: it is a right to "prompt and effective disestablishment of a dual system", a right to the elimination of the vestiges of discrimination "root and branch". 391 U.S. at 438. The *Brown I* right is a right to attend schools totally unaffected by any past discrimination, whether the effects turn up in student assignments, faculty assignments, or disparities in facilities. The right to "disestablishment" is what is involved, and it is that right which is challenged by the Administration proposals.

Put differently, the Administration position amounts to a flat denial that there is any constitutional duty, incumbent on school authorities, prescribing affirmative use of the necessary tools of desegregation. This is an exact statement of the law of the Fourteenth Amendment—in reverse. The whole course of constitutional decision-making, from the *Brown* case in 1954 to the *Swann* case in 1971, pronounces, underscores, and reaffirms again and again the affirmative constitutional duty on the part of school officials to bring about actual desegregation of the schools—the affirmative duty to dismantle the dual school system, to eliminate forever from public education all the continuing effects and lingering vestiges of past segregation, and to establish a unitary, nondiscriminatory system of public schools. In *Swann* a unanimous Supreme Court specifically defined that Fourteenth Amendment duty—and the corresponding right of black school children—as involving all necessary use of such desegregation tools as redrawing of attendance zones, consolidation of schools, and student transportation.[3]

B. *The Purpose and Effect of the Administration's Bills is to Prevent the Enforcement of Fourteenth Amendment Rights*

1. The Purpose of These Bills is to Authorize Continued Discrimination

After an examination of the Administration proposals, the conclusion is inescapable that the draftsmen of the Administration bills intended not to bar any level of busing that would have harmful effects on children, but to block any further efforts to enforce *Brown* v. *Board of Education* and to undo some of the present results of those efforts. The conclusion seems inescapable because the bills as drafted bear no relation to the harm they assertedly try to prevent, they have a clearly predictable effect of preventing further desegregation and reinstating some former discrimination, and because there are elements in the bills having nothing to do with the asserted harm but everything to do with the segregatory effect.

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[3] Our March 26 memorandum entitled "The Nixon Proposals Versus the Constitutional Principles of *Brown* and *Swann*", explores the content of the *Brown I* right, and the correlative duty of a school board, at far greater length.

2. *The Lack of Any Relationship Between These Bills and the Harm They Assertedly Seek to Prevent*

The ordinary procedure in drafting a statute is to identify the harms the statute is intended to prevent, to frame the legislation in terms that will eliminate the harm without barring anything good, and to provide sufficient indications in the legislation of exactly what constitutes the harm, so that the executive branch will have guidelines for its administration and the judicial branch will have standards it can use to determine whether the statute has been administered properly.

If a draftsman were actually concerned with the harm caused by excessive busing, rather than with unstated considerations, we could expect to see fairly definite proposals—*i.e.*, maximum time limitations on transportation for students. If there were strong enough evidence that the time spent travelling should be different for different ages, the legislation could take account of such differences. In the case of school districts which already have a substantial degree of busing simply to get students to the closest school, the legislation could take account of this by authorizing a fair amount of increase despite whatever general levels were recommended. It would, in short, be tailored to its purposes.

The Administration's proposed legislation is quite different. Under it:

1. School District A, which has never made any efforts to desegregate but which could be completely integrated by a pairing or other plan that would require some busing. It has never bused anyone. Even if no student would have to ride for more than ten minutes, both Administration bills would prohibit the court from issuing the order.[3]

2. School District B, which has been attempting to comply with *Brown* v. *Board of Education* for years, but which has so far been given a bit more lenience by the local Federal district court than the law allows. It has just one final step to take in order to be in full compliance, but this step involves a restructuring of the existing student transportation. The average time of travel will be decreased and the average ride will be shorter but the new plan involves busing some students not now being bused. Others now being bused would be no longer be bused under the new plan. The moratorium bill prohibits a court from ordering the final step, even if the court found that the new plan would be better for the health and well-being of the children involved than the existing plan. Under the equal educational opportunities bill, the school district could refuse to take the final step if doing so would increase the average daily number of students transported.[4]

3. School District C, run by segregationist diehards, has only two schools, a block from each other. Since it's a rural district, it has always had a fair amount of busing. But it has never allowed black children to ride on the same school bus with whites and, even though all whites needing transportation are bused, a fair number of black children are forced to walk miles to school each day, while they're passed by half-empty "white" school buses. The moratorium bill would prohibit a court from ordering the school district to pick up these black children. Under the equal educational opportunities bill, the school district could refuse to pick up the children if doing so would increase the average daily number of students transported.[5] Naturally, it would.

4. School District D, which is operating under a final desegregation plan involving some busing, finds that a new black family has moved into the district. Under the moratorium bill, it could refuse to pick up the new black family's children pursuant to the existing plan, and a United States court would be powerless to do anything about it. Under the equal educatonal opportunities bill, the

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Even then, the transportation order can "only be ordered in conjunction with the development of a long term plan involving one or more of the remedies set out in clauses (a) through (g) of section 402." If the school district appeals, it's entitled to an automatic stay of the order regardless of any considerations of relative harm. *Id.*, § 403(b). The order would have a five-year limit, after which conditions could return to their pre-order status. *Id.*, § 407.

[4] Same as note 1.

[5] Same as note 1.

school district could refuse to pick up the new family's children if doing so would increase the average daily number of students transported.[6]

5. School District E, operating under a plan that allows students to transfer from a school in which their race is a majority to one in which their race is in a minority, refuses to allow such majority-to-minority transfers after the effective date of the legislation. Even if a student trying to volunteer to transfer was already being bused, he moratorium bill deprives the Federal court of the power to order compliance with the existing transfer provision. Under the equal educational opportunities bill, the school district could refuse to pick up the student if doing so would increase the average daily number of students transported.[7]

And one final illustration of how the equal educational opportunities bill would work:

6. School board F, desiring to return, so far as possible, to the halcyon days before *Brown* v. *Board of Education* is advised by counsel of the existence of § 404 of the equal educational opportunities bill, and realizes that the black population in its school district lives, by and large, in different areas than whites. It releases a set of "findings" on the benefits of community control of schools; and how this promotes better parent-teacher relations and furthers the interests of education. It then asks the appropriate State authorities to split the school district into smaller parts, bused. Others now being bused would no longer be bused under the new plan. The moratorium bill prohibits a court from ordering the final step, even if the court found that the new plan would be better for the health and well-being of the children involved than the existing plan. Under the equal educational opportunities bill, the school district could refuse to take the final step if doing so would increase the average daily number of students transported.[8]

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[6] Same as note 1.

[7] Same as note 1. The "direct or indirect" language of § 402 indicates that the § 402(c) reference to majority-to-minority transfers carries no exemption from the strict student transportation equirements of § 403.

[8] Same as note 1.

[9] Same as note 1.

[10] Same as note 1.

[11] Same as note 1. The "direct or indirect" language of § 402 indicates that the § 402(c) reference to majority-to-minority transfers carries no exemption from the strict student transportation requirements of § 403.

It releases a set of "findings" on the benefits of community control of schools, and how this promotes better parent-teacher relations and furthers the interests of education. It then asks the appropriate State authorities to split the school district into smaller parts.

So long as the lines it suggests are not blatantly gerry-mandered, and so long as there was some remaining integration,[12] the result could be several school districts in which most whites would face only minimal integration and a couple with large black majorities. Under § 404 of the bill, the redrawing of lines could not be challenged in court unless it could be established "that the lines were drawn for the purposes . . . of segregating children . . . on the basis of race. . . ."[13]

The impossibility of proving an actual intent to discriminate, it must be remembered, is what led Congress to enact § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c, requiring covered States and subdivisions to submit changes in voting qualifications, practices and laws to the Attorney General for approval before being placed in effect. See *South Carolina* v. *Katzenbach*, 383 U.S. 301, 328, 335 (1966).

The proposed legislation does nothing to prohibit "harmful" levels of busing in existing orders—assuming that such levels have ever been ordered. Nor does the legislation forbid a school board to volunteer a plan that would require such "harmful" levels of busing. It does prevent a student from volunteering to be bused in order to enjoy an integrated education.[14]

3. The Administration Bills Will If Enacted Bar Further Desegregation and Resurrect Some Former Discrimination

Virtually every meaningful remedy for segregated schools—pairing, zoning, educational parks, etc.—necessarily involves some degree of student transportation. And the vast majority of school districts, which have traditionally used some degree of student transportation for reasons unrelated to desegregation, cannot possibly have any level of desegregation that does not involve some change in transprtation. A prohibition of student transportation, therefore, strikes at the jugular vein of school desegregation and makes any meaningful remedy impossible. And § 406 of the proposed equal educational opportunities bill will allow existing court orders to be diluted to the levels allowed by that bill.

The legislation under consideration thus forbids far more desegregation than its announced purposes require, and leaves intact some of the claimed evils it purports to redress. It has the same constitutional infirmities as the Tennessee voter residency statute struck down March 21 "because of [its] crudeness as a device for achieving the articulated . . . goal." *Dunn* v. *Blumstein*, 40 U.S. Law Week 4269, 4278.

Their very crudeness as a device for barring "harmful" levels of busing, when combined with their efficiency in preventing desegregation and the Administration's touring of the great care with which they were drafted, leaves little room for doubt as to their true purpose. Both bills attempt to limit the power of the Federal courts. In light of these facts, two observations on the nature of our constitutional system are particularly appropriate.

In *Cooper* v. *Aaron*, 358 U.S. 1, 17–18 (1958), the Court unanimously stated:

> However, we should answer the premise of the actions of the Governor and Legislature that they are not bound by our holding in the *Brown* case. It is necessary only to recall some basic constitutional propositions which are settled doctrine.
>
> Article VI of the Constitution makes the Constitution the "supreme Law of the Land." In 1803, Chief Justice Marshall, speaking for a unanimous Court, referring to the Constitution as "the fundamental and paramount law of the nation," declared in the notable case of *Marbury* v. *Madison*, 1 Cranch 137, 177, 2 L.Ed. 60, that "It is emphatically the province and duty of the judicial department to say what the law is." This decision declared the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitu-

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[12] *Cf. Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960), invalidating the redrawn boundaries of Tuskegee, Alabama. The new boundaries there had "a strangely irregular twenty-eight sided figure" that happened to leave all but three or four black voters outside.

[13] Separate school districts for each race were one of the most prevalent forms of segregation in the Border States before *Brown*. In 1959, Texas had 125 all-black school districts, Arkansas had 12, and Delaware had 39. Missouri and Oklahoma still had them, but the number is unknown. *Report of the United States Commission on Civil Rights* (1959) at 295.

[14] See note 1.

tion, and that principle has ever since been respected by this Court and the Country as a permanent and indispensable feature of our constitutional system. It follows that the interpretation of the Fourteenth Amendment enunciated by this Court in the Brown case is the supreme law of the land, and Art. VI of the Constitution makes it of binding effect on the States "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Every state legislator and executive and judicial officer is solemnly committed by oath taken pursuant to Art. VI, ¶ 3 "to support this Constitution."

No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it.

The other observation, written by Alexander Hamilton in "The Federalist Papers," No. 78 (1788) is particularly approprate in view of the genesis of the Administration's proposals and the haste with which their passage is urged:

> This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency, in the meantime, to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community. Though I trust the friends of the proposed Constitution will never concur with its enemies in questioning that fundamental principle of republican government which admits the right of the people to alter or abolish the established Constitution whenever they find it inconsistent with their happiness; yet it is not to be inferred from this principle that the representatives of the people, whenever a momentary inclination happens to lay hold of a majority of their constituents incompatible with the provisions in the existing Constitution would, on that account, be justifiable in a violation of those provisions; or that the courts would be under a greater obligation to connive at infractions in this shape than when they had proceeded wholly from the cabals of the representative body. Until the people have, by some solemn and authoritative act, annulled or changed the established form, it is binding upon themselves collectively, as well as individually; and no presumption, or even knowledge or their sentiments, can warrant their representatives in a departure from it prior to such an act.

II. THE ENFORCEMENT CLAUSE OF THE FOURTEENTH AMENDMENT GRANTS CONGRESS NO LICENSE TO AUTHORIZE VIOLATIONS OF FOURTEENTH AMENDMENT RIGHTS OR TO DEFEAT THEIR ENFORCEMENT

A. *Introduction*

The preceding section establishes that, where a formerly dual school system is involved, a black child's *Brown I* right to desegregation means the right to attend a school unaffected by any traces of *de jure* racial discrimination. It also establishes that, at whatever point on the path to the full effectuation of *Brown I* rights a school district now stands, both Administration bills will drastically retard its progress and stop it short of its destination. Those district at or near the end of the road will be authorized, by § 406 of the proposed equal educational opportunities bill, to take several steps back toward their pre-*Brown I* status.

Even if, contrary to the decision in *Swann*, orders requiring additional transportation or changes in pupil assignments are considered matters of remedy rather than of right, it is still inescapable that removing the power to order such remedies will allow school districts to retain some of the vestiges of state-imposed segregation. Such restrictions on remedies necessarily bar the enforcement of Fourteenth Amendment rights.

B. *The Administration's Assertions of Congressional Power Violate the Fundamental Purposes of Having a Written Constitution*

Whence comes the authority to so retard the implementation of Fourteenth Amendment rights? The Administration rests the legality of its proposals upon § 5 of the Fourteenth Amendment, which says in its entirety: The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Its argument, stripped of pretensions, is that the power to enforce is the power to define a lesser duty than that contemplated by the courts, and thereby to authorize and to legalize a school district's nonconformity with judicially-declared standards.

The identical argument had been raised in Congress in support of proposals to bar implementation of the Supreme Court's reapportionment decision in *Reynolds v. Sims*, 377 U.S. 533 (1964). Evaluating its merit, Associate Dean Robert McKay of New York University Law School wrote:

> . . . [T]o describe the proposal as an exercise of congressional power to enforce or implement the protections of the fourteenth amendment is surely a perversion of plain meaning that should not be tolerated. The whole proposal was thus infected with serious doubt as to its constitutionality.

"Court, Congress, and Reapportionment," 63 Mich. L. Rev. 255,273 (1964).

In light of the cases decided by the Supreme Court since the end of the Civil War, the Administration's assertions of the right to restrict the judicial implementation of Fourteenth Amendment rights by legislative fiat is astounding. If such power existed—under § 5 of the Fourteenth Amendment or under the Article III power of Congress to "ordain and establish" inferior courts—the Fourteenth Amendment would stand on no firmer ground than an ordinary statute, susceptible to day-to-day legislative change in accordance with the political winds of the moment.

The deepest purpose of a written constitution is that it sets limits to the powers of each branch of government, and the notion of a Congressional power to authorize conduct violating its prohibitions is incompatible with that purpose. Fourteen years after the ratification of the Constitution, Chief Justice Marshall reached the same conclusion:

> The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it; or, that the legislature may alter the constitution by an ordinary act.
>
> Between these alternatives there is no middle ground. The constitution is either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative acts, and, like other acts, is alterable when the legislature shall please to alter it.
>
> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently, the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.

Marbury v. *Madison*, 1 Cranch 137, 2 L.Ed. 60 (1803). Justice Brandeis' historic dissent in ***Olmstead*** v. ***United States***, 277 U.S. 438, 485 (1928) is equally valid as a warning against every effort to bar by indirection the practical implementation of the Constitution:

> In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law: it invites every man to become a law unto himself; it invites anarchy.

C. The Purpose of Section 5 is Solely Affirmative, Authorizing Congress to Expand the Definition of Fourteenth Amendment Rights and to Expand the Means Available for their Protection

Each of the Civil War Amendments has an Enforcement Clause nearly identical in language to that of § 5,[15] and they have all been interpreted similarly, both by Congress and by the courts.

Despite many politically unpopular decisions construing rights under the Civil War Amendments, Congress has never, in the hundred years since their passage, attempted to use its "power to enforce" the provisions of any of these amendments in order to restrict the scope of judicially-declared rights thereunder. This long-standing practical construction of its powers by Congress must be taken into consideration. More directly, the Supreme Court has construed the Enforcement Clause of the Eighteenth Amendment to preclude the construction urged by the Administration: The second section of the amendment—the one declaring "The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation"—does not enable Congress or the several states to defeat or thwart the prohibition, but only to enforce it by appropriate means.

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[15] 13th Amendment, § 2: "Congress shall have power to enforce this article by appropriate legislation."

14th Amendment, § 5: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

15th Amendment, § 2: "The Congress shall have power to enforce this article by appropriate legislation."

Rhode Island v. *Palmer*, 253 U.S. 350, 387, 40 S. Ct. 486, 488 (1920). That amendment also granted enforcement power to the States. In *McCormick* v. *Brown*, 286 U.S. 131, 143–44 (1932), the Court held again that "state legislation cannot give validity to acts prohibited by the Eighteenth Amendment. . . ."

Seven of the Justices presently sitting on the Court—a clear majority—have already expressed their view that the Enforcement Clauses of the Civil War Amendments give Congress no power to dilute judicially-declared rights thereunder.

In *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 n. 10 (1966), Justice Brennan wrote: . . . § 5 does not grant Congress power to exercise discretion in the other direction and to enact "statutes so as in effect to dilute equal protection and due process decisions of this Court." We emphasize that Congress' power under § 5 is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees. Thus, for example, an enactment authorizing the States to establish racially segregated systems of education would not be—as required by § 5—a measure "to enforce" the Equal Protection Clause since that clause of its own force prohibits such state laws.

Only two Justices dissented from the decision; all others joined the majority opinion in all or most of its respects, including this point. The majority on this point thus included Justices Brennan, White, and Douglas.

In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), Justice Brennan again made the same point. 400 U.S. at 249 n. 31. He was joined by Justices White and Marshall. Justice Stewart, joined by Chief Justice Burger and Justice Blackmun, held that Congress has a general legislative power under § 5 to protect Fourteenth Amendment rights, and went on: But even though general constitutional power clearly exists, Congress may not overstep the letter or spirit of any constitutional restriction in the exercise of that power. For example, Congress clearly has power to regulate interstate commerce, but it may not, in the exercise of that power, impinge upon the guarantees of the Bill of Rights.

400 U.S. at 287. Justice Black had reached the same conclusion: As broad as the congressional enforcement power is, it is not unlimited. Specifically, there are at least three limitations upon Congress' power to enforce the guarantees of the Civil War Amendments. First, Congress may not by legislation repeal other provisions of the Constitution. Second, the power granted to Congress was not intended to strip the States of their power to govern themselves or to convert our naional government of enumerated powers into a central government of unrestrained authority over every inch of the whole Nation. Third, Congress may only "enforce" the provisions of the amendments and may do so only by "appropriate legislation." Congress has no power under the enforcement sections to undercut the amendments' guarantees of personal equality and freedom from discrimination, see *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 n. 10, 86 S. Ct. 1717, 1723, 16 L. Ed. 2d 828 (1966), or to undermine those protections of the Bill of Rights which we have held the Fourteenth Amendment made applicable to the States.

400 U.S. at 128–29 (footnote omitted).

The purpose of the enforcement clauses are well illustrated by a consideration of the legality of literacy tests for voter registration. In *Lassiter* v. *Northampton County Board of Elections*, 360 U.S. 45, 51–53 (1959), the Court held unanimously that, absent proof of discriminatory administration, North Carolina's literacy test for voting did not violate the Fourteenth or Fifteenth Amendments:

Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. . . . We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

Then the Voting Rights Act of 1965 was passed, and Congress suspended *all* literacy tests in the areas covered by the Act, based upon evidence of discriminatory administration in some areas. § 4(a) of the Act, 42 U.S.C. § 1973b(a).

When the Act was challenged, the Supreme Court held that an across-the-board suspension, even without prior adjudication of a particular test's invalidity because of discriminatory administration, was appropriate legislation to "enforce" the Fifteenth Amendment. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 333–34, 337 (1966). The ban on literacy tests was extended nationwide by the Voting Rights Amendments of 1970. § 201 of the amended Act, 42 U.S.C. § 1973aa. This, too, was upheld under the enforcement clause of the Fifteenth Amendment and, for Justice Douglas, the enforcement clause of the Fourteenth Amendment. *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). Justice Black was influenced by the tremendous impact the literacy test suspension had had on the enfranchisement of minorities in the South since passage of the 1965 Act, and by the continuing under-registration of minorities elsewhere. 400 U.S. at 131–34. Justices Brennan, White, and Marshall were strongly influenced by the continuing effect which literacy tests gave to former denials of equal educational opportunity, and by the fact that the victims of such discrimination had travelled throughout the nation. The ban could therefore alleviate some former discrimination even in areas such as Arizona, which had never discriminated in education. 400 U.S. at 233–35. Justice Stewart, Chief Justice Burger, and Justice Blackmun subscribed to Justice Black's views on this point. 400 U.S. at 282–84.

The impact of the § 5 power upon the scope of Fourteenth Amendment rights here is clear. In an area which the Court had refused to enter because of the limitations on its decision-making power, the enforcement clause gave Congress the power to define new rights, and to provide new means of effectuating old rights—as by requiring the submission of changes in voting requirements and practices to be submitted to the Attorney General before taking effect, in order to protect the existing, judicially-declared right to freedom from discriminatory obstacles to voting.

This has been the interpretation of the enforcement clauses of the Civil War Amendments from the beginning. To enforce the prohibition of "involuntary servitude" in the Thirteenth Amendment, Congress had the power to enact the anti-peonage statute, 14 Stat. 546, 18 U.S.C. § 1581, which defined Thirteenth Amendment rights to include compulsory service to secure the payment of a debt, and provided criminal sanctions for such violations. *Clyatt* v. *United States*, 197 U.S. 207, 218 (1905). To enforce the prohibitions of the Fourteenth Amendment, Congress had the power to enact § 4 of the Civil Rights Act of 1875, 18 Stat. 336, 18 U.S.C. § 243, which defined Fourteenth Amendment rights as including the right to freedom from racial discrimination in service on grand juries and trial juries, and provided criminal sanctions for such violations. *Ex parte Virginia*, 100 U.S. 339 (1880). The Court may or may not have been willing at that time to define, itself, the prohibitions of the Civil War Amendments as reaching these activities, but it could certainly never have provided criminal sanctions for them. Again, having defined Fourteenth Amendment rights as encompassing the freedom from racial discrimination in grand juries and trial juries, Congress had the power under § 5 to enact the civil rights removal statute, now 28 U.S.C. § 1443, whereby a criminal defendant, who was black and facing trial by a jury from which black persons had been barred by a State statute, could by filing the appropriate petition have his prosecution transferred to a Federal court where he could be tried by a jury chosen without regard to race. *Strauder* v. *West Virginia*, 100 U.S. 303 (1880). This remedy, too, could never have been fashioned by a court.

Nor could courts have ordered the remedies provided in the Voting Rights Acts of 1965 and of 1970. Nor could they have established a Federal agency to investigate denials of equal protection and recommend new legislation. 42 U.S.S. §§ 1975 *et seq.* But all of these were proper exercises of the enforcement clauses of the Civil War Amendments, since they defined rights as yet undefined by the judiciary, and provided remedies for the implementation of such rights that went beyond the ordinary panoply of remedies on which a court can draw in the exercise of its inherent powers. *Cf.* the Court's reference to the "inventive manner" in which Congress exercised its Fifteenth Amendment authority in enacting the Voting Rights Act of 1965. *South Carolina* v. *Katzenbach*, 383 U.S. 301, 327 (1966).

This is in accord with the time-honored understanding of Congress' enforcement clause powers: Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective. Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

Ex parte Virginia, 100 U.S. 339, 345–46 (1880) (emphasis in original). And, earlier that Term, the Court held that: . . . there is express authority to protect the rights and immunities referred to in the Fourteenth Amendment, and to enforce observance of them by appropriate congressional legislation. And one very efficient and appropriate mode of extending such protection and securing to a party the enjoyment of the right or immunity, is a law providing for the removal of his case from a State court, in which the right is denied by the State law, into a Federal court, where it will be upheld.

Strauder v. *West Virginia*, 100 U.S. 303, 311 (1880). The *Civil Rights Cases*, 109 U.S. 3, 13–14 (1883) held: In fine, the legislation which congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation; that is, such as may be necessary and proper for counteracting such laws as the states may adopt or enforce, and which by the amendment they are prohibited from making or enforcing, or such acts and proceedings as the states may commit or take, and which by the amendment they are prohibited from committing or taking.

These readings of the scope of § 5 are supported by its legislative history: Senator Howard, in introducing the proposed Amendment to the Senate, described § 5 as "a direct affirmative delegation of power to Congress," and added: "It casts upon Congress the responsibility of seeing to it, for the future, that all the sections of the amendment are carried out in good faith, and that no State infringes the rights of persons or property. I look upon this clause as indispensable for the reason that it thus imposes upon Congress this power and this duty. It enables Congress, in case the States shall enact laws in conflict with the principles of the amendment, to correct that legislation by a formal congressional enactment." Cong. Globe, 39th Cong., 1st Sess., 2766, 2768 (1866). This statement of § 5's purpose was not questioned by anyone in the course of the debate.

Flack, "The Adoption of the Fourteenth Amendment" (1908) at 138. This passage was cited with approval by the Court in *Katzenbach* v. *Morgan*, 384 U.S. 641, 650 n. 8 (1966).

No support for the Administration position can be found in either the legislative history of § 5 or in the construction placed upon it by the Supreme Court. Indeed, the Administration position seems to be that Congress can expand or contract the protections of the Fourteenth Amendment at will. This would have to rest on one of two assumptions:

(a) that the power of Congress under § 5 is equivalent to its power under the Interstate Commerce Clause; or

(b) that Congressional exercise of the § 5 power is not subject to review by the Supreme Court for conformity to the Constitution.

Once exposed, neither of these assumptions can seriously be urged. Granted that Congress has an accordion-like power of expansion or retraction over the protections of interstate commerce[16] this is entirely traceable to the fact that Article I, § 8 imposes no affirmative duty upon Congress to protect interstate commerce, but merely authorizes Congress "To regulate Commerce . . . among the several States." Nothing remotely the equivalent of the § 5 duty exists here. In *State Board of Insurance* v. *Todd Shipyards Corp.*, 370 U.S. 451, 456–57 (1962), the Court adverted to these very distinctions, unfavorably to the Administration's position:

The power of Congress to grant protection to interstate commerce against state regulation or taxation . . . or to withhold it . . . is so complete that its ideas of policy should prevail.

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[16] The Court stated in *Prudential Insurance Company* v. *Benjamin*, 382 U.S. 408, 434 (1946) (footnote omitted):

> The power of Congress over commerce exercised entirely without reference to coordinated action of the states is not restricted, except as the Constitution expressly provides, by any limitation which forbids it to discriminate against interstate commerce and in favor of local trade. Its plenary scope enables Congress not only to promote but also to prohibit interstate commerce, as it has done frequently and for a great variety of reasons. That power does not run down a one-way street or one of narrowly fixed dimensions. Congress may keep the way open, confine it broadly or closely, or close it entirely, subject only to the restrictions placed upon its authority by other constitutional provisions and the requirement that it shall not invade the domains of action reserved exclusively for the states.

Congress, of course, does not have the final say as to what constitutes due process under the Fourteenth Amendment.[17]

Second, acts of Congress pursuant to the enforcement clauses of the Civil War Amendments are subject to the ordinary review of the Supreme Court for conformity to all provisions of the Constitution. Less than a year and a half ago, the Court invalidated part of the Voting Rights Amendments of 1970, enacted pursuant to the enforcement clauses of the Fourteenth and Fifteenth Amendments, because the provision for 18-year old voting in State and local elections violated the powers over local elections reserved to the States by other provisions of the Constitution. *Oregon* v. *Mitchell*, 400 U.S. 112 (1970). Statutes which are fatally overbroad under the ordinary standards of constitutional review are not immunized by virtue of having been enacted pursuant to an enforcement clause. *United States* v. *Reese*, 92 U.S. 214 (1876).

Repeatedly, the Court has held that the test of the constitutionality of an enforcement clause statute is the same as the test first formulated in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, 4 L.Ed. 579 (1819): Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

South Carolina v. *Katzenbach*, 383 U.S. 301, 326 (1966); *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 443 (1968); *Katzenbach* v. *Morgan*, 384 U.S. 641, 650 (1966). In passing upon the legitimacy of the end, in passing upon whether a statute is appropriate and upon whether it is consistent with the letter and spirit of the legislation, the Court has no guides better than is own decisions. In *James Everard's Breweries* v. *Day*, 265 U.S. 545, 559 (1924), a case arising under the enforcement clause of the Eighteenth Amendment, the Court held that, once its review had convinced it that "the means adopted by Congress are not prohibited *and are calculated to effect the object intrusted to it*" the Court would give a very relaxed view to the particular means chosen. (Emphasis supplied.) "The possible abuse of a power is not an argument against its existence." *Id.* at 560.

The plain meaning of these decisions, and of the common-sense purpose of § 5, is that the Court will apply the standards of its own decisions to test the validity of enforcement clause statutes. If the statute protects the covered rights more effectively than the existing judicial remedies, the Court's review of the Act will be a relaxed one. If, however, it provides a less effective remedy, the Court will decide it under extremely strict standards of review. A majority of the present Court has already indicated that it will not tolerate any legislative attempt to restrict judicially-created rights.

Any statute which, as its primary purpose and effect, attempts to remove some of the presently available judicial powers to remedy deprivations of Fourteenth Amendment rights has little hope of survival. The Department of Justice and Solicitor General Griswold have already conceded this point in a brief filed with the Supreme Court last Term. Arguing against the creation of a new remedy for a deprivation of constitutional rights—there, making Federal agents who'd violated the Fourth Amendment by making unreasonable searches and seizures liable for damages—the Solicitor General and the Department said: At the least there would be substantial doubt whether Congress could simply reject a judicially-created remedy bottomed on the Constitution; a constitutional amendment might be needed for such an end.

Brief for the United States at 21-22 (footnote omitted). The Court created the remedy. *Bivens* v. *Six Unknown Named Agents of Federal Bureau of Narcotics*, 91 S.Ct. 1999 (1971).

II. THE CONGRESSIONAL POWER OVER JURISDICTION OF FEDERAL COURTS CANNOT BE USED TO DEFEAT 14TH AMENDMENT RIGHTS

A. Introduction

The previous sections of this memorandum show (a) that the Fourteenth Amendment creates an affirmative constitutional duty, incumbent on school officials, requiring all necessary use of the tools of desegregation in order to disestablish the dual system of public schools; (b) that there is no congressional power under section 5 of the Fourteenth Amendment to countermand the judiciary's declaration of rights and duties under the Equal Protection Clause, or to inhibit the enforcement of constitutional principles; and (c) that the proposed legislation flies in the face of these hardly questionable propositions of constitutional law.

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[17] The Court went on to say that it did not think Congress was trying to use its § 5 powers to enforce the Court's earlier decisions on the constitutionality of some aspects of State regulation, but had bottomed its statute on the commerce clause.

Moreover, it can readily be seen from the foregoing that the Nixon proposals are not merely "outside" the section 5 power to enforce the Fourteenth Amendment. In seeking to prohibit use of the tools of desegregation, the proposed legislation flatly contradicts the command of the Constitution as interpreted by the judicial branch in a long series of unanimous decisions. To be sure, the legislation is framed in terms of restrictions on the enforcement powers of the federal courts, and thereby poses a dangerous challenge to the independence and integrity of the judicial branch and to the vitality of the principle of separation of powers. The resultant jeopardy to the fundamental balance of our constitutional scheme is discussed in the remainder of this memorandum. But it is important to note at the outset that if this legislation had been drafted in a forthright manner as a prohibition on affirmative action by school officials for purposes of desegregation, its unconstitutionality would be revealed simply by a reading of the Supreme Court's unanimous opinion in *North Carolina State Board of Education* v. *Swann*, 91 Sup. Ct. 1284 (1971).

In that case a unanimous Supreme Court struck down as unconstitutional a North Carolina statute which purported to outlaw affirmative use of pupil assignment techniques by state school authorities, and specifically sought to prohibit student transportation "for the purpose of creating a balance or ratio of race." The Court's reaction to this patently unconstitutional law is expressed by Chief Justice Burger in some of the strongest language available to judges. The attempt to block affirmative use of assignment techniques, "against the background of segregation, would render illusory the promise of *Brown* v. *Board of Education*"—the statute "must inevitably conflict with the duty of school authorities to disestablish dual school systems", by depriving them of "the one tool absolutely essential to fulfillment of their constitutional obligation"—it would "inescapably operate to obstruct" necessary remedies, and thus "contravenes the implicit command of *Green* v. *County School Board* . . . that all reasonable methods be available to formulate an effective remedy." At 1286. With respect to the statutory prohibition of busing for desegregation purposes, the Court specifically noted that "bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it"—the anti-busing provision was denounced because it would "hamper the ability of local authorities to effectively remedy constitutional violations." At 1286. The broad holding of the *North Carolina* case bears restatement in full, for the Nixon proposals would have the United States attempt to achieve the unconstitutional aim of the North Carolina statute: ". . . if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees."

In short, the *North Carolina* case establishes the proposition that no legislative body can authorize school authorities to perpetuate the constitutional wrong of segregation by prohibiting affirmative use of the necessary tools of desegregation. Of course, the action of a state legislature was in question in that case, but the Court's holding applies with equal force to Congress. "All provisions of federal, state, or local law requiring or permitting [racial] discrimination must yield to . . . the fundamental principle that racial discrimination in public education is unconstitutional." *Brown* v. *Board of Education*, 349 U.S. 294, 298 (1955).

It is no wonder that the Nixon proposals were not framed as prohibitions on affirmative action by school officials, for in that event there would be an obvious and fatal collision with the holding of the *North Carolina* case. The remaining question is whether, under the Constitution, Congress is permitted to achieve the very same unconstitutional result through indirection and legerdemain—by legislation designed to hamper the enforcement powers of the federal courts, the functional equivalent of legislation directly authorizing school officials to violate their affirmative Fourteenth Amendment duties.

B. Constitutional Principles Limiting Congressional Interference with Judicial Enforcement Powers

It would be intolerable in our constitutional scheme if Congress were permitted to legislate against the Constitution and defeat judicially declared constitutional rights under the guise of defining the jurisdiction of the federal courts. Administration spokesmen have suggested that the proposed legislation would be permissible as an exercise of congressional power to make "exceptions" to the Supreme Court's appellate jurisdiction, under Article III, section 2, and of an asserted congressional power to vest the lower federal courts with such jurisdictional powers as Congress sees fit. The contention is profoundly anticonstitutional. Our constitutional scheme commits to the nation's judiciary the final power to interpret the fundamental law, saving always the power of constitutional amendment through prescribed procedures. To assert a legislative power of nullification over the constitutional decisions of the Supreme Court, is to pose a blatant challenge to the fundamental principle of separation of powers. Such unfettered power would altogether subvert judicial supremacy in declaring the law of the Constitution—indeed, it would subvert the very institution of a written constitution that is supreme law unless modified through the amendment process.

There are few authoritative pronouncements by the courts that serve to define the limits upon congressional power to regulate the jurisdiction of federal courts, and this is no wonder. Congress has never attempted what the Nixon proposals aim at achieving—that is, there has never been a law passed that expressly singles out a class of constitutional rights lying within the core purpose of a constitutional provision, and seeks systematically to bar judicial enforcement of the rights selected. "Congress has never . . . actually sought to push its authority over jurisdiction so far. The basic jurisdictional statutes actually enacted have allowed the judges to carry on their essential review functions with reasonable effectiveness. . . . The organic power vested in the Congress over the competence of the judical department does not enable it to act in a manner that would, in effect, negate all judicial authority to vindicate constitutional rights."

B. Schwarts, "I. A Commentary on the Constitution of the United States: The Powers of Government" 365 (1963). The anticonstitional nature of such legislation should be enough to cause its rejection by the Congress—it always has been enough in the past. The unconstitutional nature of such legislation would, in any event, cause its denunciation and invalidation by the courts.

1. The inevitable challenge to the principle of separation of powers, posed by any legislation aimed at curtailing the enforcement powers of courts in constitutional cases, is immeasurably heightened in the present context by virtue of the unique role of federal courts in enforcing Fourteenth Amendment rights. The proposed legislation would have the Congress turn its back on a hundred years' tradition of expanding federal jurisdiction to enforce constitutional rights—disregard the vital necessity that claimants within the special protection of the Fourteenth Amendment have continued access to the full panoply of remedies ordinarily available in federal courts—and intervene to restrict the courts in their uncompleted task of implementing the fundamental principles of *Brown*.

(a) It is highly significant that the great expansion of the jurisdiction of federal courts came in the period immediately following the Civil War. "[A]fter the Civil War . . . the basic change was made whereby the national courts became the primary forum for the vindication of federal rights. . . Congress freely invoked the Federal courts to secure the Negroes newly granted civil rights, and there was enacted a series of jurisdictional provisions most of which have lasted to this day." Hart & Wechsler, "The Federal Courts and the Federal System" 727–729 (1953). The Civil Rights Act of 1871 enacted a general cause of action for civil rights deprivations by state officials, and the Congress vested original jurisdiction of such claims in the federal courts—school desegregation cases today are tried under the provisions of that legislation. Four years later the federal courts were given original jurisdiction over all cases (beyond a certain dollar amount) involving claims under federal law. Thus there emerged the modern judicial system under which "the federal courts are the primary guardians of constitutional rights," and it remains "a principle function of the federal courts to vindicate the constitutional rights of all persons." *Perez* v. *Ledesma*, 401 U.S. 82, 118-119 (1971) (concurring opinion). See also *Zwickler* v. *Koota*, 389 U.S. 241, 247 (1967); *McNeese* v. *Board of Education*, 373 U.S. 668, 672-674 (1963).

(b) The core purpose of the Equal Protection Clause is to protect black citizens of this nation against continued denial of equal status and dignity—"to take away all possibility of oppression by law because of race or color." *Ex Parte Virginia*, 100 U.S. 339, 354 (1880). Indeed, so clear was the guiding spirit and purpose of the Clause that the Supreme Court remarked in 1873: "We doubt very much whether any action of a State not directed by way of discrimination against the Negroes as a class, or on account of their race, will ever be held to come within the purview of this provision." *The Slaughter-House Cases*, 83 U.S. (16 Wall.) at 410. The prophecy proved empty, but it remains that any attempt to legislate against full vindication of the Fourteenth Amendment Rights of black school children must be seen as striking at the heart of the Amendment. The primary intended beneficiaries of the Amendment are a racial minority stigmatized and oppressed for centuries and unlikely to prevail in majoritarian institutions such as legislatures or school boards—the Equal Protection Clause, seen as a limit on abuses of majoritarianism, is nugatory absent vigorous enforcement by the courts. "[U]nder the conditions of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances." *NAACP* v. *Button*, 371 U.S. 415, 430 (1963).

(c) The whole history of school desegregation shows the vital and unique constitutional role of federal equity courts in implementing the command of *Brown* v. *Board of Education*. In *Brown II* the Supreme Court decided not to exercise its own power to frame a decree giving detailed relief, but rather remanded the cases to the district courts with instructions "to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. . . . [The lower courts shall] consider the adequacy of any plans the defendants may propose . . . to effectuate a transition to a racially nondiscriminatory school system. During this period of transition, the courts will retain jurisdiction of these cases." *Brown* v. *Board of Education*, 349 U.S. 294, 299-301 (1955). Numerous times during the ensuing decade and a half the Supreme Court had occasion to underscore the intense responsibility of the courts in school desegregation cases—". . . if Negro children of school age were to receive their constitutional rights as we had declared them to exist, the coercive assistance of courts was imperatively called for." *United States* v. *Montgomery County Board of Education*, 395 U.S. 225, 228 (1969). As a direct result of *Brown II* the district courts "were invested with a discretion appropriate to ultimate fashioning of detailed relief . . ." *Watson* v. *City of Memphis*, 373 U.S. 526, 531 (1963)—the power of the lower courts, under the broad mandate of *Brown II*, was held to include if necessary an order directing school authorities to reopen schools they had closed and to levy taxes to support public education. *Griffin* v. *County School Board*, 377 U.S. 218, 233 (1964).

The decision of *Brown II* to tolerate some delay in according full constitutional relief entailed a unique commitment of the federal judiciary to the process of bringing dual school systems into compliance with the Constitution. In time the constitutional command came to be articulated in terms of the right to call upon the enforcement powers of the courts. In 1969 the original all-deliberate-speed standard was held "no longer constitutionally permissible", *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969), and expedited procedures to ensure full relief were held mandatory: ". . . plaintiffs may apply for immediate relief that will at once extirpate any lingering vestiges of a constitutionally prohibited dual school system . . . Such relief shall become effective immediately after the courts, acting with dispatch, have formulated and approved an order that will achieve complete disestablishment of all aspects of a segregated public school system."

Carter v. *West Feliciana Parish School Board*, 396 U.S. 290, 292 (1970) (concurring opinion). The affirmative duty doctrine, which is primarily a formulation of the constitutional obligations of school officials, was also articulated in terms of the enforcement duties of the federal courts. "We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future."

Louisiana v. *United States*, 380 U.S. 145, 154 (1965), quoted in *Green* v. *County School Board*, 391 U.S. 430, 438 n.4. (1968). Recently in the *Swann* case, Chief Justice Burger reemphasized the fundamental role of the courts: "In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system." At 1276. And in the *Swann* cases the Court twice stated (in identical language) that "The district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation . . ." *Swann* at 1281; *Davis* v. *Board of School Commissioners*, 91 Sup. Ct. at 1292.

2. The congressional power to regulate jurisdiction "is not, of course, unlimited." *Glidden Company* v. *Zdanok*, 370 U.S. 530, 568 (1962) (Harlan, J.). For example, no one would suggest that Congress could bar black litigants from federal court solely on account of their race. More broadly, it cannot be supposed, consistently with the doctrine of separation of powers and judicial supremacy in interpreting the law of the Constitution, that the power to regulate jurisdiction may be used for the purpose of defeating constitutional rights declared by the highest court: "The power vested in Congress over the jurisdiction of the judicial department may not . . . be employed so as to destroy rights guaranteed by the Constitution itself. The Congressional authority to prescribe the rules by which judicial competence is to be governed must be limited to such rules as do not completely eliminate the essential function of the courts in vindicating the rights guaranteed by the basic document. To hold otherwise would be to give the legislative department an all too easy way to circumvent the supreme law. It can scarcely be supposed that the Framers, concerned as they so clearly were with the danger of legislative dominance in the governmental structure they were creating, intended to give Congress what amounts to the power to render organic rights unenforceable in its discretion. To push the Congressional power to withhold jurisdiction to the extreme of permitting constitutional rights to be made completely unenforceable would be to read the basic document as authorizing its own destruction."

B. Schwartz, "I. A Commentary on the Constitution of the United States: The Powers of Government" 361 (1963):

"An 'impenetrable bulwark' against Congressional oppression [as Madison called the Bill of Rights] that could easily be flanked by Congressional withdrawal of jurisdiction from the courts would be no bulwark at all."

R. Berger, "Congress versus The Supreme Court" 294–95 (1969):

Spokesmen for broad congressional power over jurisdiction often invoke *Ex Parte McCardle*, 7 Wall. 506 (1869), involving a statute withdrawing Supreme Court appellate jurisdiction in *habeas corpus* cases. The Court pronounced this "exception" to its jurisdiction valid and dismissed McCardle's appeal, thus acquiescing momentarily in the congressional desire to prevent the Court from deciding the validity of Reconstruction legislation attacked by McCardle. Yet it would be incorrect to read the case as establishing unfettered congressional power to prevent the Court from adjudicating constitutional claims. The Court retained the power to issue *habeas corpus* as an original matter—thus withdrawal of appellate jurisdiction merely closed one avenue, but did not bar access to the Court altogether, and the power to resolve the substantive issues raised by McCardle remained intact. See *Ex parte Yerger*, 8 Wall. 85 (1869). In any event the *McCardle* case lacks progeny, and has been criticized in recent years, see *Glidden Company* v. *Zdanok*, 370 U.S. 530, 605 n. 11 (1962) (Douglas, J., dissenting). The authority of *McCardle* is attenuated by the historical context in which the decision was rendered—the opinion recites that argument in the case was delayed because the impeachment trial of President Johnson required the presence of the Chief Justice—it was a time, in short, when separation of powers was a dangerous doctrine to invoke. There is little doubt that the more enduring principle is that of *Martin* v. *Hunter's Lessee*, 1 Wheat. 304 (1816), one which strains to protect the primacy and integrity of the Supreme Court against encroachment.

Apart from *McCardle* there is a dearth of authority supporting congressional power to hamper the courts in enforcing the Constitution. The wartime price control legislation barred the district courts from adjudicating the validity of price regulations, but the same legislation provided a special court to adjudicate these controversies, with review in the Supreme Court—the legislation was upheld because it preserved a fair and effective remedy for litigants in a federal judicial forum. See *Yakus* v. *United States*, 321 U.S. 414 (1944), and *Lockerty* v. *Phillips*, 319 U.S. 182 (1943). The Norris-La Guardia Act, 29 U.S.C. §§ 101–115, bars the federal courts from issuing injunctions in certain labor disputes, through a declaration that federal judges have no "jurisdiction" to issue such relief. The Act was of course upheld—but this statute simply declares the public policy of the United States on a nonconstitutional matter, and does not purport to deny litigants injunctive relief to redress constitutional violations. The "Portal-to-Portal" Act came after the Supreme Court had construed the Fair Labor Standards Act in a novel manner, giving rise to enormous claims for back pay: the Congress responded by changing the law and denying "jurisdiction" to enforce the broader liability. The Act was upheld in the lower courts, but not on the theory that Congress has unfettered power to interfere with the course of judicial decision-making: "We think . . . that the exercise by Congress of its control over jurisdiction is subject to compliance with at least the requirements of the Fifth Amendment. That is to say, while Congress has the undoubted power to give, withhold, and restrict the jurisdiction of the courts other than the Supreme Court, it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law or to take private property without just compensation."

Battaglia v. *General Motors Corp.*, 169 F. 2d 254, 257 (2d Cir. 1948), *cert. denied*, 335 U.S. 887 (1948). It is the Fifth Amendment, of course, through which the Equal Protection Clause is enforced against the federal government. *Bolling* v. *Sharpe*, 347 U.S. 497 (1954).

In the situations mentioned the exercise of congressional power to control jurisdiction was upheld, but in no case did the extraordinary legislation involved single out a class of constitutional rights and purport to foreclose effective judicial enforcement. See generally B. Schwartz, *supra*, at 356–65. Yet this is virtually the sum of judicial authority available to spokesmen for the proposed legislation. The field of administrative law presents situations in which the timing and scope of judicial review is limited by statute, but courts have been alert to defend the principle of judicial primacy in deciding matters of law and in controlling the administrative fact-finding process. See, e.g., *Crowell* v. *Benson*, 285 U.S. 22 (1932). When statutes have attempted to oust the courts, in whole or significant part, from exercising control over administrative lawlessness, the statutory restrictions have been brushed aside in order to accord constitutional claims a meaningful judicial hearing. See *Oestereich* v. *Selective Service System*, 393 U.S. 233 (1968); *Wong Wing* v. *United States*, 163 U.S. 228 (1896). The broad principle of these cases is relevant in the present context, for the proposed legislation attempts to commit the constitutional rights of black school children to the uncontrolled discretion of the very administrative authories—state and local school officials—responsible for violating the Constitution in the first place.

To be sure, Supreme Court opinions acknowledge a broad power on the part of Congress to allocate the judicial business of the United States between state and federal courts. Congress has the power to impose restrictions on federal diversity-of-citizenship jurisdiction, see *Sheldon* v. *Sill*, 8 How. 440 (1850), when the result is simply that the controversy be tried in state court. Moreover, "Congress could, of course, have routed all federal constitutional questions through the state court systems, saving to this Court the final say when it came to review of state judgments." *Wisconsin* v. *Constantineau*, 400 U.S. 433, 437 (1971). As noted above, it was not until after the Civil War that broad "federal question" jurisdiction was lodged in federal courts. But these facts about congressional power over jurisdiction in no way support the view that Congress may legislate to prevent effective enforcement of constitutional rights. Remitting a class of cases to state courts, while preserving Supreme Court appellate review, is in harmony with the requirement of effective judicial enforcement. In fact, in circumstances where state law does not adequately accommodate constitutionally protected interests, and federal courts may not be available to the claimant, the Supreme Court has held that state courts may be required to create a special remedy, not otherwise available at state law, in order to vindicate constitutional rights. *Ward* v. *Love County*, 253 U.S. 17 (1920); see *General Oil Company* v. *Crain*, 209 U.S. 211 (1908).

It is evident that the proposed legislation is not simply a remitting of Fourteenth Amendment suitors to state courts, preserving the Supreme Court's power to review state court judgments in school desegregaion cases and to command effective relief. First, *all* federal courts—including the Supreme Court—would be barred from ordering the full relief required by the Constitution. The Supreme Court would be required to affirm, or decline to review, constitutionally inadequate judgments of state courts. Such an ousting of unifying Supreme Court review is a direct challenge to "the essential role of the Supreme Court in the constitutional plan." Hart, "The Power of Congress to Limit the Jurisdiction of Federal Courts," 66 Harv. L. Rev. 1362, 1365 (1953). In *General Oil*, *supra* at 226, the Court noted that "without power of review by this court, it must be evident that an easy way is open to prevent the enforcement of many provisions of the

Constitution, and the Fourteenth Amendment, which is directed at state action could be nullified as to much of its operation"—such a result is intolerable, and was rejected by the Court.

The practical effect of the proposed legislation is not simply to oust Supreme Court review of state judgments, but is to oust the state courts altogether from the process of desegregation, leaving no judicial form capable of according full protection to the constitutional rights of black school children. There is nothing to support such a result in the decisions allowing Congress to allocate judicial business between state and federal courts. The proposed legislation does not take away federal jurisdiction over civil rights actions but rather restricts the enforcement powers of the federal courts—federal district courts would retain original jurisdiction over school desegregation cases, and defendant school boards would be able to remove such cases from state courts, see 28 U.S.C. § 1441, thus cutting off the possibility of a more complete remedy in a nonfederal forum. See *Avco Corp.* v. *Aero Lodge*, 390 U.S. 557, 561 (1968). As the Supreme Court noted in a case involving the anti-injunction provisions of Norris-La Guardia, there is "obviously a compelling incentive" for defendants to remove to federal court, when they thereby "gain the advantage of [federal] strictures upon injunctive relief." *Boys Markets, Inc.* v. *Retail Clerks Union*, 398 U.S. 235, 245 (1970). It is irony indeed that the removal statutes, enacted in the post-Civil War period and designed to ensure "the primacy of the federal judiciary in deciding questions of federal law", *Avco, supra* at 560, should serve to ensure that constitutional rights can receive no greater protection in state court than the proposed legislation would allow in a federal forum.

3. The proposed legislation cannot be supported as an exercise of congressional power to define the jurisdiction of federal courts.

The clear purpose and predictable effect of the legislation is to prevent full and effective vindication of Fourteenth Amendment rights, by barring federal courts from exercising ordinary equity powers to aid the desegregation process. Plainly the legislation is not simply an attempt to allocate the judicial business of the United States among available courts or to provide housekeeping rules for the orderly handling of that business. It does not remove a neutrally defined subject matter from the reach of federal courts, but aims specifically at hampering the enforcement of constitutional rights—it preserves jurisdiction in order to deny enforcement. Nothing in the available caselaw suggests that such an abuse of legislative power is permissible.

Much remains to be said in order to sketch the extent of the invasion of judicial integrity that is proposed.

Last term, in *Bivens* v. *Six Unknown Named Agents*, 91 Sup. Ct. 1999 (1971), the Supreme Court held that an action for money damages would lie in federal court against federal officials alleged to have violated the Fourth Amendment, although Congress had never created a statutory right to sue for such relief. The Court itself created the cause of action, finding that available remedies for such constitutional deprivations were not fully effective. The Court cited and relied upon the following language of *Bell* v. *Hood*, 327 U.S. 678, 684 (1946):

". . . it is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the 14th Amendment forbids the state to do. Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that the courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done."

In his careful and scholarly concurrence in *Bivens*, Justice Harlan acknowledged that "the judiciary has a particular responsibility to assure the vindication of constitutional interests", *id.* at 2010, and emphasized "the presumed availability of federal equitable relief against threatened invasions of constitutional interests . . ." *Id.* at 2008: "The reach of a federal district court's 'inherent equitable powers,' Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 460. (Burton, J., concurring), is broad indeed, *e.g.*, Swann v. Charlotte-Mecklenburg. . . . [A] general grant of jurisdiction to the federal courts by Congress is thought adequate to empower a federal court to grant equitable relief for all areas of subject-matter jurisdiction enumerated therein, see 28 U.S.C. § 1331(a). . . ." *Id.* at 2009.

The proposed legislation flies in the face of each of the premises of the *Bivens* decision. It is an attempt to render the courts unable to discharge their "responsibility to assure the vindication of constitutional interests"; specifically, the legislation seeks to deny the power of courts "to adjust their remedies so as to grant the necessary relief", thus invading the "inherent equitable powers" of the judicial branch, as exercised in *Swann*. In the *Bivens* situation itself Congress had not previously sought to foreclose the remedy that the Court held to be necessary, but the Government specifically argued in the *Bivens* case that *once* a constitutional remedy is in fact created by the Court, Congress would probably have no power to withdrawn the remedy by legislation: "At the least there would be substantial doubt whether Congress could simply reject a judicially-created remedy bottomed on the Constitution; a constitutional amendment might be needed for such an end."

Brief for the United States in *Bivens*, at 21-22:

Grave constitutional doubts about congressional repeal of *Bivens* translate themselves into a certainty that congressional overruling of *Swann* is prohibited by the Constitution. For under the proposed legislation, federal courts would still be required to adjudicate school desegregation cases, but would be barred from according the full relief required by the Fourteenth Amendment. It is obviously offensive to the principle of separation of powers for the courts to be required to adjudicate a controversy and yet be rendered unable to decide it in accordance with the Constitution—in light of American judicial history since *Brown II*, it is a particularly egregious assault upon judicial integrity for Congress to require that federal courts pronounce upon school desegregation cases yet be without power to grant an effective remedy to redress the wrong uncovered and denounced. To retain jurisdiction and bar enforcement places the courts in an intolerable position: "Jurisdiction is always jurisdiction only to decide constitutionally." Hart & Wechsler, *The Federal Courts and the Federal System* at 340 (1953). See *United States* v. *Klein*, 13 Wall. 128 (1871).

Finally, the proposed legislation is more than a mockery of the constitutional rights left without enforcement, and more than "an unconstitutional attempt to invade the judicial province." *Glidden* v. *Zdanok*, 370 U.S. 530, 568 (1962) (Harlan, J.). The proposed legislation would have the intended effect of freezing an unconstitutional state of affairs by interfering with the corrective judicial process commenced after *Brown II*. A federal court would be compelled to uphold a desegregation plan well short of what the Constitution requires. The legislation would involve the federal judiciary in sanctioning unconstitutional conduct and ratifying the continuance of a constitutional wrong unabated. Should the courts actually refuse to grant the relief required by *Swann*, and instead approve desegregation plans that do not and cannot satisfy the Fourteenth Amendment, then they would become at least as involved in the underlying discriminatory conduct as courts that lend enforcement aid to racially restrictive convenants.

Such a course is barred by *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), for courts are surely among the addressees of the Constitution, and are bound by the judicial oath to enforce the Constitution as the supreme law.

Indeed, the role of the judiciary under the proposed legislation would be vastly worse than that condemned as unconstitutional in *Shelley*. In the situation under discussion, the underlying discriminatory conduct is official, not private—and, of course, the courts cannot simply withdraw from an enforcement role, as in Shelley. The courts would remain open to exercise all traditional judicial powers in order to enforce all other constitutional rights calling for equitable relief—all, that is, other than the class of rights uniquely within the purview of the Fourteenth Amendment and uniquely within the protection of the federal courts. The proposed legislation would, in short, single out the rights of a minority and place a special roadblock in the path of their ultimate vindication; it would amount to authorization and approval of the failure of school officials to discharge their affirmative constitutional duty to desegregate; and it would render the courts—and the Congress—complicit in the denial of constitutional rights. When abandonment of a corrective process designed to redress racial discrimination has involved consequences such as these, the Supreme Court has not hesitated to condemn the action as violative of the Constitution. See *Hunter* v. *Erickson*, 393 U.S. 385 (1969); *Reitman* v. *Mulkey*, 387 U.S. 369 (1967).

The Constitutionality of the Nixon Administration's Proposed Student Transportation Moratorium Bill

(By Richard T. Seymour and Lewis D. Sargentich)

INTRODUCTION AND CONTENTS

This memorandum discusses the proposed student transportation moratorium bill from the standpoint of the ordinary principles of Constitutional law by which the courts have traditionally passed upon the validity of legislation. Other memoranda, parts of which are still in preparation, will discuss other issues.

The questions which this memorandum seeks to answer are four:

(1) Can Congress lawfully suspend the right to an integrated education while it deliberates on the second Nixon bill? See page 2.

(2) Is the proposed legislation unlawfully overbroad—*i.e.*, so completely unrelated to the evils it claims to redress that it violates the Constitution, even though other, narrower legislation having a closer relationship to these evils would be upheld by the courts? See page 6.

(3) Does this legislation's difference in treatment between school districts desiring to remain segregated (which are spared the need to integrate) and school districts desiring to comply with the Constitution (which can) violate the Constitution by making the enjoyment of a constitutional right turn upon a purely arbitrary decision by each school district? See page 10.

(4) Does the proposed moratorium violate a 57-year string of constitutional decisions of the Supreme Court by freezing into place a segregated status quo? See page 13.

Some of the discussion on these points is as relevant to the proposed Equal Educational Opportunities bill as to the transportation moratorium bill.

I. THE CONSTITUTIONAL RIGHT TO AN INTEGRATED EDUCATION CANNOT BE SUSPENDED WHILE CONGRESS DELIBERATES

The bill seeks to suspend for a year the power of Federal courts to order any meaningful remedies[1] in dealing with *de jure* segregated schools. This is ostensibly so that Congress will have the necessary time to deliberate about the problem of school segregation and come up with appropriate remedies. The problem is that constitutional rights can no longer lawfully be suspended while a legislature contemplates means of dealing with a problem. When the Supreme Court handed down the second *Brown* decision in 1955, 349 U.S. 294, it authorized a departure from the normal rule that deprivations of constitutional rights should be remedied immediately and totally, and allowed limited delays in achieving complete desegregation of a school board could "establish that such time is necessary in the public interest' and was consistent with full compliance. 349 U.S. at 300.

As early as 1964, the Supreme Court announced that the period in which these rights could be suspended had come to an end: The time for mere "deliberate speed" has run out, and that phrase can no longer justify denying these Prince Edward County school children their constitutional rights to an education equal to that afforded by the public schools in the other parts of Virginia.

Griffin v. *County School Board of Prince Edward County*, 377 U.S. 218, 234 (1964). The Court reiterated this point the next year. In *Bradley* v. *School*

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[1] Virtually every meaningful remedy for segregated schools—pairing, zoning, educational parks, etc.—necessarily involve some degree of student transportation. And the vast majority of school districts, which have traditionally used some degree of student transportation for reasons unrelated to desegregation, cannot possibly have any level of desegregation that does not involve some change in transportation. A prohibition of student transportation, therefore, strikes at the jugular vein of school desegregation and makes any meaningful remedy impossible.

The proposed bill not only prohibits the transportation of any child who was not being transported prior to its effective date, but also prohibits assigning to a different school any child who is presently being transported for any reason. The bill thus immunizes from new pupil assignment orders more than 40% of the students in the country—those who have to take a school bus in order to get to school anyway.

Board of the City of Richmond, 382 U.S. 103, 105 (1965), it stated, "Delays in desegregating school systems are no longer tolerable." Three years later, the Supreme Court again held that these rights could no longer be suspended: The burden on a school board today is to come forward with a plan that promises to work, and promises realistically to work *now*.

Green v. *County School Board of New Kent County*, 391 U.S. 430, 439 (1968). *Accord*, *United States* v. *Montgomery County Board of Education*, 395 U.S. 225, 235 (1969).

In October, 1969, the Supreme Court again held that the constitutional right to an integrated education could no longer be delayed, but had to be enforced fully and immediately:

> The question presented is one of paramount importance, involving as it does the denial of fundamental rights to many thousands of school children, who are presently attending Mississippi schools under segregated conditions contrary to the applicable decisions of this Court. Against this background the Court of Appeals should have denied all motions for additional time because continued operation of segregated schools under a standard of allowing "all deliberate speed" for desegregation is no longer constitutionally permissible. Under explicit holdings of this Court the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.

Alexander v. *Holmes County Board of Education*, 396 U.S. 19, 20 (1969). A month and three days later, the Fifth Circuit Court of Appeals authorized a one-semester delay in the full integration of the student body in a number of school districts, although it ordered the complete and immediate integration of faculty, staff, etc. *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211 (1969). Under the name of *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970), the Supreme Court reversed the *Singleton* decision six weeks after it was entered. Justices Harlan and White, in a concurring opinion, stated that they understood *Alexander* to require that, upon a *prima facie* showing of continued segregation:

> * * * plaintiffs may apply for immediate relief that will at once extirpate any lingering vestiges of a constitutionally prohibited dual school system.
>
> *   *   *   *   *   *   *
>
> *Alexander* makes clear that any order so approved should thereafter be implemented in the minimum time necessary for accomplishing whatever physical steps are required to permit transfers of students and personnel or other changes that may be necessary to effectuate the required relief.

396 U.S. at 292, 293. Referring to two other cases, Justices Harlan and White continued:

> * * * this would lead to the conclusion that in no event should the time from the finding of noncompliance with the requirements of the *Green* case to the time of the actual operative effect of the relief, including the time for judicial approval and review, exceed a period of approximately eight weeks. This, I think, is indeed the "maximum" timetable established by the Court today for cases of this kind.

396 U.S. at 293. Justices Black, Douglas, Brennan and Marshall expressly disagreed with the conclusion of Justices Harlan and White that an eight weeks' delay in full integration would be permissible:

> * * * those views retreat from our holding in Alexander v. Holmes County Board of Education, 396 U.S., at 20, 90 S.Ct., at 29, that "the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools."

Id. In the unanimous decision in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 91 S. Ct. 1267, 1275 (1971), Chief Justice Burger quoted the language of *Green* appearing above, and continued:

> This was plain language, yet the 1969 Term of Court brought fresh evidence of the dilatory tactics of many school authorities. Alexander v. Holmes County Board of Education, 396 U.S. 19, 90 S. Ct. 29, 24 L. Ed. 2d 19, restated the basic obligation asserted in Griffin v. County School Board, 377 U.S. 218, 234, 84 S. Ct. 1226, 1234, 12 L. Ed. 2d 256 (1964), and *Green*, *supra*, that the remedy must be implemented *forthwith*.

The moratorium bill provides for a year's delay in all new court orders requiring any additional or any different student transportation, and affects equally every school district in the country whether it be a rural, two-school district with a total of 120 students or a large, metropolitan district such as Richmond. Independently of the constitutional issues of overbreadth discussed in the succeeding section, the moratorium bill violates the strong policy, to which the courts have time and again addressed themselves, for closely tailoring the remedy in a school desegregation case to the particular problems and needs of particular school districts.[9]

Under the last eight years of controlling decisions, the delay sought by this bill is in clear conflict with the Constitution, a conflict that appears in even starker relief by the stay's lack of relation to any consideration of differing degrees of administrative burden and of differing types of court orders in differing kinds of school districts.

In *Green v. County School Board of New Kent County*, 391 U.S. 430, 439, the Court stated:

> The obligation of the district courts, as it always has been, is to assess the effectiveness of a proposed plan in achieving desegregation. There is no universal answer to complex problems of desegregation; there is obviously no one plan that will do the job in every case. The matter must be assessed in light of the circumstances present and the options available in each instance. It is incumbent upon the school board to establish that its proposed plan promises meaningful and immediate progress toward disestablishing state-imposed segregation. It is incumbent upon the district court to weigh that claim in light of the facts at hand and in light of any alternatives which may be shown as feasible and more promising in their effectiveness.

II. *The Proposed Bill Is Unconstitutionally Overboard*

The student transportation moratorium bill is purportedly directed at the physical and educational harm to children caused by excessive busing. If the legislation were closely linked to the prevention of such harm, it could well be upheld by the courts. The Nixon proposals, however, are a blunderbuss approach that reach all student transportation and have not the remotest links to the degree of harm present in any particular situation.

The articulation of the purported goals of this legislation in *Montgomery County*, 395 U.S. at 235, the Court again stated its adherence to the policy that "in this field the way must always be left open for experimentation." The courts deciding remedial questions are to be:

> * * * local courts so far as practicable, those courts to be guided by traditional equitable flexibility to shape remedies in order to adjust and reconcile public and private needs.

395 U.S. at 227. This policy was strongly endorsed by Chief Justice Burger in *Swann*, 91 S. Ct. at 1276:

> If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.
>
> "The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment

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[9] This policy was expressed most clearly in the second *Brown* decision, 349 U.S. 294, 299–300 (1955) (footnotes omitted):

> Full implementation of these constitutional principles may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.
>
> In fashioning and effectuating the decrees, the courts will be guided by equitable principles. Traditionally, equity has been characterized by a practical flexibility in shaping its remedies and by a facility for adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis. To effectuate this interest may call for elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954 decision. Courts of equity may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner. But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them.

> and reconciliation between the public interest and private needs as well as between competing private claims." Hecht Co. v. Bowles, 321 U.S. 321, 329-330, 64 S. Ct. 587, 592, 88 L. Ed. 754 (1944), cited in *Brown II*, *supra*, 349 U.S. at 300, 75 S. Ct. at 756.

The "findings" of Section 2 cannot save the legislation if it is otherwise overboard. Since this bill affects fundamental rights, the constitutional standard by which it must be judged is that enunciated in *Bates* v. *City of Little Rock*, 361 U.S. 516, 525 (1960):

> But governmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance. When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification.

And again, in *Shelto* v. *Tucker*, 364 U.S. 479, 488 (1960) (footnotes omitted):

> In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, the purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose.

In *N.A.A.C.P.* v. *Button*, 371 U.S. 415, 438 (1963), the Court stated:

> Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.

And yet again, in *United States* v. *Robel*, 389, U.S. 258, 265 (1967):

> When Congress' exercise of one of its enumerated powers clashes with those individual liberties protected by the Bill of Rights, it is our "delicate and difficult task" to determine whether the resulting restriction on freedom can be tolerated.

There, the statute was invalid because Congress could have used "less drastic" means of achieving a valid legislative goal. 389 U.S. at 268. Similarly, in *Dean Milk Co.* v. *City of Madison, Wisconsin*, 340 U.S. 349, 354 (1951), the Court struck down an overbroad milk inspection ordinance, since "reasonable alternatives", having a lesser impact on interstate commerce, were available.

As recently as March 21, the Court reaffirmed these principles in invalidating Tennessee's durational residency requirement for voting:

> It is not sufficient for the State to show that durational residence requirements further a very substantial state interest. In pursuing that important interest, the State cannot choose means which unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with "precision," *NAACP* v. *Button* 371 U.S. 419, 438 (1963); *United States* v. *Robel*, 389 U.S. 258, 265 (1967), and must be "tailored" to serve their legitimate objectives: *Shapiro* v. *Thompson*, *supra*, 394 U.S., at 631. And if there are other reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose "less drastic means." *Shelton* v. *Tucker*, 364 U.S. 479, 488 (1960).

Dunn v. *Blumstein*, 40 U.S. Law Week [illegible]269, 4273 (March 21, 1972).

How fare the Nixon proposals under these standards? Very poorly. For example:

1. School District A, which has never made any efforts to desegregate but which could be completely integrated by a pairing or other plan that would require some busing. Even if no student would have to ride for more than ten minutes, the Administration bill would prohibit the court from issuing the order.

2. School District B, which has been attempting to comply with *Brown* v. *Board of Education* for years, but which has so far been given a bit more lenience by the local Federal district court than the law allows. It has just one final step to take in order to be in full compliance but this step involves a restructuring of the existing student transportation. Fewer students will be bused and the average ride will be shorter, but the new plan involves busing some students not now being bused. Others now being bused would no longer be bused under the new plan. The Administration bill prohibits a court from ordering the final step, even if the court found that the new plan would be *better* for the health and well-being of the children involved than the existing plan.

3. School District C, run by segregationist diehards, has only two schools, a block from each other. Since it's a rural district, it has always had a fair amount

of busing. But it has never allowed black children to ride on the same school bus with whites and, even though all whites needing transportation are bused, a fair number of black children are forced to walk miles to school each day, while they're passed by half-empty "white" school buses. The Nixon bill would prohibit a court from ordering the school district to pick up these black children.

4. School District D, which is operating under a final desegregation plan involving some busing, finds that a new black family has moved into the district. Under the Nixon bill, it could refuse to pick up the new black family's children pursuant to the *existing* plan, and a United States court would be powerless to do anything about it.

5. School District E, operating under a plan that allows students to transfer from a school in which their race is a majority to one in which their race is in a minority, refuses to allow such majority-to-minority transfers after the effective date of the Nixon bill. Even if a student trying to volunteer to transfer was already being bused, the Nixon bill deprives the Federal court of the power to order compliance with the existing transfer provision.

The proposed legislation does nothing to prohibit "harmful" levels of busing in existing orders—assuming that such levels have ever been ordered. Nor does the legislation forbid a school board to volunteer a plan that would require such "harmful" levels of busing. It does prevent a student from volunteering to be bused in order to enjoy an integrated education.

The legislation under consideration, then, forbids far more desegregation than its announced purposes require, and leaves intact some of the claimed evils it purports to redress. It has the same constitutional infirmities as the Tennessee voter residency statute struck down March 21:

> Similarly, the durational residence requirements in this case founder because of their crudeness as a device for achieving the articulated state goal of assuring the knowledgeable exercise of the franchise. The classifications created by durational residence requirements obviously permit any long-time resident to vote regardless of his knowledge of the issues—and obviously many long-time residents do not have any. On the other hand, the classifications bar from the franchise many other, admittedly new, residents who have become minimally, and often fully, informed about the issues.

Dunn v. *Blumstein*, 40 U.S. Law Week 4269, 4278.

There is little room for doubt that the Administration transportation moratorium bill falls fatally short of "the exacting standard of precision we require of statutes affecting constitutional rights," *Dunn, supra* at 4279.

III. THE EXCEPTION FOR SCHOOL DISTRICTS VOLUNTEERING TO OBEY THE CONSTITUTION IS AN UNCONSTITUTIONAL LEGISLATIVE CLASSIFICATION MAKING THE AVAILABILITY OF A CONSTITUTIONAL RIGHT TURN UPON A PURELY ARBITRARY DECISION BY EACH SCHOOL DISTRICT

Section 3(c) of the student transportation moratorium bill allows a school district to make a free-will offering to the Founding Fathers. Section 405 of the Equal Educational Opportunities bill has an identical provision. If a school district *wants* to desegregate, by means involving additional or different busing, the Administration bills will not block its way. A prohibition of a school district's voluntary obedience to the Constitution would be even more glaringly unconstitutional,[3] but the effort to evade this problem chosen by the drafters runs afoul of perhaps the two most frequently enforced constitutional principles: that legislative classifications affecting fundamental rights have some compelling basis, *Bates* v. *City of Little Rock*, 361 U.S. 516, 524 (1960),[4] and that the enjoyment of constituional rights cannot be made to turn upon arbitrary decisions.

The Supreme Court most recently articulated the standards it uses in evaluating such classifications under the Equal Protection Clause[5] in Dunn v.

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[3] *North Carolina State Board of Education* v. *Swann*, 91 S. Ct. 1284 (1971).

[4] This is especially true where, as here, the legislation gives local school districts the option to maintain their classification of students based on race. A long line of Supreme Court decisions have held such classifications to be inherently "constitutionally suspect", and subject to the "most rigid scrutiny". *E.g., McLaughlin* v. *Florida*, 379 U.S. 184, 192 (1964); *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954); *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944); *Anderson* v. *Martin*, 375 U.S. 399 (1964); *Watson* v. *City of Memphis*, 373 U.S. 526 (1963).

[5] The due process clause of the Fifth Amendment is coextensive with the Equal Protection Clause of the Fourteenth Amendment in the area of school desegregation. *Bolling* v. *Sharpe*, 347 U.S. 497 (1954).

Blumstein, 40 U.S. Law Week 4269 (March 21, 1972). Discussing Tennessee's durational residence requirements for voting, which the court held to be unconstitutional, the decision stated:

> Durational residence laws penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period. Such laws divide residents into two classes, old residents and new residents, and discriminate against the latter to the extent of totally denying them the opportunity to vote. The constitutional question presented is whether the Equal Protection Clause of the Fourteenth Amendment permits a State to discriminate in this way among its citizens.
>
> To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification.

40 U.S. Law Week at 4271 (footnote omitted).

This proposed legislation seeks to divide all black school children into two classes: those attending school in school districts which wish to obey the Constitution, and those attending school in districts that prefer to continue each of the remaining vestiges of discrimination, the elimination of which would require some degree of student transportation. The consequence of what district a black child attends is severe: in the first, he will obtain full and immediate enjoyment of his constitutional rights; in the second, his rights will be suspended for a year or, perhaps, be lost altogether.

The only difference that accounts for such a total disparity in the enjoyment of a constitutional right is the choice of the school board. The proposed legislation establishes no standards for a school board to follow in deciding how to exercise its choice: *a decision based upon whim or caprice, or based upon the sentiment that black children are inherently inferior, is fully acceptable under the Nixon plan.* The children in both types of school systems are equally entitled to redress, and any legislative scheme that conditions the enjoyment of constitutional rights on so unprincipled a pivot must fall. The language of the Court in *Yick Wo* v. *Hopkins*, 118 U.S. 356, 366–367 (1886) is telling:

> We are consequently constrained, at the outset, to differ from the supreme court of California upon the real meaning of the ordinances as vesting in the board of supervisors a not unusual discretion in granting or withholding their assent to the use of wooden buildings as laundries, to be exercised in reference to the circumstances of each case, with a view to the protection of the public against the dangers of fire. We are not able to concur in that interpretation of the power conferred upon the supervisors. There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent. . . . [If a mandamus action were brought against supervisors who had arbitrarily withheld their consent,] it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance nor restraint.

And, at 369–70:

> When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.

Accord, e.g.; Gulf, C.&S. F. Ry. Co. v. *Ellis*, 165 U.S. 150, 155, 159–60 (1897); *McLaughlin* v. *Florida*, 379 U.S. 184, 190–91 (1964).

The conclusion of the Supreme Court in striking down the San Francisco ordinance serves as well to indict the "free will" classification of the two Administration bills:

> * * * [I]n the famous language of the Massachusetts bill of rights, the government of the commonwealth "may be a government of laws and not of men." For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life,

> at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself.

IV. THE BILL WOULD FREEZE INTO PLACE A SEGREGATED STATUS QUO

The justification for the transportation moratorium bill rests in large part upon the purported finding that it is necessary to freeze the power of the courts to order any school desegregation remedies involving new busing, in order to preserve the status quo while Congress deliberates on the problems of school desegregation and the provision of remedies therefor.

The constitutional flaw in this approach is that it is a segregated status which would be frozen into place over the next year. Supreme Court decisions in both the voting and the school areas have held that any action which results in this kind of "freeze" of discrimination[*] is unlawful. In *Guinn* v. *United States*, 238 U.S. 347 (1915), the Supreme Court invalidated Oklahoma's "grandfather clause", which had attempted to evade the Fifteenth Amendment's prohibition of voting discrimination by limiting voting eligibility to those who were qualified to vote under Oklahoma law just prior to the adoption of the Fifteenth Amendment, and to the lineal descendants. This legislation "froze" the prior discrimination in place, and was therefore struck down. Twenty-four years later, the Court faced a second attempt by Oklahoma to freeze the status quo of past discrimination by preserving for their lifetimes the voting privileges enjoyed by white citizens prior to the *Guinn* decision, while imposng new and onerous registration requirements on all persons who had not previously been voters. The Oklahoma statute was struck down. *Lane* v. *Wilson*, 307 U.S. 268, 276 (1939) (Frankfurter, J.). And in 1965, the Supreme Court held that Louisiana could be enjoined from enforcing a new voter-qualification test for new registrants even though no attack was made on the constitutionality of the new test, because it was more onerous than prior standards and because it did not apply to voters who had previously registered. Since the previous registrants were white, the Court held that this statute would freeze the status quo of past discrimination, and that it could not be enforced. *Louisiana* v. *United States*, 380 U.S. 145, 154–56 (1965).

In addition, the Court held in *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), that the process of staying the implementation of a plan providing for full desegregation froze the status quo of past discrimination, even if for only a short period, and that school districts were constitutionally required to desegregate first, and litigate later. And less than a year ago, the Court again held that each formerly dual school system must eliminate racial discrimination "root and branch":

> In this remedial process, steps will almost invariably require that students be assigned "differently because of their race." See *Swann* v. *Charlotte-Mecklenburg Board of Education*, No. 281, 402 U.S. 1, 91 S. Ct. 1267, 28 L.Ed. 2d—; *Youngblood* v. *Board of Public Instruction*, 450 F.2d 625, 630 (CA 5 1970). *Any other approach would freeze the status quo that is the very target of all desegregation processes.*

McDaniel v. *Barresi*, 402 U.S. 39 (1971) (emphasis supplied).

Under this unbroken, 57-year string of Supreme Court decisions, it is clear that any governmental action freezing the status quo of prior discrimination, even if the freeze be only temporary as in *Alexander* and *Carter*, violates the Constitution.

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[*] The Fifth Circut explained the concept of freezing the status quo of discrimination in *United States* v. *Duke*, 332 F. 2d 759, 768–69 (1964):

> While theoretically applicable to all, these new requirements primarily affect those who bore the brunt of previous discriminations and tend to maintain the position of advantage which one class has already obtained over the other. . . .
>
> * * * * * * *
>
> It may be said that when illegal discrimination or other practices have worked inequality on a class of citizens and the court puts an end to such a practice but a new and more onerous standard is adopted before the disadvantaged class may enjoy their rights, already fully enjoyed by the rest of the citizens this amounts to "freezing" the privileged status for those who acquired it during the period of discrimination, and "freezing out" the group discriminated against.

The three-judge court in *United States* v. *Louisiana*, 225 F. Supp. 353, 393 (E.D. La., 1963), *affirmed*, 380 U.S. 145 (1965), stated:

> A court of equity is not powerless to eradicate the effects of former discrimination. If it were, the State could seal into permanent existence the injustices of the past.

THE NIXON PROPOSALS VERSUS THE CONSTITUTIONAL PRINCIPLES OF BROWN AND SWANN

(By Lewis D. Sargentich and Richard T. Seymour)

I. THE AFFIRMATIVE DUTY TO DESEGREGATE: CONSTITUTIONAL BACKGROUND

The Nixon proposals are in their essence a flagrant challenge to the Supreme Court's recent and unanimous ruling in the case of *Swann* v. *Charlotte-Mecklenburg Board of Education*, 91 S. Ct. 1267 (1971). In *Swann* and its companion cases, a series of opinions for the Court by Chief Justice Burger once again reaffirmed—and refined—the fundamental constitutional principles announced in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). Before focusing on the most acute points of conflict between the *Swann* decision and the Nixon proposals (i.e., availability of the necessary tools of desegregation, especially student transportation), it is important to examine the way in which *Swann* sums up some 17 years of constitutional adjudication and builds upon constitutional premises that have been embraced by every Justice of the Supreme Court from 1954 to the present. To do so is to reveal the depth of the challenge to the judicial branch posed by the Nixon proposals—and the extent of their unconstitutionality.

(1) The fundamental constitutional premise of *Swann* is the same as that of *Brown*—"The basic constitutional requirement that the state not discriminate between public school children on the basis of their race." *Swann* at 1274–5. The *Swann* Court took pains to emphasize the continuity of constitutional decisionmaking in the field of public education, underscoring the fact that it had never "deviated in the slightest degree" from the holding of *Brown* that separate-but-equal has no place in the constitutional scheme, at 1274. The Court reaffirmed the Fourteenth Amendment command that public school systems "be unitary" in the sense required by our decisions in *Green* and *Alexander*. At 1283. Those decisions, *Green* v. *County School Board*, 391 U.S. 430 (1968), and *Alexander* v. *Holmes County Board of Education*, 396 U.S. 19 (1969), each by a unanimous Court, formulated the ultimate constitutional objective:

> "A unitary, nonracial system of public education," "a system without a 'white' school and a 'Negro' school, but just schools," *Green* at 436, 442; "a totally unitary school system," to be operated "now and hereafter," "within which no person is to be effectively excluded from any school on the basis of race or color." *Alexander* at 20, 21.

(2) *Swann* emphasized that when school officials are in default of their constitutional obligation to maintain a unitary system of schools, they are charged with an ***affirmative constitutional duty*** imposed by *Brown* to dismantle the dual system. The affirmative duty doctrine is perhaps best expressed in a passage from the *Green* opinion (quoted with approval by the Court in *Swann*, at 1275):

> "School boards [are] clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch. . . . The constitutional rights of Negro school children affirmed in *Brown I* permit no less than this . . ." At 437–8. Accord, *Cooper* v. *Aaron*, 358 U.S. 1, 7 (1958).

Swann itself speaks of the "affirmative obligations" of school authorities, at 1276, the necessity for "affirmative action," 1282, "the affirmative duty to desegregate," 1284—to the end of eliminating "all vestiges of state-imposed segregation," 1275. Thus, the Court has once again made it plain that the constitutional wrong of a dual school system is not removed simply upon the abandonment of an explicit policy of segregation, nor by a state's adopting an "apparently neutral" method of pupil assignment. *North Carolina State Board of Education* v. *Swann*, 91 S. Ct. 1289, 1286 (1971). The Court through Chief Justice Burger specifically noted that a plan assigning pupils to schools nearest their homes "may fail to counteract the continuing effects of past school segregation" and hence be constitutionally unacceptable—"In short, an assignment plan is not acceptable simply because it appears to be neutral." *Swann* at 1282.

(3) It is clear that "affirmative duty" means the duty to take all steps necessary to eliminate the dual system of racially identifiable schools, eliminate racial isolation of minority students, and operate a system containing not black schools or white schools but "just schools." In the *Green* case the Court had noted that there, under a "freedom of choice" scheme, 85% of the black children remained isolated in an all-black school, and concluded: "In other words, the school system remains a dual system," at 441. The Swann decision crystallizes the earlier

cases by establishing an express constitutional "presumption against schools that are substantially disproportionate in their racial composition." 1281. Again, *Green* states the general proposition (quoted with approval in *Swann*, 1275) that "[t]he burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now*," 439 (emphasis in original)—and *Swann* carefully articulates the elements of such a plan, giving guidelines for the affirmative use of the constitutionally necessary tools of desegregation. What emerges is a concrete and detailed picture of the affirmative duty to desegregate, drawn in terms of the various techniques of pupil-assignment, such as redrawing attendance zones, consolidation or "pairing" of schools, and transportation of students. Against that background *Swann's* emphatic command is that "school authorities should make every effort to achieve the greatest possible degree of actual desegregation," 1281—there is "an obligation to exercise every reasonable effort to remedy the violation." 1280 n.8. In *Davis* v. *Board of School Commissioners*, 91 S. Ct. 1289, 1292 (1871), a companion case to *Swann*, the Court reiterated that "every effort" be made, and added:

> "A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and non-contiguous attendance zones . . . The measure of any desegregation plan is its effectiveness," 1292.

The Court held that in *Davis* "inadequate consideration was given to the possible use of bus transportation and split zoning," 1292, and therefore refused to rule the plan constitutionally acceptable.

II. STUDENT TRANSPORTATION AS A CONSTITUTIONALLY NECESSARY TOOL OF DESEGREGATION

As noted, the *Swann* opinion holds that the various techniques of pupil assignment, discussed in detail in the opinion, 1281–1286, must be utilized if necessary to produce a desegregation plan that "promises realistically to work." The techniques include:

> (a) "a frank—and sometimes—drastic—gerrymandering of school districts and attendance zones," resulting in zones "neither compact or contiguous," 1281;
>
> (b) "'clustering,' or 'grouping' of schools with attendance assignments made deliberately to accomplish the transfer of Negro students out of formerly segregated Negro schools and transfer of white students to formerly all-Negro schools," 1281;
>
> (c) transportation of students, to the same end.

The Court held specifically that each of these methods is a permissible and appropriate tool "to break up the dual school system," 1281. Of course, when the techniques of pupil assignment are employed affirmatively to reduce racial isolation and racial identity of schools, the result is incompatible with a policy of school-nearest-home assignments. In the words of Chief Justice Burger, writing in *Swann:*

> "All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconventient and even bizarre in some situations and may impose burdens on some; but all awkardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems . . . 'Racially neutral' assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation resulting from discriminatory location of school sites or distortion of school size in order to achieve or maintain an artificial racial separation." At 1282.

In short, the *Swann* decision stands for the proposition that whenever the task of desegregation cannot be accomplished apart from affirmative use of the techniques of pupil assignment, and when the techniques are feasible, then their affirmative use is required. The constitutional duty of school authorities is thus defined to include, *inter alia*, transportation of students for the purpose of redressing racial isolation in the schools.

Swann notes that the busing of students is "a normal and accepted tool of educational policy," 1282, and concludes that in certain circumstances school authorities may be "required to employ bus transportation as one tool of school desegregation." 1283. The affirmative duty to employ busing as a desegregation device ceases when the time or distance involved jeopardizes the health or education of young children, at 1283. But absent such weighty factors, the duty to "make every effort" toward establishing a unitary system encompasses busing. "*Desegregation plans cannot be limited to the walk-in school.*" 1283. (Emphasis added.)

It is vital to understand that the tool of student transportation does not stand by itself, unrelated to the other techniques of pupil assignment. In the large or middle-sized urban areas of the nation, or in any area showing substantial patterns of racial isolation in housing, desegregation of the schools is a practical impossibility unless the tool of student transportation is available, and is actually utilized. Take, for example, two of the other techniques discussed in *Swann*—redrawing of attendance zones and consolidation of schools. The whole point of these techniques is to overcome the racial isolation in schools that would result from a school-nearest-home policy of pupil assignment. Rezoning typically involves the construction of an irregularly shaped attendance area combining students from a predominantly black residential section with students from adjacent ("contiguous") or outlying ("noncontiguous") white sections of a city. Consolidation of schools involves, at its simplest, the "pairing" of two schools each predominantly of one race, by changing the grade structure of the schools so that each serves the entire combined attendance area (e.g., two elementary schools each teaching grades one to six, are "paired" so that one school teaches grades one to three, and the other grades four to six)—when the grade structure of several schools is systematically modified in this manner, the technique is called "grouping" or "clustering" of schools. Quite obviously, such techniques involve at least some longer home-to-school distances in the rearranged attendance area—and as a result, more students will no doubt elect to ride the bus to school, entirely apart from "court-ordered busing."

In *Swann*, Chief Justice Burger began the Court's opinion by noting that the lower federal courts had developed valuable experience in confronting the "realities of day-to-day implementation of . . . constitutional commands," and stated that "our effort to formulate guidelines must take into account their experience." At 1271. It is well to look briefly at the path taken, prior to *Swann*, by the Court of Appeals for the Fifth Circuit, the federal appellate court that has handled the bulk of the judicial task of school desegregation. During the period from the end of 1969 to the start of school in 1970, the Fifth Circuit heard some 166 appeals in school desegregation cases. *Swann* at 1275 n. 5. During this entire period, the Fifth Circuit did not expressly rely on student transportation as a major tool of desegregation—by and large this technique is not even discussed in the pre-*Swann* opinions, beyond the obvious point that school authorities are barred from continuing to operate segregated bus lines. See *Singleton v. Jackson School District*, 419 F. 2d 1211, 1218 (Fifth Circuit 1970), reversed in part *per curiam*, 396 U.S. 290 (1970). See generally Note, *Busing, Swann, and the Future of Desegregation In the Fifth Circuit*, 49 Tex. L. Rev. 884 (1971). Instead of relying on transportation, the Fifth Circuit almost exclusively utilized the techniques of rezoning and school consolidation.

There are literally scores of Fifth Circuit opinions containing directives such as the following: "It is ordered that Lorah Park (740 Negroes, 0 whites) be paired with Curtiss (0 Negroes, 570 whites)." *Pate v. Dade County School Board*, 439 F. 2d 1151, 1156 (1970). In the pre-*Swann* period, the Fifth Circuit followed a rule of "contiguity," meaning that it would only order the pairing of schools whose attendance areas abutted one another. It never had occasion to order "cross-town busing"; indeed, it never had occasion to order busing at all, but simply acted on the assumption that school authorities would discharge their responsibilities under state student transportation laws and see to it that the children get to school. But it is clear that even the restrained and constitutionally inadequate Fifth Circuit approach, relying entirely on contiguous rezoning and pairing to desegregate urban schools, had the result that greater numbers of school children joined their classmates on the bus to school. Thus, to return to the example given, the District Judge had specifically found that pairing Lorah Park Elementary with the adjacent Curtiss would involve more students riding the bus (see Dist. Ct. opinion appended to the *Pate* decision, 434 F. 2d 1151, at 1177–78)—but the Fifth Circuit ruled, "None of the purported obstacles to this pairing raised by the Board . . . is to preclude the desegregation of Lorah Park." *Id.* at 1156.

The Nixon proposals would prohibit any desegregation order when the direct *or indirect effect* is greater transportation of elementary school students (Moratorium Bill, § 3(a); Equal Education Bill, § 403(a).) The result would be that Lorah Park, and all the hundreds of Lorah Parks in this nation, could not be deseregated even through the mild device of contiguous pairing, and would remain or be returned to their pre-*Brown* condition as segregated, one-race schools.

In fact the proposed legislation would attempt to override the constitutional decisions of the most conservative panels of this restrained Court of Appeals. In *Ellis* v. *Board of Public Instruction*, 423 F.2d 203 (1970), one three-judge panel of the Fifth Circuit approved a desegregation plan identical to the plan that the Nixon legislation would enact for every school district: the *Ellis* panel ordered a nearest-school-to-home assignment scheme, with no attempt to modify the existing grade structures. *Ellis* was an aberration—its holding was not followed in other Fifth Circuit cases, nor could it be, consistently with *Green's* injunction that desegregation plans "promise realistically to work." But it is a highly significant fact that the very panel of judges who decided Ellis themselves three months later rejected a nearest-school assignment plan as unworkable. The second case, *Mannings* v. *Board of Public Instruction*, 427 F.2d 874, 877 (1970), reflects an awareness of the undoubted fact that there is nothing sacrosanct in the grade structure adopted by a school board: "No particular grade structure can be considered inviolate when constitutional rights hang in the balance." *Brown* v. *Bessemer Board of Education*, 432 F. 2d 21, 23 (Fifth Circuit 1970). Accordingly, the same three judges who decided *Ellis*, committed still to the notion of "neighborhood schools," ruled as follows in *Mannings:*

> "There are 14 elementary schools with virtually all Negro student bodies. Several of these can be paired to accomplish desegregation. For example, *without departing from neighborhood school concepts*, the following schools could be paired: College Hill with Edison; Dunbar with Tampa Bay; Henderson with Graham; Lincoln with Jackson; Meacham with Gorrie; and Simmons with Burney or Wilson.
>
> "It is conceivable that substantially the same result could be achieved in some of the elementary schools by redrawing zone lines instead of pairing. The district court is authorized to consider and permit rezoning as an alternative to pairing where the result would be substantially desegregated student bodies." *Mannings* at 877 (emphasis added).

This exceedingly restrained decision by a conservative panel, which ordered no busing but simply *pairing on a neighborhood basis*, had the expected result of increased numbers of students exercising their option under state law to ride the bus to school. The school district involved, Tampa-Hillsborough, embraces a large urban area—before the *Mannings* decision, some 23,500 students were transported by the school system, *id.* at 876; after the neighborhood-pairing plan went into effect, the school system transported some 8,500 more children, for a total of 32,000, see testimony of Theodore M. Hesburgh, Chairman, U.S. Commission on Civil Rights, before Subcommittee No. 5 of the House Committee on Judiciary, March 1, 1972 (Appendix C, report on Tampa-Hillsborough, p. 11).

Thus, judicial experience *prior to Swann* makes it plain that the Nixon proposals would bring about a truly astounding—and profoundly unconstitutional—result. They would prohibit *every* desegregation technique involving pupil assignment in the elementary grades—zoning, pairing, or other techniques such as selective school closing, shifting the location of portable classrooms, etc.—by virtue of the indirect effect of greater transportation. The prohibition would operate, as a practical matter, even when the techniques are restrained by the Fifth Circuit's "contiguity" requirement. Moreover, the prohibition would defeat pairing and zoning *on a neighborhood basis*, as in *Mannings, supra*, or as in *Ross* v. *Eckels*, 434 F. 2d 1140 (Fifth Circuit 1970), where the zoning-and-pairing plan for Houston resulted in "contiguous school zones . . . well within any reasonable definition of a neighborhood school system." *Id. at* 1141. Finally—outrageously—the moratorium on busing would prevent implementation of every "majority-to-minority transfer" plan, under which a student may elect to transfer from a school in which his race is a majority to a school in which his race is minority. As the Supreme Court noted in *Swann*, such a transfer scheme "has long been recognized as a useful part of every desegregation plan"—it is "an indispensable remedy," and of course, "[i]n order to be effective, such a transfer arrangement must grant the transferring student free transportation . . ." *Swann*, 91 S. Ct. at 1281.

Swann defines the constitutional duty of school authorities—and the corresponding constitutional right on the part of black children—to include affirmative use of all the techniques of student assignment when necessary in establishing a unitary system of public schools. After what has been said, it is clear that the Nixon proposals' attack on "busing" is in fact an attack on the desegregation process itself—an attempt to prevent ultimate vindication of the rights declared in *Brown* almost 18 years ago, by barring use of the necessary tools of desegregation. This assault on the Fourteenth Amendment collides frontally with the Supreme Court's substantive holding in each of the cases in the *Swann* group.

(1) In *Swann* itself, the Court upheld the desegregation plan accepted by the district judge in that case, a plan that utilized both contiguous and noncontiguous zoning, pairing and clustering of schools, and (in consequence of the rezoning) student transportation. The Fourth Circuit had upset parts of the plan dealing with elementary schools and involving considerable transportation—the Supreme Court reversed the Circuit Court and approved the plan *in toto*.

(2) In *Davis* v. *Board of School Commissioners*, 91 S. Ct. 1287, the Court confronted a Fifth Circuit desegregation plan that utilized the techniques of zoning and pairing but was restrained by the "contiguity" requirement, with the result that a number of all-black or nearly all-black schools remained in the system. The Court held the plan to be constitutionally insufficient and reversed the Fifth Circuit, stating that "inadequate consideration was given to the possible use of bus transportation and split zoning." At 1292. The Court denounced the contiguity requirement and the notion that neighborhood zoning is *per se* adequate. *Id.* The Court directed lower courts to "consider the use of all available techniques including . . . noncontiguous attendance zones," and reaffirmed the principle that "school authorities should make every effort to achieve the greatest possible degree of actual desegregation." *Id.*

(3) In *McDaniel* v. *Barresi*, 91 S. Ct. 1287, the Court struck down a ruling by the Georgia Supreme Court, which would have barred consideration of the race of children in drawing school attendance lines. The Court noted that affirmative use of pupil assignment techniques is "almost invariably require[d]," and emphasized that a bar on such techniques "would freeze the status quo that is the very target of the desegregation processes." At 1289.

(4) And, in *North Carolina State Board of Education* v. *Swann*, 91 S. Ct. 1284, the Court struck down as unconstitutional a North Carolina statute which purported to outlaw affirmative use of pupil assignment techniques, and specifically prohibited student transportation "for the purpose of creating a balance or ratio of race." The Court's reaction to this patently unconstitutional law is expressed by Chief Justice Burger in some of the strongest language available to judges. The attempt to block affirmative assignment techniques, "against the background of segregation, would render illusory the promise of *Brown* v. *Board of Education*"—the law "must inevitably conflict with the duty of school authorities to disestablish dual school systems," by depriving them of "the one tool absolutely essential to fulfillment of their constitutional obligation"—it would "inescapably operate to obstruct" necessary remedies, and thus "contravenes the implicit command of *Green* v. *County School Board* . . . that all reasonable methods be available to formulate an effective remedy." At 1286. With respect to the statutory prohibition of busing for desegregation purposes, the Court specifically noted that "bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it"—the anti-busing provision was denounced because it would "hamper the ability of local authorities to effectively remedy constitutional violations." At 1286. The broad holding of the *North Carolina* case bears restatement in full, for the Nixon proposals would have the United States attempt to achieve the unconstitutional aim of the North Carolina statute:

> . . . if a state-imposed limitation on a school authority's discretion operates to inhibit or obstruct the operation of a unitary school system or impede the disestablishing of a dual school system, it must fall; state policy must give way when it operates to hinder vindication of federal constitutional guarantees." At 1286.

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK—COMMITTEE ON FEDERAL LEGISLATION; COMMITTEE ON CIVIL RIGHTS

THE ADMINISTRATION'S PROPOSED "ANTI-BUSING" LEGISLATION

The Administration has introduced two bills—the "Student Transportation Moratorium Act" (STMA), and the "Equal Educational Opportunities Act" (EEOA)—which would severely restrict and in a number of cases eliminate entirely the use of busing by Federal courts as a means of alleviating racial separation in the schools. They would be applicable whether that separation constitutes "*de jure*" segregation deliberately imposed by governmental authority or "*de facto*" segregation arising out of other factors, such as segregated housing patterns. We believe that the proposals are unconstitutional as well as most unwise.*

I. *Preliminary Analysis.*

Set forth below is a summary of the principal provisions of the proposed legislation together with a preliminary discussion of the Constitutional and policy problems raised thereby.

The Administration's two bills purport to rest on certain legislative findings as to students' rights to desegregation, the current status of school desegregation, and the asserted excesses of pupil transportation ("busing") for the purpose of desegregation. The STMA seeks to halt implementation of all new orders for desegregatory pupil busing until the enactment of the EEOA or until July 1, 1973.

Both bills purport to find that educational agencies have been required to implement excessive pupil busing, thereby diverting funds from use in improving educational quality (STMA § 2, EEOA § 3). The EEOA contains legislative findings to the effect that the elimination of dual school systems has been "virtually completed", they assert that great progress has been made toward elimination of the vestiges of those systems, and that excessive busing causes disruption and substantial hardship to school sytem and creates serious risks to student health and safety. (§ 3(a)). Neither bill directly defines excessive pupil transportation but both suggest that Fourteenth Amendment requirements have been exceeded.

EEOA § 403(a) prohibits an order for the busing of pupils in the sixth grade or below which exceeds the average daily distance or the average daily time of travel or the average daily number of such students transported in the preceding school year. In computing these averages, however, the Court is directed to disregard busing resulting from the student's change in residence, his or her advancement to a higher level of education, or his or her attendance in a new school. To the extent that this section serves to define excessive busing to mean only busing directed pursuant to an order requiring racial desegregation, it is plainly discriminatory and in violation of Constitutional guarantees.

It should be noted that the prohibitions of § 403(a) apply regardless of how short the distance or time involved, or how small the number transported, so long as any one of these is greater than in the preceding year. Moreover, this section would operate to prohibit or restrict most other desegregation remedies, such as pairing, rezoning or education parks, since these usually indirectly involve some increased busing.

EEOA § 403(b) has similar provisions for students in the seventh grade or higher but provides that such transportation cannot be ordered in the absence of clear and convincing evidence that no other method set out in § 402 will provide adequate remedies. Moreover, busing orders for students in the seventh grade or higher are explicitly made subject to § 407 which provides that all such orders expire after five years. In addition, such orders must be part of a long-term plan involving the other remedies provided in § 402, and all transportation orders are to be stayed upon timely application to a court of appeals. EEOA § 403(c) contains additional language that pupil transportation shall not be ordered if it poses a risk to the death of students or constitutes a significant impingement on the educational process. This merely repeats current judicial doctrine.[1] The assertion in the bills that transportation funds are diverted from other educational uses (STMA § 2(a)(6); EEOA § 3(a)(5)), neglects the consideration that desegregation is itself a goal of education. Moreover, it is far from clear that funds used for transportation would be used for other purposes. In varying degrees, the states reimburse local school districts for providing school transportation and, given the relatively small number of students transported because of desegregation, it is unlikely that the amount of funds "diverted" is significant.

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*On June 8, 1972, Congress completed action upon, and sent to the President for approval, and on June —, 1972 the President approved an education bill into which there had been interpolated, in the final stages of Congressional action on the bill, certain provisions relating to busing. Among other things, these provisions would delay, until all appeals were exhausted or until July 1, 1974, the effectiveness of district court orders requiring the "transportation or transfer" of students for the "purpose of achieving a balance among students with respect to race, sex, religion or socioeconomic status." While these provisions appear to be less restrictive than the totality of the Administration's antibusing proposals, we believe that similar Constitutional and policy objections apply to both.

In any event, the claim of excessiveness in desegregation of transportation does not withstand scrutiny. The Department of Transportation recently reported that the annual increase in desegregation of transportation accounts for less than 1% of the total number of students comprising the annual increase.[2] The Department of Health, Education and Welfare has estimated for the eleven southern states during 1967–1970 a 3% increase in busing for all purposes, including desegregation.[3] By any comparison, therefore, desegregation accounts for a statistically insignificant amount of transportation for the 43.5% of the total public school enrollment, or 18,975,939 pupils, transported daily.[4] Part of the reason for this minimal increase has been the reluctance of Federal courts to order busing except where it has been constitutionally required. Furthermore, desegregation often rationalizes a transportation system by eliminating segregated busing.

By asserting that transportation "impinges" on the educational process (STMA § 2(a)(2); EEOA § 3(a)(5)), the bills ignore the fact that bus transportation may enhance education by making available larger facilities for use by a greater number of students and by reducing the danger that walking may pose to younger children. A recent report of the National Safety Council indicates that the accident rate for boys transported by school bus is .03 per 100,000 student days compared with .09 for walking. For girl students, the accident rate is .03 when riding a bus and .07 when walking.[5]

EEOA §§ 101–102 permit the Department of Health, Education and Welfare to provide funds for compensatory education for disadvantaged students. These provisions clearly seek to make attractive the segregated schools perpetuated by the bill's impediments to busing. Implicit in this is a rejection of the holding of *Brown* v. *Board of Education*[6] that a segregated education is inherently unequal as a constitutional matter. Moreover, there are no reliable data which demonstrate that compensatory education is sufficient to overcome defects in educational background or to compensate for the denial of constitutional rights to desegregation.

EEOA § 202, which provides that the failure to achieve racial balance in the schools is not a denial of equal protection or equal educational opportunity, exceeds the provisions of the 1964 Civil Rights Act which merely defined "desegregation" as not meaning pupil assignment to overcome racial imbalance.[7] The bill fails to explain the distinction between a denial of "equal educational opportunity" and a denial of "equal protection". The term "balance" is also not defined.

EEOA § 203 supplements § 202 by providing that the assignment of students to neighborhood schools is not a denial of equal educational opportunity unless such assignment is "for the purpose of segregating students on the basis of race, color, or national origin . . ." or the school to which children are assigned was located "for the purpose of segregating students." This language appears to be at odds with constitutional requirements as outlined by the 4th Circuit Court of Appeals in *Brewer* v. *School Board of the City of Norfolk, Va.*:[8]

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[1] Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 30–31 (1971).

[2] U.S. Dept. of Transportation, Report on School Busing 1 (March 24, 1972).

[3] HEW Memorandum from Constantine Menges to Christopher Cross 3 (March 30, 1972).

[4] Id. at 1.

[5] National Safety Council, Accident Facts 90–91 (1971 ed.).

[6] 347 U.S. 483 (1954).

[7] 42 U.S.C. § 2000c(b) (1964).

[8] 397 F. 2d 37, 41–42 (4th Cir. 1968) (en banc).

> "If residential racial discrimination exists, it is immaterial that it results from private action. The school board cannot build its exclusionary attendance areas upon private racial discrimination. Assignment of pupils to neighborhood schools is a sound concept, but it cannot be approved if residence in a neighborhood is denied to Negro pupils solely on the ground of color." (footnotes omitted)

EEOA § 404 purports to validate lines drawn by a state, dividing its territory into separate school districts, except where it is established that the lines were drawn for the purpose and have the effect of segregating children. Only when a test requiring both wrongful purpose and effect is met can remedies under § 401 or § 402 be permitted. This would appear to mark a backward step in applying the Fourteenth Amendment. Courts have held that a consistent course of conduct resulting in segregation supports an inference of discriminatory intention; in short, from the effect of segregation the Fourteenth Amendment supports an inference of wrongful purpose.[9]

It is a cornerstone of our constitutional system that Congress may not impose its interpretation of the Constitution upon the courts.[10] But just as "Congress may not authorize the States to violate the Equal Protection Clause,"[11] Congress may not impose its view of a constitutional violation upon the court where that view restricts the full measure of a constitutional guarantee.

EEOA § 402 directs that in formulating a remedy "for denial of equal educational opportunity or denial of equal protection of the law", a federal court or agency may no longer simply adopt the necessary remedy but must weigh and "make specific findings on the efficacy in correcting such denial" pursuant to a descending order of preferability of various remedies, the last and least of which is pupil transportation. The vice here is that needed flexibility of the courts' traditional equity powers would be severely hampered where most or all of the specified remedies in a given case would be necessary to achieve maximum school desegregation. Plainly the severe restriction on the use of busing, without its outright prohibition, is an attempt to deal with the unanimous decision upholding busing in *North Carolina State Board of Education* v. *Swann.*[12]

In lieu of a direct ban on busing, EEOA seeks to make its utilization difficult by requiring the exhaustion of all other remedies prior to any busing. This, too, does not accord with constitutional doctrine. A unanimous court held in *Swann* v. *Charlotte-Mecklenburg Board of Education:*[13]

> "Desegregation plans cannot be limited to the walk-in school * * *
>
> "District courts must weigh the soundness of any transportation plan in light of what is said in [this opinion] above. It hardly needs stating that the limits on time of travel will vary with many factors, but probably with none more than the age of the students. The reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than remedial measures courts of equity have traditionally employed."

Equity's traditional powers to fashion an appropriate remedy are constitutionally completed where the questions in issue relate to fundamental rights. A unanimous court so held in *Davis* v. *Board of School Commissioners of Mobile County:*[14]

> "Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation. A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and noncontiguous attendance zones. . . . The measure of any desegregation plan is its effectiveness."

The scheme proposed by EEOA § 402 would impose virtually insuperable barriers before complete school desegregation could be achieved. To achieve an appropriate remedy, plaintiffs would be obligated to prove the inefficacy of a host of other remedies with all attendant expenses and without necessarily yielding any definitive answer. This negative feature of the EEOA is reinforced by § 305 which provides that attorneys' fees may be collected by the prevailing party other than the United States and that the United States shall be liable for costs to the same extent as a private person. Section 305 is clearly aimed at civil plaintiffs because § 406 provides that educational agencies may reopen a court order or desegregation plan to achieve compliance with the EEOA.

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[9] Brewer v. School Board of City of Norfolk, note 8, *supra*; Spangler v. Pasadena City Board of Education, 311 F. Supp. 501, 522 (C.D. Calif. 1970); Davis v. School District of City of Pontiac, 443 F. 2d 573 (6th Cir.), cert. denied, 404 U.S. 913 (1971).

[10] Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803).

[11] Shapiro v. Thompson, 394 U.S. 618, 641 (1969).

[12] 402 U.S. 43, 46 (1971).

[13] Note 1, supra.

[14] 402 U.S. 33, 37 (1971).

To permit the recovery of attorneys' fees against civil rights plaintiffs is to reject the rationale of Title II of the 1964 Civil Rights Act as interpreted by *Newman v. Piggie Park Enterprises, Inc.*[15] where the court stated that a plaintiff under Title II of that act obtains an injunction not for himself alone but also as a "private attorney general." In fact the 1964 Civil Rights Act and the 1968 Fair Housing Act provide that attorney's fees are recoverable by plaintiffs under certain circumstances in accord with the public-interest nature of such litigation.[16]

The prospect that a plaintiff may lose a civil rights action and therefore be required to pay substantial attorneys' fees would have an "in terrorem" effect on attempts to vindicate civil rights. The problem is highlighted by other provisions of EEOA which make it likely that decrees heretofore obtained by civil rights plaintiffs wil be reopened.

Moreover, to allow a court to charge attorneys' fees to an unsuccessful plaintiff is quite contrary to the spirit of American justice which has not allowed the taxation of costs so high as to discourage plaintiffs from commencing litigation to obtain what they deem to be their rights.[17]

EEOA § 405 permits voluntary adoption of remedies going beyond those provided in the Act, a permission not likely to be availed of in the absence of vigorous enforcement, which this bill makes virtually impossible.

EEOA § 406 permits the reopening of court-ordered desegregation plans to conform them with the provisions of the bill. While this is arguably permissible under the usual doctrine that equity decrees are always subject to review because of change of circumstances, this is in fact an invitation to reverse the shood desegregation of the past eighteen years, particularly in school districts where desegregation has long been achieved. Presumably in such districts, the alleged disadvantages of pupil transportation have long since been overcome. It is cynical in the extreme, therefore, to permit new rounds of litigation where successful adjustment to constitutional order exists.

II. CONSTITUTIONALITY OF LEGISLATION IN LIGHT OF ITS EXPLICITLY RACIAL BASIS

Recent Supreme Court decisions have made it clear beyond doubt that "compensatory" discrimination in a variety of respects (pupil assignment, faculty assignment, site-selection, etc.) is not only permitted but *required* where necessary to correct the effects of past unlawful segregation.[18] Among the remedies specifically so sanctioned by the Supreme Court in its most recent opinion, in the *Swann* case, is the use of a pupil-transportation plan to achieve integration where this is not otherwise attainable.[19] As the preceding analysis of the bills indicates, there are very serious Constitutional objections to legislation of the type proposed, in the following specific respects:

A. *Denial of any increased busing in certain cases*

It is clear from decisions of the Supreme Court that operation by any state (or its local subdivisions) of dual educational systems for the races is a violation of the Fourteenth Amendment and that the Federal Courts are obliged to grant plaintiffs who succeed in establishng such violations remedies which effectively remove the burden of such practices from the palintiffs and those similarly situated.[20] It is also clear that in some cases it may be impossible to effectuate such relief without the issuance of an order which among other things calls for some modifications of and/or additions to the presently obtaining patterns of pupil transportation within the school district(s) affected.[21] Although Section 5 of the Fourteenth Amendment invests Congress with the power to implement its guarantees with appropriate legislation,[22] it cannot be seriously contended that the prohibition of busing by the proposed legislation is authorized by Section 5; the Supreme Court has stated that that Section does not include the power to *contract* the scope of the Amendment.[23]

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[15] 390 U.S. 400, 402 (1968).

[16] 42 U.S.C. §§ 2000a-3(b) and 2000e-5(k) (1964); 42 U.S.C. § 3612(c) (Supp. 1970).

[17] Farmer v. Arabian American Oil Co., 379 U.S. 227, 235 (1964).

[18] United States v. Montgomery County Board of Educ., 395 U.S. 225 (1969); Swann v. Charlotte-Mecklenburg Bd. of Educ., Note 1, supra; Davis v. Board of School Comm'rs of Mobile County, Note 13, supra (1971); McDaniel v. Barrest, 402 U.S. 39 (1971)).

[19] Swann v. Charlotte-Mecklenburg Bd. of Educ., Note 1, supra.

[20] Note 8, supra.

If a school system is in violation of the Fourteenth Amendment with respect to its students in the sixth grade and under, and if a judicial decree ordering a certain amount of busing (within the limits set by Chief Justice Burger for the Court in *Swann*)[24] is the appropriate remedy for such violation, it is difficult to see how any Act of Congress can validly destroy the plaintiffs' right to such a remedy. The Supreme Court has in one of the *Swann* cases held that a state may not by act of its legislature forbid the assignment of pupils on a racial basis or the transportation of pupils so assigned.[25] Chief Justice Burger, speaking for a unanimous Court, made the following statement about the need for busing as a remedy in such cases:

> "* * * [A]n absolute prohibition against transportation of students assigned on the basis of race, "or for the purpose of creating a balance or ratio," will . . . hamper the ability of local authorities to effectively remedy constitutional violations . . . [B]us transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance on it." [26]

The Supreme Court also has recently affirmed without opinion a three judge Federal District Court opinion to the same effect where the racial imbalance complained of was considered by the lower court to be *de facto* rather than *de jure*.[27] The Supreme Court declared in one of the original *School Desegregation Cases*[28] that the Federal government is by virtue of the due process clause of the Fifth Amendment bound equally with the states to refrain from segregation in public education. Accordingly, it seems clear that any Act of Congress which purports to deprive the Federal courts of the power to remedy Constitutional violations of the type complained of in *Swann* must be a violation of that Amendment, and therefore invalid.

B. Definition of the scope of equal protection.

The reasons discussed above which prevent Congress from denying to the Federal courts power to remedy particular violations of the equal protection clause appear sufficient also to render ineffective any attempt by Congress to narrow the definition of what constitutes such a violation. There are some Federal court decisions to the effect that racial imbalance within schools does constitute a violation of equal protection, whether produced by or merely passively acquiesced in by the local school authorities;[29] there are also numerous decisions holding that the assignment of students on a "neighborhood" basis does not necessarily insulate school authorities from successful attack on the ground of improper discrimination.[30] If Congress cannot limit the scope and effect of the Fourteenth Amendment in general, it certainly cannot do so by a mere declaration that certain acts do not constitute violations of that Amendment's guarantees, if the acts in question would—in the absence of such legislation—be held improper as violations of equal protection.

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[21] Note 9, supra.

[22] This section was applied in Katzenbach v. Morgan, 384 U.S. 641 (1966), to uphold The Voting Rights Act of 1965.

[23] Id. at 651, n. 10 (Brennan, J., for the Court); Oregon v. Mitchell, 400 U.S. 112, 128–129 (1970) (Black, J., for the Court).

[24] Swann v. Charlotte Mecklenburg Bd. of Educ., Note 1, supra at 29–31 (1971).

[25] North Carolina State Bd. of Educ. v. Swann, Note 12, supra (1971).

[26] Id. at 46.

[27] Lee v. Nyquist, 318 F. Supp. 710 (W.D.N.Y. 1970), was affirmed by the Court without opinion, 402 U.S. 935 (1971); three Justices (Burger, C.J., Black and Harlan) voted to note probable jurisdiction and set the case for argument.

[28] Bolling v. Sharpe, 347 U.S. 497, 500 (1953):

> "In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools, it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." (Warren, C.J., for the Court.)

[29] Holland v. Board of Pub. Instruction of Palm Beach County, 258 F. 2d 730 (5th Cir. 1958); Barksdale v. Springfield School Comm., 237 F. Supp. 543 (D. Mass. 1965), vacated and remanded for dismissal, 348 F. 2d 261 (1st Cir. 1965); Blocker v. Board of Educ. of Manhasset, 226 F. Supp. 208 (E.D.N.Y. 1964); Branche v. Board of Educ. of the Town of Hempstead, School Dist. No. 1, 204 F. Supp. 150 (E.D.N.Y 1962). The Supreme Court has not yet passed on this question of the Constitutionality of racial imbalance not resulting from *de jure* segregation.

[30] Davis v. School Comm'rs of Mobile County, 402 U.S. 33 (1971) (previous *de jure* segregation); an example from the lower Federal courts is Dowell v. School Bd. of Okla. City Pub. Schools, 244 F. Supp. 971 (W.D. Okla. 1965).

C. Limitations upon, and delay of, court orders of pupil transportation to implement racial desegregation.

As noted above, the Supreme Court has held that a state may not constitutionally prohibit any attempt to implement racial integration by means of pupil transportation.[31] As the Federal government is subject equally with the states to the requirement that it refrain from invidious racial distinctions in the field of education.[32] the principle of such decisions should apply equally to Acts of Congress. It might be argued that those provisions of the proposed legislation which merely stay the effectiveness of integration orders and require the courts to utilize busing only as a remedy of last resort are not the functional equivalent of such "anti-busing" statutes, because they merely impose certain procedural burdens upon the employment of such a remedy without actually prohibiting it. However, this argument is answered by another recent series of Supreme Court opinions involving racial discrimination.

In *Reitman* v. *Mulkey*,[33] the California Supreme Court had invalidated a newly-adopted provision of that state's constitution prohibiting any interference with the individual's right to dispose of his property to whomever he should in his discretion see fit, on the ground that in the context of an existing state Fair Housing Law such an amendment was design to permit and even foster the practice of racial discrimination in the sale of property within the state. The Supreme Court upheld the California court's judgment, on the ground that it could not say that the California court had erred in finding that the state had by adopting this constitutional provision involved itself to a significant degree in private discrimination.

By itself, *Reitman* could perhaps be explained away as judicial deference to the fact-finding of a lower court. In *Hunter* v. *Erickson*,[34] however, the Court in order to reach a similar result had to reverse the Supreme Court of Ohio. The city of Akron, Ohio, had previously adopted a fair housing ordinance, generally forbidding discrimination on the ground of race or color in the sale of private housing. Later, by a majority of the voters in a general election, the city adopted a charter provision requiring that any ordinance (including the one already on the books) regulating the sale or lease of property on the basis of race or color be approved by a majority of the voters at a general election before taking effect.

Striking down this charter provision, the Court stated plainly that the "explicity racial classification" was the defect. The Court conceded that Akron could simply have repealed its fair housing ordinance, and that it could also validly have chosen to subject city ordinances in general to such a requirement of voter approval. What the city (which unquestionably wielded "state power," the Court noted) could *not* do was to place "special burdens" on racial minorities in securing the benefits of law under the political process. The majoritarian character of the provision did not render it immune, since as the court pointed out "the majority needs no protection against discrimination." [35]

Although both *Reitman* and *Hunter* involved discriminatory burdens on the minority's resort to the legislature, not the courts, it appears that the same principle should apply to the proposed busing legislation. To the extent that this legislation would impose an arbitrary stay on the implementation of court orders, or require plaintiffs to bear a burden of proof not borne by plaintiffs in analogous suits not involving racial discrimination, it would appear to put members of the affected minority at a distinct disadvantage in securing their rights by the litigation process Such a racial classification bears a "far heavier burden of justification" than is normally borne by legislation; [36] whether this burden could be met is extremely doubtful. Particularly in light of the provision which would permit the reopening of past integration orders and require their modification to comply with the proposed legislation (Section 406), the apparent intent of the proposed Equal Educational Opportunities Act—and its likely effect, whatever the intent—would appear to be the undoing of much of the remedial action taken during the last 18 years[37] and a definite impairment of future plaintiffs' ability to secure the remedies to which, under the original *School Desegregation Cases* and succeeding opinions, they may be entitled. As this would constitute a substantial intervention by the Federal government against the interests of members of racial minorities, we believe it would amount to a denial of due process of law, under the Fifth Amendment to the Constitution.

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[31] Notes 25, 26 and 27, supra.

[32] Note 28, supra.

[33] 387 U.S. 369 (1967).

[34] 393 U.S. 385 (1969).

[35] Id. at 391. The importance of the racial factor in Reitman and Hunter is emphasized by the Court's decision in James v. Valtierra, 402 U.S. 137 (1971), where no violation of equal protection was found in a referendum provision designed to discourage low-income public housing; the Court in its opinion in James stressed the absence of the racial factor, and declined to extend Hunter to nonracial discrimination. Id. at 141. Justices Marshall, Brennan and Blackmun dissented.

[36] McLaughlin v. Florida, 379 U.S. 184, 194 (1964).

III. CONGRESSIONAL CONTROL OVER JURISDICTION OF FEDERAL COURTS

Proponents of the proposed legislation have argued that it merely restricts the jurisdiction of Federal courts, denying or limiting the use in these courts of a particular remedy, and that Congress has clear power to do this under Article III of the Constitution as well as existing case law.

Article III of the Constitution vests the judicial power of the United States in the Supreme Court " and in such inferior Courts as the Congress may from time to time ordain and establish." It provides among other things that the judicial power shall extend to "all Cases . . . arising under this Constitution." It gives the Supreme Court original jurisdiction in certain specified cases and provides that that Court shall have appellate jurisdiction "with such Exceptions and under such Regulations as the Congress shall make." The few cases arising under this Article have made it clear that the Congress has substantial power to restrict the jurisdiction of the Federal Courts, including the appellate jurisdiction of the Supreme Court. *Ex Parte McCardle.*[38] In *McCardle*, Congress had enacted a statute withdrawing jurisdiction from the Supreme Court to hear appeals in habeas corpus cases. The statute was passed during the pendency of a particular appeal, with the deliberate intent to prevent Supreme Court review of the case. The Supreme Court upheld the power of Congress to do so, and dismissed the case, citing the provisions or Article III of the Constitution, giving Congress the power to make exceptions to the appellate jurisdiction.

But the *McCardle* case, assuming *arguendo* that it is still good law,[39] does not stand for the proposition that Congress has unlimited power to prevent the Supreme Court from considering Constitutional claims. The Supreme Court retained the power to issue writs of habeas corpus in the exercise of its original jurisdiction. The withdrawal of appellate jurisdiction therefore merely closed one avenue and did not prevent access to the Court. Indeed, within months after the *McCardle* decision the Court held that it had the power in the exercise of its original jurisdiction to resolve the substantive issues raised by the *McCardle* case. *Ex Parte Yerger.*[40]

Aside from the *McCardle* case, there appears to be little authority to support Congressional interference with the courts in enforcing the Constitution.

While the Emergency Price Control Act of 1942 prohibited the Federal District Courts from reviewing the validity of regulations made pursuant to the Act, the legislation also established a special court, the Emergency Court of Appeals, to adjudicate these controversies. Its decisions were made reviewable by the Supreme Court. That legislation was upheld because it preserved a full remedy in the Federal Courts. See *Yakus v. United States,*[41] and *Lockerty v. Phillips.*[42]

The line of cases under the Norris-LaGuardia Act,[43] which declares that the Federal Courts have no "jurisdiction" to issue injunctions in certain labor disputes, do not involve Constitutional matters. That Act therefore does not purport to deny the right to an injunction to vindicate Constitutional rights.

In the present situation it is apparent that in many cases, as a practical matter, no effective alternative to busing exists in carrying out the mandate of *Brown v. Bd. of Education,*[44] to desegregate schools where segregated residential patterns exist. In many such situations, the denial of busing as a remedy will constitute the denial of any effective remedy in redressing the unconstitutional condition of segregated schools. Thus, while purporting only to prohibit or restrict a particular remedy, Congress would in fact be requiring the courts to reach a particular result at odds with previous court decisions as to what is Constitutionally required.

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[37] Acting Attorney General Kleindienst testified before the Senate Judiciary Committee on April 12, 1971, that the proposed legislation would "permit the reopening of every school desegregation case in the country," according to The New York Times. New York Times, April 13, 1972, at 1, col. 1.

[38] 74 U.S. (7 Wall.) 506 (1869).

[39] The *McArdle* case has been criticized in recent years. See *Glidden Company v. Zdanok,* 370 U.S. 530, 605 n. 11 (1962) (Douglas, J. dissenting).

[40] 8 Wall. 85 (1869).

[41] 321 U.S. 414 (1944).

[42] 319 U.S. 182 (1943).

[43] 29 U.S.C. §§ 101–115.

[44] 347 U.S. 483 (1954).

Article III has to be read with the rest of the Constitution, and, as shown above, we believe that the proposed legislation clearly violates the Fifth Amendment. Leaving aside the question of whether or not Congress may take away from an individual the opportunity to obtain a judicial determination in a Federal court of constitutional rights, it can scarcely be seriously contended that, under the guise of limiting the jurisdiction of the Federal courts, Congress may do indirectly what it may not do directly, that is, restrict the scope of the Fourteenth Amendment.

In short, as stated by Professor Bickel, the proposed legislation is "plainly aimed not at regulating jurisdiction, but at mandating a desired result. The power of Congress to regulate judicial jurisdiction has never been held to enable Congress to change specific Constitutional results. It should not be, and cannot be—not consistently with *Marbury* v. *Madison*."[16] It seems abundantly clear that Article III is not to be interpreted to allow such a result.

IV. POLICY CONSIDERATIONS

As is evident from the preceding analysis, the effect of the proposed bills would be not merely to "chill" the impetus towards desegregation generated by court decisions since *Brown*, but, by reopening past decrees, actually to roll back much of the progress already made. Regardless of constitutional considerations, we think that this is indefensible as a matter of public policy. The net result of such legislation could only be further to divide our nation, to encourage racial strife, and to interfere with the realization of what are generally recognized to be desirable educational goals.

While it is recognized that such is not the intention of all of the proponents of the proposed legislation, we think that this would be its essential effect. Moreover, as pointed out above, statistics show that the evil sought to be remedied—allegedly excessive busing—is more apparent than real. We think the problems which concededly may exist in particular instances with long distance or massive busing are better dealt with in individual cases than by any attempt to establish general legislative restrictions on the use thereof.

Moreover, even assuming that Congress had the constitutional power thus to constrict the jurisdiction of the Federal courts, we think such interference with the role of the judiciary is both unwarranted and unwise. It would tend to place the legislative and judicial branches in conflict, and to impair the Supreme Court's historical role as the final arbiter of constitutional matters.

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[16] Bickel, What's Wrong with Nixon's Busing Bills?, The New Republic, April 22, 1972, at 21.

CONCLUSION

We strongly oppose this legislation. Regardless of intent, it would have the effect of condoning and indeed fostering continued segregation in schools. There is no doubt that it would, in many instances, remove the only effective remedy for the violation of an individual student's constitutional rights. We think that the proposals are in violation of the Fifth Amendment to the Constitution. Moreover, we think that, even if free of constitutional infirmities, such legislation should have no place on the national agenda. Accordingly, for all of the foregoing reasons, we urge that the proposed legislation be rejected.

Respectfully submitted,

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK.

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CIVIL RIGHTS V. INDIVIDUAL LIBERTY: SWANN, AND OTHER MONSTERS OF IMPETUOUS JUSTICE[1]

> [T]here are, in our own day, gross usurpations upon the liberty of private life actually practiced, and still greater ones threatened with some expectation of success, and opinions propounded which assert an unlimited right in the public not only to prohibit by law everything which it thinks wrong, but in order to get at what it thinks wrong, to prohibit any number of things which it admits to be innocent.
>
> John Stuart Mill[2]

Among the critical indicia of any democracy is the absence of a person, or group, with authority—assumed or delegated—to govern by fiat. Government by fiat is not the rule of law. One measure of a nation's dedication to a democractic ideal is, accordingly, the extent to which its judiciary refrains from issuing result-oriented mandates.[3] Conversely, where a nation's judiciary receives approval for issuing result-oriented mandates, it is an indication of the peoples' fear of freedom[4] and an encouragement for their government to retreat from a democratic ideal.[5]

Our national judiciary has at times been criticized for "legislating"[6] and for issuing certain result-oriented mandates which impinge upon individual liberties.[7] The United States Supreme Court, by its decision in *Swann v. Charlotte-Mecklenburg Board of Education*,[8] has again opened itself to such criticism;[9] and several lower federal courts have done so as well by rendering opinions and issuing decrees which, for civil libertarians at least, must be viewed as anathematic to democratic ideals.

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[1] The phrase is borrowed from Judge Clark of the Fifth Circuit. Singleton v. Jackson Munic. Sep. School Dist., 425 F.2d 1211, 1223 (5th Cir. 1971).

[2] J.S. Mill, On Liberty 89 (Crofts Classics ed. 1947).

[3] *But see* Askin, *The Case for Compensatory Treatment*, 24 Rutgers L. Rev. 65 (1969), where a contrary view is strongly propounded.

[4] E. Fromm, Escape from Freedom 240-43, 251-56 (1941).

[5] *See* Z. Barbu, Democracy and Dictatorship: Their Psychology and Patterns of Life 47-52, 144-45 (1956); W. Douglas, The Anatomy of Liberty: The Rights of Man Without Force 102-05 (Pocket Cardinal ed. 1964).

[6] *See generally* A. Bickel, The Supreme Court and the Idea of Progress (1970); P. Kurland, Politics, the Constitution, and the Warren Court (1970).

[7] *See, e.g.*, Watt, *The Divine Right of Government by Judiciary*, 14 U. Chi. L. Rev. 409 (1947).

[8] 402 U.S. 1 (1971) (9-0 decision).

[9] *See Hearings on the Status of School Desegregation Law Before the Senate Select Comm. on Equal Education Opportunity*, 92d Cong., 1st Sess., pt. 11, at 5415 (1971) (prepared statement of Alexander M. Bickel) [hereinafter cited as *Swann Hearings*]; *id.* at 5431 (remarks of Owen M. Fiss). Although the testimonies of Professors Bickel and Fiss differ at various points, they agree that the *Swann* decision is substantially result-oriented.

To a limited extent the April 20, 1971, decision in *Swann* and subsequent lower court decisions tend to defy criticism because they aim to safeguard the rights of a minority which has been terribly oppressed, often with the sanction of law.[10] This laudable aim, however, cannot render sacrosanct all the recent civil rights cases which have been resolved favorably to the plaintiffs. Though one might be tempted, from a quick reading of the cases, to take a contrary viewpoint, it is submitted that several—the busing and no-testing decisions in particular—are incredibly bad law in terms of what they portend for individual liberty.

An Historical Overview

More than half of a century before *Plessy v. Ferguson*[11] the black citizens of Boston sought to abolish schools which were kept racially segregated by the school system's supervisory committee.[12] When the committee refused to voluntarily desegregate the schools, the matter was litigated; and, in rendering its decision against the plaintiff, the Massachusetts supreme court, in 1849, established precedent for the separate-but-equal doctrine.[13] In an opinion full of benign rationalizations, Chief Justice Shaw rejected the eloquent arguments set forth by the plaintiff's counsel[14] and affirmed the school system's mandatory segregation policy on grounds that the schools' supervisory committee had "plenary authority" to "classify" and "distribute" Boston youth among the different schools in the manner the committee thought would best serve "general proficiency and welfare."[15]

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[10] *See, eg..*, United States v. Board of School Comm'rs, 332 F. Supp. 655, 658-65 (S.D. Ind. 1971). Judge Dillin discussed with persuasive language and specificity the numerous legal disabilities imposed upon blacks in Indiana.

[11] 163 U.S. 537 (1896).

[12] *The Smith School*, THE LIBERATOR, June 28, 1844, at 3-4, in CIVIL RIGHTS AND THE AMERICAN NEGROS.. A DOCUMENTARY HISTORY 111-12 (A. Blaustein & R. Zangrando eds. 1968) [hereinafter cited as CIVIL RIGHTS HISTORY].

[13] Roberts v. Boston, 59 Mass. (5 Cush.) 198 (1849). Enforcement of such a doctrine would discriminate against whites and blacks equally if other impediments were not present. However, the law itself had, even at this early date, sanctioned or created numerous measures designed to keep blacks "in their place." The Articles of Confederation, in art. IV, made it clear that "the free inhabitants" were the citizens of the confederacy. Although the Ordinance of 1787 prohibited slavery and involuntary servitude in several states, art. VI gave express support to slavery in other states. Moreover, it should be noted that Constitution itself was specifically geared to perpetuate the subjugation of blacks. U.S. CONST. art. IV, § 2, cl. 3 provided:

> No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due.

The Fugitive Slave Act was passed to execute this provision. Act of Feb. 12, 1793, ch. 7, 1 Stat. 302. *See* Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539 (1842), where the constitutionality of the Act was upheld. The Compromise of 1850 amended and strengthened the original Act. Act of Sept. 18, 1850, ch. 60, 9 Stat. 462. In view of Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1857), it can be argued that, as a matter of federal law, whenever possible blacks were considered property until ratification of the thirteenth amendment on December 6, 1865.

Although by 1896 slavery and peonage were no longer legally sanctioned and were in fact expressly prohibted,[16] that year saw, in the infamous *Plessy* decision, the beginning of constitutionally sanctioned forced segregation on the basis of race. The United States Supreme Court, with only Justice Harlan dissenting, opined that the fourteenth amendment was supposed to enforce "absolute equality" before the law.[17] But the Court also indicated that the fourteenth amendment did not prohibit laws which permitted or required separation of the races where facilities provided were substantially alike.[18] As Justice Harlan predicted, the *Plessy* judgment proved to be "quite as pernicious as the decision made by this tribunal in the *Dred Scott Case.*"[19] The *Plessy* case involved segregated railroad cars; but, in obiter dicta, Justice Brown recognized that segregation was imposed most often in the public schools. Twelve years later, in *Berea College v. Kentucky*,[20] the United States Supreme Court gave its blessing to such a practice.

In the 1927 case of *Cong Lum v. Rice*[21] the United States Supreme Court upheld segregation on the basis of race for the last time.[22] Although some advances were made in the interim,[23] the separate-but-equal doctrine remained—at least in the field of education[24]—the law of the land until May 17, 1954. On that day the Court in *Brown v. Board of Education*[25] declared that state-imposed racial segregation in public schools could not be squared with the fourteenth amendment. The Court in *Brown I* found that separate-but-equal schools were "inherently unequal," and one year later the Court ordered that desegregation was to proceed "with all deliberate speed."[26]

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[14] Oral argument for the plaintiff is partially reprinted in CIVIL RIGHTS HISTORY 112-17. Among other contentions, counsel asserted the following:

> Admitting [arguendo] that [the school for blacks] is an equivalent, still the colored children cannot be compelled to take it. . . . They have an equal right with white children to the general public schools. . . . [C]ompulsory segregation from the mass of citizens is of itself an *inequality*. . . . It is a vestige of ancient intolerance. . . .

Id. at 116-17.

[15] Roberts v. Boston, 59 Mass. (5 Cush.) 198, 208 (1849).

[16] *See* note 13 *supra*.

[17] Plessy v. Ferguson, 163 U.S. 537, 544 (1896).

[18] *Id.* at 548, 550. In declaring equality before the law for blacks while sanctioning state segregation laws, the Court was no more inconsistent in *Plessy* than it had been for the previous quarter-century and would be several years thereafter in civil rights cases. *See, e.g.*, Berea College v. Kentucky, 211 U.S. 45 (1908); Hodges v. United States, 203 U.S. 1 (1906); James v. Bowman 190 U.S. 127 (1903); Cumming v. Richmond County Bd. of Educ., 175 U.S. 528 (1899); Baldwin v. Franks, 120 U.S. 678 (1887); Civil Rights Cases, 109 U.S. 3 (1883); United States v. Harris, 106 U.S. 629 (1883); Strauder v. West Virginia, 100 U.S. 303 (1880); Hall v. DeCuir, 95 U.S. 485 (1878); United States v. Cruikshank, 92 U.S. 542 (1876); United States v. Reese, 92 U.S. 214 (1876); Slaughter House Cases, 83 U.S. (16 Wall.) 36 (1873).

[19] 163 U.S. at 559.

[20] 211 U.S. 45 (1908).

[21] 275 U.S. 78 (1927).

[22] *Cf.* Korematsu v. United States, 323 U.S. 214, 216 (1944).

Even after *Brown II* the nation's school boards, legislatures, and courts could not agree on answers to several perplexing questions. Several legislatures purported to give school boards authority to consider race in making pupil assignments.[27] Such laws were, of course, unconstitutional.[28] A more serious problem that arose from *Brown* was whether the decision merely required states to cease assigning pupils on the basis of race.

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[23] Missouri *ex rel.* Gaines v. Canada, 305 U.S. 337 (1938), required the University of Missouri Law School to accept a black applicant rather than allow the state to pay his tuition in an adjacent state until Missouri built a law school specifically for blacks. Sipuel v. Board of Regents, 332 U.S. 631 (1948), followed the *Gaines* ruling and required that a black woman be admitted to the University of Oklahoma Law School. Sweatt v. Painter, 339 U.S. 629 (1950), required the University of Texas Law School to admit a black applicant since the law school maintained for blacks was grossly inferior. McLaurin v. State Regents, 339 U.S. 637 (1950), found that where a black graduate student in a white school was assigned to a special row in class and to special tables in the library and cafeteria, the segregation was unconstitutional. Hinting at the declining constitutional viability of the separate-but-equal doctrine, the Court in *McLaurin* stated:

> There is a vast difference—a Constitutional difference—between restrictions imposed by the State which prohibit the intellectual commingling of students, and the refusal of individuals to commingle where the State presents no such bar. . . . The removal of the State restrictions will not necessarily abate individual and group predilections, prejudices and choices. But at the very least, the State will not be depriving the appellant of the opportunity to secure acceptance of his fellow students on his own merits.

339 U.S. at 641-42.

[24] Zoning ordinances which required racially segregated housing were declared unconstitutional as early as 1917. Buchanan v. Warley, 245 U.S. 60 (1917). Racially restrictive covenants in deeds, private arrangements aimed to obtain the same results as restrictive zoning, were declared void and unenforceable in 1948. Shelley v. Kraemer, 334 U.S. 1 (1948). Private racial discrimination in the sale of homes was declared unlawful only recently. Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968). Deeds containing restrictive covenants can nevertheless be recorded. Mayers v. Ridley, No. 71-1418 (D.C. Cir., Nov. 15, 1971).

[25] 347 U.S. 483 (1954).

[26] Brown v. Board of Educ., 349 U.S. 294, 301 (1955). The command of *Brown II* was that students be admitted to schools "on a racially nondiscriminatory basis . . . ." *Id.* As could be expected, the *Brown* decisions met with considerable opposition. On March 12, 1956, a group of 101 congressmen, most of whom were from the South, issued a "Declaration of Constitutional Principles" urging their states to oppose desegregation efforts. 102 CONG. REC. 4515 (1956). *See* W. WORKMAN, THE CASE OF THE SOUTH 285-302 (1960).

[27] Some of these are collected at Comment, 21 VAND. L. REV. 1093. 1094 n.11 (1968). *See generally* Meador, *The Constitution and the Assignment of Pupils to Public Schools*, 45 VA. L. REV. 517 (1959). The pertinent Indiana law is at IND. CODE § 20-8-10-1 (1971).

Although there is some authority to the contrary,[29] it is fairly well established that de facto segregation is constitutionally allowed.[30] What constitutes de facto segregation is, however, not entirely clear. The traditional view is that it is the "mere chance or fortuitous concentration of those of a particular race . . . not accomplished in any way by the action of state officials."[31] However, argument which suggests that all existing segregation is causally related to earlier de jure segregation is heard frequently[32] and merits attention. The gist of the argument is (1) that all states have in the past created or sanctioned racially segregative practices, (2) that such practices achieved their intended results, and (3) that this segregation has continued to the present day, despite the absence of any state action to overtly perpetuate racial segregation. The argument concludes that permitting so-called de facto segregation is to maintain the results of de jure segregation. The apparent validity of this line of reasoning may be seductive enough to attract the wrath of the Supreme Court upon de facto segregation.[33]

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[28] 49 J. URBAN L. 339, 403 n.14 (1971), has collected most decisions on the point.

[29] *See, e.g.*, Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967), *aff'd sub nom.* Smuck v. Hobson, 408 F.2d 175 (D.C. Cir. 1969); Branche v. Board of Educ., 204 F. Supp. 150 (E.D.N.Y. 1962); *Swann Hearings* 5393 (remarks of Julius Chambers); Note, *Racial Imbalance in the Public Elementary Schools in Indiana*, 3 IND. LEGAL F. 483, 493-99, 511-13 (1970).

[30] Spencer v. Kugler, 326 F. Supp. 1235 (D.N.J. 1971), *aff'd*, 92 S. Ct. 707 (1972). The leading case is Bell v. School City, 213 F. Supp. 819 (N.D. Ind.), *aff'd*, 324 F.2d 209 (7th Cir. 1963), *cert. denied*, 377 U.S. 924 (1964). *Accord*, Deal v. Cincinnati Bd. of Educ., 369 F.2d 55 (6th Cir. 1966), *cert. denied*, 389 U.S. 847 (1967); Downs v. Board of Educ., 336 F.2d 988 (10th Cir. 1964), *cert. denied*, 380 U.S. 914 (1965). *See also* Goss v. Board of Educ., 444 F.2d 632 (6th Cir. 1971); Banks v. Muncie Community Schools, 443 F.2d 292 (7th Cir. 1970); Robinson v. Shelby County Bd. of Educ., 330 F. Supp. 837 (W.D. Tenn. 1971). Sitting as Circuit Justice, William O. Douglas has recently stated that "remedies for de facto segregation, *if there are any*, are unclear." But he added that at least *Plessy* demands separate facilities to be equal. Gomperts v. Chase, 92 S. Ct. 16, 18 (1971) (emphasis added). *Cf.* Levenson, *Educational Implications of De Facto Segregation*, 16 CASE W. RES. L. REV. 545 (1965).

[31] Moses v. Washington Parish School Bd., 276 F. Supp. 834, 840 (E.D. La. 1967).

[32] Beckett v. School Board, 308 F. Supp. 1274, 1304, 1311-15 (E.D. Va. 1969), *rev'd*, 434 F.2d 408 (4th Cir. 1970); *Swann Hearings* 5393 (remarks of Julius Chambers); *id.* at 5422-24 (prepared statement of Owen M. Fiss) [reprinted with slight changes as Fiss, *The Charlotte-Mecklenburg Case—Its Significance for Northern School Desegregation*, 38 U. CHI. L. REV. 697 (1971)]; Note, *Swann v. Charlotte-Mecklenburg Board of Education: Roadblocks to the Implementation of Brown*, 12 WM. & MARY L. REV. 838, 846-47 (1971); Note, *Demise of the Neighborhood School Plan*, 55 CORNELL L. REV. 594, 597-605 (1970). *See The Supreme Court, 1970 Term*, 85 HARV. L. REV. 3, 85-86 (1971).

[33] The United States Supreme Court has never passed on the constitutionality of

Undoubtedly, the argument summarized above has begun to infirm traditional notions about what constitutes de jure segregation. In assuming that de facto segregation was adventitious and constitutionally permissible, the nation's courts necessarily evolved a dual standard—one which forbade de jure segregation only.[34]

Immediately following the *Brown* decision, the Fourth and Fifth Circuits adhered to a narrow interpretation of the command to desegregate. Until the 1966 case of *United States v. Jefferson County Board of Education,*[35] most courts established a pattern of decisions which adopted the oft-quoted dictum in *Briggs v. Elliot*[36] to the effect that state-imposed segregation was prohibited, while integration was not required.[37] *Jefferson* marked a significant departure from earlier desegregation law. That decision held that there is an affirmative duty to integrate schools which were formerly segregated de jure. Judge Wisdom asserted that "[*t*]*he only school desegregation plan that meets constitutional standards is one that works.*"[38] Thus, "actual integration" became the test by which the constitutional viability of desegregation plans was to be judged. The *Jefferson* decision's repressive and simplistic test[39] was adopted by the United States Supreme Court in 1968.

The landmark case of *Green v. County School Board*[40] made it obligatory upon school authorities to immediately effectuate desegregation plans which would in fact integrate schools formerly segregated de jure. The New Kent County School System had implemented a freedom-of-choice plan by giving each student an opportunity to select what school he wished to attend and assigning him to that school. The

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de facto segregation. *See* Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 22-23 (1971) (which examined only segregation imposed by school authorities). The Court may, however, address itself to the legality of de facto segregation in the near future. Keyes v. Denver School Dist. No. 1, 445 F.2d 990 (10th Cir. 1971), *cert. granted,* 92 S. Ct. 707 (1972) (No. 71-507).

[34] *See* note 29 *supra. But cf.* O'Neil, *Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education,* 80 YALE L.J. 699, 715 n.62 (1971) (citing instances in which several courts have refused to enjoin efforts made by school boards to overcome de facto segregation).

[35] 372 F.2d 836 (5th Cir. 1966), *aff'd en banc,* 380 F.2d 385, *cert. denied,* 389 U.S. 840 (1967). *See* 81 HARV. L. REV. 474 (1967).

[36] 132 F. Supp. 776 (E.D.S.C. 1955).

[37] 132 F. Supp. at 777. *Accord,* Lockett v. Board of Educ., 342 F.2d 225 (5th Cir. 1965); Evers v. Jackson School Dist., 328 F.2d 408 (5th Cir. 1964); Kelly v. Board of Educ., 270 F.2d 209 (6th Cir.), *cert. denied,* 361 U.S. 924 (1959); Holland v. Board of Pub. Inst., 258 F.2d 730, 732 (5th Cir. 1958); Avery v. Wichita Falls School Dist., 241 F.2d 230, 233 (5th Cir.), *cert. denied,* 353 U.S. 938 (1957).

[38] United States v. Jefferson County Bd. of Educ., 372 F.2d 836, 847 (5th Cir. 1966) (original emphasis).

[39] It is *not* contended here that "actual integration" is repressive and simplistic.

[40] 391 U.S. 430 (1968). *See* 82 HARV. L. REV. 111 (1968).

Supreme Court found that the plan had not "worked" since few blacks chose to attend the formerly all white schools, and no whites chose to attend the county's black schools[41]—this even though the freedom-of-choice plan had been in operation for three years. The Court in *Green* noted that the *Brown* decision had intended, ultimately, to produce unitary, non-racial school systems, *i.e.*, systems with neither white schools nor black schools, but just schools.[42] To avoid constitutional attack, desegregation plans had to promise "realistically to work *now*."[43]

Although *Green* failed to establish criteria that the inferior courts could use to determine whether a school system was unitary, the Court clearly indicated—albeit negatively—that desegregation plans prima facie innocent and neutral were constitutionally insufficient if they did not result in actual integration. Unquestionably by accident, the United States Supreme Court took a small step backward[44] in 1969 when it finally defined a "unitary system" as one "within which no person is to be effectively excluded from any school because of race or color."[45] This sound and unobtrusive definition was significantly absent in *Swann v. Charlotte-Mecklenburg Board of Education.*[46]

The uniqueness of *Swann* lies in the fact that the Supreme Court approved a comprehensive desegregation plan which, accordingly, can be viewed as a constitutionally acceptable model. The nation's school officials have, for the first time, an indication of what a unitary school system should look like—the Charlotte-Mecklenburg system. Moreover, school officials have an indication of the broad range of remedies the Court will sanction to correct racial imbalance in systems once segregated de jure.

Only the highlights of *Swann* need be reiterated here.[47] It should be emphasized, firstly, that "[t]he constitutional command to desegregate schools does not mean that every school in every community must always reflect the racial composition of the school system as a whole."[48] Although the Supreme Court sanctioned the district court's order that the white-black ratio in the whole Charlotte-Mecklenburg system (71-29%) be reflected as nearly as practicable in each school, the Court refused to require strict racial quotas and left the matter in the hands of the district courts.[49] The Court saw the use of ratios as a "starting point in the process of shaping a remedy, rather than an inflexible requirement."[50]

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[41] 391 U.S. at 441.

[42] *Id.*, Raney v. Board of Educ., 391 U.S. 443, 448 (1968); Monroe v. Board of Comm'rs, 391 U.S. 450, 460 (1968). *See* Comment, 21 Vand. L. Rev. 1093 (1968).

[43] 391 U.S. at 439.

[44] The definition quoted must be viewed as backward if one accepts the Court's views in *Green* and *Swann.* The freedom-of-choice plan rejected in *Green* for not producing actual integration was one which had not excluded any students from any school on the basis of race *Swann Hearings* 5422 (prepared statement of Owen M. Fiss). *But see* Comment, 20 Kan. L. Rev. 165, 170 (1971).

[45] Alexander v. Holmes County Bd. of Educ., 396 U.S. 19, 20 (1969).

[46] 402 U.S. 1 (1971).

[47] Although the commentators rarely mentioned its import for individual liberty, *Swann* received considerable early attention. Cook, *School Desegregation: To* Brown *and Back Again—The Great Circle,* 23 Baylor L. Rev. 398 (1971); Fiss, *The Charlotte-Mecklenburg Case—Its Significance for Northern School Desegregation,* 38 U. Chi. L. Rev. 697 (1971); May, *Busing,* Swann v. Charlotte-Mecklenburg, *and the Future of Desegregation in the Fifth Circuit,* 49 Tex. L. Rev. 884 (1971); *The Supreme Court, 1970 Term,* 85 Harv. L. Rev. 3, 74 (1971); 49 J. Urban L. 399 (1971); Comment, 20 Kan. L. Rev. 165 (1971); Note, *Swann v. Charlotte-Mecklenburg Board of*

What is objectionable about the *Swann* decision is that it strongly affirms and extends the rule of *Green*. As indicated above, the Court in *Swann* refused to require fixed racial ratios; and, elsewhere, the Court went so far as to acknowledge that the existence of some one-race schools might not offend the Constitution. Nevertheless, the Court gave its imprimatur to all methods of achieving actual integration:[51] re-gerrymandering districts, clustering and grouping schools, majority-to-minority transfer and busing even beyond contiguous zones. Time involved, distance of travel, and age of students can, however, be taken into consideration when busing is a remedy.[52] *Swann* cannot, then, be criticized on the ground that it imposes on inferior courts or school officials the task of adhering to strict racial quotas or that it imposes an obligation to bus students so that those in non-contiguous zones can be intermingled. And it is true that *Swann* will achieve the laudable goal of actual integration in public schools, at least for a period.[53] But *Swann* does constitute incredibly bad law.

An Argument Against Busing

The United States Supreme Court should overrule *Swann*.[54] In

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Education: *Roadblocks to the Implementation of Brown*, 12 WM. & MARY L. REV. 838 (1971). President Nixon has given a belated, though excellent, analysis of the busing problem and has proposed significant, but not original, legislation. 118 CONG. REC. S4164-69 (daily ed. Mar. 17, 1972). *See* S. 3388 and S. 3395, 92nd Cong., Sess. (1972).

[48] 402 U.S. at 24.

[49] 402 U.S. at 25.

[50] *Id.*

[51] *Id.* at 26-30. *See* May, *Busing,* Swann v. Charlotte-Mecklenburg, *and the Future of Desegregation in the Fifth Circuit*, 49 TEX. L. REV. 884-85 & nn.3-6 (1971).

[52] 402 U.S. at 30-31.

[53] *Id.* at 31. After de jure segregation has been eliminated, there is no duty to continually adjust student bodies' racial compositions.

[54] Two other 1970 Term decisions in the area of civil rights at least deserve careful review, if not rejection: Palmer v. Thompson, 403 U.S. 217 (1971) and Griggs v. Duke Power Co., 401 U.S. 424 (1971).

giving new force to the rule of *Green*, the *Swann* decision commands that wherever school officials have, at any time subsequent to *Brown*, failed to actually integrate their schools, they ***must*** integrate at once. Even after ceasing to compel or encourage segregation, schools cannot sit idly by with a desegregation plan which, however innocent, does not work, *i.e.*, result in actual integration. Professor Alexander Bickel has stated,

> Willy-nilly, the Supreme Court imposes a choice of educational policy, for the time being at least, when it orders maximum integration, and I don't think we can be sure that the choice is the right one. . . . Willy-nilly, the Court opts against decentralized and diversified schools, that can be more responsive to the needs of cohesive groups of parents and students, that can alleviate the frustrations and sense of powerlessness of such groups. . . .[55]

Professor Bickel cannot be read to oppose school integration; but rather, he opposes *Swann* because it *willy-nilly decided that the nation's legal order compels the racial mixing of students as a matter of educational policy*. This is properly the crux of the argument against *Swann*, and an argument which needs clarification.

The preceding pages substantiate that our national government and the states have historically foisted upon America's black citizenry various legal disabilities. It must also be recognized that—despite this fact—the *Swann* decision, insofar as it affirmatively asserts the rule of *Green*, is considerably more oppressive than even *Plessy v. Ferguson*[56] and some other segregative decisions. *Plessy* sanctioned state laws which compelled or allowed the use of separate-but-equal facilities. *Plessy* itself did not require racial separation. The case which embodied the *Plessy* rule educational institutions[57] did not compel racial separation. Query: Has any federal law or any federal court decision ever compelled that throughout the nation there must be racial segregation? No.

It is not being maintained here that *Plessy* was good law. To the extent that it permitted the existence of laws which forced racial separation, the *Plessy* decision was repressive to individual liberty. It is, indeed, difficult to characterize as anything but repressive any judicial fiat which sanctions laws which treat of human associations in compulsory terms. If the *Swann-Green* rule had gone only so far as to sanction the existence of state laws which require integration, it would appear equally as repugnant to individual liberty as was *Plessy.*[58] However, the *Swann-Green* rule does much more than that. To re-emphasize, the Supreme Court has now required that state practices must effectuate actual integration.

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[55] *Swann Hearings* 5415. Professor Bickel's proposals to deal with the problem are reflected in the National Educational Opportunities Act, which he helped draft. 118 Cong. Rec. H1735-39 (daily ed. Mar. 2, 1972).

[56] 163 U.S. 537 (1896).

[57] Berea College v. Kentucky, 211 U.S. 45 (1908).

Speaking for a unanimous Court in *Swann,* Chief Justice Burger remarked that,

> Our objective in dealing with the issues presented by these cases is to see that school authorities *exclude no pupil of a racial minority* from any school, directly or indirectly, on account of race.[59]

Remarks such as this have served to confuse the lower courts and, on occasion, magnify the repressive effects of *Swann.*[60] On its face, the quoted language appears to reinstate a restrictive version of the command in *Alexander v. Holmes County Board of Education*[61] that "no person is to be effectively excluded from any school because of race or color."[62] However, such an interpretation cannot be squared with the context of *Swann.* Whatever the Court's "objective in dealing with the issues" was, it most assuredly could not have been that stated above—otherwise there exists no affirmative duty to integrate. And the entire thrust of the *Swann-Green* rule is precisely that duty. Only if one takes "exclude . . . indirectly" to mean "any practice which does not result in actual integration" does the quoted statement align with the rest of *Swann.* School officials and the courts should, to meet their constitutional duties, take care in reading *Swann* else they unwittingly adopt the Sixth Circuit's interpretation of the Court's alleged objective.

In *Goss v. Board of Education*[63] the Court of Appeals for the Sixth Circuit expressed the view that *Swann,* due to the above language,[64] had made it "clear that the constitutional prohibition against assigning students or teachers on account of race is applicable only to *minority* groups."[65] The court in *Goss* further suggested that "some disparate treatment in favor of racial *minorities* must be tolerated until the 'vestiges' of de jure segregation have been eliminated."[66] The United States Supreme Court did not specifically express the view adopted in *Goss,* and the Court may not have intended to precipitate such notions; however, the clear—though implicit—thrust of the *Swann-Green* rule is to support compensatory discrimination in favor of minorities.[67]

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[58] Such a ruling actually would be more repressive than *Plessy* since it would allow states to require affirmative remedial action in the area of human associations and would, hence, run counter to the negative language of the fourteenth amendment. *See* Meador, *The Constitution and the Assignment of Pupils to Public Schools,* 45 VA. L. REV. 517, 524 (1959). *See generally* McAuliffe, *School Desegregation: The Problem of Compensatory Discrimination,* 57 VA. L. REV. 65 (1971); *Swann Hearings* 5434-37 (remarks of Senator Ervin).

[59] 402 U.S. 1, 23 (1971) (emphasis added).

[60] *See* Cook, *School Desegregation: To* Brown *and Back Again—The Great Circle,* 12 BAYLOR L. REV. 398, 401-13 (1971).

[61] 396 U.S. 19 (1969).

[62] *Id.* at 20; Northcross v. Board of Educ., 397 U.S. 232, 237 (1970) (Burger, C.J., concurring).

[63] 444 F.2d 632 (6th Cir. 1971).

[64] *See* note 59 *supra* and accompanying quote in text.

Compensatory discrimination, seen by some as the requisite first step in shaping a remedy for past racism,[68] received support from the federal government[69] and benign tolerance from the courts[70] even before the *Swann* decision. Although compensatory discrimination does not always impose an affirmative obligation, the practice, when done solely on a racial basis, smacks of reparations nevertheless; and it often operates —especially in combination with the *Swann-Green* rule—to foist upon the public the notion that equality of *condition,* as opposed to equality of *opportunity,* is a constitutional right and that it can be achieved by judicial fiat.

The No-Testing Cases

Griggs v. Duke Power Co.[71] invalidated the use of an ability test which, though neutral on its face and used in good faith by an employer, operated to disqualify from employment an excessively large number of blacks. The test was rejected for that reason and because the Court felt the intelligence test was not reasonably related to the skills of the job. Taken together, *Griggs* and *Swann* have developed a relatively new line[72] of cases and decrees. The two cases of this type most patently deliterious to individual liberty are probably *Baker v. Columbus Municipal Separate School District*[73] and *Moses v. Washington Parish School Board.*[74]

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[65] 444 F.2d at 637 (original emphasis).

[66] *Id.* at 638.

[67] *See, e.g.,* Bradley v. Milliken, Civil Action No. 35257 (E.D. Mich., Sept. 27, 1971), where Judge Roth rejected plaintiff's claim that the Detroit school system engaged in discriminatory practices with respect to the hiring and assigning of teachers; the court, nevertheless, refused to condemn—or even comment upon—the fact that in 1970 alone the school board held open 240 teaching positions, rejecting white applicants so that qualified blacks could be found and accepted.

[68] *See, e.g.,* Askin, *The Case for Compensatory Treatment,* 24 RUTGERS L. REV. 65 (1969).

[69] *Id.* at 66.

[70] *See, e.g.,* Contractors' Ass'n v. Secretary of Labor, 311 F. Supp. 1002 (E.D. Pa. 1970), *aff'd,* 442 F.2d 159 (3d Cir. 1971); Quarles v. Philip Morris, 279 F. Supp. 505 (E.D. Va. 1968). *But cf.* Caldwell v. Arizona Bd. of Regents, 106 Ariz. 430, 477 P.2d 520 (1970).

[71] 401 U.S. 424 (1971), *rev'g* 420 F.2d 1225 (4th Cir. 1970). For excellent discussions of problems embodied in this case *see* Fiss, *A Theory of Fair Employment Laws,* 38 U. CHI. L. REV. 235, 290-310 (1971); *Developments in the Law—Employment Discrimination and Title VII of the Civil Rights Act of 1964,* 84 HARV. L. REV. 1109, 1137 (1971).

In *Baker* it was established beyond question that Columbus school authorities used the National Teacher Examination scores on a racially inconsistent basis to avoid hiring black teachers.[75] The court, however, went far beyond condemning this practice. The court found that the school system's 1000 NTE cutoff score for hiring could be met by 90% of the white graduates of Mississippi colleges but could not be met by 89% of the black graduates of Mississippi colleges. Attempting to meet the *Griggs* test,[76] the court found that the 1000 NTE score was not reasonably related to measuring job capability; and, combining this with the fact that few black teachers attained the requisite score, the *Baker* court declared that, as a matter of law, the NTE is racially discriminatory. The internecine effect of the *Baker* decision can best be seen in light of *Moses*.

From 1953 to August of 1971, the Franklin Elementary School of Washington Parish used the Primary Mental Ability Test and the Ginn Reading Readiness Test to produce homogeneous ability groups in its student body.[77] Although the school was not integrated until late 1969,[78] Judge Heebe opined that the tests were used to segregate the students and proceded to devote his efforts to chastising the school officials for their educational policy. The student body of Franklin Elementary was 69% black and 31% white, but the ability tests tended to segregate the white pupils into the higher tracks.[79] The *Moses* court, accordingly, found that the use of ability groupings violated the equal protection clause.[80]

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[72] Judge Skelly Wright condemned ability grouping in schools as early as 1967. Hobson v. Hansen, 269 F. Supp. 401 (D.D.C. 1967).

[73] 329 F. Supp. 706 (N.D. Miss. 1971).

[74] 330 F. Supp. 1340 (E.D. La. 1971).

[75] 329 F. Supp. at 711-14, 716.

[76] *Id.* at 717. *See* 401 U.S. at 431.

> [A]bsence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds" for minority groups and are unrelated to measuring job capability.

See also Penn v. Stumpf, 308 F. Supp. 1283 (N.D. Cal. 1970); Arrington v. Massachusetts Bay Transp. Authority, 306 F. Supp. 1355 (D. Mass. 1969).

[77] Moses v. Washington Parish School Bd., 330 F. Supp. 1340, 1341-44 (E.D. La. 1971).

[78] Franklin Elementary had been an all-white school. *Id.* at 1341.

[79] *Id.* at 1343.

[80] [T]o assign black students on the basis of the presently used testing violates their Fourteenth Amendment rights to be treated equally with white students. Homogeneous grouping is educationally deterimental to students as-

The *Moses* decision is only illustrative of a recent trend.[81] These decisions are predicated on the crucial assumption that ability groupings are socio-educationally detrimental to those students with demonstrably less ability than some other students. And to circumvent the supposed detrimental affects, at least for blacks, the federal courts have decided that ability groupings are violative of the fourteenth amendment's equal protection clause and are, hence, impermissible. The assumption and remedy are at least convenient. If it could be proved that ability groupings provide the best educational opportunity for students of low ability, courts would be faced with the dilemma of chosing whether they prefer integrated classes or equal educational opportunity. The recent trend of "civil rights" law may, in view of the thrust of *Griggs* combined with the *Swann-Green* rule, compel a judicial preference for integrated classes in such a case. But have concepts of equal protection ever envisaged the development of affirmative obligations which would make such a choice necessary?

Conclusion

In 1971 a few historic advances[82] in the law were made, the benefits of which will flow most directly to minority groups and, thus, generally to all Americans. *Swann v. Charlotte-Mecklenburg Board of Education,*[83] however, should not be viewed as an advance for civil rights. Primarily because it attempts to carve an affirmative duty out of the proscriptive language of the fourteenth amendment, the *Swann* decision necessarily raises some very serious questions about the limits to which the national judiciary can be held once a socially desirable goal is identified.

The fourteenth amendment did not acquire its negative language by quirk. The Constitution's references to equality were never meant to

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> signed to the lower sections and blacks comprise a disproportionate number of the students in the lower sections. This is especially true where . . . black students who until recently were educated in admittedly inferior schools are now competing with white students educated in superior schools for positions in the top sections.

Id. at 1345. In view of *Swann* one is tempted to query why the court did not require the affirmative act of integrating the ability levels by fiat rather than merely prohibit ability grouping.

[81] *See, e.g.,* Lemon v. Bossier Parish School Bd., 444 F.2d 1400 (5th Cir. 1971).

[82] *E.g.,* Griffin v. Breckenridge, 403 U.S. 88 (1971); Boddie v. Connecticut, 401 U.S. 371 (1971); Serrano v. Priest, 5 Cal. 3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). *But see* Palmer v. Thompson, 403 U.S. 217 (1971); Whitcomb v. Chavis, 403 U.S. 124 (1971); James v. Valtierra, 402 U.S. 137 (1971); Wyman v. James, 400 U.S. 309 (1971).

[83] 402 U.S. 1 (1971).

affirmatively command equality of condition, but were, rather, meant to assert that men are equal in ultimate worth.[84] The axiom of equality is simply that every American must be afforded equal rights and equal opportunity.[85] One of our nation's greatest civil libertarians, Justice William O. Douglas, has made this argument:

> Equal protection under the law is the most important single principle that any nation can take as its ideal.[86]

And he continued:

> All men of course are not equal in talents or abilities. But once all men are treated equally by government and afforded equal opportunities for preferment and advancement, society undergoes a transformation. A new aristocracy emerges—not an aristocracy of family, wealth, race or religion, but an *aristocracy of talent.*[87]

If the United States Supreme Court is going to adhere to the *Swann-Green* rule, the Indianapolis desegregation decision[88] provides a powerful and realistic guide for other jurisdictions.[89] The decision is atypical in two important respects: (1) The spectre of "white-flight" was given careful consideration in the formulation of the remedy;[90] and (2) because of that, the remedy aimed to join school districts beyond Indianapolis and even beyond Marion County.[91] If *Swann* is to stand, it seems that Judge Dillin's approach would reduce the probability of immediate re-segregation.

The affirmative command of the *Swann-Green* rule has serious import for other areas of desegration law besides education. Since nearly every desegregation case has recited the causal relation of segregated housing to segregated schools, one wonders why the federal government has not taken stronger action in this area. If the causal relation is real, which it likely is, short of imposing a *Swann-Green* based affirmative duty by telling people where they must live, the courts could take this powerful step: Wherever the state or national govenment financially underwrites, or supports any bank which underwrites, loans for housing for a person in any area in which predominantly one race resides, the courts could find de jure segregation. Rather than require people to move, the courts could prohibit any governmental unit or any governmentally-supported agency or organization from loaning funds to those persons who seek to purchase homes in areas where members of their race predominate.

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[84] H.A. Myers, Are Men Equal?—An Inquiry into the Meaning of American Democracy 161 (Great Seal ed. 1955).

[85] *Id.* at 136.

[86] W. Douglas, The Anatomy of Liberty: The Rights of Man Without Force 51 (Pocket Cardinal ed. 1964).

[87] *Id.* (original emphasis).

[88] United States v. Board of School Comm'rs, 332 F. Supp. 655 (S.D. Ind. 1971).

[89] *See* Bradley v. School Board, Civ. No. 3353 (E.D. Va., Jan. 5, 1972).

[90] United States v. Board of School Comm'rs, 332 F. Supp. 655, 676-79 (S.D. Ind. 1971). That Judge Dillion considered the "tipping point" was prescient and unusual. Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 31-32 (1971), appeared to counsel against this. And many courts have expressly rejected consideration of this problem in view of Monroe v. Board of Comm'rs, 391 U.S. 450, 459 (1968). *See* A. Bickel, The Supreme Court and the Idea of Progress 136-37 (1970). *Cf.* United States v. Scotland Neck City Bd. of Educ., 442 F.2d 575, 581-83 (4th Cir. 1971).

[91] 332 F. Supp. at 679-80. Professor Fiss suggested that "there's an understandable legitimate basis for having school districts conform to the municipal boundaries" and thought that multidistrict orders were "very, very far down the road." *Swann Hearings* 5432.

Hopefully, the national judiciary will do none of this and will, rather, overrule *Swann*.[92] The most compelling ground for doing so is the United States Constitution. The national judiciary has, in the past, had the perspicacity to recognize that affirmative duties do not naturally flow from the fourteenth amendment.[93] Although *Griggs* and the other no-testing decisions do not, by themselves, impose affirmative duties in the field of human associations—and, hence, are less reprehensible than *Swann*—the decisions elicit the reminder that the law does not require equal treatment where differences in fact exist.[94]

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[92] Rather than wait for the Supreme Court to overrule itself, Congress has attempted to develop some remedies to *Swann*. Several Senators have attempted to amend the Civil Rights Act of 1964 to sanction freedom-of-choice. 117 CONG. REC. S17658 (daily ed. Nov. 5, 1971). Senator Talmadge introduced S.J. Res. 165, 92d Cong., 1st Sess. (1971), proposing a constitutional amendment to prohibit busing. *See* 117 CONG. REC. S16095 (daily ed. Oct. 8, 1971). *See also* 118 CONG. REC. E2089-90 (daily ed. Mar. 7, 1972) and 118 CONG. REC. E2191-92 (daily ed. Mar. 8, 1972) which reprint some testimony from hearings on a House-proposed amendment. The views of several notable constitutional law scholars toward an anti-busing amendment are gathered at 118 CONG. REC. E1301-05 (daily ed. Feb. 18, 1972).

During the evening and night of November 4-5, 1971, the House of Representatives passed the Emergency School Aid Act of 1971 by a vote of 332 to 38. The bill (S. 659—H.R. 7248) contained a provision designed to postpone any district court order which would force busing to achieve racial balance until the Supreme Court had time to act on an appeal. The bill also contained a section supporting the concept of "neighborhood schools." *See* 117 CONG. REC. H10352-434 & D1124-25 (daily ed. Nov. 4, 1971). The Senate debates were longer and equal in intensity. *See, e.g.*, 118 CONG. REC. S2074-79 (daily ed. Feb. 18, 1972) (remarks of Senator Mondale); 118 CONG. REC. S2308-10, S2373-74 (daily ed. Feb. 22, 1972) (remarks of Senators Spong and Ribicoff); 118 CONG. REC. S2434-52 (daily ed. Feb. 23, 1972) (colloquoy among several Senators). The Senate first took an anti-busing stance, but quickly changed that position. *See* 118 CONG. REC. S2636 *et seq.* (daily ed. Feb. 25, 1972); 118 CONG. REC. S2856-912, S2915-16 (daily ed. Feb. 29, 1972); 118 CONG. REC. S3010-35 (daily ed. Mar. 1, 1972).

The Senate's successful efforts to keep strong anti-busing amendments out of its version of education bills did not, however, end the controversey. On March 8, 1972, the House agreed, by a vote of 272 to 139, to bind its conferees on the education bills to the strict anti-busing measures the House had adopted in November of 1971. 118 CONG. REC. H1838-60 (daily ed. Mar. 8, 1972).

[93] *See, e.g.*, Cassell v. Texas, 339 U.S. 282, 286 (1950); Akins v. Texas, 325 U.S. 398, 403 (1945). *See generally* McAuliffe, *School Desegregation: The Problem of Compensatory Discrimination*, 57 VA. L. REV. 65 (1971).

Not only will the existing status of desegregation law continue to produce glaringly disharmonious results[95] until *Swann* is rejected; but, much more importantly in the long run, America can no longer accept Roscoe Pound's simple but demonstrably correct pronouncement that,

> The guarantees of liberty in American constitutions are not and are not thought of as exhortations as to how government should be carried on or its agencies will operate. They are precepts of the law of the land backed by the power of the courts of law to refuse to give effect to legislative or executive acts in derogation thereof.[96]

It is not at all surprising that the national judiciary has found it necessary to ignore the proscriptive language of the fourteenth amendment in order to impose an affirmative duty in the broad area of human associations. The courts could not have in any other way mustered a constitutionally envisaged compulsion to achieve the identified socio-educational goal of equality of condition.[97]

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[94] Dennis v. United States, 339 U.S. 162, 185 (1950); Tigner v. Texas, 310 U.S. 141, 147 (1940); Tussman & tenBroek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 344 (1949).

[95] *Compare* Bivins v. Bibb County Bd. of Educ., 331 F. Supp. 9 (M.D. Ga. 1971) (where the court effectively side-stepped or misread *Swann*), *with* Cisneros v. Corpus Christi Independent School Dist., 330 F. Supp. 1377 (S.D. Tex. 1971) (where the court went so far as to identify the number, race, housing units, and schools of those to be compulsorily mixed) *and* Mims v. Duval County School Bd., 329 F. Supp. 123 (M.D. Fla. 1971). A simple, though presumably effective, plan was approved in Davis v. Board of Educ., 449 F.2d 500 (8th Cir. 1971). *See* President Nixon's remarks on the "maze of differing and sometimes inconsistent orders" at 118 CONG. REC. S4164 (daily ed. Mar. 17, 1972).

[96] R. POUND, THE DEVELOPMENT OF CONSTITUTIONAL GUARANTEES OF LIBERTY at v (1957).

[97] Although there have been several attempts to explain the supposed necessity and justifiability of result-oriented decision-making, most such attempts appear to be rather specious; and none give satisfactory answers to some very difficult yet basic questions: Why is it necessary, and how is it justifiable, to frame a remedy in racial terms when damage can be ascertained in socio-educational and economic terms? Are there no disadvantaged whites who would be denied remedial action? Are there limits beyond which the courts cannot go in imposing affirmative duties in the area of human associations? If so, what are those limits? If there can be a racial basis for imposing affirmative duties, can the Constitution be read to impose affirmative duties on the basis of creed or sex if damage has been imposed primarily on the basis of these classifications? If not, why? Such questions may seem rhetorical at this time; but, if *Swann* and other recent cases have in fact created affirmative duties, the nation's courts will some day be forced to grapple with such monstrous problems as are implicit in the above questions. *See generally* Askin, *The Case for Compensatory Treatment*, 24 RUTGERS L. REV. 65 (1969); O'Neil, *Preferential Admissions: Equalizing the Access*

In Athens, located on the western side of the Acropolis, is Areopagus—the hill of Ares. The judges of Areopagus once commanded that the books of Protagoras of Abdera be burned. And, before that, it was at Areopagus where Draco's council is said to have met, apportioning justice at its pleasure. Never has America's history seen such practices. And to the extent this nation is dedicated to a democratic ideal, the courts must retreat from any restriction on individual liberty in the field of human associations. The longer our highest Court adheres to the impetuous justice of the *Swann-Green* rule, the less that Court can be said to support freedom for all Americans.

NILE STANTON

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of Minority Groups to Higher Education, 80 YALE L.J. 699, 713-18 & nn.55-71 (1971); Wright, *The Role of the Supreme Court in a Democratic Society—Judicial Activism or Restraint?*, 54 CORNELL L.Q. 1 (1968), none of which examine the implications for individual liberty. *Cf.* Freund, *Civil Rights and the Limits of Law*, 14 BUFFALO L. REV. 199 (1964); Kaplan, *Equal Justice in an Unequal World: Equality for the Negro—the Problem of Special Treatment*, 61 NW. U. L. REV. 363 (1966).

Nos. 71-1778-79

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

ROBERT W. KELLEY, ET AL.,
HENRY C. MAXWELL, JR., ET AL.,
Plaintiffs-Appellees,
v.
METROPOLITAN COUNTY BOARD OF EDUCATION OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, C. R. DORRIER, Chairman, et al.,
Defendants-Appellants.

APPEAL from the United States District Court for the Middle District of Tennessee, Nashville Division.

Decided and Filed May 30, 1972.

Before: EDWARDS, CELEBREZZE and McCREE, Circuit Judges

EDWARDS, Circuit Judge. In this case we do not write on a clean slate. What follows describes an incredibly lengthy record and settled law pertaining to segregated schools. We start with this latter, as recited in the United States Constitution and in three historic, unanimous decisions of the United States Supreme Court – the last dated 1971.

> "[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1.

> We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situ-

> ated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. *Brown* v. *Board of Education,* 347 U.S. 483, 495 (1954).
>
> [A] plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is also intolerable. "The time for mere 'deliberate speed' has run out," *Griffin* v. *County School Board,* 377 U. S. 218, 234; "the context in which we must interpret and apply this language [of *Brown II*] to plans for desegregation has been significantly altered." *Goss* v. *Board of Education,* 373 U. S. 683, 689. See *Calhoun* v. *Latimer,* 377 U. S. 263. The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work *now.* *Green* v. *County School Board of Kent County,* 391 U.S. 430, 438-39 (1968).
>
> All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes. But all things are not equal in a system that has been deliberately constructed and maintained to enforce racial segregation. The remedy for such segregation may be administratively awkward, inconvenient, and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period when remedial adjustments are being made to eliminate the dual school systems. *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 28 (1971).

After 17 years of continuous litigation the Metropolitan County Board of Education of Nashville and Davidson County, Tennessee, appeals from a final order of the United States District Court for the Middle District of Tennessee requiring the School Board to take the necessary steps to end the racially separated school systems which it had previously been found to be operating. This order was a direct result of an order of this court approving the District Court's findings of violations of equal protection and vacating a stay of proceedings. In it we had noted:

> [T]he instant case is growing hoary with age. It is actually a consolidation of two cases. The first case, Kelley v. Board of Education of the City of Nashville, Civ. A. No. 2094, was filed in September of 1955; and the second case, Maxwell v. County Board of Education of Davidson County, Civ. A. No. 2956, was filed in September of 1960. A whole generation of school children has gone through the complete school system of Metropolitan Nashville in the intervening years under circumstances now determined to have been violative of their constitutional rights. A second generation of school children is now attending school under similar circumstances – and the remedy is not in sight. *Kelley* v. *Metropolitan Board of Education of Nashville, Tennessee,* 436 F.2d 856, 858 (6th Cir. 1970).

The order of the District Judge is the first comprehensive and potentially effective desegregation order ever entered in this litigation. The District Judge tells us that now the remedy is at least in sight.

THE APPELLATE ISSUES

On appeal defendants contend 1) that the District Court had no jurisdiction to hear and determine this case because of failure to comply with Rule 23 of the Federal Rules of Civil Procedure and because of changes in the status of the original party plaintiffs since the commencement of these suits; 2) that the District Court's order is invalid because it requires integration of schools according to a fixed racial ratio, in violation of the rules set out in *Swann* v. *Charlotte-Mecklenburg Board of Education, supra* at 23, 24; and 3) that the plan ordered into effect should be reconsidered because of what the defendant School Board claims to be adverse effects on the health and safety of school children involved.

Plaintiffs as cross-appellants claim 1) that the District Court erred in adopting the Department of Health, Education and Welfare plan when the plan proposed by plaintiffs would have achieved a greater degree of integration; and 2) that the HEW plan should have been rejected because it places the burden of desegregation disproportionately upon Negro children.

HISTORY OF THE NASHVILLE-DAVIDSON COUNTY CASE

The history of school desegregation from *Brown* v. *Board of Education, supra,* to date can be traced in this case in the proceedings in the District Court, in this Court, and in the United States Supreme Court: *Kelley* v. *Board of Education of City of Nashville,* 139 F.Supp. 578 (M.D. Tenn. 1956) (Dissolution of three-judge court); *Kelly* v. *Board of Education of City of Nashville,* 159 F.Supp. 272 (M.D. Tenn. 1958) (Disapproval of integration plan and grant to Board of additional time to file a new plan); *Kelley* v. *Board of Education of City of Nashville,* 8 R.R.L.R. 651 (M.D. Tenn. 1958) (Approval of 12-year plan); *Kelley* v. *Board of Education of City of Nashville,* 270 F.2d 209 (6th Cir. 1959) (Upholding District Court order); *Kelley* v. *Board of Education of City of Nashville,* 361 U.S. 924, 80 S.Ct. 293, 4 L.Ed.2d 240 (1959) (Denial of certiorari); *Maxwell* v. *County Board of Education of Davidson County,* 203 F.Supp. 768 (M.D. Tenn. 1960); *Maxwell* v. *County Board of Education of Davidson County,* 301 F.2d 828 (6th Cir. 1962), *reversed in part and remanded sub nom, Goss* v. *Board of Education of Knoxville,* 373 U.S. 683, 83 S.Ct. 1405, 10 L.Ed.2d 632 (1963); *Kelley* v. *Board of Education of Nashville and Davidson County,* 293 F.Supp. 485 (M.D. Tenn. 1968) (Further proceedings in a consolidation of *Maxwell, supra,* and *Kelly, supra*); *Kelley* v. *Metropolitan County Board of Education,* 317 F.Supp. 980 (M.D. Tenn. 1970); *Kelley* v. *Metropolitan Board of Education of Nashville, Tennessee,* 436 F.2d 856 (6th Cir. 1970) (Memorandum opinion (filed June 28, 1971); Judgment (filed July 15, 1971)).

This case began in 1955 on the heels of the United States Supreme Court's decision in *Brown* v. *Board of Education, supra,* holding that "separate educational facilities are inherently unequal," *supra* at 495. Plaintiffs in a class action sought invalidation of the Tennessee school laws, T.C.A. § 49-3701, *et seq.*, which in specific terms required segregation of school pupils by race. (See Appendix A) In 1956 a three-judge federal court which had been convened to pass on the constitutionality of the state statute was dissolved when the defendant Board of Education conceded the unconstitutionality of the state statute by which it had previously been governed. *Kelley* v. *Board of Education of City of Nashville,* 139 F.Supp. 578 (M.D. Tenn. 1956). The case was then remanded to the United States District Court for the Middle District of Tennessee. The District Judge determined that the case was an appropriate class action under Rule 23 of the Federal Rules of Civil Procedure (Record, Min. Book 19 at 683). He ordered the defendant School Board to prepare and present a plan for desegregation of the Nashville schools.

Before judgment was entered, the State of Tennessee in January 1957 adopted a Parental Preference Law, TCA § 49-3704, Pub. Acts 1957, cc 9-13, 2 RACE REL. L. REP. 215 (1957). (See Appendix A) This statute provided for separate white, black, and mixed schools, with attendance to be determined by parental preference. The District Court in September of 1957 held this statute to be unconstitutional on its face. 2 RACE REL. L. REP. 970 (1957).

The defendant School Board thereupon (and nonetheless) presented a parental preference plan for white, black, and mixed schools substantially the same as that called for by the unconstitutional state law.

In February of 1958 the District Court held the School Board plan to be unconstitutional.

Later in the same year a grade-a-year desegregation plan was submitted by defendant School Board, approved by the District Court and the Court of Appeals, with certiorari denied by the United States Supreme Court.

In 1960 a suit was filed to desegregate the Davidson County schools. *Maxwell* v. *County Board of Education of Davidson County, supra.* It was brought on behalf of Negro children alleged to be denied their constitutional rights to equal education in the county school system. Again the suit was brought as a class action and recognized as such by the District Court under Rule 23 FED. R. CIV. P. (Record, Min. Book 24 at 114.) The Davidson County School Board proposed a free transfer plan and it was approved by the District Court. On appeal Maxwell's free transfer plan was invalidated by the United States Supreme Court, *sub nom., Goss* v. *Board of Education of Knoxville,* 373 U.S. 683 (1963).

In 1963 the school systems of Nashville and Davidson County were then consolidated as part of a general consolidation of the City of Nashville and County of Davidson into one metropolitan government. Petitions for further relief, including an order to desegregate the Nashville-Davidson County schools and to enjoin further school construction pending such an order, were filed in the consolidated case, with additional plaintiffs intervening.

In 1968 the United States Supreme Court took further note of how the *Brown II* phrase "deliberate speed" was being employed to delay rather than to implement school desegregation.

For purposes of reemphasis, we again quote the unanimous opinion:

> [A] plan that at this late date fails to provide meaningful assurance of prompt and effective disestablishment of a dual system is also intolerable. "The time for mere 'deliberate speed' has run out," *Griffin* v. *County School*

> *Board*, 377 U. S. 218, 234; "the context in which we must interpret and apply this language [of *Brown II*] to plans for desegregation has been significantly altered." *Goss* v. *Board of Education*, 373 U. S. 683, 689. See *Calhoun* v. *Latimer*, 377 U. S. 263. *The burden on a school board today is to come forward with a plan that promises realistically to work, and promises realistically to work* NOW. *Green* v. *County School Board of Kent County*, 391 U.S. 430, 438-39 (1968). (Emphasis added.)

On the heels of these decisions plaintiffs sought relief consistent with them and lengthy hearings followed. In 1970 the District Judge entered findings of fact which were subsequently reviewed and given effect by this court. *Kelley* v. *Metropolitan County Board of Education of Nashville, Tennessee*, 436 F.2d 856 (1970). In its opinion this court said:

> It would be well for those in authority in Nashville and Davidson County to read the able opinion [District Court opinion entered July 16, 1970] which we now revitalize by our present order. The emphasis in the quotation which follows is that of this court:
>
> > "[I]t is the Court's view that in the area of school zoning, school boards will fulfill their affirmative duty to establish a unitary school system only if attendance zone lines are drawn in such way as to maximize pupil integration. In drawing such lines, the defendant school board may properly consider in the total equation such factors as capacities and locations of schools, physical boundaries, transportation problems, and cost; however, none of these considerations can supersede the importance of the primary goal of maximizing integration.
> >
> > "In looking to the facts of this case, the Court finds that many of the elementary and secondary school zone lines in the Nashville and Davidson County School System have not been drawn so as to minimize integration. *With the exception of zone*

lines drawn for new schools, the zone lines currently in existence were drawn prior to Brown v. *Board of Education with the aim of maintaining segregation.* Though there has been some black population migration to formerly white areas, in large part *these zone lines continue to serve quite well the segregative purpose for which they were originally established.* The truth of this statement is made manifest when one examines the racial make-up of the pupil population in areas containing several contiguous attendance zones. In East Nashville, for example, there is a cluster of five elementary schools having contiguous attendance zones. Of these five schools, white pupils are in the great majority in four schools, Baxter, Dalewood, Rosebank, and Bailey, while black students are in the majority in one of the schools, Inglewood. As a reference to the zone map will indicate, Inglewood is completely surrounded by the four predominantly white schools, and the Inglewood zone is drawn to enclose most of the black population living in the five school area. Defendants argue that they are applying the 'neighborhood' concept in the drawing of elementary school zone lines. *If such a concept is indeed being applied in this five school area, it appears to the Court that it is being applied solely to perpetuate segregation. Defendants contend that one of the prime advantages of 'neighborhood' schools is that they allow pupils to walk to and from school. If this is true, it is difficult to see why black pupils who live closer to Baxter or Bailey schools, for instance, are required to walk the greater distance to attend Inglewood school.*

"The same pattern is repeated in a seven school area in south and west Nashville. In this situation, the attendance zones for Ransom and Eakin schools are contiguous with the attendance zones for Ford, Greene, Head, Carter Lawrence, Murrel and Clemons schools. The former two schools are almost completely white, while the latter five schools are almost totally black.[7] Once again it appears that the zone lines as drawn insure that white neighborhoods will have white schools and black neighborhoods will have black schools. *As the above two illustrations make clear, by maintaining the old dual school zones, defendant has encouraged continued segregation rather than significant integration in the elementary schools.*

"Turning to junior high school zones, the Court finds much the same situation as in the elementary schools. Though the 'neighborhood' concept is not applied in secondary school zoning, junior high school zones are drawn so that each school serves a particular residential area or 'service area' as it is sometimes referred to by defendant. These service areas cover a broader geographic area than a single neighborhood, for several elementary schools within their respective neighborhood zones feed graduating students into the junior high school within whose zone they lie. This process is generally described in terms of a 'feeder pattern.' Once again, a look at the existing zone lines convinces the Court that the junior high school attendance zones and the 'feeder patterns' which graduate elementary students into the junior high schools are structured so as to foster for the most part continued segregation or at best only token integration. *It is apparent that the zone lines as presently drawn are designed to provide racially identifiable 'black' schools for*

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[7] See Map No. 2 in Appendix and note the following figures* on the enrollment of these schools:

	W	B	%B
Ford Greene	0	887	100
Head	0	791	100
Carter Lawrence	0	516	100
Murrel	0	328	100
Clemons	51	519	90
Ransom	355	2	1
Eakin	487	5	1

* Based on plaintiff's exhibit No. 3.

black residential areas and 'white' schools for white residential areas. For example, looking at a cluster of six contiguous junior high school zones, the Court finds that Bass, West End, and Moore Junior high schools are all predominantly white schools with their attendance zones being drawn so as to correspond significantly with white residential areas. On the other hand, Washington, Rose Park and Waverly-Belmont are all racially identifiable as black schools and their attendance zones have been drawn in a manner effectively to prevent a significant number of black pupils from attending school outside of the black residential area.[8]

"Finally, looking to the high school zones, there is similar evidence of continued duality in the school system. For example, of five contiguous high school zones, three of the schools, Cohn, Hillsboro and Central, are racially identifiable as white schools. Their attendance zone lines form the boundary line between the predominantly white residential areas in south and west Nashville and the black residential areas to the north and east. These black areas are served by Cameron and Pearl high schools.[9]

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[8] *See* Map No. 3 in Appendix and note the following figures: *

	W	B	%B
Bass	777	12	2
West End	578	40	6
Moore	999	85	8
Washington	0	1,347	100
Rose Park	11	527	98
Waverly-Belmont	26	260	91

* Based on plaintiff's exhibit No. 3.

[9] *See* Map No. 4 in Appendix and note the following figures:

	W	B	%B
Cohn	960	45	4
Hillsboro	1,223	15	1
Central	899	203	18
Pearl	1	1,308	100
Cameron	0	1,212	100

> "In connection with the segregative effect of present school zoning, it is interesting to note that while portable classrooms are in limited use in predominantly Negro schools, approximately 117 portables are in use in racially identifiable white schools. These predominantly Negro schools, on the basis of their rated maximum capacities, have approximately 5,400 vacancies, yet the white schools, in zones tailored to white residential sections, are overcrowded. It would seem that rezoning could serve the dual purpose of alleviating this overcrowding and, at the same time, promoting the goal of integration.
>
> *"It is the Court's conclusion that defendant's current policy of attendance zoning does not facilitate rapid conversion from a dual to a unitary school system. As is evident from the foregoing discussion, the zone lines as they presently exist foster continued segregation in many instances.*[10] *Corresponding as they do to racial residential patterns, it is difficult to envision any other result. Historic zone lines which purposely promote segregation must be altered. In making such alterations defendant board should take those steps 'which promise realistically to convert promptly to a system without a "white" school and a "Negro" school, but just schools.'* Green v. County School Board of New Kent County, *supra* [391 U.S. 430] at 442, [88 S.Ct. 1689, 20 L.Ed.2d 716].
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> [10] Of the 139 regular schools in the system in 1969-70, 88 had less than 10% black enrollment, 22 had 10% to 40% black enrolling (with the total enrollment of these latter 22 schools constituting only 16% of the entire metropolitan school enrollment), and finally 29 schools had more than 40% black enrollment. A clear racial pattern is present."

Kelley v. *Metropolitan County Board of Education of Nashville, Tennessee, supra* at 859-61. (Footnotes in quotation.)

We then remanded the case with instructions:

> We believe that "the danger of denying justice by delay" in this case is as clear as it was in Alexander, *supra;* Green v. County Board, *supra,* and Carter, *supra.*
>
> We now vacate the stay of August 25, 1970, with the intention of leaving in full effect and operation the judgment of the District Court of August 13, 1970. The present District Judge should proceed immediately to hold the necessary hearings upon objections to the Board of Education plan and thereafter to approve or modify same as the record which is developed appears to require, and thereupon enter an order of implementation. The time schedule for consideration and implementation of this order should, of course, meet the "maximum" standard set forth by the Supreme Court in the second *Carter* case (Carter v. West Feliciana Parish School Board, 396 U.S. 290, 293, 90 S.Ct. 608, 24 L.Ed.2d 477 (1970)). The District Court may, of course, require reports (including a pupil locator map) and recommendations (including those of expert witnesses and the Department of Health, Education and Welfare) and consider them in its order of implementation. Id. at 862.

Acting within the terms of his sworn obligation a new District Judge proceeded to implement this court's instructions.

While he was thus engaged, the United States Supreme Court decided the third history making case pertaining to school segregation (*Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971)). The opinion for a unanimous Supreme Court was written by Chief Justice Burger. In recital of the facts and conclusions of law, it parallels and controls our decision of this case.

> We granted certiorari in this case to review important issues as to the duties of school authorities and the scope of powers of federal courts under this Court's mandates to eliminate racially separate public schools estab-

> lished and maintained by state action. *Brown* v. *Board of Education*, 347 U. S. 483 (1954) (*Brown I*).
>
> This case and those argued with it arose in States having a long history of maintaining two sets of schools in a single school system deliberately operated to carry out a governmental policy to separate pupils in schools solely on the basis of race. That was what *Brown* v. *Board of Education* was all about. These cases present us with the problem of defining in more precise terms than heretofore the scope of the duty of school authorities and district courts in implementing *Brown I* and the mandate to eliminate dual systems and establish unitary systems at once. *Swann* v. *Charlotte-Mecklenburg Board of Education, supra* at 5-6. (Footnote omitted.)

These words apply exactly to the fundamental problems in the instant case also. The District Court order here under review is designed to "eliminate racially separate public schools established and maintained by state action." Tennessee is, as we have noted above, a state "having a long history of maintaining two sets of schools in a single school system deliberately operated to carry out a governmental policy to separate pupils in schools solely on the basis of race." (See Appendix A) We here consider a District Court order designed to "implement . . . Brown I and . . . to eliminate dual systems and establish unitary systems at once."

> The District Court held numerous hearings and received voluminous evidence. In addition to finding certain actions of the school board to be discriminatory, the court also found that residential patterns in the city and county resulted in part from federal, state, and local government action other than school board decisions. School board action based on these patterns, for example, by locating schools in Negro residential areas and fixing the size of the schools to accommodate the needs of immediate neighborhoods, resulted in segregated education. These findings were subsequently accepted by the

> Court of Appeals. *Swann* v. *Charlotte-Mecklenburg Board of Education, supra* at 7.

This paragraph applies to the facts of the instant case without change of a single word.

Chief Justice Burger then turned to the question of appropriate remedial measures to eliminate state imposed segregation:

> The objective today remains to eliminate from the public schools all vestiges of state-imposed segregation. Segregation was the evil struck by *Brown I* as contrary to the equal protection guarantees of the Constitution. That was the violation sought to be corrected by the remedial measures of *Brown II*. That was the basis for the holding in *Green* that school authorities are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." 391 U. S., at 437-438.
>
> If school authorities fail in their affirmative obligations under these holdings, judicial authority may be invoked. Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.
>
> • • •
>
> In seeking to define even in broad and general terms how far this remedial power extends it is important to remember that judicial powers may be exercised only on the basis of a constitutional violation. Remedial judicial authority does not put judges automatically in the shoes of school authorities whose powers are plenary. Judicial authority enters only when local authority defaults.
>
> School authorities are traditionally charged with broad power to formulate and implement educational policy and might well conclude, for example, that in order to prepare students to live in a pluralistic society each school

> should have a prescribed ratio of Negro to white students reflecting the proportion for the district as a whole. To do this as an educational policy is within the broad discretionary powers of school authorities; absent a finding of a constitutional violation, however, that would not be within the authority of a federal court. As with any equity case, the nature of the violation determines the scope of the remedy. In default by the school authorities of their obligation to proffer acceptable remedies, a district court has broad power to fashion a remedy that will assure a unitary school system. *Swann* v. *Charlotte-Mecklenburg Board of Education, supra* at 15-16.

The default of school authorities referred to by Chief Justice Burger is equally illustrated by the history of our present case.

With this history and these principles before us, a tabular comparison of the fact situations and District Court plans presented in the *Swann* and *Kelley* cases is appropriate:

	SWANN v. BD. ED.	KELLEY v. BD. ED.
Date of original complaints	1965	1955
No. of schools (before plan)	107 (1968-69)	139 (1970-71)
No. of schools (after plan)	107	133 (1971-72)
Total enrollment	84,000 (approx.)	94,170 (1970-71)
Per cent white students	71%	75% (75.12%)
Per cent black students	29%	25% (24.63%)
Walking distance (after plan)	1½ miles	1½ miles
No. students bused prior to plan	23,600	33,485

	SWANN V. BD. ED.	KELLEY V. BD. ED.
No. white students bused prior to plan	Exact figures not available, but it is clear that a large majority of students bused were white	30,000
No. black students bused prior to plan		3,500 (approx.)
Extent of segregation prior to plan	In 1969 2/3 of the black students were then attending schools that were either totally or 99% black.	In 1969 81% of all white students were attending schools that were over 90% white, while 62% of all black students were attending school that were over 90% black.
Net increase in No. of students bused as a result of court adopted plan	13,300	15,000 (approx.)
No. of additional buses required	138 54-passenger buses	82 84-passenger buses
No. of buses obtained to carry out plan	Court opinions do not contain this information.	None
Ratio of white to black student population employed by court approved plan as guide	71%–29%	75%–25%

	SWANN V. BD. ED.	KELLEY V. BD. ED.
Per cent of schools desegregated by plan within guide related ratios	100% of elementary[*] schools would have black student population of 9%–38%.	77% of elementary schools would have a black student population of 16%–41%; 22 outlying schools would have a black student population of 0% –22%.
One race schools remaining under plan due to travel distance	Apparently none	5

[*] Junior and Senior High School desegregation under the *Swann* plan was likewise considerably closer to ideal unitary school standards than the plan approved by the District Court in this case.

The general principles of *Swann* were, of course, enunciated by the Supreme Court for guidance of District Courts and Courts of Appeals in *all* school segregation cases. In view of the close factual resemblances between this case and *Swann*, these principles, however, apply here a fortiori.

THE REMEDIAL ORDER OF THE DISTRICT COURT

The nature of the problem facing the District Court many years after *Brown* v. *Board of Education*, 347 U.S. 483 (1954), is vividly portrayed in the statistics and the table set forth below.[1]

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[1] These statistics are based largely upon plaintiffs' exhibits in the court below, but we can find no contrary evidence offered by defendants.

Racial Composition for the Three Years Preceding Hearings on Motion for Further Relief

1967-68 – 85% of the white students attended schools that were over 90% white.

63% of the black students attended schools that were over 90% black.

1968-69 – 80% of the white students attended schools that were over 90% white.

61% of the black students attended schools that were over 90% black.

1969-70 – 81% of the white students attended school that were over 90% white.

62% of the black students attended schools that were over 90% black.

These figures show that during the three-year period nearly two-thirds of the black students in the Nashville system went to racially identifiable schools, and more than four-fifths of the white students attended racially identifiable schools.

Busing did not come to Nashville by federal court decree. This record demonstrates that Nashville and Davidson County have long used extensive bus transportation as a normal part of their school systems. Busing was, however, employed wholly disproportionately for the transportation of its white students as compared to its black students (30,000 white to 3,500 black). In this regard the District Judge's opinion noted:

> "Since the defendants have consistently transported large numbers of students to promote segregation, some adjustment must be made to reverse this unconstitutional practice."

The District Court clearly found that defendants had defaulted in relation to their duty to dismantle their segregated school system prior to 1970. The District Court also found that although defendants had repeatedly been asked and ordered to produce an adequate plan, they had failed to do so. It noted that the School Board accepted as a policy statement "an ideal student racial ratio of an integrated school as one which is 15% to 35% black." Yet its analysis of the plan actually submitted by the School Board showed it to be utterly inadequate.

> The Board of Education submitted a plan for pupil integration in August, 1970. Included in this plan was a policy statement that the school board "accepts as an ideal student racial ratio of an integrated school as one which is 15% to 35% black."
>
> The August, 1970 plan made 49 minor geographic zone changes, and provided for the transportation of an additional 1162 pupils. The result of the plan was to leave the elementary schools significantly unchanged. Six of the 38 high schools and junior high schools would remain at least 50 per cent black. Fifty-seven per cent of the black high school and junior high school students would attend these six schools. The racial composition of two schools would be at least 95 per cent black and four other schools would be at least 90 per cent black. This would result in 47 per cent of the black students attending schools where the composition would be above 90 per cent black. Eight schools, accommodating 20 per cent of the black students, would operate with 15-35 per cent black students. Fifteen schools would operate with 95 per cent or above white students. (Footnotes omitted.)

Concerning the School Board plan, the District Court concluded:

> The pupil integration plan submitted by the school board, viewed in the most favorable light, constitutes mere tinkering with attendance zones, and represents only a token effort. It clearly falls short of meeting the objectives and tests set out in the decisions of the United

> States Supreme Court. *Swann* v. *Charlotte-Mecklenburg Board of Education, supra; Davis* v. *Board of School Commissioners, supra; Green* v. *County School Board,* 391 U.S. 430 (1968). In effect, the defendant has made no effort to meet its affirmative duty to establish a unitary school system "in which racial discrimination would be eliminated root and branch." *Green* v. *County School Board, supra,* at 437-38; quoted in *McDaniel* v. *Barresi,* [402] U.S. [39], 28 L.Ed.2d 582, 585 (April 20, 1971).
>
> Since the defendants have, in effect, failed to submit a constitutionally sufficient plan, the Court must examine the other plans. (Footnote omitted.)

The plan adopted by the District Judge was one proposed by the United States Department of Health, Education and Welfare. It is described in detail in his Memorandum Opinion, dated June 28, 1971, and in his Judgment, dated July 15, 1971, both of which are by reference hereby incorporated as a part of this opinion. For our present purpose it suffices for us to note that in all respects which have come to our attention, the HEW plan approved by the District Judge represents a somewhat less stringent approach to desegregation than the plan approved by the United States Supreme Court in *Swann, supra.*

Major portions of the Court's comprehensive Opinion and Judgment, such as those dealing with faculty desegregation, school construction and maintenance, and transfer policy, etc., are not discussed herein because no appellate issues have been presented as to those features.

I The Rule 23 Issue

As to the Rule 23 issue, earnestly if belatedly sought to be raised by appellants, we affirm the Memorandum Order of the District Judge, dated July 21, 1971, for the reasons set forth therein, and print same for ready reference as Appendix B.

Further, we note that this issue was clearly waived by failure of appellants to raise it prior to trial and final adjudication of this case.

We also note that such a class action as this dealing with continuing constitutional violations does not become moot because of years of delay (much of it attributable to appellants) which occasioned the graduation of the named, original student plaintiffs from the school system before final decision.

II The Ratio and Residual Effect Issues (Plaintiffs' stated Issues 2, 3 & 4)

Where a school system has been deliberately constructed on a segregated basis by state action, a duty inheres in the School Board to do more than to establish rules fair on their face which simply serve to perpetuate the effects of such segregation. *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1, 26, 28 (1971).

The record in this case supports the District Judge's findings that racial discrimination in school construction, assignment of temporary buildings, assignment of teachers, and assignment of students continued until the close of the record — if not beyond. The record also discloses a background of racial discrimination by means of state law which motivated much of the school segregation. (See Appendix A)

The fact that population shifts in the metropolitan school district have helped to some degree to change the racial composition of some schools during the course of litigation does not eliminate the duty of the school board to present a plan for a unitary school system.

Nor, of course, does it alter the duty of the District Court on default of the school board to require production of such a plan and order it into effect. Chief Justice Burger put the matter thus in the *Davis* case:

> "Having once found a violation, the district judge or school authorities should make every effort to achieve the greatest possible degree of actual desegregation, taking

> into account the practicalities of the situation." *Davis* v. *School Commissioners of Mobile County, supra* at 37.

Perhaps the primary thing that the *Swann* case decided was that in devising plans to terminate such residual effects, it is appropriate for the school system and the District Judge to take note of the proportion of white and black students within the area[2] and to seek as practical a plan as may be for ending white schools and black schools and substituting therefor schools which are representative of the area in which the students live.

We have noted that the District Judge in *Swann* employed a flexible 71% white to 29% black population ratio as a guide in seeking a practical plan. The Supreme Court specifically approved his doing so. *See Swann* v. *Charlotte-Mecklenburg Board of Education, supra* at 16, 23-24. The District Judge in this case clearly read and followed the *Swann* guideline. As to this issue, we find no error.

An earlier finding of "good faith" does nothing to excuse the defaults and failures shown by this record. "The measure of any desegregation plan is its effectiveness." *Davis* v. *School Commissioners of Mobile County,* 402 U.S. 33, 37 (1971). *See also Green* v. *County School Board,* 391 U.S. 430, 439 (1968).

III Practical Problems

If there is an appellate issue of substance in this appeal, it is to be found in the practical problems which appellants claim have developed since the entry of the District Judge's order. Appellant summarizes these issues thus:

> A plan which exposes the children in the school system to undue danger to health and accident, interferes with

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[2] The area referred to in this case is all of Davidson County, including the City of Nashville, which is included in the jurisdiction of defendant Metropolitan Board of Education.

> their education by requiring excessive periods of time on buses, causes them to leave home before daylight or to return home after dark, exposes them to the dangers of travel in old and inadequately maintained equipment and causes elementary school children, both black and white, to suffer hardships to which young children should not be exposed can hardly be termed feasible, workable, effective and realistic.

Substantial as these problems appear to be on the surface, there are two reasons why no relief can be granted in this forum. The first is that no motion for relief pertaining to these facts has ever been filed by appellant in the District Court. These statements at this point are allegations and they are controverted by the appellee. This, of course, is an appellate court – not a trial court. As appellants well know, the arena for fact-finding in the federal courts is the United States District Court. Until these claims have been presented in a trial court, with an opportunity for sworn testimony to be taken and controverted issues and facts decided by the processes of adversary hearing, this court has no jurisdiction.[3]

The second reason as to why appellants are entitled to no relief on this issue probably serves to explain the first. The entire "record" upon which appellant bases his plea for relief as to practical problems is a "Report to the Court" of Dr. Brooks, Director of Schools of the Metropolitan County Board of Education. This report is dated October 18, 1971, just over a month after the opening of school. While we are advised that it was sent to the District Judge, as we have noted, no motion of any kind seeking any District Court action was ever filed concerning it. Even more important, the statement on its face suggests that local authorities in Nashville and Davidson County have not made good faith efforts to comply with the order of the District Judge.

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[3] During the pendency of an appeal, jurisdiction of the case lies, of course, in the appellate court. There is, however, familiar law to deal with an unexpected problem which arises in this period concerning the actual terms of the order or judgment under appeal. The District Court may on being apprised of the problem and having determined its substantiality (with or without hearing) certify to the appellate court the desirability of a remand for completion or augmentation of the appellate record. No memory in this court encompasses a refusal of such a request.

The record is clear that no request for remand was made by the District Court, obviously, at least in part, because appellants made no motion for relief before the District Court.

Dr. Brooks' affidavit does present this exculpatory explanation which serves to point in the direction of other authorities as those responsible for the inconveniences and hazards of which Dr. Brooks' statement speaks. The statement says:

> The School Board is fiscally dependent in that its budgets must be approved by the Metropolitan City Council. In approving the budget of the School Board on June 30, 1971, Council members demanded assurance that no funds included in the budget would be used to purchase buses for the purpose of transporting students to establish a racial balance. The 1971-72 budget did provide for the purchase of 18 large buses to replace obsolete equipment to provide transportation for students to the new comprehensive McGavock High School.

It is clear, however, that neither the Metropolitan City Council or, for that matter, the Legislature of Tennessee can forbid the implementation of a court mandate based upon the United States Constitution. In a companion case to *Swann*, *supra*, Chief Justice Burger, writing again for a unanimous court, held that an anti-busing law which flatly forbids assignment of any student on account of race or for the purpose of creating a racial balance or ratio in the schools and which prohibits busing for such purposes, was invalid as preventing implementation of desegregation plans required by the Fourteenth Amendment. *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 45-46 (1971). *See also Cooper* v. *Aaron*, 358 U.S. 1 (1958).

Dr. Brooks' statement also furnishes the bus schedule of the Metropolitan County Board of Education by yearly models. It shows that the Board has an average of 18.9 buses for each of the last 10 model years. The 18 buses purchased in 1971 were described by Dr. Brooks as "to replace obsolete equipment." It appears from the Metropolitan Board's own statements that the Board and the local authorities in Nashville did not purchase one piece of transportation equipment for the purpose of converting the Metropolitan County Board of Education school system from a dual school system segregated by race into a unitary one, as called for by the District Judge's order.

At court hearing we had been puzzled as to why counsel for the Board had failed to go back to the District Court to report on the grievous circumstances which he so strongly alleged before us. Like most decrees in equity, an injunctive decree in a school segregation case is always subject to modification on the basis of changed circumstances. *Sloan* v. *Tenth School District of Wilson County,* 433 F.2d 587, 589-90 (6th Cir. 1970). Further acquaintance with the record, which, of course, the District Judge would have known in detail, leaves us in no further quandry as to the reasons for counsel's reluctance.

IV Plaintiffs-Appellants' Plan

Our review of this record convinces us that the District Judge's choice of the HEW plan as opposed to plaintiffs' plan was well within his judicial discretion. It may not be ideal, but to us it seems clearly to be a plan for ending a dual school system based on race and substituting therefor a unitary one. It promises to work and to work *now.* *Green* v. *County School Board of Kent County,* 391 U.S. 430 (1968).

V Plaintiffs-Cross-Appellants' Discrimination Claim

Plaintiffs-Cross-appellants claim that the grade school plan discriminates against Negro students in the lowest elementary grades.

The feature complained of in this issue is the transportation of black students in grades 1-4 to outlying schools, paralleled by the cross-transportation of white students in grades 5-6. In this regard the HEW plan appears to follow the pattern of the school plan approved in *Swann. Swann* v. *Board of Education, supra* at 10. The Supreme Court made no reference to this feature, and neither in *Swann* nor in this case does the record seem to provide adequate rationale for it. We do not believe, however, that we can appropriately hold that the District Judge abused his discretion in approving the HEW plan which (like the plan in *Swann*) incorporated this feature.

It may be that this is a temporary expedient or it may be that there are practical reasons to justify it for longer duration. In any event, any adverse effects of this aspect of the plan can, of course, likewise be brought to the District Judge's attention when the case is back before him.

The Intervention

Twenty-four hours before oral arguments in this appeal, the United States Department of Justice filed a motion to intervene as amicus curiae. In spite of the extraordinary delay in filing the motion, we granted leave to intervene and invited the representative of the Justice Department who appeared to address the court.

On reading the motion, hearing oral argument, and questioning counsel, we determined that the representative of the Justice Department had not had the opportunity to read the District Court record in this case and was not aware in advance of hearing that the claimed practical problems had never been presented to or adjudicated by the District Judge.

One America

This nation has been told by a Presidential Commission that our country is rapidly becoming divided into two societies — one black and one white. REPORT OF NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS 1 (3/1/68).

The Constitution of the United States was written for one nation, "indivisible." As it speaks to men's consciences, the Constitution argues against division and apartheid.

In the public domain, however, the Constitution commands. Here the constitutional command is One America.

The Constitution and the Supreme Court opinions quoted above do not command the use of busing any more than they command the use of books, desks, paper, pens, buildings, lights, heat, and other tools, equipment and supplies needed in modern life and in modern education. What the Constitution and the Supreme Court say about the principal issue of this case is that no one may forbid a school board (or a federal court) from employing any of the tools of modern life in carrying out a constitutional mandate. *Davis* v. *Board of Commissioners of Mobile County*, 402 U.S. 33, 37-38 (1971).

The District Court order in this case specifically retained jurisdiction. Thus, upon our affirmance, the door of the District Court is clearly open (as it has been!) to the parties to present any unanticipated problems (not resulting from failure to comply with its order) which may have arisen or may arise in the future.

We now affirm the findings of fact, conclusions of law, and judgments of the District Court.

The District Judge's order noted that no stay would issue and we likewise note that any stay of this order must be sought from the United States Supreme Court.

APPENDIX A

CHAPTER 37

SEGREGATION OF RACES

SECTION.
49-3701—49-3703. [Unconstitutional.]

49-3701—49-3703. [Unconstitutional.]

Compiler's Note. Under the decision of Roy v. Brittain (1956), 201 Tenn. 140, 297 S. W. (2d) 72, the statutes providing for the compulsory separation of races in the field of public education are no longer in effect, and therefore these sections have been omitted. They read:

49-3701. Interracial schools prohibited.—It shall be unlawful for any school, academy, college, or other place of learning to allow white and colored persons to attend the same school, academy, college, or other place of learning. [Acts 1901, ch. 7, § 1; Shan., § 6888a37; Code 1932, § 11395.]

49-3702. Teaching of mixed classes prohibited.—It shall be unlawful for any teacher, professor, or educator in any college, academy, or school of learning to allow the white and colored races to attend the same school, or for any teacher or educator, or other person to instruct or teach both the white and colored races in the same class, school, or college building, or in any other place or places of learning, or allow or permit the same to be done with their knowledge, consent, or procurement. [Acts 1901, ch. 7, § 2; Shan., § 6888a38; Code, § 11396.]

49-3703. Penalty for violations.—Any persons violating any of the provisions of this chapter, shall be guilty of a misdemeanor, and, upon conviction, shall be fined for each offense fifty dollars ($50.00), and imprisonment not less than thirty (30) days nor more than six (6) months. [Acts 1901, ch. 7, § 3; Shan., § 6888a39; mod. Code 1932, § 11397.]

49-3704. [Unconstitutional.]

Compiler's Note. This section was held unconstitutional in Kelly v. Board of Education (1959), 270 Fed. (2d) 209 and is, therefore, omitted. It read:

49-3704. Separate schools authorized.—Boards of education of counties, cities and special school districts in this state are authorized to provide separate schools for white and negro children whose parents, legal custodians or guardians voluntarily elect that such children attend school with members of their own race. [Acts 1957, ch. 11, § 1.]

CHAPTER 22—TRANSPORTATION OF SCHOOL CHILDREN

SECTION.

49-2201. Power of boards to provide transportation — Use to achieve racial balance prohibited.

49-2210. Color and markings of buses.

49-2213. Speed limit.

49-2201. Power of boards to provide transportation—Use to achieve racial balance prohibited.—Boards of education may provide school transportation facilities for children who live over one and one-half (1½) miles by the nearest accessible route from the school to which they are assigned by the board of education and in which they are enrolled; provided, however, that the boards of education may, in their discretion, provide school transportation facilities for children who live less than one and one-half (1½) miles by the nearest accessible route from the school in which they are enrolled, but the county shall not be entitled to receive state transportation funds for any student, other than physically handicapped children, who live less than one and one-half (1½) miles by the nearest accessible route from the school in which they are enrolled; provided, that nothing in this chapter shall be construed to prevent a board of education from transporting physically handicapped children, regardless of the distance they live from school, under rules and regulations adopted by the state board of education with the approval of the state commissioner of education; and provided further, that said boards shall have power to purchase school transportation equipment, employ school transportation personnel, and contract for transportation services with persons owning equipment, and pay for same out of funds duly authorized in the budget approved by the quarterly county court; provided further, that said boards in employing school transportation personnel and in contracting for transportation services with persons owning equipment are hereby authorized to enter into contracts for such services for periods of time as long as, but not exceeding, four (4) years from the date of making such contracts, it being the purpose of this section to permit a reasonable degree of employment security for such school transportation personnel.

Provided, however, no board of education shall use or authorize the use of any school transportation facilities for the purpose of achieving a racial balance or racial imbalance in any school by requiring the transportation of any student or pupil from one school to another or from one school district established for his neighborhood to another. [Acts 1947, ch. 92, § 1; 1949, ch. 233, § 1; C. Supp. 1950, § 2495.1 (Williams § 2495.2); Acts 1957, ch. 10, § 1; 1957, ch. 400, § 1; 1970 (Adj. S.), ch. 491, § 1.]

Amendment. The 1970 amendment added the last paragraph to this section.

Effective Date. Acts 1970 (Adj. S.), ch. 491, § 2. February 27, 1970.

[Note that a statute similar to the proviso in the last paragraph of the statute above was held unconstitutional by the United States Supreme Court. *North Carolina State Board of Education* v. *Swann,* 402 U.S. 43 (1971).]

APPENDIX B

MEMORANDUM AND ORDER

(Filed July 21, 1971)

The defendant Metropolitan County Board of Education of Nashville and Davidson County, Tennessee, filed two motions, to-wit, a motion to set aside the judgment entered in this cause on July 16, 1970, and a motion to set aside the memorandum opinion filed June 28, 1971, which motions are grounded on the failure of the Court to comply with Rule 23 of the Federal Rules of Civil Procedure.

Apparently these motions were filed without counsel for the defendant having made even a casual perusal of the record in the consolidated cases.

The history of the consolidated cases reveals:

The first cause of Robert W. Kelley, et al. v. Board of Education of the City of Nashville, Davidson County, Tennessee, et al., Civil No. 2094, was filed on September 23, 1955. This case will be hereinafter referred to as the "first case."

The case of Henry C. Maxwell, Jr., et al. v. County Board of Education of Davidson County, Tennessee, et al., Civil No. 2956, was filed on September 19, 1960. This case will be hereinafter referred to as the "second case."

These cases were consolidated by consent order filed September 10, 1963.

Rule 23 of the Federal Rules of Civil Procedure as to class action was amended, effective July 1, 1966. Prior to the amendment, class actions were referred to as "spurious" or "true" class actions. Prior to the amendment, the requirements for the maintenance and determination of the existence of a proper class action were less stringent than those requirements as set forth in Rule 23, as amended. Prior to its amendment, Rule 23 did not require detailed findings and determinations by the Court as set forth in subsection (c) of the Rule, as amended.

First Case

By Memorandum filed on January 21, 1957, the Honorable William E. Miller determined "that the rights of the plaintiffs and others similarly situated to attend the public schools of the City of Nashville without discrimination on account of race are recognized and declared, . . ." Record, Min. Book 19, at 679.

By findings of fact and conclusions of law filed on February 20, 1957, the Honorable William E. Miller adjudicated that Case No. 2094 was "properly brought as a class action under Rule 23 (a) of the Federal Rules of Civil Procedure. Title 28 U.S.C." Record, Min. Book 19, at 783.

On August 15, 1958, the case was appealed to the Sixth Circuit Court of Appeals. On July 20, 1959, the Court of Appeals affirmed the judgment of the District Court, thereby affirming the determination of the Honorable William E. Miller that this was a proper class action.

On September 10, 1963, a consent order was entered in Case No. 2094, the first case, and Case No. 2956, the second case, in which the parties agreed and stipulated that the functions and powers of the defendants Board of Education of the City of Nashville and County Board of Education of Davidson County were vested in the Metropolitan School System, and the "Transitional Board of Education for the Metropolitan Government of Nashville and Davidson County" was substituted as defendant. All orders, judgments, and other proceedings in the first case and the second case were made effective as to the substituted defendant. There was an express provision that all orders, judgments and proceedings entered previously would remain in full force and effect, and that none of the rights of the parties would be affected or prejudiced.

By order of December 3, 1964, the Metropolitan County Board of Education and its board members were made parties defendant in lieu of the Transitional Board. Again, there was a provision that all orders, judgments and proceedings in both cases would remain in full force and effect and that none of the rights of any parties would be affected or prejudiced.

By order entered on October 7, 1968, certain additional parties, including infants and their parents, were added as intervening plaintiffs to have full standing as plaintiffs.

The two cases were again appealed to the Sixth Circuit Court of Appeals. The opinion of the Court of Appeals was filed in this Court on February 8, 1971.

Second Case

On November 23, 1960, the Honorable William E. Miller adjudicated that "this is a class action brought not only by the plaintiffs for their own benefit but also on behalf of all other persons similarly situated." Record, Min. Book 24, at 114.

This case was appealed to the Court of Appeals for the Sixth Circuit on February 20, 1961.

The orders in the consolidated cases of September 10, 1963, December 3, 1964, and October 7, 1968, noted above also apply to this case.

As appears above, the Honorable William E. Miller carefully adhered to Rule 23 as it existed at the time of the filing of these two cases. The Court of Appeals did not question his determination, but affirmed the actions which he took in the matter. In addition, in the latest mandate to the District Court received from the Court of Appeals in February, 1971, this Court was instructed to implement the July 16, 1970 opinion of the Honorable William E. Miller.

This Court does not feel once a class action has been adjudicated and the action of the trial court has been reviewed by the Court of Appeals, that it is necessary or proper to continue to redetermine the standing of the plaintiffs to represent a class. The United States Supreme Court in its order implementing the amendment to Rule 23 states:

> ". . . the foregoing amendments and additions to the Rules of Civil Procedure shall take effect on July 1, 1966, and shall govern all proceedings in actions then pending, except to the extent that in the opinion of the Court their application in a particular action then pending would not be feasible or would work injustice in which event the former procedure applies."*

See also Escott v. Barchris Construction Corp., 283 F. Supp. 643 (S.D. N.Y. 1968); Polakoff v. Delaware Steeplechase and Race Assn., 264 F. Supp. 915 (Del. 1966).

This clearly indicates an intent that there should not be a continuous readjudication of this question in cases where there has been a lengthy history of litigation, both in the district and the appellate courts. Frankly, this Court feels that it is not feasible or practical to have continuous adjudication of such items.

In view of the above, the Court is not required to determine (1) whether this question should have been raised prior to the adjudication of the cause, and (2) what, if any, effect the alleged failure to comply with Rule 23 would have on the right of the individual plaintiff children who reside throughout Davidson County, Tennessee, to assert their constitutional privilege to attend an integrated school in a unitary school system.

The motions are hereby denied.

L. CLURE MORTON
United States District Judge

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* Paragraph 2, Order of the Supreme Court of the United States, February 28, 1966, reporting amendments to the Federal Rules of Civil Procedure for the United States District Courts to the United States Senate and House of Representatives. This is reported in 15 L.Ed.2d lxxv.

McCree, Circuit Judge (Concurring). I agree with the majority opinion on the issues it discusses. Nevertheless, I wish to add a few observations concerning our reasons for rejecting plaintiffs' cross-appeal and affirming, for the present, the District Court's selection of the HEW plan.

The District Court, in deciding to reject plaintiffs' plan, recognized that under *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971); *Davis* v. *School Commissioners of Mobile County*, 402 U.S. 33 (1971); and *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), its duty was to select the plan that appeared to be the most effective in eradicating the effects of past segregation, unless it would be impractical to adopt such a plan. The court found that plaintiffs' plan was "impractical and not feasible" because of the costs and transportation problems that would result from the inclusion of certain out-county schools in the plan. The court also relied upon the fact that plaintiffs' plan left to the school board the specifics of pupil assignment, grade organization, school structuring, and school district zoning.

My colleagues and I agree that there is no need at this juncture to hold that the District Court abused its discretion in thus preferring the HEW plan over that of plaintiffs. The HEW plan promises to accomplish a significant degree of integration, and it is a plan that promises realistically to work and to work *now*. *Green* v. *County School Board of New Kent County, supra*, 391 U.S. at 439. Although plaintiffs' plan might have more effectively desegregated the district's schools, its inclusion of outlying schools and its lack of specificity rendered it, in the court's opinion, impractical and unfeasible. Since the District Court has retained jurisdiction in order to supervise the implementation and effectiveness of the HEW plan, plaintiffs have the option of revising their plan to eliminate the defects noted by the court and requesting the court to make specific changes in the plan to promote, in a practical way, more effective integration. If the court should then find that plaintiffs' plan is "feasible and pedagogically sound," *Robinson* v. *Shelby County Board of Education*, 442 F.2d 255, 258 (6th Cir.), *on remand*, 330 F. Supp. 837 (W.D. Tenn. 1971), *appeal pending*, No. 71-1966 (6th Cir.), it would be required to adopt that plan. *See Harrington* v. *Colquitt County Board of Education*, No. 72-1579 (5th Cir. May 10, 1972); *Monroe* v. *Board of Commissioners of City of Jackson, Tennessee*, 453 F.2d 259, 262 (6th Cir. 1972), *cert. filed*, 40 U.S.L.W. 3491 (U.S. March 31, 1972) (No. 71-1249); *Robinson* v. *Shelby County Board of Education, supra; Davis* v. *School District of the City of Pontiac, Inc.*, 443 F.2d 573, 576-77 (6th Cir.), *cert. denied*, 404 U.S. 913 (1971). In the special circumstances of this case, therefore, there is no need to remand and thereby possibly jeopardize implementation of the first desegregation plan ordered into effect in this school district that promises, after 17 years of litigation, realistically to work now.

With respect to plaintiffs' contention that the District Court abused its discretion in adopting a plan that places the greater burden of desegregation on black children and their parents, I observe initially that, although the plan approved by the Supreme Court in *Swann* appears to have contained a provision that in some respects resembles one of the features of the HEW plan attacked by plaintiffs herein – the pairing and clustering feature that requires all children in grades one through four to attend suburban schools while all children in grades five and six attend the inner-city schools – *Swann* cannot be read as uncritically approving any plan employing a similar technique if it has an unreasonably disparate racial impact. The issue apparently was not raised in the Supreme Court and the Court did not discuss it. Moreover, the District Court in *Swann*, in approving the adoption of this feature of the school board's plan, did so "only (1) with great reluctance, (2) as a one-year, temporary arrangement, and (3) with the distinct reservation that 'one-way bussing' plans for the years after 1969-70 will not be acceptable." *Swann*

v. *Charlotte-Mecklenburg Board of Education*, 306 F. Supp. 1291, 1298 (W.D. N.C. 1969). And, following the Supreme Court's decision in *Swann*, the District Court rejected a revised plan proposed by the school board because, among other reasons, the plan continued to place a disproportionate burden on black children and their parents without showing any educational justification therefor. *Swann* v. *Charlotte-Mecklenburg Board of Education*, 328 F. Supp. 1346, 1352-53 (W.D.N.C. 1971).

Since I agree, however, that remand is not required at this time, and since I wish to make it clear what the majority opinion is *not* holding with respect to this issue, I add the following comments.

Without a compelling justification, adoption of a plan that places a greater burden of accomplishing integration on black students and their parents is impermissible, whether this be phrased in terms of an equal protection violation because the plan was the school board's product, *see, e.g., Lee* v. *Macon County Board of Education*, 448 F.2d 746, 753-54 (5th Cir. 1970); *Carr* v. *Montgomery County Board of Education*, 429 F.2d 382, 385 (5th Cir. 1970); *Brice* v. *Landis*, 314 F. Supp. 974, 978-79 (N.D. Cal. 1969), or in terms of an abuse of the court's discretion in fashioning an equitable remedy to rectify the effects of past injustice. Although adoption of such a plan might be justified on the basis of the nature of facilities involved, or on practical, administrative considerations, or on the need to adopt a temporary expedient to assure at least immediate substantial progress toward the creation of a unitary school system (*see Swann* v. *Charlotte-Mecklenburg Board of Education, supra*, 306 F. Supp. at 1298), we cannot determine the reason for the District Court's decision because the court did not discuss this issue in its memorandum opinion. Ordinarily, in such a case, we would remand for findings and conclusions by the District Court. *See Gordon* v. *Jefferson Davis*

Parish School Board, 446 F.2d 266 (5th Cir. 1971) (per curiam).

However, the same considerations that argue against remand on the issue of the court's adoption of a less effective plan are persuasive here as well. The integration plan adopted by the court has been in operation during the 1971-72 school year, and the court has retained jurisdiction of this case to oversee and, if necessary, to modify the plan's implementation. The defendant school board has indicated in this court that it intends to seek modification on the basis of asserted practical problems that have become apparent since the plan was put into effect. Plaintiffs have indicated dissatisfaction with the adoption of a plan less effective than that proposed by them, and we have indicated that they may seek further relief in the District Court. In these circumstances, I agree that we should not now disturb the District Court's approval of the HEW plan and possibly encourage the kind of delay and inaction that has caused this case to pend for 17 years. Plaintiffs may seek modification of the court's order on the ground that the plan places a disproportionate burden on black children and their parents, and this issue can be litigated and determined before the beginning of the 1972-73 school year. In this way, the disproportionate burden asserted by plaintiffs will exist at most for only a short period of time and will amount to no more than a transitory phase (assuming the absence of sufficient justification for maintaining it permanently) in the over-all creation of a unitary school system.

It is to be emphasized, nevertheless, that our refusal to take affirmative action on this issue at this time results only from the peculiar timing, posture, and history of this case. Our opinion should not be construed in any way as a qualification of the principle that a district court has an obligation to endeavor to distribute the burden of integration equitably on all races and that any deviation from this norm, without a compelling justification, is impermissible.

Finally, I observe that the majority opinion does not discuss plaintiffs-appellees' contention that they should be awarded double costs and attorneys' fees because the school board's appeal is frivolous within the meaning of Fed. R. App. P. 38. Since the class action issue obviously has no merit, and since the only issue raised by the Board that might have merit has never been presented to the District Court, I would award the requested double costs and attorneys' fees. *See Coppedge* v. *Franklin County Board of Education*, 404 F.2d 1177, 1179-80 (4th Cir. 1968); *cf. Monroe* v. *Board of Commissioners of City of Jackson, Tennessee, supra,* 453 F.2d at 262-63. The long history of this litigation would, in my opinion, make such an award particularly appropriate. *Cf. Clark* v. *Board of Education of the Little Rock School District*, 449 F.2d 493, 499 (8th Cir. 1971), *cert. denied*, 40 U.S.L.W. 3400 (U.S. Jan. 27, 1972) (No. 71-751).

[The following measures are identical to H.J. Res. 30: H.J. Res. 80 (Fuqua), and H.J. Res. 844 (Rogers)]

92d CONGRESS
1st Session

H. J. RES. 30

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. BENNETT introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution to provide that no child shall be deprived of education or otherwise be forced to attend a school not chosen by such child when such child is not in the school nearest the area of residence of such child.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"SECTION 1. No child shall be deprived of education or otherwise be forced to attend a school not chosen by such child when such child is not in the school nearest the area of residence of such child."

[The following measure is identical to H.J. Res. 43: H.J. Res. 823 (Hicks of Mass.)]

92d CONGRESS
1st Session

H. J. RES. 43

IN THE HOUSE OF REPRESENTATIVES

January 22, 1971

Mr. Brinkley introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States prohibiting involuntary busing of students.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"Article —

"Section 1. The involuntary busing of any student to a school or the required attendance of any student at a school outside the student's local school zone for the purpose of achieving racial balances or quotas is prohibited.

"SEC. 2. For the purposes of this article, the term 'local school zone' shall mean the area within which a student resides."

[The following measures are substantively identical to H.R. 66: H.R. 87 (Bevill), and H.J. Res. 216 (Nichols)]

92D CONGRESS
1ST SESSION

H. R. 66

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. ABERNETHY introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

Proposing an amendment to the Constitution of the United States with respect to freedom of choice for children attending elementary and secondary schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"SECTION 1. The right of any person to choose freely the public elementary or secondary school which his child or ward will attend shall not be impaired by any provision of this Constitution or by any law, regulation, ordinance, or action of the United States or of any State.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation."

[The following measure is identical to H.J. Res. 75: H.J. Res. 606 (Burke of Fla.)]

92d CONGRESS
1st Session

H. J. RES. 75

IN THE HOUSE OF REPRESENTATIVES

January 22, 1971

Mr. Frey introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to the busing or involuntary assignment of students.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"Nothing in the Constitution of the United States shall empower any official or court of the United States to issue any order requiring or encouraging, or directing or permitting any funds to be used or withheld to require or encourage, the transportation or busing of pupils or students from one school to another or one school district to another or to force any student or students attending any elementary or secondary school in their own neighborhood, where such school is not established purposely to perpetuate segregation, to attend any other school against the choice of his or her parents, parent or guardian, in order to accomplish any objective or purpose, express or implied, under this Constitution."

[The following measure is identical to H.J. Res. 79: H.J. Res. 652 (Chappell, Sikes, Daniel of Va., Waggonner)]

92D CONGRESS
1ST SESSION

H. J. RES. 79

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. FUQUA introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States with respect to freedom of choice in attending public schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by Congress:

"ARTICLE —

"No citizen shall be compelled against his will to do or perform any act required on the basis of race, color, or national origin."

92d CONGRESS
1st Session

H. J. RES. 94

IN THE HOUSE OF REPRESENTATIVES

January 22, 1971

Mr. Griffin introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States with respect to the establishment of public schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by Congress:

"Article —

"Each State shall create public school districts in such number as is necessary to provide public education at the elementary and secondary school levels. The geographic and population limits of each school district shall be such as to insure the most efficient operation of schools and to provide for the highest quality of education possible. Each such school district shall be governed by a board of education consisting of five members elected by the residents of the school district who have attained the age of twenty-one. The term of office of each member of a board of education shall be two years. The employment and assignment of teachers within a school district shall be within the exclusive authority of the appropriate board of education; and each such board shall have exclusive authority to assign pupils: *Provided,* That no child may be denied admission to a public school because of his race, creed, color, religion, or national origin; and no child may be compelled to attend a school because of his race, creed, color, religion, or national origin."

92d CONGRESS
1st Session

H. J. RES. 150

IN THE HOUSE OF REPRESENTATIVES

January 22, 1971

Mr. Rarick introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to powers not delegated to the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"The power to establish or supervise schools or other educational facilities within a State is declared to be a power not delegated to the United States by the Constitution, nor prohibited by it to the States, and is reserved to the States respectively, or to the people."

[The following measure is identical to H.J. Res. 179: H.J. Res. 653 (Chappell, Sikes, Daniel of Va., Waggoner)]

92d CONGRESS
1st Session

H. J. RES. 179

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. SIKES introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States with respect to freedom of choice in attending public schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by Congress:

"ARTICLE —

"The right of any citizen to be assigned to the public school of his parents' or guardian's choice if a minor, or to the public school of his choice if an adult, shall not be denied or abridged by the United States either directly or by means of a condition to the receipt of Federal financial assistance."

[The following measures are identical to H.J. Res. 561: H.J. Res. 564 (Edwards of Ala.), H.J. Res. 597 (Satterfield), H.J. Res. 651 (Thompson of Ga., Abbitt, Broyhill of Va., Buchanan, Collins of Tex., Duncan, Fisher, Kuykendall, McClure, Rarick, Schmitz, Scott, Sikes), H.J. Res. 658 (Thompson of Ga., Blanton), H.J. Res. 860 (Price of Tex.), and H.J. Res. 875 (Dickinson)]

92D CONGRESS
1ST SESSION

H. J. RES. 561

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 1971

MR. THOMPSON of Georgia (for himself, Mr. LANDGREBE, and Mr. ASHBROOK) introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to freedom from forced assignment to schools or jobs because of race, creed, or color.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"AMENDMENT ——.—FREEDOM FROM FORCE

"SECTION 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

"SEC. 2. No public school teacher or other public employee of the United States of America or one of the several States or any political subdivision thereof shall, because of his race, creed, or color, be assigned to or required to work at any particular job or location.

"SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

92d CONGRESS
1st Session

H. J. RES. 579

IN THE HOUSE OF REPRESENTATIVES

April 27, 1971

Mr. Whitten introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), that the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress:

"Article —

"Section 1. No governmental authority shall at any time force any school or school district which is desegregated as that term is defined in title IV of the Civil Rights Act of 1964, Public Law 88–352, to take any action to force the busing of students; to require the abolishment of any school so desegregated; or to force on account of race, creed, or color the transfer of students to or from a particular school so desegregated over the protest of his or her parents or parent."

92D CONGRESS
1ST SESSION

H. J. RES. 587

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1971

MR. ARCHER introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to freedom from forced assignment to schools because of race, creed, or color.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States:

"AMENDMENT .—FREEDOM FROM FORCE

"SECTION 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

"SEC. 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission."

[The following measures are identical to H.J. Res. 600: H.J. Res. 747 (Gibbons), H.J. Res. 820 (Wright), H.J. Res. 856 (Andrews of Ala.), H.J. Res. 858 (Clark), and H.J. Res. 1035 (Kemp)]

92D CONGRESS
1ST SESSION

H. J. RES. 600

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 1971

Mr. YOUNG of Florida introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to the busing or involuntary assignment of students.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"Article —

"Section 1. The right of students to attend the public school nearest their place of residency shall not be denied or abridged for reasons of race, color, national origin, religion, or sex.

"Sec. 2. The Congress shall have the power to enforce this article by appropriate legislation."

[The following measures are identical to H.J. Res. 607: H.J. Res. 640 (Baring), and H.J. Res. 781 (Cabell, Roberts)]

92D CONGRESS
1ST SESSION

H. J. RES. 607

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1971

Mr. CASEY of Texas introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to insure the rights of parents and local school authorities to determine which school the children in that locality will attend.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right and duty of designating which public elementary and secondary school a child or ward will attend belongs jointly to the parents or guardian of each child, or ward, and to the local school board for the district in which the child resides, or other local educational authority, and shall not be impaired or denied, either directly or indirectly, by this Constitution or by any law, ordinance, regulation, or action of the United States, or of any State or political subdivision thereof.

"SEC. 2. The Congress shall have power to enforce this article with appropriate legislation."

[The following measures are identical to H.J. Res. 620: H.J. Res. 593 (Mizell, Jonas), H.J. Res. 646 (Mizell, Baker, Buchanan, Camp, Collins of Tex., Derwinski, Devine, Flowers, Jonas, Lent, Minshall, Montgomery, Poage, Scott), H.J. Res. 702 (Taylor), H.J. Res. 769 (Downing), H.J. Res. 777 (Whitehurst), H.J. Res. 841 (Jones of Tenn.), H.J. Res. 870 (Jones of N.C.), H.J. Res. 874 (Don Clausen), H.J. Res. 877 (Stuckey), H.J. Res. 886 (Mizell, Baker, Buchanan, Camp, Del Clawson, Collins of Tex., Derwinski, Devine, Flowers, Jonas, King, Lent, Minshall, Montgomery, Poage, Scott, Zion), H.J. Res 888 (Quillen), H.J. Res 927 (Bray), H.J. Res. 977 (Whalley), H.J. Res. 1021 (Halpern), and H.J. Res. 1190 (Mrs. Andrews of Ala.)]

92D CONGRESS
1ST SESSION

H. J. RES. 620

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1971

MR. LENT introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to neighborhood schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"SECTION 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

"SEC. 2. Congress shall have the power to enforce this article by appropriate legislation."

92d CONGRESS
1st Session

H. J. RES. 628

IN THE HOUSE OF REPRESENTATIVES

May 11, 1971

Mr. Fountain introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to attendance assignments in public schools on the basis of race or color.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"Article —

"No governmental authority shall at any time, nor for any purpose, shape, determine or prescribe attendance assignments in public schools on the basis of race or color."

92d CONGRESS
1st Session

H. J. RES. 636

IN THE HOUSE OF REPRESENTATIVES

May 12, 1971

Mr. Lennox introduced the following joint resolution; which was referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of the final passage of this joint resolution:

"Article —

"Section 1. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

"SEC. 2. No public school teacher or other public employee of the United States of America or one of the several States or any political subdivision thereof shall, because of his race, creed, or color, be employed, promoted, or assigned to or required to work at any particular job or location.

"SEC. 3. The Congress shall have the power to enforce this article by appropriate legislation."

1882

92d CONGRESS
1st Session

H. J. RES. 854

IN THE HOUSE OF REPRESENTATIVES

September 8, 1971

Mr. Purcell introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relative to freedom from forced assignment to schools because of race, creed, or color.

Whereas the American educational tradition of neighborhood school systems has been endangered by recent decisions of the Supreme Court and has been further disrupted by contradictory statements and actions of the President of the United States and high officials of his administration; and

Whereas thousands of American schoolchildren are being uprooted from familiar neighborhood schools and are being diffused throughout entire metropolitan areas by bus; and

Whereas the ensuing dissolution of the neighborhood school concept, and the resulting strife accompanying it poses drastic consequences for the overall quality of American education and has worked great hardship and suffering on children, parents, and communities; and

Whereas Congress has enacted prohibitions on at least seven occasions against the Federal Government requiring the forced transportation of schoolchildren to achieve predetermined levels of attendance with regard to race, creed, or color within individual schools: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission:

"ARTICLE —

"SECTION 1. The right and duty of designating which public elementary and secondary school a child or ward will attend belongs jointly to the parents or guardian of each child, or ward, and to the local school board, or other local educational authority, for the district in which the child resides, and shall not be impaired or denied, either directly or indirectly, by any law, ordinance, regulation, or action of the United States, or of any State or political subdivision thereof.

"SEC. 2. No agency or authority of the Federal Government or of any of the official governing bodies of the several States, including the political subdivisions therein, shall enact or otherwise promulgate any legislation, ordinance, regulation, or other statute which maintains or would tend to maintain any distinction between the quality of education offered by any of the public elementary and secondary schools within the purview of such agency, authority, or official governing body.

"SEC. 3. The Congress shall have power to enforce this article with appropriate legislation."

92d CONGRESS
1st Session

H. J. RES. 855

IN THE HOUSE OF REPRESENTATIVES

September 9, 1971

Mr. Abbitt introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to open admissions to public schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"Article —

"Section 1. No official or court of the United States shall issue any order providing for the transportation of pupils or students to public schools where such transportation is intended to overcome, or has the effect of overcoming, racial imbalance in public schools.

"SEC. 2. No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school.

"SEC. 3. The Congress shall have the power to enforce this article by appropriate legislation."

92d CONGRESS
1st Session

H. J. RES. 983

IN THE HOUSE OF REPRESENTATIVES

November 30, 1971

Mr. Chamberlain introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to the assignment and transportation of pupils to public schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States:

"Article—

"Section 1. This Constitution shall not be construed to require that pupils be assigned or transported to public schools on the basis of their race, color, religion, or national origin.

"SEC. 2. The Congress shall have the power to enforce this article by appropriate legislation.

"SEC. 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress."

1889

92D CONGRESS
2D SESSION

H. J. RES. 1039

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1972

Mr. MINSHALL introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to insure the right of States to establish and prescribe the powers of their local educational agencies.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"SECTION 1. Each State shall have the exclusive right to establish and determine the jurisdiction and powers of public agencies in the State dealing with education."

92d CONGRESS
2d Session

H. J. RES. 1043

IN THE HOUSE OF REPRESENTATIVES

February 1, 1972

Mr. Hall introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to give to local school authorities the right to determine the extent to which students are provided transportation to their schools.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by conventions in three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"SECTION 1. Each local public school authority in a State shall have the right, to the extent not inconsistent with State law, to determine the extent to which, and the manner in which, students are provided transportation to their schools."

92D CONGRESS
2D SESSION

H. J. RES. 1073

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1972

Mr. BENNETT introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to prohibit compelling attendance in schools other than the one nearest the residence and to insure equal educational opportunities for all students wherever located.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

"SECTION 1. No student shall be compelled to attend a public school other than the one nearest his residence.

"SEC. 2. The Congress shall have the power to enforce by appropriate legislation the provisions of this article; and to insure equal educational opportunities for all students wherever located."

92d CONGRESS
2d Session

H. J. RES. 1076

IN THE HOUSE OF REPRESENTATIVES

February 23, 1972

Mr. Casey of Texas introduced the following joint resolution; which was referred to the Committee on the Judiciary

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JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to insure the rights of parents and local school authorities to determine which school the children in that locality will attend.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right and duty of designating which public elementary and secondary school a child or ward will attend belongs jointly to the parents or guardian of each child, or ward, and to the local school board for the district in which the child resides, or other local educational authority, and shall not be impaired or denied, either directly or indirectly, by this Constitution or by any law, ordinance, regulation, or action of the United States, or of any State or political subdivision thereof.

"SEC. 2. No child shall be refused the right to attend the school of his choice because of race, color, or creed.

"SEC. 3. The Congress shall have power to enforce this article with appropriate legislation."

[The following measure is identical to H.R. 65: H.R. 1280 (Fisher)]

92d CONGRESS
1st Session

H. R. 65

IN THE HOUSE OF REPRESENTATIVES

January 22, 1971

Mr. Abernethy introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To prohibit the involuntary busing of schoolchildren and to adopt freedom of choice as a national policy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title IV of the Civil Rights Act of 1964 (78 Stat. 349) is amended by adding at the end thereof the following new section:

"Sec. 411. Nothing in this title shall authorize or require any school board, or empower any court to order any school board, to assign any student to a public school or to transport any student away from the school of his choice, on the basis of his race, color, religion, or national origin."

92d CONGRESS
1st Session

H. RES. 135

IN THE HOUSE OF REPRESENTATIVES

January 22, 1971

Mr. Sikes submitted the following resolution; which was referred to the Committee on the Judiciary

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RESOLUTION

Whereas school systems throughout the Nation are in a state of chaos and disruption as a result of conflicting decisions of lower Federal courts dealing with the desegregation of the Nation's public schools, and

Whereas school administrators and board members are without adequate guidelines for determining what is required to achieve unitary school systems, and

Whereas the scope and coverage of legislative guidelines enacted by the Congress for ending discrimination in the Nation's public schools have yet to be definitely determined, and

Whereas it is imperative that these critical issues be settled in order that the Nation's public schools may effect an orderly transition in the coming year: Now, therefore, be it

Resolved, That it is the sense of the House of Representatives that the United States Supreme Court should consider and decide desegregation cases presently pending before it at the earliest possible date in order that the Nation's public school systems may be provided with adequate judicial guidelines consistent with the mandate of Congress, as reflected in section 401 (b) of the Civil Rights Act of 1964, which states: "desegregation shall not mean the assignment of students to schools in order to overcome racial imbalance."

[The following measures are identical to H.R. 159: H.R. 374 (Rarick, Edwards of La., Long of La., Hébert, Waggonner, Caffery, Passman), H.R. 717 (Flowers), H.R. 2346 (Nichols), H.R. 2491 (Lennon), and H.R. 4213 (Davis of Ga.)]

92d CONGRESS
1st Session

H. R. 159

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. GRIFFIN introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Civil Rights Act of 1964 by adding a new title, which restores to local school boards their constitutional power to administer the public schools committed to their charge, confers on parents the right to choose the public schools their children attend, secures to children the right to attend the public schools chosen by their parents, and makes effective the right of public school administrators and teachers to serve in the schools in which they contract to serve.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Civil Rights Act of 1964 (42 U.S.C. 1971, 1975a–1975d, 2000a–2000h–6) is amended by adding at the end thereof the following new title:

"TITLE XII—PUBLIC SCHOOL—FREEDOM OF CHOICE

"SEC. 1201. As used in this title—

"(a) 'State' means any State, district, commonwealth, territory, or possession of the United States.

"(b) 'Public school' means any elementary or secondary educational institution, which is operated by a State, subdivision of a State, or governmental agency within a State, or any elementary or secondary educational institution which is operated, in whole or in part, from or through the use of governmental funds or property, or funds or property derived from a governmental source.

"(c) 'School board' means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

"(d) 'Student' means any person required or permitted by State law to attend a public school for the purpose of receiving instruction.

"(e) 'Parent' means any parent, adoptive parent, guardian, or legal or actual custodian of a student.

"(f) 'Faculty' means the administrative and teaching force of a public school system or a public school.

"(g) 'Freedom of choice system' means a system for the assignment of students to public schools and within public schools maintained by a school board operating a system of public schools in which the public schools and the classes it operates are open to students of all races and in which the students are granted the freedom to attend public schools and classes chosen by their respective parents from among the public schools and classes available for the instruction of students of their ages and educational standings.

"SEC. 1202. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold, such financial assistance from any such program or activity on account of the racial composition of the student body at any public school or in any class at any public school in any case whatever where the school board operating such public school or class maintains in respect to such public school and class a freedom of choice system as defined in section 1201 (g).

"SEC. 1203. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school by way of grant, loan, or otherwise shall withhold, or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school to transport students from such public school to any other public school for the purpose of altering in any way the racial composition of the student body at such public school or any other public school.

"SEC. 1204. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity of any public school in any public school system by way of grant, loan, or otherwise shall withhold or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce any school board operating such public school system to close any public school, and transfer the students from it to another public school for the purpose of altering in any way the racial composition of the student body at any public school.

"SEC. 1205. No department, agency, officer, or employee of the United States empowered to extend Federal financial assistance to any program or activity at any public school in any public school system by way of grant, loan, or otherwise shall withhold or threaten to withhold any such Federal financial assistance from any such program or activity at such public school to coerce or induce the school board operating such public school system to transfer any member of any public school faculty from the public school in which the member of the faculty contracts to some other public school for the purpose of altering the racial composition of the faculty at any public school.

"SEC. 1206. Whenever any department, agency, officer, or employee of the United States violates or threatens to violate section 1202 or section 1203 of this Act, the school board aggrieved by the violation or threatened violation or the parent of any student affected or to be affected by the violation or threatened violation may bring a civil action against the United States in the District Court of the United States complaining of the violation or threatened violation, and the District Court of the United States shall have jurisdiction to try and determine the civil action irrespective of the value or the amount involved in it and enter such judgment or issue such order as may be necessary or appropriate to redress the violation or prevent the threatened violation. Any civil action against the United States under this section may be prosecuted in the judicial district in which the school board aggrieved by the violation or threatened violation has its principal office, or in the judicial district in which any school affected or to be affected by the violation or threatened violation is located, or in the judicial district in which students affected or to be affected by the violation or threatened violation reside, or in the judicial district encompassing the District of Columbia. The United States hereby expressly consents to be sued in any civil action authorized by this section, and hereby expressly agrees that any judgment entered or order issued in any such civil action shall be binding on the United States and its offending department, agency, officer, or employee, subject to the right of the United States to secure an appellate review of the judgment or order by appeal or certiorari as is provided by law with respect to judgments or orders entered against the United States in other civil actions in which the United States is a defendant.

"SEC. 1207. No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system as defined in section 1201 (g) of this Act, or requiring any school board to transport any students from one public school to another public school or from one place to another place or from one school district to another school district in order to effect a change in the racial composition of the student body at any school or place or in any school district, or denying to any student the right or privilege of attending any public school or class at any public school chosen by the parent of such student in conformity with a freedom of choice system as defined in section 1201 (g) of this Act, or requiring any school board to close any school and transfer the students from the closed school to any other school for the purpose of altering the racial composition of the student body at any public school, or precluding any school board from carrying into effect any provision of any contract between it and any member of the faculty of any public school it operates specifying the public school where the member of the faculty is to perform his or her duties under the contract."

92d CONGRESS
1st Session

H. R. 1295

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1971

Mr. FLYNT introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To define the application and effective date of court orders effecting desegregation of faculty and students in public school systems.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no order, decree, or judgment of the Supreme Court of the United States or any inferior court of the United States effecting desegregation of students or faculty should be issued unless it is applied in a uniform fashion to all public school systems in each of the States and the District of Columbia.

Sec. 2. That no order, decree, or judgment of the Supreme Court of the United States or any inferior court of the United States ordering a reassignment of students and faculty members within a school system shall have an effective date during a school term, but that such effective date shall be confined to the beginning of a school term subsequent to the date of such order, decree or judgment.

92d CONGRESS
1st Session

H. R. 5670

IN THE HOUSE OF REPRESENTATIVES

March 8, 1971

Mr. Abbitt introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title VI of the Civil Rights Act of 1964 with respect to the use in good faith by State and local authorities of freedom of choice systems for the assignment of students to public elementary and secondary schools.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VI of the Civil Rights Act of 1964 is amended by adding at the end thereof a new section as follows:

"Sec. 606. Nothing contained in this title shall be construed to authorize any department or agency to prescribe any requirement, or take any action to effectuate compliance with any requirement adopted pursuant to this title, which is designed to or has the effect of interfering with or prohibiting the application or enforcement in good faith by State and local authorities of any system for student assignment based on an unrestricted exercise on the part of each student of his freedom to choose the public elementary or secondary school in which he is to be assigned."

92D CONGRESS
1ST SESSION

H. R. 10614

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 13, 1971

Mr. SCHMITZ introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To limit the jurisdiction of the Supreme Court and of the district courts in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Appellate jurisdiction; limitations

"(a) Notwithstanding the provisions of sections 1253, 1254, and 1257 of this chapter, the Supreme Court shall not have jurisdiction to review, by appeal, writ of certiorari, or otherwise, any case arising out of any State statute, ordinance, rule, regulation, or part thereof, or arising out of any

Act interpreting, applying, or enforcing a State statute, ordinance, rule, or regulation, which relates to assigning or requiring any public school student to attend a particular school because of his race, creed, or color."

(b) The section analysis at the beginning of chapter 81 of such title 28 is amended by adding at the end thereof the following new item:

"1259. Appellate jurisdiction; limitations.".

SEC. 2 (a) Chapter 85 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1363. Limitations on jurisdiction

"Notwithstanding any other provision of law, the district courts shall not have jurisdiction of any case or question which the Supreme Court does not have jurisdiction to review under section 1259 of this title."

(b) The section analysis at the beginning of chapter 85 of such title 28 is amended by adding at the end thereof the following new item:

"1363. Limitations on jurisdiction.".

SEC. 3. The amendments made by the first two sections of this Act shall take effect on the date of the enactment of this Act, except that such amendments shall not apply with respect to any case which, on such date of enactment, was pending in any court of the United States.

92d CONGRESS
1st Session

H. R. 10693

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 15, 1971

Mr. FULTON of Tennessee introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To prohibit any United States court from issuing any order or from enforcing any order requiring the excessive transportation of students from one school to another or from one school district to another in order to achieve racial balance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no United States court may in the exercise of its jurisdiction issue (1) any order requiring the excessive transportation of students from one school to another or from one school district to another on the basis of race, religion, or color among students in such schools or districts, or (2) any order to enforce such an order, wherein such order would cause undue hardship to the school system or its students, or frustrate the basic function of the public educational system.

92d CONGRESS
1st Session

H. R. 11312

IN THE HOUSE OF REPRESENTATIVES

October 19, 1971

Mr. Broomfield (for himself, Mr. William D. Ford, Mr. O'Hara, Mr. Nedzi, Mr. McDonald of Michigan, Mr. Dingell, and Mrs. Griffiths) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To postpone the effectiveness of any United States district court order requiring the busing of schoolchildren for the purpose of achieving racial balance until such time as all appeals in connection with such order have been exhausted, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding any other law or provision of law, in the case of any order on the part of any United States district court which requires the transfer or transportation of any student or students from any school attendance area prescribed by competent State or local authority for the purposes of achieving a balance among students with respect to race, sex, religion, or socioeconomic status, the effectiveness of such order shall be postponed until all appeals in connection with such order have been exhausted or, in the event no appeals are taken, until the time for such appeals has expired.

92d CONGRESS
1st Session

H. R. 11401

IN THE HOUSE OF REPRESENTATIVES

October 21, 1971

Mr. Fulton of Tennessee (by request) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To declare the policy of Congress and to define the powers of Federal courts with respect to transportation or assignment of students to achieve racial balance in the public schools.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under section 5 of the fourteenth amendment, empowering the Congress "to enforce by appropriate legislation, the provisions of this article," and section 1 of article I of the Constitution, vesting all legislative powers in the Congress, the remedy for State-imposed segregation in the public schools is primarily a matter for legislative rather than judicial concern. The Supreme Court of the United States has commented on the failure of Congress, in the

Civil Rights Act of 1964, to provide the courts "material assistance in answering the question of remedy for State-imposed segregation." It is hereby declared to be the national policy that transportation of pupils or students to achieve racial balance should not be required, whatever the cause or origin of the segregation for which a remedy is sought.

SEC. 2. No restraining order or injunction shall hereafter be granted by any court of the United States, or a judge or the judges thereof, in any case or controversy involving education, requiring the transportation or assignment of pupils or students from one school to another or one school district to another in order to achieve a racial balance in any school, nor shall any such order or injunction heretofore issued, to the extent that same requires such transportation or assignment, be enforced by contempt proceedings or otherwise.

SEC. 3. Nothing herein shall be construed to prohibit local school authorities from fashioning other remedies in their discretion to disestablish dual school systems.

[The following measure is identical to H.R. 12827: H.R. 13176 (Scott, Baker, Nichols, Robinson of Va.)]

92D CONGRESS
2D SESSION

H. R. 12827

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 1972

Mr. SCOTT introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To clarify the jurisdiction of certain Federal courts with respect to public schools and to confer such jurisdiction upon certain other courts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court created by Act of Congress and having general jurisdiction, original or appellate, with respect to cases or controversies arising under the laws or Constitution of the United States, shall have any jurisdiction to hear or decide cases or controversies involving the public schools. The jurisdiction terminated by this Act shall be vested in the courts of the several States and, with respect to such cases and controversies arising in the District of Columbia or in any other territory or possession of the United States, in the Federal courts of an essentially local jurisdiction in such district, territory, or possession. In each such case or controversy, there is vested in the Supreme Court of the United States appellate jurisdiction by writ of certiorari to the highest State or territorial court exercising jurisdiction over such case or controversy.

[The following measure is identical to H.R. 13024: H.R. 13202 (Ashbrook)]

92D CONGRESS
2D SESSION

H. R. 13024

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1972

Mr. CRANE introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To extinguish Federal court jurisdiction to require attendance at a particular school of any student because of race, color, creed, or sex.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no court of the United States shall have jurisdiction to require the attendance at a particular school of any student because of race, color, creed, or sex.

92D CONGRESS
2D SESSION

H. R. 13534

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 1972

MR. DINGELL (for himself and Mr. O'HARA) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Judicial Code with respect to orders of Federal courts intended to desegregate public schools as required by the United States Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public School Improvement and Desegregation Act of 1972".

SEC. 2. (a) Part VI of title 28, United States Code, is amended by adding at the end thereof the following new chapter:

"Chapter 177.—ORDERS RELATING TO DESEGREGATION OF PUBLIC SCHOOLS

"Sec.
"2921. Statement of findings and policy.
"2922. Contents of orders.

"§ 2921. Statement of findings and policy

"The Congress hereby finds that orders of courts of the United States requiring the transportation of students or the merger of school districts as a means of eliminating racial segregation have failed to provide students with the benefits expected from such desegregation and have, on the contrary, resulted in a denial of rights of students and their parents.

"It is therefore the policy of the Congress in enacting this chapter to enable the courts of the United States to issue orders which will result in desegregation of public schools as required by the Constitution without the sacrifice of other rights entitled to the same protection.

"§ 2922. Contents of orders

"No court of the United States shall issue an order requiring the transportation of students or the merger of school districts as a means of eliminating racial segregation in schools if—

"(1) the local educational agency affected has adopted a plan for its schools approved by the Secretary of Health, Education, and Welfare under section 2 of the Public School Improvement and Desegregation Act of 1972,

"(2) the court determines such plan provides for assignments of students to schools on a racially nondiscriminatory basis and in a manner which will result in the elimination of segregation in such schools to the maximum extent feasible without requiring the transportation of students, or their attendance in the schools of another such agency, for that purpose,

"(3) the plan will so improve the quality of education in the schools of the agency that no student will suffer inequality of educational opportunity by reason of the school he attends, and

"(4) funds are or will be available to carry out the plan."

(b) The table of contents for part VI of title 28, United States Code, is amended by adding at the bottom thereof the following:

"177. Orders relating to desegregation of public schools.".

SEC. 2. (a) Where a court of the United States determines that a local educational agency must take action to eliminate segregation in its schools, the Secretary of Health, Education, and Welfare may make a grant to such agency to assist it to carry out a plan for such action submitted to him by the local educational agency. The Secretary shall approve the plan if he determines—

(1) the plan provides for assignment of students to schools on a racially nondiscriminatory basis and in a manner which will result in the elimination of segregation in the schools of such agency to the maximum extent

feasible without requiring the transportation of students, or their attendance in the schools of another such agency, for that purpose,

(2) the plan will so improve the quality of education in the schools of the agency that no student will suffer inequality of educational opportunity by reason of the school he attends,

(3) the plan contains assurances satisfactory to the Secretary that the agency will not reduce its fiscal effort for the provision of free public education to less than that of the academic year preceding that for which the plan is in effect, and

(4) funds will be available from State and local sources for payment of the non-Federal share of the cost of carrying out the plan.

(b) The Secretary may make a grant to a local educational agency if (1) the plan it submits meets the requirements of subsection (a), (2) in the case of grants for years after the initial year's grant, the agency is carrying out the plan according to its terms. The amount of the grant shall be equal to 75 per centum of those net additional costs which are determined by the Secretary, in accordance with regulations prescribed by him, to be the result of implementing the plan.

(c) There is authorized to be appropriated for making grants under this Act for the fiscal year ending June 30, 1973, and each of the four succeeding fiscal years, the sum of $5,000,000,000. In the event the amounts appropriated for a fiscal year are inadequate to make all grants authorized by this section, the Secretary shall determine which grants to make on the basis of his determination of the relative urgency of need.

[The following measure is identical to H.R. 13916: H.R. 13936 (Teague of Tex.)]

92D CONGRESS
2D SESSION

H. R. 13916

IN THE HOUSE OF REPRESENTATIVES

MARCH 20, 1972

Mr. McCULLOCH (for himself, and Mr. GERALD R. FORD) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To impose a moratorium on new and additional student transportation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Student Transportation Moratorium Act of 1972."

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that:

(1) For the purpose of desegregation, many local educational agencies have been required to reorganize their school systems, to reassign students, and to engage in the extensive transportation of students.

(2) In many cases these reorganizations, with attendant increases in student transportation, have caused substantial hardship to the children thereby affected, have impinged on the educational process in which they are involved, and have required increases in student transportation often in excess of that necessary to accomplish desegregation.

(3) There is a need to establish a clear, rational, and uniform standard for determining the extent to which a local educational agency is required to reassign and transport its students in discharging its obligation under the fourteenth amendment to the United States Constitution to desegregate its schools.

(4) The Congress is presently considering legislation to establish such a standard and define that obligation.

(5) There is a substantial likelihood that, pending enactment of such legislation, many local educational agencies will be required to implement desegregation plans that impose a greater obligation than required by the fourteenth amendment and permitted by such pending legislation and that these plans will require modification in light of the legislation's requirements.

(6) Implementation of desegregation plans will in many cases require local educational agencies to expend large amounts of funds for transportation equipment, which may be utilized only temporarily, and for its operation, thus di-

verting those funds from improvements in educational facilities and instruction which otherwise would be provided.

(7) The modification of school schedules and student assignments resulting from implementation of desegregation plans and any subsequent modification in light of the legislation's requirements would place substantial unnecessary administrative burdens on local educational agencies and unduly disrupt the educational process.

(b) It is, therefore, the purpose of this Act to impose a moratorium on the implementation of Federal court orders that require local educational agencies to transport students and on the implementation of certain desegregation plans under title VI of the Civil Rights Act of 1964, in order to provide Congress time to fashion such a standard, and to define such an obligation.

MORATORIUM ON ORDERS AND PLANS

SEC. 3. (a) During the period beginning with the day after the date of enactment of this Act and ending with July 1, 1973, or the date of enactment of legislation which the Congress declares to be that contemplated by section 2(a)(4), whichever is earlier, the implementation of any order of a court of the United States entered during such period shall be stayed to the extent it requires, directly or indirectly, a local educational agency—

(1) to transport a student who was not being trans-

ported by such local educational agency immediately prior to the entry of such order; or

(2) to transport a student to or from a school to which or from which such student was not being transported by such local educational agency immediately prior to the entry of such order.

(b) During the period described in subsection (a) of this section, a local educational agency shall not be required to implement a desegregation plan submitted to a department or agency of the United States during such period pursuant to title VI of the Civil Rights Act of 1964 to the extent that such plan provides for such local educational agency to carry out any action described in clauses (1) or (2) of subsection (a) of this section.

(c) Nothing in this Act shall prohibit an educational agency from proposing, adopting, requiring, or implementing any desegregation plan, otherwise lawful, that exceeds the limitations specified in subsection (a) of this section, nor shall any court of the United States or department or agency of the Federal Government be prohibited from approving implementation of a plan that exceeds the limitations specified in subsection (a) of this section if the plan is voluntarily proposed by the appropriate educational agency.

SEC. 4. For purposes of this Act—

(a) The term "desegregation" means desegregation as defined by section 401 (b) of the Civil Rights Act of 1964.

(b) The term "local educational agency" means a local educational agency as defined by section 801 (f) of the Elementary and Secondary Education Act of 1965.

(c) A local educational agency shall be deemed to transport a student if it pays any part of the cost of such student's transportation, or otherwise provides such transportation.

92D CONGRESS
2D SESSION

H. R. 14461

IN THE HOUSE OF REPRESENTATIVES

APRIL 18, 1972

Mr. WAGGONNER introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To exercise the authority of Congress to enforce the fourteenth amendment to the Constitution by defining for the purposes of the equal protection guarantee the term "unitary school system", and to declare the policy of the United States respecting certain voluntary transfers by students among certain schools of any school system.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress, pursuant to its authority under section 5 of the fourteenth article of amendment to the Constitution of the United States, establishes the meaning of the term "unitary school system", for the purposes of equal protection guarantee of the first section of such article, as follows: A unitary school system is one within which no person is to be effectively excluded from any school because of race, color, or national origin, and this shall be so, whether or not such school system was in the past segregated de jure or de facto.

Sec. 2. The Congress declares it to be the policy of the United States to encourage school systems to adopt programs permitting any student who attends a school in which persons of his race, color, or national origin constitute a majority of the students to transfer, if he desires to do so, to the nearest appropriate school in which persons of his race, color, or national origin constitute a minority of the students.

APPENDIX A

COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,
SCHOOL OF LAW,
New York, N.Y., April 17, 1972.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: Members of the Columbia Law Faculty join in signing the enclosed statement on busing. Similar statements are being circulated at Harvard and several other leading law schools. You are free to make whatever use you think appropriate of the statement. If you have any questions please call Professor Benno Schmidt, Jr., 212-280-2627 or me, at 212-280-2624.

Sincerely yours,

CURTIS J. BERGER,
Professor of Law.

Enclosure.

STATEMENT ON BUSING

The undersigned members of the Faculty of Law of Columbia University are strongly opposed to the two bills proposed by President Nixon for passage by Congress on the subject of busing of school children. We believe that the two bills, if enacted, would sacrifice the enforcement of constitutional rights, impair the functions of the judiciary under a rule of law, and jeopardize improved schooling for many, many children. More specifically, our reasons for opposition are as follows:

(1) The Supreme Court declared the segregated dual school system unconstitutional in the *Brown* case 18 years ago. For much of that period, opponents of the *Brown* decision have successfully avoided and delayed its enforcement. Only recently has the enforcement process achieved any momentum. Enactment of the two bills at this time will certainly be seen—by blacks and whites alike—as a major break in the Nation's resolve to realize the constitutional rights of black children under the *Brown* decision. Moreover, the very proposal of these bills—especially given the psychological impact of the President's speech—will seriously hamper and may well cripple efforts to achieve compliance with *Brown* now under way.

(2) The two bills call for a very substantial change in the standards and modes of enforcement of *Brown* by the courts. Their enactment by Congress under Section 5 of the Fourteenth Amendment invokes a rarely exercised power whose limits are not at all clear. Strong doubts of constitutionality exist, with constitutional lawyers differing as the outcome of the bills become law and their legality were tested in the courts.

Whatever may be the scope of the Congressional power, the proposed bills clearly would misdirect it. The President is encouraging Congress to react in a panic to busing, as though that were the key issue, when he should be exercising his leadership to calm the public and to call on Congress to deal with busing as one aspect of a comprehensive program for ending dual systems of segregated schools. This failure of leadership is highlighted by two key facts. According to Administration sources, while about 40% of the Nation's school children are bused to school, at most 1% or 2% of this total are bused for reasons of desegregation. Secondly, in calling for an expenditure of 2.5 billion dollars on "inner-city schools," the Administration has not added one dollar to existing programs or proposals it has previously made. The net effect of the present proposals is to cut back sharply on existing remedies for segregation while offering little or nothing in their place.

(3) The two bills involve a needless and dangerous disruption of the power relationships between the President and the Congress on the one side and the Supreme Court and other federal courts on the other. As recently as one year

ago in the *Swann* case, in light of almost 20 years of experience with enforcing *Brown*, the Supreme Court approved of court-ordered busing as one means of disestablishing dual school systems—a means which in particular cases might be necessary to bring about a unitary, desegregated school system. The Court did not insist that busing was required in any mechanical way or that its disadvantages should be ignored by federal judges.

The President has suggested that lower federal courts have gone beyond the Supreme Court—and in his view, improperly so. One would then expect the Administration to press appeals of these decisions to the Supreme Court, and perhaps to ask that Congress mandate stays of execution pending the appeals. Instead, the Administration presents proposals which amount to a declaration of no confidence in the courts and a repudiation of what they have done under the Constitution and laws of the United States. If we take the President at his word, this is premature and unnecessary. It risks the very undermining of the Supreme Court's standing that the President has on other occasions said should be avoided.

(4) One need not be an advocate of large-scale busing to see the harms and dangers in the proposed scheme. Serious questions about various aspects of busing have been raised by both blacks and whites. But the Administration has not asked Congress to regulate alleged excesses of busing in a selective, sensitive way. Rather, the Administration seeks to eliminate all busing as a remedy for desegregation by placing rigid mechanical limitations on it. The practical effect is that busing could no longer be used even as a minor but necessary part of a desegregation plan that emphasized, for example, new geographic districts, or school pairings. It is in cases of this kind that the threats to the enforcement of *Brown* and to the proper role of the courts are clearest.

We call on Congress to reject the two proposed bills on busing.

Curtis J. Berger, Harlan M. Blake, George Cooper, Harold S. Edgar, E. Allan Farnsworth, Wolfgang G. Friedmann, William R. Fry, Nina M. Galston, Richard N. Gardner, Harvey J. Goldschmid, Frank P. Grad, Louis Henkin, Harold L. Korn, Louis Lusky, Michael C. Meltsner, Arthur W. Murphy, Harriet Rabb, Albert J. Rosenthal, Leonard M. Ross, Benno C. Schmidt, Abraham D. Sofaer, Philip G. Schrag, Michael I. Sovern, Peter L. Strauss, H. Richard Uviller, Walter Werner, William F. Young, John M. Kernochan.

EMORY UNIVERSITY,
SCHOOL OF LAW,
Atlanta, Ga., April 25, 1972.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR MR. CELLER: The undersigned law teachers are strongly opposed to the two bills proposed by President Nixon for passage by Congress on the subject of busing of school children. We believe that the two bills, if enacted, would sacrifice the enforcement of constitutional rights, impair the functions of the judiciary under a rule of law, and jeopardize improved schooling for many, many children. More specifically, our reasons for opposition are as follows:

(1) The Supreme Court declared the segregated dual school system unconstitutional in the *Brown* case 18 years ago. For much of that period, opponents of the *Brown* decision have successfully avoided and delayed its enforcement. Only recently has the enforcement process achieved any momentum. Enactment of the two bills at this time will certainly be seen—by blacks and whites alike—as a major break in the Nation's resolve to realize the constitutional rights of black children under the *Brown* decision. Moreover, the very proposal of these bills—especially given the psychological impact of the President's speech—will seriously hamper and may well cripple efforts now under way to achieve compliance with *Brown*.

(2) The two bills call for a very substantial change in the standards and modes of enforcement of *Brown* by the courts. Their enactment by Congress

under Section 5 of the Fourteenth Amendment invokes a rarely exercised power whose limits are not at all clear. Strong doubts of constitutionality exist, with constitutional lawyers differing as to the outcome if the bills were to become law and their legality tested in the courts.

Whatever may be the scope of the Congressional power, the proposed bills clearly would misdirect it. The President is encouraging Congress to react in a panic to busing, as though that were the key issue, when he should be exercising his leadership to calm the public and to call on Congress to deal with busing as one aspect of a comprehensive program for ending dual systems of segregated schools. This failure of leadership is highlighted by two key facts. According to Administration sources, while about 40 per cent of the Nation's school children are bused to school, at most 1 per cent or 2 per cent of this total are bused for reasons of desegregation. Secondly, in calling for an expenditure of 2.5 billion dollars on "inner-city schools," the Administration has not added one dollar to existing programs or proposals it has previously made. The net effect of the present proposals is to cut back sharply on existing remedies for segregation while offering little or nothing in their place.

(3) The two bills involve a needless and dangerous disruption of the proper relationships between the President and the Congress on the one side and the Supreme Court and other federal courts on the other. As recently as one year ago in the *Swann* case, in light of almost 20 years of experience with enforcing *Brown*, the Supreme Court approved of court-ordered busing as one means of disestablishing dual school systems—a means which in particular cases might be necessary to bring about a unitary, desegregated school system. The Court did not insist that busing was required in any mechanical way or that its disadvantages should be ignored by federal judges.

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We call on Congress to reject the two proposed bills on busing.

Prof. C. Michael Abbott, Prof. Nathaniel E. Gozansky, Prof. Melvin Gutterman, Prof. Lucy S. Henritze, Dean Ben F. Johnson, Prof. G. Stanley Joslin, Prof. George Savage King, Prof. Michael J. Lynch, Prof. Harold L. Marquis, Prof. Frank J. Vandall.

THE GEORGE WASHINGTON UNIVERSITY,
THE NATIONAL LAW CENTER,
Washington, D.C., May 2, 1972.

Congressman EMANUEL CELLER,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: Enclosed is a statement in opposition to President Nixon's legislative proposals on public school busing which was prepared by members of the faculty of the Harvard Law School.

This is to advise you that this statement has been endorsed by the following members of the faculty of the National Law Center of the George Washington University.

Richard C. Allen
John Banzhaf III
Jerome A. Barron
Elyce Zenoff Ferster
Monroe H. Freedman
David C. Green
J. Reid Hambrick
Irving Kayton
Roger S. Kuhn
Arthur S. Miller
Ralph C. Nash, Jr.
Donald P. Rothschild
Russell B. Stevenson, Jr.

Sincerely yours,

Roger S. Kuhn,
Professor of Law.

The undersigned law teachers are strongly opposed to the two bills proposed by President Nixon for passage by Congress on the subject of busing of school children. We believe that the two bills, if enacted, would sacrifice the enforcement of constitutional rights, impair the functions of the judiciary under a rule of law, and jeopardize improved schooling for many, many children. More specifically, our reasons for opposition are as follows:

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(2) The two bills call for a very substantial change in the standards and modes of enforcement of *Brown* by the courts. Their enactment by Congress under Section 5 of the Fourteenth Amendment invokes a rarely exercised power whose limits are not at all clear. Strong doubts of constitutionality exist, with constitutional lawyers differing as to the outcome if the bills were to become law and their legality tested in the courts.

Whatever may be the scope of the Congressional power, the proposed bills clearly would misdirect it. The President is encouraging Congress to react in a panic to busing, as though that were the key issue, when he should be exercising his leadership to calm the public and to call on Congress to deal with busing as one aspect of a comprehensive program for ending dual systems of segregated schools. This failure of leadership is highlighted by two key facts. According to Administration sources, while about 40 per cent of the Nation's school children are bused to school, at most 1 per cent or 2 per cent of this total are bused for reasons of desegregation. Secondly, in calling for an expenditure of 2.5 billion dollars on "inner-city schools," the Administration has not added one dollar to existing programs or proposals it has previously made. The net effect of the present proposals is to cut back sharply on existing remedies for segregation while offering little or nothing in their place.

(3) The two bills involve a needless and dangerous disruption of the proper relationships between the President and the Congress on the one side and the Supreme Court and other federal courts on the other. As recently as one year ago in the *Swann* case, in light of almost 20 years of experience with enforcing *Brown*, the Supreme Court approved of court-ordered busing as one means of disestablishing dual school systems—a means which in particular cases might be necessary to bring about a unitary, desegregated school system. The Court did not insist that busing was required in any mechanical way or that its disadvantages should be ignored by federal judges.

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STATEMENT SIGNED BY LAW SCHOOL FACULTY MEMBERS

The undersigned law teachers are strongly opposed to the two bills proposed by President Nixon for passage by Congress on the subject of busing of school children. We believe that the two bills, if enacted, would sacrifice the enforcement of constitutional rights, impair the functions of the judiciary under a rule of law, and jeopardize improved schooling for many, many children. More specifically, our reasons for opposition are as follows:

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(2) The two bills call for a very substantial change in the standards and modes of enforcement of *Brown* by the courts. Their enactment by Congress under Section 5 of the Fourteenth Amendment invokes a rarely exercised power whose limits are not at all clear. Strong doubts of constitutionality exist, with constitutional lawyers differing as to the outcome if the bills were to become law and their legality tested in the courts.

Whatever may be the scope of the Congressional power, the proposed bills clearly would misdirect it. The President is encouraging Congress to react in a panic to busing, as though that were the key issue, when he should be exercising his leadership to calm the public and to call on Congress to deal with busing as one aspect of a comprehensive program for ending dual systems of segregated schools. This failure of leadership is highlighted by two key facts. According to Administration sources, while about 40 per cent of the Nation's school children are bused to school, at most 1 per cent or 2 per cent of this total are bused for reasons of desegregation. Secondly, in calling for an expenditure of 2.5 billion dollars on "inner-city schools," the Administration has not added one dollar to existing programs or proposals it has previously made. The net effect of the present proposals is to cut back sharply on existing remedies for segregation while offering little or nothing in their place.

(3) The two bills involve a needless and dangerous disruption of the proper relationships between the President and the Congress on the one side and the Supreme Court and other federal courts on the other. As recently as one year ago in the *Swann* case, in light of almost 20 years of experience with enforcing *Brown*, the Supreme Court approved of court-ordered busing as one means of disestablishing dual school systems—a means which in particular cases might be necessary to bring about unitary, desegregated school system. The Court did not insist that busing was required in any mechanical way or that its disadvantages schould be ignored by federal judges.

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We call on Congress to reject the two proposed bills on busing.

Signed by the following members of Harvard Law School:

Paul M. Bator, Derrick A. Bell, Jr., Gary Bellow, Derek C. Bok, Stephen G. Breyer, Victor Brudney, Clark Byse, A. James Casner, Abram Chayes, Archibald Cox, John P. Dawson, Richard H. Field, Paul A. Freund, Charles M. Haar, Philip B. Heymann, Benjamin Kaplan, Andrew L. Kaufman, and Lance Liebman.

Louis Loss, John H. Mansfield, Michael J. McIntyre, Karen S. Metzger, Frank I. Michelman, Arthur R. Miller, Albert M. Sacks, Frank E. A. Sander, David L. Shapiro, Richard B. Stewart, Arthur E. Sutherland, Donald T. Trautman, Laurence H. Tribe, Donald F. Turner, James Vorenberg, Lloyd L. Weinreb, and Ralph U. Whitten.

We call on Congress to reject the two proposed bills on busing.

Signed by the following members of the University of Pennsylvania Law School:

Martin J. Aronstein, Paul Bender, Paul W. Bruton, Martha A. Field, David Filvaroff, Jefferson B. Fordham, Daniel I. Halperin, Howard Lesnick, Clarence Morris, William Nelson, Covey Oliver, Richard Sloane, Edward Sparer, Ralph S. Spritzer, and Bernard Wolfman.

We call on Congress to reject the two proposed bills on busing.

Signed by the following members of Columbia Law School:

Curtis J. Berger, Harlan M. Blake, George Cooper, Harold S. Edgar, E. Allan Farnsworth, Wolfgang G. Friedmann, William R. Fry, Nina M. Galston, Richard N. Gardner, Harvey J. Goldschmid, Frank P. Crad, Louis Henkin, Harold L. Korr, and Louis Lusky.

Michael C. Meltsner, Arthur W. Murphy, Harriet Rabb, Albert J. Rosenthal, Leonard M. Ross, Benno C. Schmidt, Abraham D. Sofaer, Philip G. Schrag, Michael L. Sovern, Peter L. Strauss, H. Richard Uviller, Walter Werner, William F. Young, and John M. Kernochan.

NEW YORK UNIVERSITY,
SCHOOL OF LAW, FACULTY OF LAW,
New York, N.Y., April 28, 1972.

HON. EMANUEL CELLER,
U.S. House of Representatives,
Committee on the Judiciary,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of March 21 requesting my comment on two legislative proposals submitted by the President to the Congress that relate to pupil assignment and transportation. Rather than reply only for myself, I submit herewith a copy of a letter that I have sent to Senator Mondale embodying my views and the views of 27 other faculty members at the New York University School of Law. I hope this statement is helpful to you in your review of this important legislation.

Sincerely,

NORMAN DORSEN,
Professor of Law.

New York University,
School of Law, Faculty of Law,
New York, N.Y., April 27, 1972.

Senator **Walter Mondale,**
U.S. Senate,
Washington, D.C.

Dear Senator Mondale: The undersigned law teachers are strongly opposed to the two bills proposed by President Nixon for passage by Congress on the subject of busing of school children. We believe that the two bills, if enacted, would sacrifice the enforcement of constitutional rights, impair the functions of the judiciary under a rule of law, and jeopardize improved schooling for many, many children. More specifically, our reasons for opposition are as follows:

(1) The Supreme Court declared the dual school system unconstitutional in the *Brown* case 18 years ago. For much of that period, opponents of the *Brown* decision have successfully avoided and delayed its enforcement. Only recently has the enforcement process achieved any momentum. Enactment of the two bills at this time will certainly be seen—by blacks and whites alike—as a major break in the Nation's resolve to realize the constitutional rights of black children under the *Brown* decision. Moreover, the very proposal of these bills—especially given the psychological impact of the President's speech—will seriously hamper and may well cripple efforts now under way to achieve compliance with *Brown*.

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Whatever may be the scope of the Congressional power, the proposed bills clearly would misdirect it. The President is encouraging Congress to react in a panic to busing, as though that were the key issue, when he should be exercising his leadership to calm the public and to call on Congress to deal with busing as one aspect of a comprehensive program for ending dual systems of segregated schools. This failure of leadership is highlighted by two key facts. According to Administration sources, while about 40 per cent of the Nation's school children are bused to school, at most 1 per cent or 2 per cent of this total are bused for reasons of desegregation. Secondly, in calling for an expenditure of 2.5 billion dollars on "inner-city schools," the Administration has not added one dollar to existing programs or proposals it has previously made. The net effect of the present proposals is to cut back sharply on existing remedies for segregation while offering little or nothing in their place.

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We call on Congress to reject the two proposed bills on busing.

Edward J. Bander
Ralph F. Bischoff
Thomas G. S. Christensen
James S. Eustice
Walter G. Farr, Jr.
Stanley N. Futterman
Albert H. Garretson
Gidon A. G. Gottlieb
Joseph W. Hawley
Lawrence P. King
Fannie J. Klein
Charles L. Knapp
Homer Kripke
Thomas M. Franck
Leroy Clark
Daniel Collins
Norman Dorsen
Steven H. Leleiko
Charles S. Lyon
Robert B. McKay
Gerhard O. W. Mueller
Oliver Rosengart
Lawrence J. Schultz
Harry I. Subin
John Y. Taggart
George E. Zeitlin
Peter L. Zimroth
Victor Zonana

Sincerely,

NORMAN DORSEN,
Professor of Law.

APPENDIX B

NEW YORK UNIVERSITY,
SCHOOL OF LAW, FACULTY, OF LAW,
New York, N.Y., February 29, 1972.

Hon. EMANUEL CELLER,
Chairman, House Committee on the Judiciary,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in reply to yours of January 6, 1972, requesting my comments on *H.J. Res. 620*. Please forgive the long delay in my response, which, I am embarrassed to confess, was partly due to my naive assumption that there was no real likelihood that the House or the country would be forced to confront, in a serious way, a proposed constitutional amendment as draconian as H.J. Res. 620. The events of the past few weeks have rather chilled my optimism, so I now belatedly respond to your kind invitation.

In my judgment, adoption of the proposed resolution would be a mistake, of large, unforeseeable and perhaps historic proportions. It would not only seriously hamper (if not halt) efforts to desegregate the public schools, but it would be a virtual repudiation of *Brown* v. *Board of Education* and the hopes that that case embodies and symbolizes for a society that eventually is not divided by color or caste.

Before elaborating, I should note that its passage now, while the public is in a particular and very likely extreme mood, would be altogether inconsistent with the desirable caution with which we as a nation have historically amended the Constitution. It should not be forgotten that the Constitution is not a code of education. An amendment passed in response to short-run movements of public opinion would be an unfortunate precedent which could be followed on other occasions when public feeling runs high on a particular issue—at great cost to the Constitution's value as an instrument embodying the permanent, or at least the long-range values of the society.

Returning to the fundamental objection, it is important to stress that while recent publicity has focused on anti-busing proposals, H.J. Res. 620 represents much more than an attack on busing. The proposal is an *anti-segregation* measure which undoubtedly would have the effect of foreclosing remedial devices which have proven successful in correcting the injustices of *de jure* segregation. Measures such as pairing of school districts, alteration of attendance zones, and minority to majority transfers, are effective desegregation techniques which have been used by school authorities and the courts since *Brown* v. *Board of Education*. They all depend upon identification of a student's race and the use of that identification in student's assignments. This formulation of school policy may be and usually is quite apart from busing and, in some cases, may actually reduce the need for busing. As the Supreme Court recently stated in *North Carolina State Bd. of Ed.* v. *Swann*, 402 U.S. 43, 46 (1971):

> "Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems."

The necessity of taking account of race in order to design effective remedies has also been recognized in cases involving racial discrimination in housing, employment and the assignment of teachers. See, e.g., *United States* v. *Montgomery County Bd. of Ed.*, 395 U.S. 225 (1969); *Contractors Ass'n of Eastern Pennsylvania* v. *Schultz*, 442 F. 2d 159 (3d Cir.); *cert. den.* 40 U.S.L.W. 3165 (1971); *Norwalk CORE* v. *Norwalk Redevelopment Agency*, 395 F. 2d 920 (2d Cir. 1968). In this connection, I should add that the apparent racial neutrality of H.J. Res. 620 is deceptive. It is by now axiomatic that an official policy which appears to be neutral on its face may perpetuate the effects of prior racial discrimination. This principle has long been recognized in employment and voting discrimination cases. See *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971); *Gaston County* v. *United States*, 395 U.S. 255 (1969). It was recently reaffirmed in *Swann* in the context of school segregation:

> "'Racially neutral' assignment plans proposed by school authorities to a district court may be inadequate; such plans may fail to counteract the continuing effects of past school segregation . . . In short, an assignment plan is not acceptable simply because it appears to be neutral."

In other words, the apparently neutral language of H.J. Res. 620, like the "racially neutral" assignment plans invalidated in the *Swann* case, would operate in practice as an instrument to continue freezing racial segregation in the public schools, or where steps have been taken to alter this pattern, to enable local boards, relying on racially segregated housing patterns and the "neighborhood schools" concept, to reverse these efforts.

This, in the last analysis, would be the ultimate effect and undoubtedly is the principal objective of the proponents of H.J. Res. 620—to undercut *Brown* v. *Board of Education* and everything it stands for. That is, to move the country away from racial equality and to a hardening of racial lines. It is difficult to be sure whether the actual effects of this movement would be worse than the symbolic ones to all people everywhere.

Sincerely,

NORMAN DORSEN,
Professor of Law.

THE UNIVERSITY OF CHICAGO,
THE LAW SCHOOL,
Chicago, Ill., March 7, 1972.

Hon. EMANUEL CELLER,
U.S. House of Representatives,
Committee on the Judiciary, Washington, D.C.

DEAR CONGRESSMAN CELLER: This is in response to your inquiry about one of the so-called anti-busing amendments, H.J. Res. 620, which provides that "no public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school."

At initial glance, this proposed amendment to the Constitution looks unobjectionable. It seems merely to make the prohibition against racial discrimination applicable to public school assignments. But such a view—which would probably render the proposed amendment as superfluous as it might be objectionable—is too superficial. It ignores the major thrust of the proposed amendment, which is to limit the capacity of local school boards to integrate their schools, either on their own or at the direction of a court.

H.J. Res. 620 should be evaluated only after two conditions are posited. The first is that segregated patterns of student attendance—whites in one set of schools, blacks in another—may result even if students are assigned to schools on the basis of a criterion other than race, such as geographic proximity. The second is that often the most direct and effective technique for achieving integration is to assign students to schools on the basis of race.

Both of these conditions are satisfied in the typical urban community of today, where there is some population density and racial residential segregation. In that instance, a prohibition against assignment on the basis of race—such as that contained in H.J. Res. 620—will not avoid school segregation; for even if the students are assigned to the school nearest their home (the "neighborhood school"), racial segregation will result. Indeed, such a prohibition would tend to perpetuate the segregation, for it would make it unlawful for the local school board to assign some white students (because of their race) to the formerly all-black schools and some black students (because of their race) to the formerly all-white schools.

True, even in the situation hypothesized, one could imagine alternative ways of achieving integration that do not entail assigning students to the various schools on the basis of their race. For example, the board could abandon all the existing school plants and construct a single school (an "educational park") large enough to accommodate all of the students in the community. Then integration would be achieved presumably without violating the prohibition of

H.J. Res. 620. But, by confining the community to such an expensive and elaborate remedy and foreclosing the obvious and immediate one—assignments based on race, H.J. Res. 620 makes the achievement of the integration goal more costly, more difficult, and more unlikely.

I recognize that in many situations it is thought unfair to judge an individual on the basis of his race, and that it might be argued that H.J. Res. 620 is designed, not to impede integration, but rather to prohibit such unfair or wrongful conduct. The suggestion is that H.J. Res. 620 would be analogous to a fair employment law or the Fifteenth Amendment. But I find such a view of H.J. Res. 620 unpersuasive. It overlooks the fact that the proposed amendment deals only with the assignment of students among various schools, presumably of equal quality. The allocation of a scarce good, such as jobs, or votes, or admission to a school college, is not at stake. H.J. Res. 620 regulates officials simply trying to decide to which particular school a child should be assigned. Moreover, in attempting to make such a decision, it cannot be said that the child's race is irrelevant when integration is the objective. The wrongness inherent in using race in part stems from the view that race is an irrelevance—that, for example, it tells one nothing about an individual's productivity or his qualifications to vote. But race is not an irrelevant characteristic when the official is seeking to obtain integration. Indeed, no characteristic is more relevant.

H.J. Res. 620 must thus be viewed as a means of limiting the capacity of local school boards to integrate their schools, and should be so judged. But in making that judgment it is important to recognize that there are three quite distinct bases for a commitment to integration—a commitment that would lead you to oppose H.J. Res. 620. One is a belief that the arguments in favor of integration are of sufficient persuasiveness to allow the various local school boards to choose for themselves whether they wish to integrate their schools. The local board should be free to decide that integration is good educational policy. H.J. Res. 620 would cut off this local option, at least where the locality chose to accomplish that goal in the most direct way—through racial assignments.

A second basis for the commitment to integration is the view—now being advanced and tested in the courts—that segregation itself impairs the educational opportunities of minorities, and that the obligation to integration derives from the Equal Protection Clause. The theory is that segregation stigmatizes the blacks, deprives them of educationally significant contacts with the socially and economically dominant groups, and reduces the share of resources allocated to the black schools simply because they are attended only by members of the minority group. H.J. Res. 620—in an indirect fashion—rejects that theory; for it makes the obvious remedy—integration through racial assignments—unlawful.

Finally, the commitment to integration could be based on the belief that the Supreme Court was correct in declaring, in *Swann* v. *Charlotte-Mecklenburg Board of Education*, that the local school boards are obliged to integrate their schools—even if it be through racial assignments—as a means of liquidating or eradicating the traditional dual school system and its vestiges. As the Supreme Court put it in a companion case, *North Carolina State Board of Education* v. *Swann*, in which a state anti-busing law, quite similar to H.J. Res. 620, was struck down:

"... But more important the statute exploits an apparently neutral form to control school assignment plans by directing that they be "color blind"; that requirement, against the background of segregation, would render illusory the promise of *Brown* v. *Board of Education*, 347 U.S. 483 (1954). Just as the race of students must be considered in determining whether a constitutional violation has occurred, so also must race be considered in formulating a remedy. To forbid, at this stage, all assignments made on the basis of race would deprive school authorities of the one tool absolutely essential to fulfillment of their constitutional obligation to eliminate existing dual school systems."

There is some question as to whether H.J. Res. 620 will be read by the courts in such a manner as to be applicable when the racial assignments are made to satisfy an obligation under the Equal Protection Clause of the Fourteenth Amendment. But if it were, then the practical impact of H.J. Res. 620 would be most cynical—it would deny a remedy for an acknowledged constitutional wrong. And in that sense, it comes close to being the first constitutional amendment that is unconstitutional.

Respectfully yours,

Owen M. Fiss,
Professor of Law.

CASE WESTERN RESERVE UNIVERSITY,
Cleveland, Ohio, April 14, 1972.

Hon. EMANUEL CELLER,
Congressman, House of Representatives, Chairman, House Judiciary Committee, Washington, D.C.

DEAR CONGRESSMAN CELLER: Thank you very much for your letter of March 29, 1972, with which you enclosed a copy of H.R. 13916 (the proposed "Student Transportation Moratorium Act of 1972", before your Committee); you also enclosed copies of H.R. 13915 and H.R. 13983 (different versions of the "Equal Educational Opportunities Act of 1972", both before the House Committee on Education and Labor).

I have undertaken to study the bills carefully, concentrating on H.R. 13916, and have reached the conclusion that there is a serious constitutional objection to H.R. 13916. I should like it to be understood that my constitutional objection is addressed to only one basic provision of H.R. 13916 (Sec. 3), and then only to a particular application of the bill. There are, of course, some broader constitutional questions involved in H.R. 13916, principally whether the proposed "Equal Educational Oppotrunity Act of 1972" and, with it, the "Student Transportation Moratorium Act of 1972" are constitutionally valid in the light of the Supreme Court's decision in *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 U.S. 1, 29-31 (1971), which in interpreting the Fourteenth Amendment and *Brown* v. *Board of Education*, 347 U.S. 483 (1954), sanctioned the use by the courts of more extensive busing as a device for accomplishing desegregation. I assume *arguendo*, without subscribing to it, the principle that the substantive provisions of the "Equal Educational Opportunities Act of 1972" (Title II of H.R. 13915, and Title I of H.R. 13983) are a constitutionally valid "enforcement" by Congress pursuant to Section V of the Fourteenth Amendment to the Constitution. Nevertheless, it is my opinion that Section 3 of H.R. 13916 violates the Constitution, not for any reasons of constitutional equal protection, but for being contrary to the broad constitutional principle of separation of powers and the principle of the independence of the judiciary. In particular, I should like to direct my attention to a situation where a lower court has ordered more extensive busing as a device of desegregation and where in certain circumstances under section 3(a) of H.R. 13916 the implementation of such court orders would be stayed perhaps until July 1, 1973. In other words, you have a situation here where Congress attempts to nullify, or at least postpone, a court decision because it desires in the future to establish a standard different from that which was established by the court; by the proposed bill Congress attempts to change the equitable effect of the previous court decree. (It should be noted that in the case at hand the standard laid down by the court in the exercise of its equitable powers involves a constitutional question.)

Such an attempt by Congress, in my opinion, violates the principle of the independence of the judiciary, and the Supreme Court opinion of *United States* v. *Klein*, 80 U.S. (13 Wall) 128 (1871) supports that view. The *Klein* opinion, of long standing, has never been questioned and, in fact, was in 1962 referred to in full detail by Mr. Justice Harlan in the celebrated *Glidden Company* v. *Zdanok* opinion (370 U.S. 530, at 568 (1962)) as demonstrating an "unconstitutional attempt to invade the judicial province by prescribing a rule of decision in a pending case." I shall attempt to describe the *Klein* situation in fuller detail in order to show its importance in the present case but before doing so I should like to make it clear that certain broader issues are not involved in my attack: I am not here contending that Congress may not have taken away the *jurisdiction* of the counts to handle desegregation matters. H.R. 13916 does not attempt to deprive the courts of *jurisdiction* in desegregation matters; thus, H.R. 13916 does not abolish court *jurisdiction* in matters under Title IV of the Civil Rights Act of 1964 (78 Stat. 241, 246 (1964)). I am not here concerned with the question whether such a provision would have been desirable or, in some situations, may have been unconstitutional. Consequently, we are not here concerned with the many different types of case which have sanctioned Congressional annulment of the courts' *jurisdiction* to hear a case. Thus the following cases, for instance, are of no relevance here: *District of Columbia* v. *Eslim*, 183 U.S. 62 (1901) (repeal sanctioned of a *jurisdictional* act though prior thereto plaintiff had recovered judgment in the lower court); *Burner* v. *United States*, 343 U.S. 112 (1952) (change of statutory language held to have ended *jurisdiction* of a pending suit);

Lauf v. *E. G. Shinner & Co.*, 303 U.S. 323, 330 (1938) (generally sustaining the power of Congress to limit the *jurisdiction* of the inferior courts of the power of Congress to limit the *jurisdiction* of the inferior courts of the United States); or the celebrated *Ex parte McCardle* case (74 U.S. (7 Wall.) 506 (1869)) (the famous habeas corpus decision, which in a later opinion (*Bruner* v. *United States, supra*) the Supreme Court summarized as holding that "when a law conferring *jurisdiction* is repealed without any reservation as to pending cases, all cases fall with the law"). None of these cases are of relevance here because H.R. 13916 does not attempt to annul jurisdiction; it seeks to prescribe for the judiciary a rule of decision in pending cases. Nor is there any need here for considering the general provisions on the effect of repealer statutues (1 U.S.C. § 109) since H.R. 13916 in no way attempts to repeal any statute. It merely seeks to nullify existing interpretations of statutory, and in fact constitutional, provisions.

The facts in *United States* v. *Klein* were as follows: The Captured and Abandoned Property Act had authorized suit in the Court of Claims for the return of seized Confederate property on proof that plaintiff had given no aid or comfort to the rebellion. In *United States* v. *Padelford*, 76 U.S. (9 Wall.) 531 (1869) the Supreme Court had ruled that the statute was satisfied when the claimant had received a pardon under a Presidential general amnesty. Immediately thereafter Congress, while the appeal in the *Klein* case was pending, enacted a rider to an appropriation bill, forbidding proof of loyalty by pardon. In *United States* v. *Klein*, 80 U.S. (13 Wall.) 128 (1871), the Supreme Court held this statute unconstitutional. Recognizing that Congress had "complete control over the organization and existence" of the Court of Claims, the Supreme Court stated the act amounted to a "rule of decision, in causes pending, precribed by Congress. . . . What is this [the act] but to prescribe a rule for the decision of a cause in a particular way? In the case before us, the Court of Claims has rendered judgment for the claimant and an appeal has been taken to this court. We are directed to dismiss the appeal, if we find that the judgment must be affirmed, because of a pardon granted to the intestate of the claimants. . . . Can we do so without allowing that the legislature may prescribe rules of decision to the Judicial Department of the government in cases pending before it? We think not: . . . We must think that Congress has inadvertently passed the limit which separates the legislative from the judicial power. It is of vital importance that these powers be kept distinct." (at 145, 146, 147)

In my opinion, this clear holding in the *Klein* strongly suggests that, similarly, the "student Transportation Moratorium Act of 1972" is unconstitutional. In both situations there was a prior Supreme Court ruling (*United States* v. *Padelford* and *Swann* v. *Charlotte-Mecklenburg Board of Education*, respectively); in both situations the Supreme Court decision had interpreted a prescribed scheme (in the *Klein* case prescribed by statute; here even more directly prescribed by the Constitution); and in both situations an attempt is made to change the rule of decision in pending cases. Certainly there are some differences between two situations (the *Klein* case being a suit against the federal government, etc.) but I believe that these dissimilarities are minor. The basic matter is that, like in *Klein*, H.R. 13916 is a violation of the fundamental doctrine of separation of powers.

As indicated, these comments are basically limited to H.R. 13916, but it should be noted that the broad constitutional principle, enunciated in the *Klein* opinion, of an attempted interference with the judiciary would seem to apply specifically also to a certain provision of the "Equal Educational Opportunities Act of 1972" (section 406 of H.R. 13915 and sec. 306 of H.R. 13983). Under the proposed rule there would be a mandatory reopening of previous court orders decreeing desegregation under the Civil Rights Act. Aside from the larger constitutional questions involved, such a solution, in my opinion, would also raise the *Klein* questions as a possible interference with the judiciary. The Supreme Court's opinion in *Pope* v. *United States*, 323 U.S. 1, 8–9 (1944), when mentioning the *Klein* holding, suggested that that case under certain conditions also prohibits a Congressional act from setting aside a judgment in a case already decided. Such an unconstitutional attempt, it might be urged, would be made in the above-mentioned sections of the "Equal Educational Opportunities of 1972."

In summary, I should like to emphasize that my comments are not addressed to the broad constitutional arguments against H.R. 13916, which are based on the Fourteenth Amendment and which would attempt to show that H.R. 13916 in certain situations would deprive individuals of constitutional rights. Quite aside from these broad arguments, my comments are intended to show that, even if the Fourteenth Amendment arguments were invalid, H.R. 13916 would suffer from its violation of the constitutional principle of separation of powers. Finally, I have sought to demonstrate another fact: even assuming that there is broad, unlimited power in Congress to abolish the *jurisdiction* of the courts—and there may be legitimate reasons for doubting the broad scope of such power—the *Klein* principle shows that Congress does not, as a "minor" power, possess the authority, without changing a statute, to prescribe a rule of decision for the courts in pending litigation. Such an attempt is being considered by the Supreme Court as unconstitutional interference with the judiciary, in violation of the principle of separation of powers. In other words, Congressional power to abolish *jurisdiction* does not, as a "minor" matter, include authority to violate the principle of separation of powers.

These comments were included in a letter addressed to you, Mr. Chairman, which thanked you for sending me the pertinent bills. Of course, I hereby give you full authority to utilize the comments in any way you desire and to include them as part of the record of hearings on H.R. 13916.

Very respectfully yours,

SIDNEY B. JACOBY,
Professor of Law.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., March 6, 1972.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR SIR: This letter is being written in response to your request for my views about House Joint Resolution 620, proposing an amendment to the Constitution of the United States relative to neighborhood schools.

I am opposed to passage of House Joint Resolution 620. I see it as essentially an effort to slice off one piece of an enormously complicated and difficult problem and to resolve it in a fashion that ignores the remainder.

My general premise is that the genius of the Constitution and especially the Bill of Rights, including the Fourteenth Amendment, is that it speaks to ideal principles in large terms capable of continuous evolution. While I recognize the necessity of occasional constitutional amendment to deal with specific problems, I start with a presumption against amendments that fill the document with statutory-type specifics.

My thinking on the School issue begins with agreement with the conclusion of the Supreme Court in Brown v. Board of Education. That decision, however, represents the beginning, not the end, of thought about the relationship of the Constitution to schools—surely one of the most complicated issues that government, legislative, executive, and judicial, has had to face this century. The problem is especially intractible because ever since *Brown*, it has been perceived as involving elements both of racial equality and educational quality.

The Supreme Court and the Congress, however, have together made a start over the past 18 years towards attacking both the educational quality and racial inequality problems. I need not describe to you the various programs that have been aided with federal funds despite the inability of educators to reach any consensus about the most effective use of such money. The Congress has not waited for any such consensus but perceiving the crucial importance of saving the educational structure, it has made its own judgments. Its action has demonstrated a responsible and progressive concern for children's education.

Likewise the history of the Supreme Court's attempt to seek fair and effective remedies to well established and deeply rooted compulsory segregation has been a history of responsible and thoughtful action. In fact, the most serious criticism of the Supreme Court has been that its careful, deliberate efforts to avoid disruption have encouraged those who wished to retain segregation in some form and delayed justice to the intended beneficiaries of *Brown*. Only recently has the Supreme Court in Green v. County School Board and Swann v. Charlotte-Mecklenburg Board of Education moved to require and endorse desegregation plans requiring more than token desegregation.

Thus far the Supreme Court has spoken only to the issue of segregation that has been given the sanction of law, so-called de jure segregation, both South and North. It has not yet decided any case involving racially imbalanced schools whose composition as such did not derive from the mandate of state law. Nor has it yet decided any case involving de jure segregation of a minor sort, such as the case of a school board in an integrated district moving a boundary line to preserve the predominant racial character of a particular school without, however, any general segregation plan. The Denver school case, now in the Supreme Court, does involve these issues and may well give us an idea of the Supreme Court's thinking.

To date, however, the Court has, wisely I think, refrained from writing textbooks of constitutional law in this difficult area of constitutional analysis. It has proceeded case by case, always after having given local school districts and lower courts a great deal of time to deal with the problem at the local level. The Court has taken cases only after the passage of time has elicited a variety of views about the alternative resolutions. Even then, it has avoided a doctrinnaire attitude and grandiose pronouncements. It has left considerable discretion to lower courts and has given a rather broad hint that once dismantling of de jure segregation is achieved, it perceives the possibility of an end to continuous judicial supervision of local school boards. Much will of course depend, as it always has, on conditions beyond the Supreme Court's control, namely the ability of the American public, aided by their government, to bring to a close that chapter of our history labelled segregation.

House Joint Resolution 620, however, can only contribute to keeping that chapter open. Perhaps if it had been passed with the Thirteenth, Fourteenth, and Fifteenth Amendments, or perhaps even after 50 years of the so-called "separate but equal" doctrine of Plessy v. Ferguson, it would have operated, and been viewed, as a step forward in the field of race relations. That would certainly not be the case today. In those areas where segregation was mandated by law prior to 1954, this proposed constitutional amendment would undo the arduous work of 18 years in dismantling de jure segregation by authorizing a return to tokenism and, in some areas, a return to completely segregated schools as a matter of constitutional right. In view of the history of segregation in this country, that result would be a betrayal of the principles of Brown v. Board.

One of the principal problems with which the amendment seems designed to deal is the fear of many parents, some white, some black, although doubtless many more of the former, whose children are in nearby "good" schools that they will be sent to far away "bad" or "dangerous" schools. The problem is particularly severe in states that had not been thought of as operating "de jure" systems by the populace generally but are now coming under attack for clandestine operation of de jure systems or for knowing maintenance of de facto racially imbalanced schools. Obviously, these fears are reasonable, but there is considerably more to the problem than merely obviating them.

First, we have not even yet heard from the Supreme Court with respect to bussing in such situations, and the Court in Swann did recognize that there might be health and educational limitations on court-ordered bussing. More importantly, however, there are rights of other parents and children to be considered, those children in the "bad" school. We do not yet know enough about what makes a "good" or a 'bad" school to make confident pronouncements. We do know, however, that many children from racial and ethnic minorities are found in "bad" schools and that their parents believe that sufficient educational resources will be achieved only if white children are in the same schools as their children. Although phrased in neutral terms (while yet recognizing that it is an amendment "relative to neighborhood schools"), H.J. Res. 620 would resolve this conflict of fears and desires by giving constitutional protection to those that have good schools at the expense of those that have not.

I think such an amendment would be a terrible mistake at this stage in our history of race relations. At a time when the country as a whole, when recial and ethnic groups, whether majority or minority, are uncertain about the values of complete or partial or no mixing with one another, it seems particularly shortsighted to take one aspect of the problem, the schools, and impose a constitutional solution. With the enormous race and educational problems we face my judgment is that the principal governmental efforts ought to be heavy investment in positive programs that attack educational deficiencies and racial animosities. Our long-term future as a united country lies more in making "haves" out of "have nots" than in constitutionalizing the privileges of "haves."

Very truly yours,

ANDREW L. KAUFMAN,
Professor of Law.

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, N.Y., March 7, 1972.

Congressman EMANUEL CELLER,
U.S. House of Representatives,
Committee on the Judiciary,
Washington, D.C.

DEAR CONGRESSMAN CELLER: When I received your January letter asking my comments and observations on H.J. Res. 620, proposing a constitutional amendment relating to neighborhood schools, I was just about to leave the country for a brief trip to Israel; so I did not then have an opportunity to answer. Upon my return I learened that you had received a number of responses, some of which I have seen, that stated very well my objections to the proposal. I particularly admired and agreed with the observations in the letters of Professors Anthony G. Amsterdam, Charles L. Black, Jr. and William Van Alstyn on two central points: First, the proposal in its present form is badly drafted because subject to various interpretations that are entirely at odds with each other. Second, assuming revision of the language of the resolution to make clear the probable intent of the drafter—a prohibition of busing in order to halt desegregation of public schools—the proposal should be opposed on the merits because antithetical to the promise of nondiscrimination in public school education from *Brown* v. *Board of Education* in 1954 to *Sawnn* v. *Charlotte-Mecklenburg Board of Education* in 1971. Approval of that resolution would also reverse congressional affirmation of the same principle in the Civil Rights Acts of 1964 and later, as well as executive branch support for school desegregation in devising and financing imaginative plans for individual school districts to provide equal educational opportunities for all.

In short, I believe that the letters you received in response to your original inquiry provided an irrefutable case against turning our backs on the admittedly difficult problems of the public schools by allowing the United States to revert to official tolerance of state-supported segregation. Accordingly, in early February I thought I had nothing to add to an already overwhelming case. More recent events, particularly current debate in the Senate on other aspects of the same matter, reveal that my optimism was sadly misplaced. Substantial attempts are now being made to forbid busing, to restrict the power of the federal courts, and indeed to assure the return of racial segregation in more virulent form than ever, because for the first time it would have the imprimatur of federal approval. However little I can contribute to the debate, I feel it necessary to add my voice to those who are opposing those efforts.

I wish to comment on three approaches by those who wish to halt or slow down the progress toward desegregation: (1) Proposals for a constitutional amendment; (2) legislation (such as the amendment supported by Senator Griffin) to restrict the authority of the federal courts; and (3) legislation (such as the amendments offered by Senators Scott and Mansfield) to limit the participation of the federal government in school desegregation except upon request of local authorities.

First. Let me add just these few words to the eloquent statements you have already received in opposition to any constitutional amendment whose purpose, however explicit or inarticulate, is to take a long step backward to the time when separation of the races in public schools was thought tolerable.

Between 1954 and 1972 the three branches of the federal government have cooperated with increasing success to reduce the harmful consequences of segregation in the public schools and elsewhere in public life. In the process the Supreme Court has developed as the law of the land the significant proposition that the Constitution of the United States requires *effective* remedies to disestablish existing dual school systems. The Court has said that in some circumstances "the one tool absolutely essential to the fulfillment" of this constitutional obligation is the taking into account of race in the assignment of public schools. *North Carolina State Board of Education* v. *Swann*, 402 U.S. 43, 46 (1971). If that essential remedy should be denied to the courts—and even to school boards which seek voluntarily to lift the burden of segregation—all previous efforts to achieve equality would seem to have been pointless, indeed, worse, because it would then be apparent that Congress as well as the ratifying states had specifically accepted separation of the races as approved governmental policy.

Second. Senator Griffin's proposed amendment to the Higher Education Act, although hopefully sidetracked at this writing, is especially dangerous. The proposal to withdraw jurisdiction from the courts of the United States to issue any order requiring busing of pupils to promote desegregation should be opposed for the same reason as the constitutional amendment above discussed because it seeks to remove from the courts the only device likely to be effective in putting an end to segregation. The legislative proposal is in some respects even worse than the constitutional amendment. It is advanced with a cynical awareness of its almost certain unconstitutionality as an effort to "persuade" the Supreme Court to modify its rulings on desegregation. This is unacceptable pressure by one branch upon its coequal partner.

Moreover, this device seeks to limit federal judicial independence by denying federal courts the power to act in those areas in which Congress anticipates constitutional rulings with which Congress might not agree.

Third. The proposed amendment by Senators Scott and Mansfield would (1) prohibit the use of federal funds for busing except upon the request of local authorities; (2) prohibit federal agencies from urging the adoption of local busing plans that would "risk the health of the child or significantly impinge on his or her educational process"; (3) delay enforcement of any court decision ordering desegregation across district lines until all appeals are exhausted, but not beyond June 30, 1973, the expiration date of the legislation. (The following comments apply as well to the somewhat similar proposals approved by the House of Representatives in 1971.)

This proposal may not be unconstitutional on its face since it does not directly withdraw from the federal courts the power to implement their orders with remedies constitutionally mandated to assure effective compliance. And it may be that the amendment was offered as a compromise that would give enough to the neo-segregationists to make possible defeat of more drastic measures. Without commenting on the pragmatics of this strategy, I wish at least to remind its proponents of potential dangers along this route.

There may indeed be a problem of constitutionality with the clause that forbids federal agencies and their employees from urging local school boards to adopt a busing plan to accomplish desegregation, and to withhold federal financial assistance for such a plan, "unless constitutionally required." If this means that federal officials cannot advise or aid local officials where a court order mandates adoption of a particular plan, the proposal comes dangerously close to forbidding federal officials to advise local officials who seek voluntary compliance with the Constitution rather than resisting compliance until so ordered by a federal court. It is at least unwise thus to discourage voluntary efforts to adhere to the Constitution and possibly a violation of separation of powers for Congress to impose such restraint upon the executive branch.

If the clause, "unless constitutionally required," instead means simply that federal agencies should not counsel on busing plans not "required" by the Constitution, there is a problem of vagueness. Short of Supreme Court adjudication on each issue, which federal official can know when he is permitted and when forbidden to offer advice or provide funds for local school plans? Such an interpretation would impose an *in terrorem* restraint, possibly unconstitutional and certainly unwise, upon the freedom of government officials to accomplish their assigned mission.

Even the legislatively ordered delay in implementation of certain court orders until the exhaustion of all appeals is at best dubiously permissible. It is clearly an interference with the equity powers of the federal courts and, to that extent objectionable as an improper intrusion of the legislative branch into the affairs of the judicial branch.

Apart from these technical difficulties with the Scott-Mansfield proposal, it is deficient in a more profound sense as well. This proposal, not unlike the suggested constitutional amendments and the Griffin proposal, would put Congress on record against busing—which the Supreme Court has said is sometimes the only way to achieve desegregation—and would require the executive branch to display similar hostility. There is no way to avoid the necessary, and intended, implication that the federal government would then be on record in favor of slowing down the process of desegregation. I think it intolerable for government to signal its willingness to revert to patterns of segregation.

Sincerely,

ROBERT B. MCKAY.